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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,	)	
	)	
Movant,	)	KNOX COUNTY
v.	)	No. M2020-01156-SC-DPE-DD
	)	CAPITAL CASE
CHRISTA GAIL PIKE,	)	
	)	Trial Court No. 58183A
Defendant.	)	

DEFENDANT CHRISTA PIKE'S RESPONSE IN OPPOSITION TO THE STATE'S MOTION TO SET EXECUTION DATE AND REQUEST FOR A CERTIFICATE OF COMMUTATION

Christa Gail Pike opposes the State's motion to set an execution date and asks this Court for a Certificate of Commutation. Extenuating circumstances exist because Christa Pike was only eighteen at the time of this offense and suffering from severe mental illness along with organic brain damage. Her youth, her sexual victimization and traumatic upbringing, as well as her severe mental illness justify a commutation of the death sentence by this Court. Alternatively, Ms. Pike requests this Court deny the State's motion because that motion is premature. Setting an execution date is premature because the Inter-American Commission on Human Rights (IACHR) has reviewed Ms. Pike's Petition requesting issuance of precautionary measures, determined that she is at serious and urgent risk of irreparable harm, and requested that the United

States refrain from carrying out the death penalty on Christa Pike until the IACHR can complete its investigation.

Furthermore, setting an execution date at this time is also premature because TDOC safety measures in response to the COVID pandemic have precluded completing a current mental health evaluation. The State has just begun reopening and prisons have only recently begun allowing experts to conduct in-person evaluations. This Court should delay any ruling on the State's motion until Ms. Pike has had the opportunity to fully research and investigate potential arguments for commutation that were stymied by the pandemic.

Christa Gail Pike was a teenaged girl when the State of Tennessee sentenced her to death.[1] If the Attorney General's motion is granted, she will be the first woman Tennessee executes in over 200 years.[2] She would also be the first person Tennessee has executed in the modern era who

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[1] There have been only 17 women executed by States or the federal government in the post-*Furman* era. https://deathpenaltyinfo.org/death-row/women/executions-of-women. None were teenagers at the time of their offense; all were over the age of 21. *See* Exhibit 1 (Women Executed Post-*Furman*).

[2] *See* https://www.acrosswalls.org/datasets/executions-us/ (database drawn primarily from Espy reflecting only four executions of women: 1) March 20, 1807, hanging of Molly Holcomb, a Black female; 2) 1808 hanging of an unnamed Black female; 3) 1819 hanging of an unnamed Black female, and 4) 1820 hanging of Eve Martin, race unknown for accessory to murder. However, the Espy database appears to have incorrectly included Eve Martin, who was the victim of a homicide, not an accessory. *See* David V. Baker, *Women and Capital Punishment in the United States: An Analytical History*, 132 (McFarland, 2015).

was a teenager at the time of the offense.[3] Such death sentences for youthful offenders have now become exceedingly rare in this country in the years since her conviction and this Court's last review of her sentence in 1998.[4]

Facts of the Case and Procedural History

In January 1995, eighteen-year-old Christa Pike, seventeen-year-old Tadaryl Shipp, and nineteen-year-old Shadolla Peterson were charged in the Criminal Court for Knoxville County, Tennessee with the murder of nineteen-year-old Colleen Slemmer. (T XXIII: 2202.) All four teenagers were participating in Job Corps, a federal jobs training program for troubled adolescents. The three defendants invited Slemmer with them to a secluded area, where they killed her. Her throat was cut

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[3] Prior to resuming executions post-*Furman*, Tennessee's last execution was in 1960. Tennessee executed thirteen men between 2000 and 2020, all of whom were in their 20's or 30's when committing their offenses. *See* Exhibit 2 (Tennessee Executions Post-*Furman*).

[4] In 1996, when Christa Pike was tried, execution of those 16 years or older at the time of the offense was permitted. *Stanford v. Kentucky*, 492 U.S. 361 (1989). Since her sentencing and this Court's last review of her case, standards of decency have evolved. *C.f. Roper v. Simmons*, 543 U.S. 551 (2005). Notably, in this Court's proportionality review of Ms. Pike's sentence, the Court compared her case to eight others, and six of those defendants are no longer subject to execution. *State v. Pike*, 978 S.W.2d 904, 920–24 (Tenn. 1998). The seventh, Oscar Franklin Smith, awaits execution having been convicted of killing three people—his wife, and her 13 and 16-year-old sons. The eighth, Mr. Hall, was executed in 2019 after abandoning federal habeas proceedings. The 1998 Court was unaware of Ms. Pike's severe mental illness (posttraumatic stress disorder and bipolar disorder), congenital brain damage, childhood sexual victimization and rape, abandonment, and neglect because this evidence was never presented at trial.

multiple times, her head was struck with a large piece of asphalt, and a pentagram was carved into her chest. (T XVII: 1691–95; T XVIII: 1744–47, 1777.) Christa confessed to her role in this crime. (T Exs. 28, 29).

Even though the crime was highly sensationalized in the Knoxville media market,[5] Christa went on trial in Knox County just over a year after she was charged. William Talman[6] and Julie Martin Rice were appointed to represent her although neither had tried a death penalty case. Mr. Talman acknowledged that the most important part of Christa's trial was the penalty phase,[7] yet his presentation to persuade the jury to spare Christa's life lasted only a couple of hours and the totality of the

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[5] *See, e.g.,* T III: 334 (January 20, 1995 Knoxville News-Sentinel headlined "Alleged killers held 'soul captive'") describing "police sources" claiming that Ms. Pike and her codefendants took a skull fragment "to trap the victim's soul in her body. . . ." The article refers to Satanist beliefs and devil worship, which were not motives in the offense, but nonetheless colored the media coverage and the prosecution's presentation at trial.

[6] At the time of his appointment, Talman was facing legal difficulties of his own. As the presiding judge later acknowledged, "we all knew Talman had his own problems." (Supp. PC II: 114.) Around that time, Talman was under investigation by several law enforcement agencies for overbilling the state's Indigent Defense Fund—a Class B felony. (*See* Apr. 2008 Ex. 1: Letter dated Dec. 8, 1994; Comptroller Report (CR): May 31, 1995 Letter.) The investigation, which attracted widespread local news coverage, revealed that Talman repeatedly billed over 24 hours per day and apparently manipulated time entries to avoid detection. (CR: 9; *see* Apr. 2008 Ex. 1: Collection of Knoxville News Sentinel articles.) Talman eventually pleaded guilty to two ethics charges, and the Tennessee Supreme Court imposed an approximately one-year suspended revocation of Talman's license. (Feb. 2006 Ex. 2-A: Order of Enforcement.)

[7] PC XX: 324.

defense testimony takes up less than sixty pages of transcript. As explained below, trial counsel failed to uncover compelling mitigating evidence that was never presented to the sentencing jury or considered by this Court.

Trial counsel's sentencing phase closing argument was also brief. Counsel did not tell the jury that Christa's youth was a statutory mitigating factor, or that the jury might spare her life based on her lack of significant criminal record. Rather, counsel emphasized the prosecution argument that Christa enjoyed the attention this case brought.[8] The defense proposed a life sentence as a more severe punishment, reasoning to the jury that Christa would receive less attention than if the jury imposed death. (T XXV: 2481.) Counsel was inexplicably arguing that the jury should inflict the harshest punishment. The jury responded by imposing the harshest punishment under the law and sentenced Christa to death.[9] Had she been slightly younger at the time of the crime, like her codefendant Shipp, Christa Pike would have been ineligible for the death penalty.

This Court affirmed her convictions and sentences on appeal. *State v. Pike*, 978 S.W.2d 904 (Tenn. 1998), *cert. denied*, 526 U.S. 1147 (1999).

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[8] This argument was based on the defense assessment that Christa had Borderline Personality Disorder, a diagnosis reached after cursory testing and without any analysis of her traumatic childhood. Post-conviction experts and now, Dr. Bethany Brand, have raised serious questions about the validity of this diagnosis.

[9] *See* https://www.wbir.com/video/news/local/march-30-1996-christa-pike-is-sentenced-to-death/51-bc611a44-2e79-4084-96a6-f1f11c9f9fc4 (50 second video from Knoxville television station reporting the verdict).

Next, she was denied post-conviction[10] and federal habeas relief. *Pike v. State*, No. E2009–00016–CCA–R3–PD, 2011 WL 1544207 (Tenn. Crim. App. Apr. 25, 2011), *perm. appeal denied* (Nov.15, 2011). *Pike v. Gross*, 936 F.3d 372, 382–86 (6th Cir. 2019) (Stranch, J., concurring).

While the Sixth Circuit Court of Appeals affirmed the denial of habeas relief, Judge Stranch wrote a concurrence wherein she expressed the view that because Christa was 18 years old at the time of the crime the death sentence "likely" violates the Eighth Amendment under the Supreme Court's "precedent focusing on the lesser blameworthiness and greater prospect for reform that is characteristic of youth." *Id.* at 384 (citing *Roper* v. *Simmons*, 543 U.S. 551 (2005), *Miller* v. *Alabama*, 567 U.S. 460 (2012), and *Montgomery* v. *Louisiana*, 136 S. Ct. 718 (2016)). Just like children under age 18, Judge Stranch observed, 18- to 21-year-olds exhibit "a lack of maturity and an underdeveloped sense of responsibility," a greater susceptibility to negative influences, and an unformed character. *Id.* at 385. Indeed, Judge Stranch observed, it is precisely because of those characteristics that society has set the age of majority at 21 in many circumstances. *Id.* But Judge Stranch "reluctantly" concurred in the denial of habeas relief on the ground that the Supreme Court has "not extended *Roper* to 18-year-olds." *Id.* at 386. Because a federal court may only grant habeas relief based on "clearly

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[10] This Court never reviewed the merits of Christa's post-conviction appeal but did consider, as an issue of first impression, whether she could reinstate her petition after an early aborted attempt to forgo post-conviction review. *Pike v. State*, 164 S.W. 3d 257 (Tenn. 2005).

established federal law," (28 U.S.C. section 2254(d)), Judge Stranch was forced to vote against habeas relief.

The United States Supreme Court denied certiorari, *Pike v. Gross*, 141 S.Ct. 86 (2020), and the State of Tennessee has now asked this Court to set an execution date. This Court has not reviewed Christa's sentence since 1998. Because of trial counsel's ineffective representation, the record this Court reviewed was woefully incomplete. Furthermore, the science regarding brain maturity and the effects of trauma have been greatly advanced since then. For the following reasons, Christa Pike asks this Court to deny the State's motion.

A. Because of Christa Pike's youth, traumatic upbringing, and severe mental illness, this Court should issue a Certificate of Commutation.

This Court should grant a Certificate of Commutation. Before her arrest at age eighteen, Pike had a horrific childhood. Before she was even born, she suffered brain damage. Then, from the time she was a small child,[11] she endured abuse, neglect, multiple violent rapes, and suffered from severe mental illness. With these factors working against her, she

[11] *See* Jan. 2007 Ex. 2:1 (Photograph introduced as Ex. 2 to January 29–31, 2007 post-conviction hearing):

was never able to develop into a functional adult. In fact, she was only eighteen at the time of the offense and, while she was technically barely legally eligible for the ultimate punishment under current Tennessee law, her immaturity and severe mental illness mandate commutation from execution.

1. Christa Pike suffered brain damage before she was even born.

At the time Christa was conceived, her mother was an alcoholic who continued to drink while pregnant. This caused brain damage *in utero* to Christa's frontal lobe, the region in the brain that controls executive functioning and behavioral regulation. (PC VIII: 242–243, 248–249; PC XXIX: 49–50, 55.) Her brain damage is so severe that—unlike most damage of a similar nature—it is visible on an MRI. (PC VIII: 244–45.) Dr. Jonathan Pincus, a well-respected neurologist and clinical psychiatrist, confirmed Christa's brain damage at her post-conviction hearing. (PC VIII: 248–49; PC XXIX: 49–50.) Such brain damage increases the likelihood of developing bipolar disorder, as Christa ultimately did. (PC XXIX: 49–50.)

This brain damage has carried consequences throughout Christa's life. As an infant, it caused her to suffer seizures. (Jan. 2007 Ex. 7: 14, Appalachian Hospital May 29, 1977 EEG Report.) As an older child, Christa's brain developed inhibitory systems that controlled the epilepsy. But, according to Dr. Pincus, "the abnormal group of cells is still there and the behavioral effects of the abnormality in the brain may not go away." (PC VIII: 246). Christa's brain damage affected her ability to

control her actions since it damaged her executive functioning. (PC VIII: 243.)

This damage to executive functioning affected Christa's behavior at the time of the crime in this case. According to Dr. Pincus, "[Christa] lost control of herself" while she was participating in killing Colleen Slemmer. (PC VIII: 278.) According to Dr. Pincus, "she didn't start off by wanting to kill [Slemmer]." (PC VIII: 278.) However, "her mental disease and defect prevented her from being able to consider what she was doing" and to prevent herself from following through with killing Slemmer once the assault on her had begun. (PC VIII: 278.)

