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REPORT No. 192/18
PETITION 1506-08
REPORT ON ADMISSIBILITY

OSWALDO MARCELO LUCERO ET AL.
UNITED STATES OF AMERICA

Approved electronically by the Commission on December 31, 2018.

Cite as: IACHR, Report No. 192/18, Petition 1506-08. Admissibility. Oswaldo Marcelo Lucero et al. United States of America. December 31, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Latino Justice PRLDEF <i>et. al.</i> ¹
Alleged victim:	Oswaldo Marcelo Lucero <i>et. al.</i> ²
Respondent State:	United States of America ³
Rights invoked:	Articles I (life, liberty and personal security), II (equality before law), V (protection of honor, personal reputation, and private and family life), IX (inviolability of the home), XVII (recognition of juridical personality and civil rights), XVIII (judicial protection) of the American Declaration of Rights and Duties of Man ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	December 24, 2008
Additional information received at the stage of initial review:	March 5, 2009; October 24, 2011; January 6, 2012; April 19, 2013; February 5, 2014
Notification of the petition to the State:	July 18, 2014
State's first response:	September 14, 2015

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes, under the terms of Section VII
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Declaration (ratification of the OAS Charter on June 19, 1951)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles I (life, liberty and personal security), II (equality before law), V (honor, personal reputation, and private and family life), XVII (recognition of juridical personality and civil rights), XVIII (judicial protection) of the American Declaration
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI

¹ The petition was originally presented by Latino Justice PRLDEF, Carlos Orellana and Jacinto Jaramillo, which later named the following organizations as co-petitioners: Association of Mexicans in North Carolina (AMEXCAN); Casa de Esperanza; CASA de Maryland; Coalition for New South Carolinians; East Bay La Raza Lawyers Association (EBLRLA); El Centro Latino, Inc.; Farm Labor Organizing Committee, AFLCIO (FLOC); Human Rights Project at the Urban Justice Center; League of United Latin American Citizens (LULAC); National Employment Law Project (NELP); National Immigrant Solidarity Network (NISN); National Immigration Project of the National Lawyers Guild; National Lawyers Guild San Francisco Bay Area Chapter; Southern Coalition for Social Justice; Southern Poverty Law Center (SPLC); Sugar Law Center for Economic and Social Justice; Virginia Coalition of Latino Organizations (VACOLAO).

² The following persons are alleged victims in this petition: Oswaldo Marcelo Lucero, Carlos Orellana, Jacinto Jaramillo, Angel Loja, Hector Sierra, Luis Ramirez (originally listed as Luis Eduardo Martinez), Romel Sucuzhañay, Jose Oswaldo Sucuzhañay, and Juan Varela.

³ Hereinafter, "USA" or "United States".

⁴ Hereinafter, "the Declaration" or "the American Declaration".

⁵ The observations submitted by each party were duly transmitted to the opposing party.

Timeliness of the petition:

Yes, under the terms of Section VI

V. FACTS ALLEGED

1. The petitioners allege that the United States, through its actions and omissions, is responsible for encouraging a climate that fosters violence against *Latinos* residing in the country, which has resulted in an increase in the number of crimes committed against them by private individuals. The petitioners assert that the United States has not adequately addressed the negative impacts of its anti-*Latino* rhetoric, in particular the acts of violence committed against *Latinos*, nor taken sufficient measures to prevent them. They claim that the State has failed to protect *Latinos* from hate crimes through a combination of inadequate data collection, limited training of law enforcement officials regarding investigating and documenting hate crimes, delegation of immigration authority to localities, hostile enforcement of immigration laws, as well as the failure to devote resources to monitor hate groups and institute policies to ensure protection. The petitioners allege that these practices created a context in which the crimes committed against the alleged victims – that is the murder of Oswaldo Marcelo Lucero, Luis Ramirez, José Oswaldo Sucuzhañay and Juan Valera, as well as the beating of Carlos Orellana,⁶ Angel Loja, Hector Sierra, Jacinto Ramillo,⁷ and Romel Oswaldo Sucuzhañay – have to be understood.