2. Christa Pike's childhood was characterized by physical and mental abuse as well as neglect.

In addition to the physical damage caused by her drinking, Christa's mother, Carissa, inflicted emotional abuse. Carissa was herself a seriously troubled woman. She suffered from depression, attempted suicide when Christa was three years old, and drank heavily throughout Christa's childhood. She preoccupied herself with partying, her own appearance, and—above all—her latest boyfriend, leaving her children with only whatever "was left." (PC VII: 175–76). Loath to care for Christa, Carissa left her with relatives whenever she became inconvenient, including for almost all of the first three years of her life. (PC VII: 169–71; Jan. 2007 Ex. 1-A: Social History at 18, 26; PC VII: 171, 181–83; PC IX: 368–69; Apr. 2008 Ex. 6: 4–5.) Carissa sent Christa away when she

was eight years old, after Carissa's fourth husband indicated he "didn't like children." (PC X: 169–71.)[12]

Carissa's romantic partners visited further neglect and abuse on Christa. Her fourth husband whipped Christa and her sister regularly with a leather strap on a wooden handle. (Jan. 2007 Ex. 1-A: Social History at 28.) Carissa's subsequent boyfriend, Steve Kyaw, beat Christa with a belt, sometimes waking her in the dead of night to do so. (Jan. 2007 Ex. 1-A: Social History at 14.) Other times, he twisted Christa's nipples and "fe[lt] her up" while wrestling with her. (Jan. 2007 Ex. 1-A: Social History at 13–14; Apr. 2008 Ex. 6: 4.) Kyaw's abuse persisted until he was charged for punching Christa in the nose, after which child protective services ordered him not to be alone with the child. (PC XI: 568–69.)

The relatives with whom Carissa left Christa provided no refuge. Christa has scars on her back from her father's whippings, which he meted out five or six times in a single day. (Apr. 2008 Ex. 6: 4.) Beyond that, Glenn Pike ignored his daughter. Christa's maternal grandmother, meanwhile, resented having to care for her, "because it took away some of that alcohol time;" she physically and verbally abused Christa before

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[12] Christa's familial instability upended her education as well. Constantly relocating, Christa never spent more than a few years at the same school—and she split seventh grade among three different schools. (PC XXIV: 655, 690; PC XXV: 789.) She failed third grade and seventh grade, and she did not complete any formal schooling beyond the ninth grade. (PC XXV: 789; Jan. 2007 Ex. 1-A: Social History at iv.) Thus, she did not complete her education despite "above-average intelligence." (Jan. 2007 Ex. 1-A: Social History at 38; Jan. 2007 Ex. 1-A: Mitigation Materials (M Mat.) at 10.)

dying of alcoholic hepatitis. (PC VII: 171, 181–83; PC IX: 368–69.) When Christa was in the care of her maternal grandfather, she "repeatedly witnessed the bloody slaughter, skinning, and carving of animals, at least one of whom she had become attached to and named." Exhibit 3, Declaration of Bethany Brand, Ph.D., ¶5.[13]

The only relative who exerted a positive influence on Christa's life was her paternal grandmother, who died when Christa was twelve. (Jan. 2007 Ex. 1-A: Social History at 18, 28.) Watching her grandmother gradually succumb to cancer devastated Christa; she felt she had lost "the only person who really loved her." (*Id.*) The records in this case indicate that the loss of her grandmother was so traumatic to Christa that she suffered amnesia and dissociation, "in that she perceived herself outside and above herself" at the time of the funeral. Ex. 3, Dr. Brand Decl., ¶12. Afterward, her sister remarked, Christa "virtually had to raise [herself]." (Apr. 2008 Ex. 5: 1; Apr. 2008 Ex. 6: 4.)

3. From a very early age, Christa Pike was the victim of repeated instances of sexual abuse.

Christa was also the victim of repeated instances of sexual abuse. When she was in kindergarten or first grade, her teacher reported that she was drawing penises. This early rendering of sexual imagery is indicative of very early sexual abuse. (PC XXV: 779, 781–82.) Although counseling was recommended, her mother failed to follow through.

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[13] Dr. Brand is a clinical psychologist with expertise in the assessment, treatment, and research of trauma-related disorders. Ex. 3, ¶1. Dr. Brand's services were retained during the COVID-19 pandemic and her work thus far has focused on record review. Ex. 3, ¶3.

When Christa was a pre-teen, a neighbor pushed her into a weed patch, where he held her down and raped her while she screamed. (PC VIII: 257–58; Jan. 2007 Ex. 1-A: Social History at 44.) After reporting this crime the next day to a classmate and teacher's aide, Christa identified the perpetrator from a lineup. *Id.* He was indicted and ultimately pleaded no contest to a reduced offense. (Jan. 2007 Ex. 5.) Yet Carissa refused to believe that Christa had been attacked, causing Christa to attempt suicide. (Jan. 2007 Ex. 1-E: M Mat. at 000716; Jan. 2007 Ex. 1-B: M Mat. at 000139, 000142.)

At seventeen, Christa was raped again by a stranger she encountered while walking down the street at night. (Jan. 2007 Ex. 1-A: Social History at 44.) She tried to run away, but the man dragged her off the street, causing her to hit her head on a rock, before pulling her up a hill by her hair and shirt. (*Id.*) While raping her, the stranger continued to hit Christa's head against a rock, held his hand over her mouth, and cursed at her. (*Id.*) After a car approached, he fled. (*Id.*) Christa ran to a friend's home, where the police were called. (*Id.*) Hospital records confirm the rape. (Jan. 2007 Ex. 6: 18–30.) Dkt. No. 12-7, at 8759–70. However, once again, her mother downplayed the issue. (Jan. 2007 Ex. 1-A: Social History at 48; Jan. 2007 Ex. 1-E: M Mat. at 000665.)

4. **Following this abuse, neglect and sexual trauma, Christa Pike became a highly traumatized teenager, suffering from PTSD and subject to periods of dissociation.**

After reviewing records from Christa's childhood, monitoring her treatment, and interviewing Christa several times, Dr. William Kenner,

a clinical psychiatrist,[14] testified at her post-conviction hearing that she suffers from bipolar II disorder, dissociation, and posttraumatic stress disorder (PTSD). (PC XXIX, XXX; PC Ex. 42, Dr. Kenner's PowerPoint presentation). Each of these conditions, he explained, can flow from complex trauma in childhood. (PC XXX: 149–55, 185–86). Christa's history of complex trauma and dissociation are well-documented.

Dr. Bethany Brand, a highly experienced and qualified expert on the effects of trauma, confirms that the records in this case establish that Christa Pike is a highly traumatized teenager, suffering from PTSD and subject to periods of dissociation. Dissociation is defined as "a disruption and/or discontinuity in the normal integration of consciousness, memory, identity, emotion, perception, body representation, motor control, and behavior" (American Psychiatric Association, 2013, p. 291). Ex. 3, Dr. Brand Decl., ¶10. Dr. Brand explains that research shows "a clear link between experiencing traumatic events during childhood and developing a complex, chronic symptom profile into adulthood, including dissociation." *Id*. (citations omitted).

Dr. Brand saw many examples of likely dissociation in the records of this case,

> [I]including Christa referring to possible dissociative phenomena during the crime, according to what she told in the interview by Randy York: 'blacking out' (p. 6), hearing a voice talking to her (p. 18 and p. 21), and not being able to hear what was going on around her (p. 21). Dr, Pincus noted in his report that Christa has "dissociative states" (p. 6) and

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[14] The post-conviction court appointed Dr. Kenner as the court's expert during competency proceedings. *Pike v. State*, 164 S.W.3d 257, 260 (Tenn. 2005).

> dissociative amnesia for some of the horrific episodes of abuse (p. 8).

Id., ¶11.

Dr. Brand's review of these records shows that the mitigating evidence of abuse and trauma that was never presented to Christa's jury is extremely relevant to judging the moral culpability of her offense. As she concludes,

> The severity and chronicity of the trauma and neglect that Christa experienced as a child and adolescent seems to have resulted in symptoms related to PTSD and dissociation, as detailed throughout the records I have thus far reviewed. These trauma-based symptoms can impact the individual's brain development; response to stress; ability to reliably focus attention, think clearly and develop sound judgement; development of emotional and behavioral control; and impact their identity, values, academic and occupational progress, and relationships. Due to the impact of these trauma-created problems, individuals who have experienced child abuse and neglect are at risk for criminal behavior, and the courts have therefore repeatedly considered trauma-related mental health disorders and problems in considering legal cases.

Id., ¶16.

Christa had no distance or time to heal from her traumatic childhood when she committed this crime at the age of only eighteen. This evidence should lead this Court to grant a Certificate of Commutation because death is not the appropriate punishment for Christa Pike.[15]

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[15] At the very least, this Court should delay the setting of any execution date until Dr. Brand has the opportunity to complete her work by conducting an in-person assessment of Christa now that the TDOC has reopened visitation in State prisons.

5. **Christa Pike suffers from severe mental illness which began during her childhood.**

Records from Christa's childhood reveal that she suffered from severe sleep deprivation, frenetic behavior, impulsivity, and feelings of invincibility, all of which indicate early-onset bipolar disorder. (PC XXIX: 35–40.) Dr. Kenner testified in post-conviction that Christa Pike suffers from bipolar disorder which is a severe mental illness. (PC XXIX: 39–40, 58–66, 72, 76, 80–81, 86–88.) Prison medical records demonstrate that the medical providers within the Tennessee prison system concur in this diagnosis, as well as his diagnosis of posttraumatic stress disorder (PC XXX: 137, 147, 149–53), and currently treat Christa's mental illness with Topamax, Wellbutrin, Abilify and Vistaril. Exhibit 4, TDOC "Mental Health Treatment Plan Review" form signed by psychologist Dr. Eric Gauen on October 19, 2020.

Individuals with bipolar II disorder, like Christa, suffer episodes of hypomania, typified by racing thoughts and sleep deprivation, which produce "extremely poor judgment." (PC XXIX: 61, 66.) In unstructured environments, let alone abusive or neglectful ones, people with bipolar disorder seem "out of control." (PC XXX: 147, 173.) For Christa Pike, that poor executive functioning was worsened by organic brain damage and PTSD. (PC XXX: 147.)

Abused, neglected, and severely mentally ill, Christa was vulnerable to bad influences and exercising poor judgment. At seventeen, she became enthralled by a severely disturbed former psychiatric patient. After Carissa and her fifth husband kicked that boyfriend out of their

house, Christa followed him onto the streets, living homeless for months. (Jan. 2007 Ex. 1-A: Social History at 34–35.) Such "very intense attachments," Dr. Kenner testified, can occur in people who "missed out on early parenting experiences." (PC XXX: 150.)

Christa's relationship with her codefendant in this case, Tadaryl Shipp, fit the same pattern. (PC XXX: 168.) Christa met Tadaryl at the Job Corps where the other participants created a dangerous environment. (PC XII: 677; PC XIII: 793.) She considered Tadaryl her protector and the first person to care about her well-being since her grandmother's death—and she therefore obsessed about pleasing him, even though he was a violent gang member who physically abused her. (PC XII: 679; PC XV: 156–160, 168.)

This Court must consider the fact that Christa's relationship with Tadaryl was an important factor in her involvement in this crime. That relationship can only be adequately understood in the context of Christa's severe mental illness.

6. Improved Knowledge of Youthful Brain Development and Evolving Standards of Decency About the Punishment of Young Adults Compel a Certificate of Commutation for Christa Pike.

Since 1998 when this Court last reviewed Christa Pike's death sentence, the legal landscape has been changing to reflect America's evolving standards on the punishment of children and adolescents. These standards also reflect developing brain science that recognizes the immaturity of the adolescent brain as well as the effects of untreated severe mental illnesses such as bipolar disorder. This Court must

determine whether to execute the death penalty imposed on a defendant who committed an offense at age 18 while suffering from brain damage and severe mental illness.[16]

In *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme Court recognized that executing juvenile offenders—*i.e.*, those who had not reached 18 when they committed their offenses—contravenes the Eighth and Fourteenth Amendments. *Id.* at 555–56, 578. Examining precedent and then-recent scientific advances, *Roper* identified three distinguishing features of youth: "[a] lack of maturity and an underdeveloped sense of responsibility," resulting in "impetuous and ill-considered actions and decisions"; vulnerability "to influence and to psychological damage"; and a mutable character. *Id.* at 569–570. Those characteristics undercut the twin justifications for the death penalty: retribution and deterrence. Specifically, the Court explained, the death penalty does not exact a proportional retribution if an offender's "culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." *Id.* at 571. In addition, "[t]he likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent." *Roper*, 543 U.S. at 572 (quoting *Thompson* v. *Oklahoma*, 487 U.S. 815, 837 (1988) (plurality opinion)).

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[16] In the Sixth Circuit Court of Appeals, Judge Stranch felt constrained by 28 U.S.C. Section 2254(d) to tolerate that "likely" constitutional violation. *Pike v. Gross*, 936 F.3d 372, 384 (6th Cir. 2019) (Stranch, J., concurring). This Court faces no such constraint.

Roper's logic extends to 18-year-olds, since "[r]ecent research in neuroscience and developmental psychology indicates that individuals between the ages of 18 and 21 share many of the[] same characteristics" identified in *Roper*. *Pike v. Gross*, 936 F.3d at 385 (Stranch, J., concurring). Neuroimaging has revealed that the reward pathways of the brain develop early in adolescence, while the prefrontal cortex, which plays a central role in higher cognitive abilities (such as cognitive control and behavioral regulation), gradually matures until the early twenties. *See, e.g.*, B.J. Casey *et al.*, *The Adolescent Brain*, 28 Dev. Rev. 62 (2008); Elizabeth P. Shulman et al., *The Dual Systems Model: Review, Reappraisal, and Reaffirmation*, 17 Developmental Cognitive Neuroscience 103, 103, 111, 114 (2016) (collecting studies); Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101:21 Proceedings of the National Academy of Science 8174, 8177 (2004). Consistent with that neuroimaging, 18- to 20-year-olds "show[] diminished cognitive control under both brief and prolonged negative emotional arousal relative to slightly older adults." Alexandra O. Cohen *et al.*, *When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 Psychol. Sci. 549, 559 (2016).

Those differences manifest in how society treats 18- to 20-year-olds—both generally and as criminal offenders. States and the federal government "recognize 21 as the age of majority in a number of contexts," including with respect to purchase of alcohol, purchase of firearms, and secure immigration status. 936 F.3d at 385. Indeed, "the age of majority

at common law was 21, and it was not until the 1970s that States enacted legislation to lower the age of majority to 18." *Ibid.* (quoting *NRA* v. *ATF*, 700 F.3d 185, 201 (5th Cir. 2012)) (internal quotation marks omitted). Society increasingly eschews the death penalty for offenders in that age category as well. Since *Roper*, the number of 18- to 20-year-olds receiving death sentences continues to decline and youthful offenders "are increasingly unlikely to receive death sentences when compared to older homicide offenders." John H. Blume et al., *Death by Numbers: Why Evolving Standards Compel Extending Roper's Categorical Ban Against Executing Juveniles From Eighteen to Twenty-One*, 98 Tex. L. Rev. 921, 940 (2020).

The American Academy of Pediatric Neuropsychology has called for State[17] and Federal governments to ban application of death as a penalty for 18- to 20-year-olds because "there is no scientific basis for-` the cut off to be at age 18.[18] The same restrictions applied to the application of the

[17] The AAPdN specifically asks the Tennessee courts and other Tennessee authorities "to refrain from executing any person whose capital offense was committed prior to the age of 21 years" given "the current scientific understanding of adolescent brain development." Exhibit 5, at 15.

[18] The AAPdN is joined by other organizations, including the American Bar Association, in calling for a prohibition of imposing death or execution of any individuals who were in late adolescence at the time of offense. Exhibit 5, at p. 14–15. The American Bar Association's Resolution was based upon "the overwhelming legal, scientific, and societal changes of the last three decades." Report at p. 3, *see* Resolution and Report, available at https://www.americanbar.org/groups/committees/death_penalty_representation/resources/dp-policy/late-adolescent-death-penalty-resolution/.

death penalty to persons aged 17 should apply to persons ages 18 through 20 years and for the same scientific reasons." Exhibit 5, AAPdN Declaration. This is because:

> The maturation of the juvenile brain is not fully complete until the mid-20s. While academics continue to debate the exact age of brain maturation, it is clear that this does not happen until after age 20. There is no clear way to differentiate the functioning of the brains of 17-year-olds from those aged 18, 19, and 20 in terms of risk taking behaviors, the ability to anticipate the consequences of their actions (i.e., engage in a cost-benefit analysis), to evaluate and avoid negative influences of others, and to demonstrate fully formed characterological traits not subject to substantive change over the next decade of their lives. The key aspects of brain development governing these abilities and characteristics simply are not yet mature or fully functional until sometime after the age of 21.

Exhibit 5, AAPdN Declaration, p. 3.

There is thus no justification for a drastic differentiation in punishment between a 17-year-old offender and an 18-year-old offender. And the question is an important one, for Christa Pike was eligible for the death penalty in this case and her co-defendant, Tadaryl Shipp, was not. This Court must consider the injustice of the disparate application of the death penalty to two defendants who committed the same crime.

It is also significant that, in addition to her youth, Christa Pike was also brain damaged and severely mentally ill at the time of her offense. Thus, practical effects of the immaturity that would be inherent in the brain of any eighteen-year-old were magnified by other problems that adversely affected Christa's developing brain. Her abilities to control "impetuous and ill-considered actions and decisions," referenced by the

AAPdN were even more diminished than the average person her age. Thus, while all eighteen-year-olds have trouble controlling impulses and planning ahead,[19] Christa's impulse control was also negatively affected by her untreated bipolar disorder because "during a manic period, a person has a lot of difficulty in controlling behavior because the mania itself manifests itself by making the person feel invulnerable and can do anything and don't have to confine their behavior to the limits of what is allowed by society." (PC VIII: 244.)

B. Executing Christa Pike is neither necessary nor just given the punishment imposed upon similarly situated defendants.

Christa's death sentence is an aberration among those convicted of first degree murder in Tennessee, especially among women convicted of first degree murder. The Eighth Amendment of the U.S. Constitution and Article I, § 16 of the Tennessee Constitution both prohibit the state-sanctioned infliction of "cruel and unusual punishment." *See, e.g., Van Tran*, 66 S.W.3d 790, 801 (Tenn. 2001). A sentence that is disproportionate to the crime committed—as measured against objective indicia of national standards and the subjective purposes served by a particular punishment—is "cruel and unusual," and thus, unconstitutional. *Id*. at 800–01 (*construing Gregg v. Georgia*, 428 U.S. 153, 173 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.)). Courts must exercise special care to ensure proportionality when the state seeks to impose the severest punishment of all— death. *See*

[19] Exhibit 5, AAPdN Declaration, p. 6.

Kennedy v. Louisiana, 554 U.S. 407, 420 (2008) ("This [principle] is of particular concern . . . in capital cases. When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint.").

In Tennessee, the appellate courts are required to consider whether each death sentence "is excessive or disproportionate to the penalty imposed in similar cases, considering both the nature of the crime and the defendant." Tennessee Code. Annotated § 39–13–206(c)(l)(D). In conducting its statutory proportionality review, the Tennessee Supreme Court will find a death sentence disproportionate if it is "plainly lacking in circumstances consistent with those cases where the death penalty has been imposed." *State v. Bland*, 958 S.W.2d 651, 668 (Tenn. 1997).

Courts must continuously revisit the death penalty to determine if it remains a proportionate punishment in a given category in light of evolving standards of decency. *See Kennedy*, 554 U.S. at 419. "The Eighth Amendment 'is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice.'" *Hall v. Florida*, 134 S. Ct. 1986, 1992 (2014) (*quoting Weems v. United States*, 217 U.S. 349, 378 (1910)). "The Eighth Amendment's protection of dignity reflects the Nation we have been, the Nation we are, and the Nation we aspire to be." *Id*. This Court also recognizes this principle. *See State v. Pruitt*, 415 S.W.3d 180, 211 (Tenn. 2013) ("[A]s our society matures, our standards of decency evolve as well.").

In Christa's case, the ineffective assistance of trial counsel deprived this Court of significant information that it would have considered in its

comparative proportionality review on direct appeal. In 1998, this Court's review did not consider critical information, including Christa's age, developmental brain science (then yet to reach our current understanding), substantial cognitive impairments, history of trauma and abuse, and the outcomes for similarly situated defendants. As noted above, much has changed since this Court last considered Christa's death sentence. *See Roper v. Simmons*, 543 U.S. 551, 555–56, 578 (2005). Now is the appropriate time for this Court to take a fresh look at Christa's death sentence. A review of similarly situated defendants, taking into account her age and gender, shows that Christa's sentence is "plainly lacking in circumstances consistent with those cases where the death penalty has been imposed." *Bland*, 958 S.W.2d at 668.

1. Christa is the only woman under a death sentence amid the almost two hundred women convicted of first degree murder.

Christa is the only woman on Tennessee's death row. In fact, historical research only identifies three women executed in Tennessee. All three were black women executed between 1807–1819.[20] According to the Tennessee Department of Correction, nearly 200 women have been convicted of, or plead guilty to, first degree murder in Tennessee since 1976. *Rule 12 Database*, Administrative Office of the Courts (2021), *First Degree Murder Report*, Administrative Office of the Courts (May 2021).[21]

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[20] Executions in the U.S. 1608–2002, Espy File, available at https://deathpenaltyinfo.org/executions/executions-overview/executions-in-the-u-s-1608-2002-the-espy-file.

[21] The Rule 12 Database maintained by the Administrative Office of the Courts (AOC) lists 115 women who have been convicted of or plead

Of that number, the State sought the death penalty in only 17. Four of those death notices were subsequently withdrawn. Only two of those cases have resulted in a death sentence; Christa and Gail Owens.[22] Ms. Owens' sentence was commuted to life in 2010, and she was later released on parole. In fact, when this Court last considered the proportionality of Christa's death sentence more than twenty years ago, this Court cited to Ms. Owen's case to support Christa's sentence. *See State v. Pike*, 978 S.W.2d 904, 920 (1998). There have been no other sustained death sentences for women in Tennessee since the end of slavery.

There are no similar defendants, no women, who have been sentenced to death with whom to compare Christa's sentence. In reviewing Christa's sentence, this Court is required to consider her gender when comparing her to other defendants. *Bland*, 958 S.W.2d at 667. Christa stands alone as the only woman with a sustained death sentence.

That is significant because Christa's case is not more egregious than the cases of other women convicted of first-degree murder. In fact, Christa's crime involved a single victim, whereas, of the nearly 200

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guilty to first degree murder (two of those are men incorrectly listed as women). The AOC also maintains a database of all first degree murder convictions in Tennessee; that database, last updated May 2021, contains an additional 79 women who were convicted of or plead guilty to first degree murder for whom Rule 12 reports have either not been completed or for whom completed forms have not been filed.

[22] While the Rule 12 numbers may be incomplete, because Christa is the only woman on death row, the number of death sentences will not increase as the number of first-degree murder Rule 12 reports increases.

women convicted of first-degree murder, at least ten of those cases involved multiple victims. In *State v. Tallent*, No. M2005–00183–CCA–R3–CD, 2006 WL 47090 (Tenn. Crim. App. Jan. 10, 2006) the defendant, after a night of smoking crack cocaine, led police on a high-speed chase in a stolen car from Knoxville to Mt. Juliet, Tennessee traveling 80 to 120 miles an hour when she struck and killed two police officers. She received two life sentences. The State did not seek the death penalty. In *State v. Dunavant*, No. W2018–00031–CCA–R3–CD, 2019 WL 1418184 (Tenn. Crim. App. March 28, 2019) the defendant was convicted of aggravated assault, two counts of felony murder, aggravated child neglect, and aggravated arson after setting fire to her home killing her two infant grandchildren. She was sentenced to two life sentences. The State did not seek the death penalty.