2. They allege that the aggressive immigration enforcement policies have been undertaken with little regard for the human rights of undocumented migrants and have had a disparate impact on *Latinos*. They sustain that the active use of local law enforcement officials in the implementation of the immigration policies has had the effect of shifting their role from protecting civilians to reporting undocumented *Latinos*, sending the message that *Latinos* are undesirable and that targeting them is serving public good. Petitioners cite, for example, the agreements under Section 287(g) of the Immigration and Nationality Act. They allege that whereas these agreements are meant to promote local enforcement of immigration matter, they create the unfortunate consequences of promoting racial profiling and discrimination by state actors, as well as hate and violence against immigrants by private actors. They additionally claim that the anti-immigrant rhetoric and the discriminatory and aggressive enforcement of immigration policies have emboldened extremists to commit crimes against *Latinos*, which is illustrated by the disproportionate rise in hate crimes towards *Latinos* compared to other hate crimes. The petitioners also submit that there have been reports of disproportionate use of force against *Latinos* by law enforcement officials, contributing to the perception that it is acceptable to target them. They further submit that such apprehensions are followed by an utter lack of fair process.

3. They claim the depicted practices have had the effect of creating a climate in which *Latinos* cannot seek effective protection and have lost access to law enforcement; in which they are perceived as not being equal before the law and are targeted independently of their immigration status; and in which violation of their rights is seen as implicitly approved by the State, thus further encouraging private actors to commit hate crimes against them. They submit that the inability and unwillingness of law enforcement authorities to properly document crimes, in addition to the fear of the victims to denounce them, has also meant that anti-immigrant and anti-*Latinos* hate groups are largely overlooked by the federal government, which hampers the government's ability to prevent violent acts committed by them through properly identifying crime pattern and adequately determining how to allocate resources. Petitioners indicate that the United States' failure to overhaul its system for data collection on hate crimes has also lead to underreporting and has prevented them from vindicating their constitutional and human rights.

4. With respect to specific acts of hate and violence, the petitioners refer to crimes committed against the alleged victims on the basis of their ethnicity. They claim that in Patchogue, Suffolk County, New York, members of the self-titled "hate group" "Caucasian Crew" carried out a series of targeted assaults against *Latinos*. They refer the killing of Oswaldo Marcelo Lucero, stabbed to death on November 8, 2008, and

⁶ Originally referred to as John Doe 1.

⁷ Originally referred to as John Doe 2.

the attack of Angel Loja, who was with Mr. Lucero at the time of his attack but managed to escape the group, and Hector Sierra, who was chased down and assaulted by several assailants, allegedly belonging to the same group, before he was able to escape and knock on the door of a nearby house. They also refer to the assault of Carlos Orellana, on July 14, 2008, by a group of ten or more white teenagers.

5. The petitioners indicate that 7 teens have been sentenced for the death of Mr. Lucero, six pleading guilty and one being convicted after trial. They indicate that the only perpetrator that went to trial was sentenced to 25 years for first-degree manslaughter as a hate crime. The petitioners indicate that two of the young men that assaulted Carlos Orellana were indicted and later convicted for the attack, but underlines that the police took four months to initiate a follow up after he reported the crime. The petitioners indicate that both had also been charged in Marcelo Lucero's death. They are currently serving prison sentences of 25 and 7 years for the crimes against Mr. Lucero and Mr. Orellana. According to the petitioners, the *New York Times* reported that Mr. Loja received monetary compensation from the Suffolk County District Attorney's office, in the form of payments totaling 9,600\$ to a religious organization that were to provide assistance to M. Loja so he could remain in the jurisdiction and provide testimony at trial. The petitioners indicate that the defendants in Mr. Lucero's killing either plead guilty or were convicted of attempted second degree assault as a hate crime against Mr. Sierra, and are serving various prison sentences. The petitioners claim that even if the perpetrators were punished, the State has not done enough to address the general problem of hate crimes towards *Latinos* in this region and to provide reparation to the victims for the violation of their rights.

6. The petitioners also refer to several attacks carried out against Jacinto Jaramillo in the same city, which he purportedly did not report because of a prior intimidating experience with the local police department and out of fear that the authorities will either ignore his complaints or retaliate against him for making them. He was allegedly deported after publicly sharing his story.