Melissa Ferris was sentenced to one sentence of life and one sentence of life without parole after torturing and killing a 22-year-old Memphis woman by cutting her throat. Ferris then shot her boyfriend/accomplice in the head when the two were surrounded by police after fleeing the state.[23] In *State v. Myers*, No. E2012–01814–CCA–R3–CD, 2013 WL 5436955 (Tenn. Crim. App. September 27, 2013) the defendant was sentenced to life after she and her boyfriend broke into the victims' mobile home, shooting and killing one victim. A second victim was shot in the head but survived. In *State v. Pelley*, No. 253 CCA, 1989 WL 147522 (Tenn. Crim. App. Dec. 8, 1989), the defendant received a life

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[23] Melissa Gale Ferris Report, *Rule 12 Database*, Administrative Office of the Courts (2021); https://www.kait8.com/story/4581902/memphis-topless-dancer-pleads-guilty-to-killing-fellow-dancer/

sentence after she and a co-defendant killed a clerk and a security guard. Latonya Taylor killed three people during the robbery of a fast-food restaurant. *State v. Taylor*, No. M2005–00272–CCA–R3–CD, 2006 WL 2563433 (Tenn. Crim. App. Aug. 25, 2006). Christa received a much harsher sentence than women who have committed multiple murders.[24]

Historically, Tennessee does not execute women. That is not because women do not commit first-degree murder. Scores and scores of women, indeed almost 200, have committed first-degree murder in the recent decades. Christa's death sentence is not the proximate result of a crime that is more egregious than the many other first-degree murders and multiple murders committed in Tennessee post-*Furman*. Her sentence is an outlier, an aberration, the result of her trial lawyer's complete failure to present adequate mitigation evidence at her

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[24] Christa also received a much harsher sentence than minors who committed first-degree murder. As discussed above, society's understanding of brain development places Christa's culpability much more in line with minors who have committed similar crimes. *Alderson v. State*, No. M2010–00896–CCA–R3–PC, 2010 WL 488137 (Tenn. Crim. App. Nov. 30, 2010) (16 year-old defendant guilty of two counts of felony murder and one count of attempted first-degree murder and sentenced to life plus 15 years) and *Turnmire v. State*, 762 S.W.2d 893 (Tenn. Crim. App. 1988) (15 year-old defendant killed both of her parents).

sentencing hearing[25] and the sensationalized climate that surrounded her trial.[26]

Women experience the criminal justice system differently. For most women and girls in the criminal justice system, their involvement begins with gender-based violence. *See Women and Girls' Experiences Before, During, and After Incarceration: A Narrative of Gender-based Violence, and an Analysis of the Criminal Justice Laws and Policies that Perpetuate This Narrative.* 20 UCLA Women's L.J. 137, 144 (Fall 2013). Studies have shown an "astonishing number" of incidents of severe physical and sexual abuse reported by incarcerated women. *Id. See also,*

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[25] This Court has never reviewed the validity of Christa's sentence in light of the powerful mitigation developed in post-conviction, as the Court declined permissive appeal in 2011. Since then, this Court established a bar for consideration of claims of ineffective assistance of counsel for failure to investigate, develop, and present mental health mitigation which was not met in Christa's sentencing trial. *See Davidson v. State*, 53 S.W.3d 386 (Tenn. 2014). The *Davidson* opinion exemplifies that merely retaining a mental health expert is insufficient to meet the prevailing professional norms in the 1990's. The *Davidson* Court found that "Counsel held in their hands compelling evidence that Mr. Davidson has a broken brain and a tragic past. Their failure to submit any of this neuropsychological evidence to the sentencing jury falls short of the professional norms that prevailed at the time of trial." 53 S.W.3d at 392. This Court further found prejudice—regardless of Mr. Davidson's multiple prior offenses, his significant history of "malignant misogyny and [a] propensity to commit sexual violence," and his convictions for premeditated first-degree murder and aggravated kidnapping of a woman whose decapitated body was found mutilated and partially buried in the woods. *Id.* at 389–90, 404–05.

[26] Headlines like "Alleged Killers Held "Soul Captive" and "Satanic Links Revealed" were consistently on the front page of the Knoxville News Sentinel. (T III: 334–37, Jan. 19 and 20 of 1995).

Women Under Lock: A View from Inside. 63 PRISON J., 47, 49 (1983); Anita Raj et al., *Prevalence and Patterns of Sexual Assault Across the Life Span Among Incarcerated Women*, 14 Violence Against Women 528 (2008) (documenting sexual assault rates of incarcerated women at over 70%). This was certainly true for Christa.

2. Christa Pike's shared culpability with her co-defendant Shipp highlights the arbitrariness of her sentence and requires commutation.

The testimony at trial and at the post-conviction hearing makes it clear that, Christa Pike's co-defendant, Tadaryl Shipp was violent and abusive towards Christa and a leader in the killing of Ms. Slemmer. Christa was 18 years old at the time of the crime, only a few months removed from being categorically ineligible for the death penalty. Mr. Shipp, only a few months younger than Christa, was not eligible to be sentenced to death. In the months leading up to Christa's participation in Ms. Slemmer's killing, Christa was surrounded by circumstances that greatly amplified her potential for violent behavior. These circumstances centered around the pervasive violence at Job Corps, and Shipp's controlling and abusive thrall over her.

William Joseph Mode was an instructor at Job Corps from 1992 through April 19, 1995. He testified that the Job Corps facility was dangerous for both students and faculty. (PC XIII: 760, 763–67.) He knew that Mr. Shipp was both an uncooperative student and dangerous. (*Id*. at 765–66.) He was aware the many students were armed with either knives or guns, and that Mr. Shipp, in particular, was widely known to be in possession of a firearm. (*Id*. at 767.) Mr. Mode explained that, while the

most dangerous students were readily identifiable, a private company held the contract to run the Job Corps center in Knoxville, and the company was paid based upon the number of students at the facility. Consequently, Job Corps was very reluctant to remove a student from the program. (*Id*. at 769–71.)

Andrew Scott Drace attended Job Corps at the same time as Christa. (PC XII: 676.) He testified that Job Corps was a very violent place due to the presence of gangs and predatory students who picked on others. (*Id*. at 677.) He indicated that the gang members would come into his room and put a towel or sheet over him and beat him up. (*Id*. at 679.) Tadaryl Shipp was one of these gang members. (*Id*.) Mr. Drace said that he did not personally know Shadolla Peterson—Christa's second codefendant—but he did know Mr. Shipp quite well "because [he] was in fear of him on a daily basis." (*Id*. at 681.) Mr. Shipp was the leader of his group and made it known that he was "a thug." (*Id*. at 682–83.)

Mr. Drace testified that on one occasion, Mr. Shipp tried to pick him up and throw him off a bridge onto a railroad track some 200 feet below. (*Id*. at 683.) Mr. Drace managed to get away when several cars crossing over the bridge stopped to investigate and Mr. Shipp was distracted, fearing witnesses to the attempted murder. (*Id*. at 684.)

Kimberly Rhodes testified that she had been a student at Job Corps and a friend of Christa's. (PC XIII: 790.) Ms. Rhodes testified for the State at Christa's 1996 trial under her maiden name "Iloilo."[27] (*Id*. at 790–91.)

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[27] Ms. Rhodes' maiden name is misspelled in the transcript as Ellow. (PC XII: 792.)

In her post-conviction testimony, she indicated that Job Corps was scary at times, and that she was afraid for her personal safety. She elaborated that there was a lot of animosity between different groups, and that this sometimes led to violence. (*Id*. at 793–94.) She also testified that there was a lot of drug use. (*Id*. at 794.)

Mr. Shipp was violent and abusive towards Christa and a leader in the killing of Ms. Slemmer. Fellow participants at Job Corps described Mr. Shipp as violent and threatening. These students also described Mr. Shipp's relationship with Christa as violent, abusive, and controlling. (PC II: 156–60, 168; PC III: 253–56.) There was no doubt that Mr. Shipp was in control of Christa and the relationship. One student detailed evidence that Mr. Shipp physically abused Christa. (PC II: 156–60.) Co-Defendant Shadolla Peterson's confession and testimony at Mr. Shipp's trial details how Mr. Shipp directed the attack on Ms. Slemmer. Directing Christa over and over during the commission of the crime.

Even Mr. Shipp testified at the post-conviction hearing that he, not Christa, brought the box cutter to the murder and carved the pentagram into Ms. Slemmer's chest. (PC II: 110–13.) Dr. Kenner explained the psychological foundation of Christa's relationship with her co-defendant Tadaryl Shipp. Dr. Kenner stated that Christa was infatuated with Mr. Shipp. (PC XXX: 168.) The available information concerning Mr. Shipp was that he was violent, dangerous, had been involved in gang related violent activity before coming to Job Corps, and practiced Satanism. (*Id*. at 169.) He exerted a strong influence on Christa, who was willing to adopt his interests in effort to please him and thereby bolster her low self-esteem. (PC XXX: 168–70.)

Mr. Shipp was 17 years old at the time of Ms. Slemmer's death. Christa Pike was 18. That is the difference between a death sentence and parole eligibility in 2028. That difference cannot be equated with increased maturity or brain development. Christa was not more mature or more responsible than Mr. Shipp. At the time of the crime, Christa was only a year older than Shipp, and because of that slight difference in age, Shipp was ineligible for the death penalty. He was convicted of first-degree murder and sentenced to life. He is eligible for release in 2028.

3. Christa Pike's death sentence is not consistent with similarly situated defendants who have committed multiple murders or particularly egregious murders.

In 2018, the Rule 12 database contained reports for 1,348 of the approximately 2,500 first-degree murder cases since 1976. *See Tennessee's Death Penalty Lottery*, 13 Tenn. J.L. & Pol'y 85, p. 131 (2018). As Justices Koch and Lee noted in their concurrence/dissent in *Pruitt*, "the Rule 12 reports, as well as the database in which the contents of all the reports are organized, provide an important source of proportionality information to the bench and the bar." *Pruitt*, 415 S.W.3d at 226.[28]

Christa's sentence is disproportionate according to numerous metrics. A review of cases within the Rule 12 database shows that Christa and her case are significantly more similar to cases where defendants received sentences less than death. At the time of the crime,

[28] However, the database is far from complete. *See, e.g., State v. Godsey*, 60 S.W.3d 759, 785 (Tenn. 2001) (noting that the Rule 12 database was, at the time, incomplete and that the courts must collaborate to "ensure that these reports are being filed in current cases and will be filed in future cases").

Christa was 18 years old with no felony convictions. Of the defendants included in the Rule 12 database under the age of 25, 91.7% were not sentenced to death.[29] Of the defendants with no prior felony convictions, 94.7% were sentenced to life or life without the possibility of parole.[30] Christa's death sentence is an anomaly, especially when considering her age.

This Court should decline to set an execution date. Christa's sentence is not proportionate, and Christa and her crime are "plainly lacking in the circumstances consistent with those cases where the death penalty has been imposed." Rather, this court should issue a certificate of commutation encouraging the governor to commute Christa's sentence.

a. The overwhelming majority of defendants who have committed multiple murders have not received death sentences.

There have been 339 defendants convicted of multiple counts of first-degree murder since 1977. Of those, only 33 (less than 10%) received sustained death sentences. The other 90% received sentences of life or life without the possibility of parole. Virtually all of these defendants were found guilty of premeditated murder (as opposed to felony murder), thus drawing a sharp contrast to the majority of defendants with

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[29] The Rule 12 database includes reports on 662 defendants under the age of 25, only 8.3% (55) of whom were sentenced to death. Searching "Document Contents" for "DIA1 or DIA2", and "(DIA1 or DIA2) and PHE1", respectively.

[30] There are 684 reports for defendants with no prior felony convictions, and only 5.3% (36) of whom received a death sentence. Searching "Document Contents" for "DIO" and NOT (DIO4 or DIO5)" and (DIO* and NOT (DIO4 or DIO5)) and PHE1", respectively.

sustained death sentences (53 out of 86, or 62%) who committed single murders. A defendant who deliberately kills two or more victims is nine times more likely to be sentenced to life or life without the possibility of parole than death, and the sentence he receives is most likely dependent on extraneous factors like geography, the prosecutor, quality of the defense, and timing of the case. *Tennessee's Death Penalty Lottery*, 13 Tenn. J.L. & Pol'y 85, p. 170–74. In addition to the women who have committed multiple murders and received sentences less than death, there are many examples of men committing multiple murders and receiving sentences less than death.

For example, Henry Burrell and Zakkawanda Moss were convicted of six counts of first-degree premeditated murder. *State v. Moss,* No. M2014–00746–CCA–R3–CD, 2016 WL 5253209 (Tenn. Crim. App. September 21, 2016). The two, who had both previously served time in jail or prison, shot a man and a woman in the head, strangled two women to death, one of whom was pregnant, thus killing her unborn child, and stomped a 16-month-old child to death. The defendants received six life sentences.

In *State v. Cobbins*, No. E2013–00476–CCA–R3–CD, 2014 WL 4536564 (Tenn. Crim. App. September 12, 2014) and *State v. Thomas*, No. E2013–01738–CCA–R3–CD, 2015 WL 513583 (Tenn. Crim. App. February 5, 2015), these co-defendants were a part of a group that kidnapped and murdered a young couple. There were found guilty of more than thirty criminal charges. The male victim was killed and burned to dispose of the body. The female victim was bound, raped repeatedly, killed, stuffed in a plastic garbage can, and doused with

bleach. The jury found three aggravating factors in the capital sentencing phase: (1) the murder was especially heinous, atrocious, and/or cruel in that it involved the torture or serious physical abuse beyond that necessary to produce death; (2) the murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another; and (3) the murder was knowingly aided by the defendant, while the defendant had a substantial role in committing the rape, the kidnapping, and the robberies of the victims. The jury sentenced the Defendant Cobbins to life without parole and Defendant Thomas to life for both of the murder convictions.

The disproportionality of outcomes with these defendants and Christa is clear. Christa committed a single murder; she was 18 years old at the time of the crime suffering from severe mental illness.

b. The overwhelming majority of defendants who have committed similar, or even more egregious, first-degree murders have not received death sentences.

Even in cases where defendants were convicted of a single murder, Christa's case is no more and, in some cases, less egregious than defendants who received less than death.[31] Christa's case contained

[31] *State v. Blair*, No. E2008–00073–CCA–R3–CD, 2009 WL 4878615 (Tenn. Crim. App. December 7, 2009)*State v. Oliver*, No. E2006–01736–CCA–R3–CD, 2007 WL 3194570 (Tenn. Crim. App. October 30, 2007); *State v. Lopez*, No. E2003–02307–CCA–R3–CD, 2005 WL 1521826 (Tenn. Crim. App. June 28, 2005); *State v. Thompson*, No. E2006–00292–CCA–R3–CD, 2007 WL 2437948 (Tenn. Crim. App. August 24, 2007); *State v. Brewster*, No. E2004–00533–CCA–R3–CD, 2005 WL 762604 (Tenn. Crim. App. April 5, 2005); *State v. Massengale*, No. E2018–00387–CCA–R3–CD, 2019 WL 1965697 (Tenn. Crim. App. May

significant mitigation because she was only 18 years old at the time of the crime and suffering from severe mental illness. This Court should not set an execution date, rather, this court should issue a certificate of commutation.

C. This Court Should Not Schedule Christa Pike's Execution Pending Disposition of Her Petition in the Inter-American Commission on Human Rights, Which Has Issued an Urgent Request to Refrain from Carrying Out Her Death Sentence Until the Commission Can Review the Merits of Her Claims.

Christa Pike filed a Petition in the Inter-American Commission on Human Rights (IACHR) in November 2020, as soon as she was able under the Commission's rules of procedure, which require exhaustion of domestic remedies. In a death penalty case, remedies are not fully exhausted until the U.S. Supreme Court has denied certiorari at the end of the federal habeas process.[32]

After considering the response of the United States, the IACHR issued precautionary measures[33] on December 11, 2020 and asked the

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2, 2019); *State v. Barnard*, 899 S.W.2d 617 (1994); *State v. Underwood*, No. E2013–01221–CCA–R3–CD, 2014 WL 891037 (Tenn. Crim. App. March 6, 2014); *State v. Frantzreb*, No. CCA 89-136-III, 1990 WL 8074 (Tenn. Crim. App. February 6, 1990); *State v. Awatt*, No. W2003–02680–CCA–R3–CD, 2004 WL 2378254 (Tenn. Crim. App. October 18, 2004); *State v. Pike*, No. E2015–02357–CCA–R3–CD, 2017 WL 363283 (Tenn. Crim. App. January 25, 2017)

[32] *See* Declaration of Sandra Babcock, Exhibit 6, at 4 (par. 12).

[33] "Precautionary measures are 'urgent requests, directed to an OAS Member State, to take immediate injunctive measures in serious and urgent cases, and whenever necessary [. . .] to prevent irreparable harm to persons.'" Diego Rodríguez-Pinzón, *Precautionary Measures of*

government to refrain from executing Christa Pike's death sentence until the Commission can examine the merits of her petition. The Commission found a prima facie case that Ms. Pike faces a serious and urgent risk of irreparable harm to her rights to life and personal integrity from a premature execution. The IACHR rarely issues precautionary measures, only granting 5.5% of requests in 2019, for example.[34]

This Court has sole discretionary authority to determine whether or not to extend comity to rulings or judgments of foreign jurisdictions. *Hyde v. Hyd*e, 562 S.W.2d 194, 196 (Tenn. 1978). A comity decision is guided by the particular facts, laws, and policies presented in any specific case. *Id.*

In granting comity to the IACHR, this Court would not be breaking new ground. In 2015, the Ohio Supreme Court denied the State's request to set an execution date for José Loza after the IACHR issued precautionary measures similar to those in Ms. Pike's case.[35] As

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the Inter-American Commission on Human Rights: Legal Status and Importance, 20 No. 2 Hum. Rts Brief 13 (2013). "Interim measures developed based on the understanding that it is essential for the victims of human rights abuses to be able to resort to regional systems, such as the Inter-American Human Rights System, to seek immediate protection of their basic rights recognized under regional international treaties." *Id.*

[34] *See* Declaration of Ariel Dulitzsky, Exhibit 7, at 4, par. 7. Professor Dulitzky is the former Assistant Executive Secretary of the IACHR and references the most recent publicly available data (2019). *Id.*

[35] *See* Exhibit 6, Declaration of Sandra Babcock, at 4, par. 10–11. Professor Babcock also discusses another case, Mr. Roberto Moreno Ramos, in which the State's request for setting an execution date was not granted pending disposition in the IACHR but ultimately proceeded after the IACHR issued its merits ruling. *Id.*, at 2–3, par. 5–9.

discussed below, the particular facts, laws, and policies presented in Christa Pike's case warrant deferral of an execution date until the IACHR issues a merits ruling.[36] In death penalty cases, the Commission typically expedites the review process.[37]

1. Ms. Pike Petitioned the Inter-American Commission on Human Rights for Issuance of Precautionary Measures While the Commission Investigates Allegations of Human Rights Violations in Contravention of United States Treaty Obligations.

After Christa Pike exhausted domestic remedies when the Supreme Court of the United States denied her petition for writ of certiorari[38] and the State of Tennessee moved, on August 27, 2020, to set an execution date, Ms. Pike filed a *Petition Alleging Violations of the Human Rights of Christa Pike by the United States of American and Request for Precautionary Measures* to the Inter-American Commission on Human

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[36] *Id.*, at 4–5, par. 13. The length of the review process is variable. *Id.* "In a case in which both parties promptly respond to the Commission's requests, the review process can be completed in as little as a year, although it is more typical for the Commission to take two years or more before adopting a final report." *Id.*

[37] *Id.*

[38] *Pike v. Gross*, No. 19-1054, 2020 WL 3038298 (June 8, 2020).

Rights (IACHR),[39] Organization of American States,[40] on November 16, 2020. *See* Exhibit 7 [*Petition Alleging Violations of the Human Rights of Christa Pike by the United States of America and Request for Precautionary Measures*].[41]

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[39] The IACHR is a principal and autonomous organ of the Organization of American States ("OAS") whose mission is to promote and protect human rights in the American hemisphere. https://www.oas.org/en/iachr/mandate/what.asp. Created in 1959, the Commission has its headquarters in Washington, D.C. *Id.* In 1965, the IACHR was expressly authorized to examine complaints or petitions regarding specific cases of human rights violations. *Id.* Accordingly, Ms. Pike has petitioned the IACHR to examine whether the government failed to protect her from severe abuse, neglect, and gender-based violence as a child and whether circumstances surrounding her trial, detention, and execution present violations of her rights under international law.

[40] The IACHR was formed after approval of the American Declaration of the Rights and Duties of Man at the Ninth International Conference of American States held in Bogota in 1948. https://www.oas.org/en/iachr/mandate/what.asp There, the OAS Charter was adopted, which declares that one of the principles upon which the Organization is founded is the "fundamental rights of the individual." *Id.* The American Declaration (also known as the Bogota Declaration) was adopted by the United States. The subsequent American Convention on Human Rights has been signed, but not yet ratified, by the United States. https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm The American Declaration has been found to be a source of legal obligation for OAS Member States, like the United States, and its terms govern the consideration of complaints filed against those States that have yet to ratify the Convention. *See* Rodríguez-Pinzón, 20 No. 2 Hum. Rts Brief 13, *supra*.

[41] The United States timely responded to the Petition and opposed issuance of precautionary measures on November 30, 2020. *See* Exhibit 9, Response of the United States to Request for Information. The United

The Petition alleged that the government failed to protect Christa Pike from severe abuse, neglect, and gender-based violence when she was a child and adolescent. Exhibit 7, at 3.[42] Instead, by the time she was 18 years old and committed this offense with two other teenagers, Christa had been raped twice, sexually assaulted, beaten, and neglected, and had attempted suicide twice. *Id.*, at 2. Christa's bipolar disorder was never diagnosed, despite earlier indicators, until she received a psychiatric evaluation upon attempting to dismiss her post-conviction proceedings.[43]

Christa's congenital brain damage was also not discovered until post-conviction. *Id.*, at 9–10. Her childhood sexual victimization and rape was not presented to the jury, although it was partially discovered by a trial investigator. *Id.*, at 12–13. This evidence was only presented in post-conviction. *Id.* Therefore, this Court was deprived of critical information the only time it reviewed Ms. Pike's death sentence, on direct appeal in 1998, knowing only that the proof at trial established that she had a personality disorder, was believed to be a liar with behavioral problems, lacked maternal bonding, was shuffled around as a child, and was "out of control." *State v. Pike*, 978 S.W.2d 904, 913 (Tenn. 1998).

States affirmed, however, that "should the Commission adopt a precautionary measure resolution in this matter, the United States would take it under advisement and construe it as recommendatory." *Id.*, at 8.

[42] The Petition also alleged four other human rights violations. *Id.*, at 3.

[43] Exhibit 8, at 15–17; Appendix I (Post-Conviction Testimony of Dr. William Kenner).

2. **The Inter-American Commission on Human Rights Issued Precautionary Measures and Urged the United States to Refrain from Executing Ms. Pike Pending the Commission's Investigation.**

On December 11, 2020, the Inter-American Commission on Human Rights, passed Resolution 95/2020 and issued Precautionary Measure No. 1080-20. "The Inter-American Commission on Human Rights concludes that the present matter meets prima facie the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure." Resolution 95/2020, Precautionary Measure No. 1080-20, at 10. "Consequently, the IACHR requests that the United States of America:

a) adopt the necessary measures to protect the life and personal integrity of Christa Pike;

b) refrain from carrying out the death penalty on Christa Pike;

c) ensure that Christa Pike's detention conditions are consistent with international standards, giving special consideration to her personal conditions; and,

d) agree on the measures to be adopted with the beneficiary and her representatives." *Id.*, at 10–11.

In its findings, the IACHR noted that "Ms. Pike's state appointed lawyers allegedly failed to present mitigating evidence of her history of sexual violence and child abuse to the jury, leaving the jurors with no reason to consider an alternative sentence to the death penalty." Exhibit 10, at 8. Further, the Commission found that while the American Declaration does not per se prohibit Ms. Pike's execution due to her age at the time of commission of the crime, the Commission has previously

recognized "that the possibility of an execution in such circumstances is sufficiently serious to permit the granting of precautionary measures to the effect of safeguarding a decision on the merits of the petition filed." *Id.*

It is extremely rare for the IACHR to issue precautionary measures. *See* Exhibit 7, Declaration of Ariel Dulitzky[44] ("In 2019, the latest publicly available data disclosure, the Commission only granted 5.5% of precautionary measures requests.") Further, issuance of precautionary measures and its adoption "do not constitute prejudgment of any violations" alleged. *Id.*, at 11. The Commission's review period is accelerated in death penalty cases and variable but can be completed in as little as a year, or more, typically, two years or more. Exhibit 6, at 4–5, par. 13.

The Ohio Supreme Court, in a similar procedural posture, recently denied the State's request to set an execution date for José Loza after the IACHR issued precautionary measures. In July 2015, the State of Ohio filed a motion in the Ohio Supreme Court to schedule Mr. Loza's execution after the Supreme Court of the United States denied certiorari. Exhibit 6, at 4, par. 10. In August 2015, in response to Mr. Loza's request for precautionary measures, the Inter-American Commission on Human Rights issued such measures, asking that the government take all

[44] Professor Dulitzky is a Clinical Professor of Law, Director of the Human Rights Clinic and Director of the Latin America Initiative at the University of Texas School of Law. Prior to joining the University of Texas, he served as Assistant Executive Secretary of the Inter-American Commission of Human Rights. *See* Exhibit 7, at 1.

necessary steps to "preserve [his] life and physical integrity." *Id.*, par. 11; Appendix D to Declaration.

Three days later, Mr. Loza filed a notice with the Ohio Supreme Court advising the Court of the precautionary measures. *Id.*; Appendix E to Declaration. He asked that the Court deny the State's request "or defer the setting of an execution date out of comity and respect for the IACHR." *Id*. On November 10, 2015, the Ohio Supreme Court issued an order denying the State's request to set an execution date. *Id*. Appendix F to Declaration, (Supreme Court of Ohio Order denying motion to set execution date). This Court should similarly extend comity to the IACHR's urgent request to refrain from executing Ms. Pike.

3. This Court Should Extend Comity, Heed the Inter-American Commission's Urgent Request, and Refrain from Setting an Execution Date Until Conclusion of Proceedings.

"[C]omity is a discretionary doctrine and may be granted or withheld depending on the particular facts, laws and policies present in an individual case." *Hyde v. Hyde*, 562 S.W.2d 194, 196 (Tenn. 1978). "While Tennessee is not, as a matter of law, required to grant comity to any foreign decree, the decision to grant comity in a given situation is nevertheless purely a question of Tennessee law." 562 S.W.2d at 198. In that case, this Court affirmed the lower court's order declaring the divorce decree "of the Court of First Instance, Santa Domingo, Dominican Republic, valid and enforceable." *Id.*

The IACHR, just as this Court now does, examines a very different set of facts than what was known in 1998. The new evidence includes

compelling mitigating circumstances (severe mental illness and trauma)[45] as well as the more advanced current scientific understanding of adolescent brain development. *See* Exhibit 8, (IACHR Petition) at 62 ("The conclusion of scientific research is that an eighteen-year-old may be functionally equivalent to someone exempted from execution by a jus cogens norm. That equivalence is heightened here, given Christa's extensive and profound vulnerabilities."); Exhibit 5, (Declaration of the AAPdN).