7. The petitioners furthermore mention the fatal beating of Luis Ramirez in Shenandoah, Pennsylvania, on July 14, 2008, carried out by two teenagers who, while assaulting him, shouted that he should tell all his Mexican friends to leave the city. The perpetrators were initially convicted to only six months in prison for his assault and death since the County Judge did not classify their actions as a hate crime. They were eventually convicted for the violation of Ramirez's civil rights and plotting to cover up the beating. The petitioners also claim that local law enforcement officials attempted to protect the teens involved in the killing and shield them from prosecution – these officials, including the police chief, were charged with obstruction of justice. The former police chief was found guilty of falsification of documents, and a police lieutenant was found guilty of lying to federal agents, while one of the police officers was acquitted of the charges of conspiracy and falsification of documents..

8. Additionally, they submit that brothers Romel and José Osvaldo Sucuzhañay were brutally attacked by two assailants shouting anti-Latino and gay slurs at them, in Brooklyn, New York, in December 2008 as they walked home from a party. José Osvaldo Sucuzhañay died from the injuries sustained. According to the petitioners, only one of the assailants was convicted for assault and murder as a hate crime while the other was acquitted of hate crime charges and found guilty of manslaughter. Both were sentenced to 37 years in prison.

9. They also refer to the story of Juan Varela, a U.S. citizen of Mexican descent, who was shot to death in 2010 in Phoenix, Arizona, by his neighbor who had told him in front of his family that he should go back to Mexico or he would die. They assert that the perpetrator was sentenced to 27.5 years for second-degree murder and aggravated assault, but that no hate crime charges were brought since the Phoenix Police Department refused to classify the incident as a hate crime.

10. The petitioners also informed the IACHR of 100 incidents of alleged hate crimes committed nationwide against, *inter alia*, U.S. citizens, legal permanent residents, Latino day laborers and migrant workers, children and other relatives residing with migrant workers and Latino human rights defenders. They specified these incidents were illustrations of the many dangers faced by the Latino community in the United States.

11. The petitioners submit that because there is no domestic legal basis upon which suing the State for affirmative protection from hate crimes, there are no available remedies that can be exhausted in the domestic courts. They indicate that redress for civil rights violations are often filed on the basis of 42 U.S.C. Section 1983, but that this remedy is inapplicable to the violations referred to in this petition because the statute is not applicable against the federal government and the U.S. Constitution does not impose upon the State affirmative obligations to protect persons from hate crimes. It is further submitted that the State's failure to overhaul its system for data collection on hate crimes leads to underreporting and prevents the petitioners from vindicating constitutional and human rights. The petitioners submit that the exceptions provided for in Article 31.2(a) and (b) of the Rules of Procedure should apply in this case

12. For its part, the State asserts that the facts alleged by the petitioners do not demonstrate a failure by the United States to uphold its commitments under the American Declaration in light of the actions taken and the policies enacted in the period since the petition was filed in 2008. Additionally, the State submits that the Commission lacks competence *ratione personae* to consider the petition, that the petitioners have yet to exhaust the domestic remedies and that the petition is inadmissible since it does not state facts that tend to establish a violation of the American Declaration because this instrument does not impose a duty to prevent private violence, especially not under the circumstances alleged in the petition.

13. According to the State, the petition is inadmissible in light of supervening information and evidence which renders it out of order, following Article 34(c) of the Rules of Procedures. The crimes referred to have been investigated by the federal or state authorities, and their perpetrators have been prosecuted and convicted. Additionally, the Suffolk County Police Department has undergone a reform since the events referred to in the petition took place in Patchogue, New York, following a joint investigation initiated by the Department of Justice Civil Rights Division and the U.S. Attorney's Office for the Eastern District of New York in 2009. Among other things, an agreement was reached in order to ensure that all officers would receive hate crime training and that outreach efforts in Latino communities would be strengthened. Moreover, in Shenandoah, Pennsylvania, three of the police department's seven officers were prosecuted in the case of Luis Ramirez, leading to the conviction of the police chief and a lieutenant and to the hiring of a new police chief. Accordingly, the State submits that the petitioners' claims are now moot. Additionally, it indicates that since the petition was filed, significant changes have been made to U.S. immigration policies and practices, including the expiration of all section 287(g) programs. The State rejects the petitioners' pretensions regarding the use of force by immigration officials, claiming that the Department of Homeland Security enforces strict standards of conduct that apply to all of its employees, investigates deaths resulting from use of force and follow up on civil liberties-related complaints. The State additionally contends that it is committed to collecting and analyzing data, training federal and state law enforcement to identify hate crime and to prosecute the perpetrator, and that it has undertaken many actions to increase its efforts to address hate crimes, as illustrated by recent federal legislation. Furthermore, many states have incorporated hate crimes provisions into their penal codes, including the two states where the crimes alleged by the petitioners occurred.