In *Pike v. Gross*, Sixth Circuit Court of Appeals Judge Stranch wrote that Ms. Pike's case "presents an issue with which our society must be concerned—whether 18-year-olds should be sentenced to death. Had she been 17 rather than 18 at the time of her crime, like her codefendant Tadaryl Shipp, Christa Pike would not be eligible for the death penalty." 936 F.3d at 383 (Stranch, J., concurring). Judge Stranch, but for the strictures of AEDPA, would have found "that society's evolving standards of decency likely do not permit the execution of individuals who were under 21 at the time of their offense." *Id.* at 385. Therefore, she (or any federal judge) was powerless to preserve Christa's life until the clearly established science becomes clearly established constitutional law.[46]

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[45] The Department of Correction identifies Ms. Pike's illnesses as bipolar disorder and posttraumatic Stress Disorder. *See* Exhibit 4.
[46] Otherwise death-excludable defendants were executed around this nation between *Penry v. Lynaugh*, 492 U.S. 302 (1989) and *Atkins v. Virginia*, 536 U.S. 304 (2002). This Court recognized the cruel and unusual nature of punishing those with intellectual disabilities before the federal Supreme Court and before Tennessee executed anyone with that disability post-*Furman*. *See Van Tran v. State*, 66 S.W.3d 790 (Tenn. 2001) (rejecting argument that the 1990 statutory exemption

The Inter-American Commission and this Court are not similarly constrained. The Inter-American Commission will review Ms. Pike's claims through the lens of international human rights law,[47] which informs our constitutional jurisprudence.[48] This Court recognizes that

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was retroactive but finding that execution of such person violated the Eighth Amendment and article I, sec. 16 of the Tennessee Constitution). The opinion issued the year after Tennessee's first modern-era execution in 2000. Tennessee was one of the first four states to exclude those with intellectual disabilities from the death penalty and the last Southern state to resume executions in the modern era. https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/tennessee.

[47] Our federal Constitution contains: "broad provisions to secure individual freedom and preserve human dignity," *Roper v. Simmons*, 543 U.S. 551, 578 (2005), reflecting the same interests found in international human rights law. "It does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom." *Id.*

[48] Respect for the views of other nations and human rights norms factors into federal constitutional jurisprudence regarding evolving standards of decency. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 578 (2005):

> It is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty, resting in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime. See Brief for Human Rights Committee of the Bar of England and Wales et al. as *Amici Curiae* 10–11. The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.

the cruel and unusual punishments clause "is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice." *Abdur'Rahman v. Bredesen*, 181 S.W.3d 292, 305 (Tenn. 2005) (quoting *Weems v. United States*, 217 U.S. 349 (1910)). In Mr. Abdur'Rahman's case, this Court also noted that evolving standards of decency mark the progress of a maturing society and "[b]y protecting even those convicted of heinous crimes, the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons." *Id.* (quoting *Roper v. Simmons*, 534 U.S. 552 (2005)).

This Court should not set an execution date for Ms. Pike while the Commission investigates the merits of the Petition pending in that body and when evolving standards of decency indicate that an 18-year-old (and particularly one with congenital brain damage, PTSD, and bipolar disorder) shares the same characteristics of those excluded from death by *Roper v. Simmons*. Should the Court choose to select and set a date for Christa's death before the Commission can address the merits of her claims, Ms. Pike would be the first woman Tennessee executes in over 200 years.

For all these reasons, Ms. Pike's execution would be an extreme deviation from prevailing standards of decency, whether viewed through the national or international lens. "It is an established principle that decency, in its essence, presumes respect for the individual and thus moderation or restraint in the application of capital punishment." *Kennedy v. Louisiana*, 554 U.S. 407, 435 (2008). Restraint is warranted here, in the form of extension of comity given the specific facts of this case. This Court should afford the Inter-American Commission sufficient

time to determine the merits of Ms. Pike's petition instead of setting a premature execution date.

CONCLUSION

The Attorney General asks this Court to direct the Tennessee Department of Correction to commit an extraordinary act. TDOC personnel would be required to execute a severely mentally ill, brain-damaged, and traumatized child who became the teenager who committed a terrible crime. Christa would be the first woman Tennessee executes in over 200 years, the first teenaged offender Tennessee executes in the modern era, and the only teenaged female offender to be executed in the United States since the death penalty was found to be unconstitutional in 1972. This Court should instead issue a certificate of commutation recommending that the Governor commute Christa's sentence to life/life without possibility of parole, the sentence imposed on all other (nearly 200) female individuals in Tennessee convicted of first-degree murders.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing was electronically filed with the Court on June 7, 2021, and a copy sent via email to:

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Associate Solicitor General
Amy.Tarkington@ag.tn.gov

/s/Stephen A. Ferrell
Stephen A. Ferrell
Assistant Federal Community Defender

EXHIBIT 1

The 17 Women Executed in the United States Post-*Furman*

There have been only 17 women executed by states or the federal government in the post-*Furman* era. None were teenagers at the time of their offense; all were over the age of 21. Source: Death Penalty Information Center https://deathpenaltyinfo.org/death-row/women/executions-of-women and reported cases or sources with further detail below.

Velma Barfield was executed in North Carolina on November 02, 1984. She was **45 years old** when she poisoned a man she was in a relationship with. *See Barfield v. Harris*, 540 F. Supp. 451, 471 (E.D.N.C. 1982).

Karla Tucker was executed in Texas on February 03, 1998. She committed capital murder at the **age of 23**. *See Tucker v. Johnson*, 115 F.3d 276, 282 (5th Cir. 1997).

Judy Buenoano was executed in Florida on March 30, 1998. She was born on April 4, 1943, and committed murder by suspected arsenic poisoning on September 16, 1971, at **age 28**. *See Buenoano v. State*, 527 So. 2d 194, 195 (Fla. 1988).

Betty Beets was executed in Texas on February 24, 2000. She was born in 1937 and murdered her fifth husband in 1983 at **age 46**. *See Beets v. Collins*, 65 F.3d 1258, 1261 (5th Cir. 1995).

Christina Riggs was executed in Arkansas on May 02, 2000. She was born on September 2, 1971, and murdered her two children on November 4, 1997, at **age 26**. *See* http://news.bbc.co.uk/2/hi/americas/734313.stm; *Riggs v. State*, 3 S.W.3d 305 (Ark. 1999).

Wanda Allen was executed in Oklahoma on January 11, 2001. She was born in 1959 and murdered her girlfriend in 1998 at **age 39**. *See Allen v. State*, 871 P.2d 79, 86 (Okl. Cr. 1994).

Marilyn Plantz was executed in Oklahoma on May 01, 2001. She engineered the murder of her husband at **age 28**. *See Plantz v. State*, 876 P.2d 268, 282 (Okl. Cr. 1994).

Lois Smith was executed in Oklahoma on December 04, 2001. She was born on September 12, 1940, and committed murder on July 4, 1982, at **age 42**. *See Smith v. State*, 727 P.2d 1366, 1368 (Okl. Cr. 1986).

Lynda Block was executed in Alabama on May 10, 2002. She was born on February 8, 1948 and was convicted of the October 4, 1993 killing of a police officer in the line of duty at **age 45**. *See Block v. State*, 744 So. 2d 404, 407 (Ala. Crim. App. 1997).

Aileen Wuornos was executed in Florida on October 09, 2002. She was born in February 1956 and committed first degree murder and armed robbery with a firearm on December 1, 1989, at **age 33**. *See Wuornos v. State*, 644 So. 2d 1000, 1003 (Fla. 1994).

Frances Newton was executed in Texas on September 14, 2005. She was born April 12, 1965 and committed the murder of her young daughter in the same criminal transaction as the murders of her husband and young son on April 7, 1987, at **age 21**. *See Newton v. Dretke*, 371 F.3d 250, 252 (5th Cir. 2004).

Teresa Lewis was executed in Virginia on September 23, 2010. She was born on April 26, 1969 and committed the murder of her husband and stepson on October 30, 2002, at **age 33**. *See Lewis v. Commonwealth,* 593 S.E.2d 220, 223 (Va. 2004).

Kimberly McCarthy was executed in Texas on June 26, 2013. She was born May 11, 1961 and committed the murder of her elderly neighbor in July 1997 at **age 36**. *See McCarthy v. State*, 65 S.W.3d 47, 48 (Tex. Crim. App. 2001).

Suzanne Basso was executed in Texas on February 5, 2014. She was born May 15, 1954 and committed the murder of a disabled man for life insurance money on August 28, 1999, at **age 45**. *See Basso v. Thaler*, 359 F. App'x 504, 506 (5th Cir. 2010).

Lisa Coleman was executed in Texas on September 17, 2014. She was born October 6, 1975 and committed the murder by neglect and abuse of a nine-year-old boy on July 26, 2004, at **age 28**. *See Coleman v. Thaler*, 716 F.3d 895, 898 (5th Cir. 2013).

Kelly Gissendaner was executed in Georgia on September 30, 2015. She was born March 8, 1968 and planned a murder that took place on February 7, 1997, when she was **28 years old**. *See Gissendaner v. State*, 272 Ga. 704, 705, 532 S.E.2d 677, 682 (2000).

Lisa Montgomery was executed in Missouri on January 13, 2021. She was born February 27, 1968 and committed murder on December 16, 2004, at **age 36**. See *United States v. Montgomery*, 635 F.3d 1074, 1079–80 (8th Cir. 2011).

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All execution dates were acquired from the Death Penalty Information Center, and all date of births were acquired from the respective state's Department of Correction.

EXHIBIT 2

Tennessee Executions Post-*Furman*

Prior to resuming executions post-*Furman*, Tennessee's last execution was in 1960. Tennessee executed 13 men on the following dates between 2000 and 2020, all of whom were in their 20's or 30's when committing their offenses. *See* https://www.tn.gov/correction/statistics-and-information/executions/tennessee-executions.html and reported cases with further details below.

April 19, 2000:

Robert Coe was born on April 15, 1956. (TDOC FOIL for Robert Glen Coe). On September 1, 1979 (at **age 23**), he committed the rape, kidnapping, and murder of an eight-year-old girl. *See State v. Coe*, 655 S.W.2d 903 (Tenn. 1983).

June 28, 2006:

Sedley Alley was born on August 16, 1955. (TDOC FOIL for Sedley Alley). On July 11, 1985 (at **age 30**), he attacked and murdered a 19-year-old girl. *See Alley v. Bell*, 307 F.3d 380, 384 (6th Cir. 2002).

May 09, 2007:

Philip Workman was born on June 1, 1953. (TDOC FOIL for "Phillip" Workman). On August 5, 1981 (at **age 28**), he robbed a Wendy's restaurant and shot a police officer in the parking lot. *See State v. Workman*, 111 S.W.3d 10, 12 (Tenn. Crim. App. 2002)

September 12, 2007:

On November 30, 1997, **36-year-old Daryl Holton** killed his children of four, six, ten, and twelve-years-old. *See State v. Holton*, 126 S.W.3d 845, 866 (Tenn. 2004).

February 04, 2009:

Steve Henley was born on November 25, 1953. (TDOC FOIL for Steve Henley, #00109572). On July 24, 1985 (at **age 31**), he committed aggravated arson and murdered an elderly couple who were close neighbors to his grandmother. *See State v. Henley*, 774 S.W.2d 908 (Tenn. 1989); Jackson County Circuit Court No. 87731; Case No. M1987–00116–SC–DPE–DD.

December 02, 2009:

Cecil Johnson was born on August 29, 1956 (TDOC FOIL for Cecil C. Johnson, Jr., #00090996). In July 1980 (at **age 23**), he committed three counts of first-degree murder, two counts of robbery, and two counts of assault. *See Johnson v. State*, 797

S.W.2d 578 (Tenn. 1990); Davidson County Criminal Court No. C6732A; Case No. M1981–00121–SC–DPE–DD.

<u>08/09/2018:</u>

Billy Irick was born on August 26, 1958 (TDOC FOIL for Billy Ray Irick). In April 1985 (at **age 27**), he committed rape and murder. *See Irick v. Bell*, 565 F.3d 315, 318–19 (6th Cir. 2009).

<u>11/01/2018:</u>

Edmund Zagorski was born on December 27, 1954 (TDOC FOIL for Edmund George Zagorski). In April 1983 (at **age 28**), he committed the first-degree murders of two men after luring them into a wooded area in Robertson County under the pretense of a drug deal. *See State v. Zagorski*, 701 S.W.2d 808, 810 (Tenn. 1985).

<u>12/06/2018:</u>

David Miller was born on July 16, 1957 (TDOC FOIL for David Earl Miller). In May 1981 (at **age 23**), he committed the murder of a 23-year-old mentally ill girl. *See State v. Miller*, 674 S.W.2d 279, 280 (Tenn. 1984)

<u>05/16/2019:</u>

Donnie Johnson was born January 15, 1951 (TDOC FOIL for Donnie Edward Johnson). At **age 33**, he murdered his wife on December 8, 1984. *See State v. Johnson*, 743 S.W.2d 154, 155 (Tenn. 1987)

<u>08/15/2019:</u>

Stephen West was born on September 16, 1962 (TDOC FOIL for Stephen M. West). On March 17, 1986 (at **age 23**), he committed two counts of first-degree murder, two counts of aggravated kidnaping, one count of aggravated rape, and one count of larceny. *State v. West,* 767 S.W.2d 387, 390 (Tenn. 1989).

<u>12/05/2019:</u>

Lee Hall was born on October 28, 1966 (TDOC FOIL for Leroy Hall Jr.). In April 1991 (at **age 24**), he committed first degree murder and aggravated arson. *State v. Hall*, 958 S.W.2d 679, 685 (Tenn. 1997)

<u>02/20/2020:</u>

Nicholas Sutton was born on July 15, 1961 (TDOC FOIL for Nicholas Todd Sutton). On January 15, 1985 (at **age 25**), he committed the first-degree murder of another inmate. *State v. Sutton*, 761 S.W.2d 763, 764 (Tenn.1988).

EXHIBIT 3

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE, Movant,	)	KNOX COUNTY
v.	)	No. M2020-01156-SC-DPE-DD
	)	Death Penalty Case
CHRISTA GAIL PIKE, Defendant.	)	Trial Court No. 58183A

DECLARATION OF DR. BETHANY BRAND, CLINICAL PSYCHOLOGIST AND PROFESSOR OF PSYCHOLOGY

I, Dr. Bethany Brand, Ph.D., attest to the following:

1. I am a licensed clinical psychologist (Maryland license 3126) with expertise in the assessment, treatment, and research of trauma-related disorders. I am a Professor of Psychology at Towson University with 30 years of clinical and research experience. As the Director of the Clinical Focus program at Towson University, I have taught courses about diagnosing and treating psychiatric disorders for 23 years. I earned my Ph.D. in clinical community psychology at the University of Maryland and completed training at Johns Hopkins Hospital, George Washington University Hospital, and the Trauma Disorders program at Sheppard Pratt Health System. I have received a variety of research, clinical, and teaching awards including the highest research award given within the state of Maryland's colleges. I am an Associate Editor for the *Journal of Trauma & Dissociation* and have published approximately 100 peer-reviewed articles, book chapters, and other scientifically-based publications. I am a co-author on two trauma-related books that

describe the assessment and treatment of dissociation and other trauma-related symptoms that are in press with Oxford University Press.

2. I have served as a trauma expert for civil and criminal cases, including state, federal and capital cases, and an international Supreme Court case. In personal injury cases, I have been hired by counsel for plaintiffs and defendants. I have qualified as an expert in every case I have testified.

3. I was recently hired by the defense team in Christa Pike's case as a trauma expert. At this point, my involvement has included talking to Christa's defense team and reviewing case records to determine if there are indications of psychological symptoms and/or psychological disorders that are possibly related to Christa's childhood physical, sexual, and emotional abuse and neglect. I have not had an opportunity to review many of the records in this case, nor to meet with or assess Christa. Thus, my professional opinion has been developed based on my training, knowledge, and 30 years of professional practice, and a limited review of documents in this case. My opinion may change if I am given the opportunity to review more documents and/or to assess Christa.

Documents Reviewed:

1) Dr. Kenner's Psychiatric Evaluation and Post-Conviction Testimony 4/11/08
2) Dr. Engum's Trial Transcript Testimony 12/26/1996; Neuropsychological Evaluation Report; Psychological testing data and computer-generated reports
3) Randy York- Investigator - Interview with Christa 1/14/1995
4) Christa's Current Medication List
5) Penalty phase Transcript

6) Dr. Woods' Evaluation- Post Conviction
7) Dr. Pincus' Neurology report and Post-Conviction Testimony 1/29/2007
8) Dr. McCoy Social History
9) Dr. Grassian's Reports
10) Dr. Rosemary Wilson's psychological testing data from 1991

4. Based on this limited review, I offer the following professional opinion. Christa's abuse and neglect by her mother began even before she was born because her mother, Carissa, continued to drink throughout her pregnancy. Her mother appears to have struggled with depression and attempted suicide when Christa was a young girl. Carissa had also been abused as a child and was likely severely damaged by her own horrific childhood. As a result, Carissa did not provide adequate love, guidance or supervision to Christa. Rather, Carissa focused on drinking, and her volatile romantic relationships. Carissa's five marriages and relationships with a series of boyfriends brought chaos and danger to Christa's life. Some of Carissa's partners were physically and sexually abusive to Christa, compounding the severe damage caused by maternal abuse and neglect. Rather than providing a safe, predictable, loving home, Christa's father, Glenn Pike, physically abused her, leaving her with permanent scars on her back. He told Christa's defense team that despite the excessive beatings he frequently gave Christa, he believes that Christa's problems are due to him not beating her more often.

5. Christa was continually shuttled back and forth between her divorced parents across states, requiring continually changing schools with such frequency

that she could not develop solid, caring relationships with teachers, neighbors, and peers that could have provided some semblance of support. Her mother often left Christa with anyone who was available to take care of her. Her grandfather "babysat" Christa at his slaughterhouse where she repeatedly witnessed the bloody slaughter, skinning, and carving of animals, at least one of whom she had become attached to and named. Christa was also physically abused by her maternal grandmother, who was a violent alcoholic who died of liver failure. Christa's sister, Alicia, reported that Christa was repeatedly pawned off on this grandmother and a maternal aunt for babysitting. Unfortunately, Alicia also contributed to emotionally abusing Christa by telling her she was unwanted and should leave the family, as well as by locking Christa in a room and terrifying her, taunting her by saying she was leaving her trapped, while their mother was away from home.

6. Further compounding the devastating impact of this emotional, physical, and sexual abuse and neglect, Christa was sexually assaulted by two men during her childhood. Even though the police caught and prosecuted one of the men, Carissa did not believe or support Christa through the investigation and prosecution process nor did she follow through on the recommendation to take the traumatized young Christa to counseling. This level of horrific chaos, neglect, parental betrayal, familial abuse, and rape by pedophiles is exceedingly rare.

7. Unfortunately, Christa's original defense team did not have her evaluated by a trauma expert to assess whether this ghastly childhood caused psychological problems that may have contributed to her criminal behavior.

Equally concerning, there are numerous indications throughout the records I have thus far reviewed that strongly suggest Christa likely has posttraumatic stress disorder (PTSD) and dissociative symptoms, and perhaps a full-blown dissociative disorder. For example, Dr. Engum's psychological testing showed that Christa scored high on three different psychological scales that are indicators of possible PTSD.

8. Despite this evidence, Dr. Engum did not mention these signs of possible PTSD in his report or testimony. I do not see indication that any other expert involved in this case has seen the psychological tests indicating likely PTSD. Instead, Dr. Engum emphasized that she had borderline personality disorder, without recognizing or clarifying that many symptoms of that disorder have been shown to be signs of having been traumatized (e.g., Herman, 1997).

9. Research shows that people who experienced childhood abuse and neglect, and who struggle with trauma-related PTSD symptoms and dissociation, can be extremely dysregulated and highly symptomatic. In fact, they can *appear* to have serious personality disorders such as borderline personality disorder when they are dysregulated and untreated. However, they stabilize significantly once they receive trauma-focused treatment to the point where they often no longer show any symptoms that could be confused with borderline personality disorder (Ellason & Ross, 1997). This research has led trauma experts such as Judith Herman and others to argue that personality disorder diagnoses should not be assigned to

untreated trauma survivors because such diagnostic labels do not convey that these symptoms are trauma-induced and can be stabilized with appropriate treatment.

10. Exposure to trauma during childhood can negatively impact mood, behavioral control, cognitive abilities such as judgement and abstract thinking, health, and overall functioning (Felitti et al., 1998). There is a clear link between experiencing traumatic events during childhood and developing a complex, chronic symptom profile into adulthood, including dissociation (Briere, Kaltman & Greene, 2008; Cloitre et al., 2009; Hodges et al., 2013). Dissociation is "a disruption and/or discontinuity in the normal integration of consciousness, memory, identity, emotion, perception, body representation, motor control, and behavior" (American Psychiatric Association, 2013, p. 291).

11. There are many examples of likely dissociation and trauma in the records I reviewed, including Christa referring to possible dissociative phenomena during the crime, according to what she told in the interview by Randy York: "blacking out" (p. 6), hearing a voice talking to her (p. 18 and p. 21), and not being able to hear what was going on around her (p. 21). Dr. Pincus noted in his report that Christa has "dissociative states" (p. 6) and dissociative amnesia for some of the horrific episodes of abuse (p. 8).

12. Dr. Kenner's report indicated possible amnesia in that Christa recalls little about her paternal grandmother's funeral (p. 7) during which she perceived herself outside and above herself (i.e., dissociative depersonalization p. 33). Dr.

Kenner noted that her "brain stalled out" during her interview with him, which could indicate thought blocking, which can occur in dissociative individuals (p. 31).

13. The psychological testing data gathered by Dr. Wilson when Christa was approximately 14 years-old also shows signs indicating she was struggling with the impact of trauma. For example, the stories she told during the Thematic Apperception Test included one child who was killed in a bus accident, a woman who was killed by someone hitting her over the head with a frying pan, one girl beating up another because the latter was with the girl's boyfriend, and a girl who is worried and cannot pay attention because she is preoccupied with thoughts about her parents having forgotten to pick her up at the babysitter's home. These themes of danger, death, violence, and being forgotten by caregivers are characteristic of traumatized and neglected children.

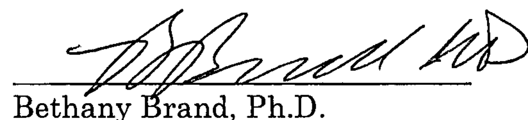
14. Similarly, Christa reported seeing the image of a "mouth with a busted lip" on a Rorschach inkblot card, which is strikingly similar to the story she told Dr. Wilson about one of her mother's boyfriends punching her in the face and "busting my lip." Research shows that trauma survivors frequently experience traumatic intrusions when shown Rorschach cards (Brand, Armstrong & Loewenstein, 2006).

15. Unfortunately, a trauma expert did not examine Christa nor did any of the experts who examined her use any of the gold standard tests or interviews designed to assess trauma-related disorders. Thus, this critical area of Christa Pike's mental health functioning was not adequately assessed nor presented in her trial.

16. The severity and chronicity of the trauma and neglect that Christa experienced as a child and adolescent seems to have resulted in symptoms related to PTSD and dissociation, as detailed throughout the records I have thus far reviewed. These trauma-based symptoms can impact the individual's brain development; response to stress; ability to reliably focus attention, think clearly and develop sound judgement; development of emotional and behavioral control; and impact their identity, values, academic and occupational progress, and relationships. Due to the impact of these trauma-created problems, individuals who have experienced child abuse and neglect are at risk for criminal behavior, and the courts have therefore repeatedly considered trauma-related mental health disorders and problems in legal cases.

17. It is my professional opinion that Christa Pike shows many signs indicating that she suffers from trauma-related psychological symptoms and problems including, but not limited to, symptoms of PTSD and dissociation. It is also my opinion that Christa urgently needs to be carefully assessed by a trauma expert using a variety of research-based, trauma-sensitive testing methods to determine over a series of interviews whether she has psychiatric symptoms and/or disorders related to trauma that may have impacted her criminal behavior.

Signed under penalty of perjury this seventh day of June, 2021.



Bethany Brand, Ph.D.