14. Additionally, the State submits that the Commission lacks competence *ratione personae* since two of the alleged victims are not identified, but rather referred to as John Doe 1 and 2⁸, and that the petition purports to be filed on behalf of "other unidentified or unknown victims of hate crimes targeting *Latinos* and/or undocumented immigrants", in addition to making a myriad of allegations of general nature, untied to any specific individuals or specific events, notably regarding the Sucuzhañay brothers. The State contends that such *actio popularis* is not allowed by the Commission's governing instruments. Further, it submits that the petitioner have not satisfied their duty to demonstrate that they have invoked and exhausted domestic remedies. It claims that the US domestic legal system provides several avenues for redress that serve to prevent human rights abuses, hold human rights abusers accountable, and provide relief to victims, including criminal punishment of the individuals responsible for the violations, reliefs aimed at improving institutions or systems and civil suits.

⁸ The petitioners revealed their identities, respectively Carlos Orellana and Jacinto Jaramillo, in communications dated October 24, 2011, and April 19, 2013.

15. The State contends that the named petitioners received an effective criminal domestic remedy subsequent to the filing of the petition, since authorities conducted an investigation, located and arrested the perpetrators, put them on trial and secured convictions and substantial prison sentences, thus barring them from international forum. It also states that the estate of the alleged victim Lucero pursued a 42 U.S.C. Section 1983 action, which did not meet the substantive standard for relief for a suit alleging governmental responsibility. As for civil suits, the State indicates that the petitioners could have bring tort suits against the private actors responsible for the alleged crimes, or actions against the government authorities, including bringing a civil action in federal or state court under the federal civil rights state, 42 U.S.C. Section 1983; seeking damages for negligence of federal officials and for negligence and intentional torts of federal law enforcement officers under the Federal Tort Claims Act, 22 U.S.C. section 2671; suing federal officials directly for constitutional tort damages under the U.S. Constitution or bring either a *Bivens* or a *Davis* actions; challenging official action through judicial procedures in state courts and under state law, based on statutory or constitutional provisions; and seeking civil damages from participants in conspiracies to deny civil rights, 42 U.S.C. section 1985. As for relief aimed at improving the institutions, the State indicates that the Department of Justice conducted more than 20 pattern and practice investigations of law enforcement agencies, is enforcing more than 16 landmark agreements with state or local law enforcement agencies, as well as seeking to identify and address potential policing issues before they become systemic problems.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

16. The petitioners claim that the facts alleged in their petition amount to human rights violations that cannot be addressed in domestic courts since the United States does not have any national laws upon which the alleged victims can rely, therefore relieving them from the obligation to exhaust domestic remedies. They claim that redress for civil rights violations are often filed on the basis of 42 U.S.C. Section 1983, but that this relief is not available to them in the present matter. The petitioners additionally allege that where criminal investigations were conducted and the perpetrators convicted, the procedures were insufficient or did not tackle the hate crime aspect. For its part, the State submits that domestic remedies were available to the petitioners, including the criminal punishment of the perpetrators, reliefs aimed at improving on institutions or systems and civil suits, against the private parties or against the government authorities, and that they were not exhausted.

17. The Commission notes that the State identifies several domestic remedies that allegedly should have been exhausted by the petitioners. It further acknowledges that the crimes alleged in the petition were investigated by the State. The Commission however observes that the petitioners allege the inadequacy of the penal investigations, submitting that, where appropriate, they are either carried out in a way that is prejudicial to the alleged victims or are unavailable to them, as it would have been the case with Mr. Jaramillo. They also submit that with respect to certain victims, the investigations and punishment were insufficient, while perpetrators were either found innocent or were not charged of hate crimes, as it would have been the case with Mr. Lucero, Mr. Orellana, Mr. Loja, Mr. Sierra, Mr. Ramirez, MM. Sucuzhañay and Mr. Varela. The Commission additionally notes that the petitioners make allegations seeking to establish the existence of a broader context in which the State would have failed to comply with its obligation to prevent the denounced acts. The Commission considers that, pursuant to Article 31.1 of the Rules of Procedure, the domestic remedies were indeed exhausted in the cases of the latter petitioners. Additionally, the Commission considers that the alleged unavailability of the remedy would *prima facie* have prevented Mr. Jaramillo to exhaust the remedies under domestic law and therefore concludes that the exception to the prior exhaustion of domestic remedies set forth in Article 31.2(b) of the Rules of Procedure applies in his case. The IACHR notes in this regard that the question of the existence of a duty to prevent hate crimes and to abstain to contribute to a climate that fosters violence towards the *Latinos*, as well as whether the facts alleged by the petitioners regarding the ineffectiveness of the remedies indeed constitute a violation under the Declaration, will be analyzed, as appropriate, in the report that the Commission adopts on the merits of the case.

18. The Commission believes that there is no need in this case to exhaust a civil action before resorting to the Inter-American system since that remedy would not settle the main issue in this petition. The

Commission additionally considers that the reliefs aimed at improving institutions or systems, while a response to the broader situation of systemic discrimination alleged by the petitioners, do not constitute an appropriate remedy to the violations reportedly suffered by the alleged victims. The Commission reiterates that whenever a State alleges that a petitioner has not exhausted domestic remedies, it has the burden of identifying the remedies to be exhausted and demonstrating that the remedies that have not been exhausted are “appropriate” for redressing the alleged violation—in other words, that the function of those remedies within the national legal system is suitable for protecting the legal right infringed. The Commission considers that the State has not identified a remedy that was suitable for the claim made by the petitioners, which in turn allege that no such remedy exists.

19. With respect to the requirement concerning the timeliness of the petition, the Commission observes that the alleged facts took place in or after July 2008 and that the petition to the IACHR was received on December 24, 2008. Consequently, the Commission considers that the petition was filed within a reasonable period of time and that, therefore, the requirement established in Article 32.2 of the Rules of Procedures of the IACHR has been met.

VII. ANALYSIS OF COLORABLE CLAIM

20. In view of the factual and legal elements alleged by the parties, the Commission considers that, if proven, the allegations regarding the actions and omissions by which the State purportedly created a climate that fosters discrimination and violence against *Latinos* residing in the country, which has resulted in an increase in the number of hate crimes committed against them, notably the crimes committed against the alleged victims and the actions of the State surrounding them, could characterize possible violations of Articles I (life, liberty and personal security), II (equality before law), V (honor, personal reputation, and private and family life), XVII (recognition of juridical personality and civil rights), XVIII (judicial protection) of the American Declaration.

21. With respect to the allegations raised by the State regarding the Commission’s lack of competence *ratione personae*, the Commission notes that the petitioners have revealed the identity of John Doe 1 and John Doe 2, respectively, Carlos Orellana and Jacinto Jaramillo, in their communications dated October 24, 2011, and January 06, 2012, in addition to having described the alleged abuses committed against the Sucuzhañay brothers in their communications dated October 24, 2011, and April 19, 2013. In light of the foregoing, the Commission considers that it is competent *ratione personae* to assess this petition with respect to Carlos Orellana, Jacinto Jaramillo, as well as the Sucuzhañay brothers. Moreover, it is also competent *ratione personae* to entertain the petition with respect to the other alleged victims, namely, Oswaldo Marcelo Lucero, Angel Loja, Hector Sierra, Luis Ramirez and Juan Varela. With respect to the other unidentified or unknown victims of hate crimes targeting *Latinos* and/or undocumented immigrants and the list of 100 incidents provided by the petitioners in their communication dated October 24, 2011, the IACHR observes that the petitioners indicate that the detailed list of incidents of hate crimes targeting *Latinos* was meant to give the Commission a snapshot view of the depth and breadth of the kinds of hate crimes committed against *Latinos* across the country, and the Commission will consider these submissions as contextual evidence and not as individual claims on behalf of each person or incident.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, II, V, XVII and XVIII;
2. To find the instant petition inadmissible in relation to Articles IX; and
3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 31st day of the month of December, 2018. (Signed): Margarette May Macaulay, President(dissenting opinion); Esmeralda E.

Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli (dissenting opinion), Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.