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EXHIBIT 4

TENNESSEE DEPARTMENT OF CORRECTION
MENTAL HEALTH TREATMENT PLAN REVIEW

DJRC
INSTITUTION

INMATE: Pike Christa
NUMBER: 261368
DATE OF BIRTH: 3/10/1976
GENDER: Female

TREATMENT PLAN REVIEW DUE ON: 4/12/21
☒ VOLUNTARY ☐ INVOLUNTARY ☒ LEVEL OF CARE 2
☐ INPATIENT ☐ OUTPATIENT
SPECIAL UNIT SPECIFY: Unit 3

LEVEL OF CARE: ☒ II ☐ III ☐ IV ☐ V

DSM-5 DIAGNOSIS:
296.52 (F31.32) Bipolar I disorder, MRE depressed, moderate
309.81 (F43.10) Post Traumatic Stress Disorder

TARGET SYMPTOMS/PROBLEMS:
1) ☒ SAME ☐ REVISED mood instability
2) ☒ SAME ☐ REVISED overreaction to hostility
3) ☒ SAME ☐ REVISED
4) ☐ SAME ☐ REVISED
5) ☐ SAME ☐ REVISED

PROGRESS ACCORDING TO TREATMENT PLAN GOALS:
1) ☒ NONE ☐ MINIMAL ☐ IMPROVED ☐ DISCHARGE GOAL no improvement
2) ☒ NONE ☐ MINIMAL ☐ IMPROVED ☐ DISCHARGE GOAL no improvement
3) ☐ NONE ☐ MINIMAL ☐ IMPROVED ☐ DISCHARGE GOAL
4) ☐ NONE ☐ MINIMAL ☐ IMPROVED ☐ DISCHARGE GOAL
5) ☐ NONE ☐ MINIMAL ☐ IMPROVED ☐ DISCHARGE GOAL

NEW/REVISED TREATMENT MODALITY AND FREQUENCY:
Medication Management and Review every 30-90 Days
Psychotherapy or Group Therapy every 30-90 Days

X [signature] 10-12-20
INMATE SIGNATURE / CONSERVATOR SIGNATURE DATE

[signature] Pam Monjar, LPC-MHSP (Temp), NCC 10/12/20
STAFF SIGNATURE TITLE DATE

[signature] Eric Gauen, Psy.D. Mental Health Clinical Director [signature] Traci Boswell, PMHNP-BC Psychiatric Nurse Practitioner 10-19-20
STAFF SIGNATURE TITLE DATE

RECEIVING PROVIDER DATE

EXHIBIT 5

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,	)	
	)	
Movant,	)	KNOX COUNTY
v.	)	No. M2020-01156-SC-DPE-DD
	)	Death Penalty Case
CHRISTA GAIL PIKE,	)	
	)	Trial Court No. 58183A
Defendant.	)	

DECLARATION ON BEHALF OF
THE AMERICAN ACADEMY OF PEDIATRIC NEUROPSYCHOLOGY

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1. The American Academy of Pediatric Neuropsychology (AAPdN) was established as a non-profit organization in 1996 to advocate for board certification in pediatric neuropsychology as a clinical specialty, provide continuing education for practitioners, and allow for collaboration among individuals and professional specialties with a passion for providing the best possible clinical neuropsychological services for children and adolescents, from birth through the age of 21 years. In addition to a doctoral degree in relevant clinical areas and post-doctoral training in pediatric neuropsychology, Diplomates of the Academy must pass a rigorous credential review as well as both written and oral examinations. The Academy currently offers advanced training and accredited continuing education in pediatric neuropsychology and supports the examination of competence in pediatric neuropsychology through peer review of training and credentials, and oversees the examination process for board certification in pediatric neuropsychology by its subsidiary examination arm, the American Board of Pediatric Neuropsychology.

Persons earning Diplomate status via the peer review and examination process become Fellows of the Academy. The Academy holds an annual conference and sponsors a scholarly, peer-review publication, the *Journal of Pediatric Neuropsychology*.

2. In deciding *Roper* v. *Simmons,* the Supreme Court of the United States held that juvenile offenders under 18 years of age are categorically less culpable than the average criminal and subsequently ruled that application of death as a penalty to persons under age 18 is unconstitutional. Our reading of this decision indicates the conclusion of lessened culpability was based upon three primary findings by the *Roper* Court. First, juveniles possess a lack of maturity and an underdeveloped sense of responsibility. Second, juveniles are more vulnerable/susceptible to negative influences, such as peer pressure and other outside pressures. Third, the Court found that the character of juveniles was not as fully formed as that of adults. The AAPdN believes the primary reason these findings are true and accurate is the level of maturity (or immaturity) of the brain at this age. However, there is no bright line regarding brain development nor is there neuroscience to indicate the brains of 18- year-olds differ in any significant way from those of 17-year-olds. An examination of the research on brain development indicates ongoing maturation of the brain through at least age 20. Thus, it is the opinion of the AAPdN that there is no scientific basis for the cut off to be at age 18. The same restrictions applied to application of the death penalty to

persons aged 17 should apply to persons ages 18 through 20 years and for the same scientific reasons.

3. The maturation of the juvenile brain is not fully complete until the mid-20s. While academics continue to debate the exact age of brain maturation, it is clear that this does not happen until after age 20. There is no clear way to differentiate the functioning of the brains of 17-year-olds from those aged 18, 19, and 20 in terms of risk taking behaviors, the ability to anticipate the consequences of their actions *(i.e.,* engage in a cost-benefit analysis), to evaluate and avoid negative influences of others, and to demonstrate fully formed characterological traits not subject to substantive change over the next decade of their lives. The key aspects of brain development governing these abilities and characteristics simply are not yet mature or fully functional until sometime after the age of 21. Occasionally in this declaration, we will refer to adulthood, because it is part of the common vernacular of the neuroscience research community. However, our use of this term refers to a neurobiological state of maturity and not to a specific chronological age such as 18 years of age which is for some purposes considered adulthood in legal proceedings.

4. As any clinician who works with adolescents understands, and as our science and actuarial reviews confirm, the lack of maturity and underdeveloped sense of responsibility noted by the *Roper* Court exists in the 18-to-20-year-old population as much so as in the 17-year-old population. In *Roper,* the Court noted that these qualities often result in impetuous and ill-considered actions and

decisions. It has been noted by the Court that adolescents are overrepresented statistically in virtually every category of reckless behavior. This finding is also well documented in the peer-review literature in the 18-to-20-year-old population of teens and youth as well as in the experiences of those who interact with this age group on a consistent basis. For example, every parent has experience with car insurance rates which are significantly higher for 17-year-olds, due to their risky behaviors when driving, and these rates extend to 18-20-year-olds for the same reason. It is notable that a variety of federal regulations as well as every state imposes numerous restrictions on the actions and behavior of youth under the age of 21. As an example, and also due to the immaturity of their brains and the enhanced adverse effects of alcohol on the developing brain (as has been explained in numerous publications of the National Institutes of Mental Health and its subsidiary agencies), no state allows those under age 21 to purchase or consume alcoholic beverages.

5. Aspects of brain development discussed herein demonstrate the propriety of both protections of the under-21 population from their ill-conceived ideas and rashness and restrictions on their behavior designed to protect the general public from their reckless behavior (for example, the interstate transportation of passengers for pay requires a special commercial driver's license that is restricted by law to persons 21 and older) since the same areas of the brain associated with the ability to assess the consequences of behavior and the proclivity for engaging in risky and rash behavior that are under-developed or immature in

17-year-olds, remain so in the 18-to-20-year-old population, and in fact do not show, on average, maturity of function until after age 20. It is increasingly clear that the brains of 18-to-20-year-olds are not yet fully developed in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance, and are poorly distinguished from the brain development of 17-year-olds with regard to these important brain systems. There remains a great deal of plasticity in the development of these brain regions at ages 18-20 years.

6. In 2011, discussing recent findings from the neurosciences regarding brain development and the so-called "Teen Brain" specifically, the United States National Institutes of Mental Health (an official agency of the Federal government of the United States) in an official publication on this topic [*The teen brain: Still under construction,* U.S. Department of Health and Human Services, National Institutes of Health, National Institute of Mental Health NIH publication no. 11-4929, 2011] reports that, "These findings have altered long-held assumptions about the timing of brain maturation. In key ways, the brain doesn't look like that of an adult until the early 20s." The National Institute of Mental Health goes on to instruct us that, with regard to recent neuroscience findings, " ... the results push the timeline of brain maturation into adolescence and young adulthood. In terms of the volume of gray matter seen in brain images, the brain does not begin to resemble that of an adult until the early 20s." And, even more importantly related to any extension of the Supreme Court's reasoning in *Roper,* "The scans also suggest that different parts of the cortex mature at different rates. Areas involved in more

basic functions mature first: those involved, for example, in the processing of information from the senses, and in controlling movement. The parts of the brain responsible for more 'top-down' control, controlling impulses, and planning ahead-the hallmarks of adult behavior-are among the last to mature." These "last to mature" functions are precisely those brain functions the *Roper* Court noted to be necessary for mature judgement and that the lack of this level of maturation was a key reason for an upward extension of the age of eligibility for death as a penalty for certain murders. In the literature noted below, which is designed to be exemplary and not exhaustive, we will discuss these findings in more detail.

Brain Development and Maturation of the Cognitive and Behavioral Control Systems

7. Twentieth century neuroscience long held that the prefrontal cortex (the last portion of the human brain to evolve) is the master control center of the mature brain. This brain region evaluates complex behavioral decisions and signals other parts of the brain and appraises actions to be taken (or not to be taken) constantly based on new information received throughout the cortex as well as feedback loops present in the brain, on how and when to behave, to act, how to act, and how not to act, and exerting inhibitory control over all behavioral functions. This region of the brain, when mature, is the only brain region empowered to over-ride the powerful urges of the limbic system and its more reflexive and emotionally-laden response patterns. The eminent neuroscientist and oft exalted father of clinical neuropsychology Alexander Luria instructed us on the role of the frontal regions of the brain in the title of his 1969 keynote address to the International

Congress of Psychology, "The cerebral coordination of conscious acts: A frontal lobe function." Neuroscience of the 21st century has continued to validate this view and elaborate how this coordination and control of conscious acts actually occurs.

8. As complex as this process is within the brain, even this brief explanation is simplistic. The brain is an interdependent systemic network, with each component of the system having some unique contribution to make, yet, each part of the brain is capable of influencing all other parts of the brain. With regard to the areas of concern to the *Roper* Court, as noted above, it nevertheless remains the prefrontal cortex and its communication circuitry that exert the final set of controls in what is ostensibly a go/no go system of behavioral action and control. While other parts of the brain are involved in the executive system, it is the prefrontal cortex and communication circuitry that is the key control mechanism over such matters as decision-making, planning, inhibition, sequencing of behavior, development of actions (the generative functions of the brain), and evaluating the results of behavior-in essence learning from experience how to modify all aspects of the system to become more adaptive to the world in which it exists *(e.g.,* Morgan, White, Bullmore, & Vertes, 2018; Bassett, Xia, & Satterthwaite, 2018). The prefrontal cortex and its communication circuitry, moreover, coordinate behavioral development and responding based on input from all other brain regions and systems.

9. Consistent with the literature reviewed above as reflecting more appropriately the true period of development of the adolescent or teen brain, the

AAPdN's own longstanding definition of pediatric clinical neuropsychological practice extends to age 21 years. Similarly, the period of chronological age known as "the developmental period" of childhood and adolescence has been extended by federal law to encompass the period up to age 22 years and similar age cutoffs have been recognized by multiple federal agencies and some states. In 2000, PUBLIC LAW 106-402-OCT. 30, 2000 114 STAT. 1683, the Developmental Disabilities Assistance and Bill of Rights Act of 2000, was enacted as binding federal legislation. This act extended the period of chronological age known as the period of development, from age 18 upward to age 22 years, expressly allowing the diagnosis of what are widely known and also recognized in this Act as developmental disabilities to be diagnosed and those so diagnosed to benefit from the provisions of this act so long as symptoms of the Developmental Disability occurred prior to the age of 22 years *(i.e.,* during the developmental period). The United States Social Security Administration, the largest certifier and payer of disability benefits in the United States, pays disability benefits to persons with qualifying developmental disabilities with an upper limit in age of onset set at 22 years, up from 18 years in earlier times.

10. Five states have modified their laws governing the determination of developmental disabilities to reflect recent neuroscience findings. Indiana, Maryland, Nebraska, New Mexico, and Utah now allow the diagnosis of developmental disorders including intellectual disability to be made if symptoms

are present prior to the age of 22 years. The Academy expects other states to follow suit in coming years.

11. In recognition of the current state of knowledge regarding the continuing level of brain development past age 18 years, in the most recent edition of the American Psychiatric Association Diagnostic and Statistical Manual 5th edition (DSM-5; 2013), the American Psychiatric Association has left the developmental period open ended beyond age 18. Given that the American Psychiatric Association had, for many decades, declared the developmental period to end at age 18 years, this reflects a significant change of direction in favor of protecting those beyond 18 years of age and allowing the expression of their developmental disability to be later, in line with the scientific underpinnings of brain maturation, and still recognized for what it is, a developmental disability.

Advances in Neuroscience Related to Brain Development

12. Incremental yet profound advances in neuroscience and neuropsychology have emerged in the 16 years since the *Roper* decision, and especially in the last decade. Those advances have unequivocally demonstrated that significant brain development supporting greater complexity in brain functions continues to take place well beyond the age of 18 years. This research has led to a paradigmatic shift in the way that the behavior of adolescents and young adults is understood. Although robust knowledge was emerging later in the year of the *Roper* decision *(e.g.,* B.J. Casey, N. Tottenham, & C. Liston, et al., *Imaging the developing brain: What we have learned about cognitive development,* TRENDS IN

COGNITIVE SCIENCE, Vol. 9, 104-110 (2005)), a broader more comprehensive body of neuroscientific and neuropsychological evidence has appeared since that time clearly showing that brain maturation supporting more complex functionality continues at the very least into the third decade of life.

13. Structural maturation of the frontal regions and perhaps even more importantly their communication circuitry (without mature lines of communication, the level of development of the frontal regions would not matter) continues into the mid-to-late-20s in the critical regions of the frontal lobes and is most delayed in the prefrontal cortex. Myelogenesis, closely associated with central nervous system communication schemes, is critical to structure and function and is the process by which the neurons of the brain insulate themselves and develop accurate, faster, and more precise, communication patterns. Myelogenesis occurs last in the cortex and of cortical structures with prefrontal regions being among the last to mature via myelogenesis *(cf,* B.J. Casey, R.M. Jones & T.A. Howe, *The Adolescent Brain,* ANNALS OF THE NY ACADEMY OF SCIENCE, 1124, 111-126 (2008); C. Lebel, C. Beaulieu, *Longitudinal development of human brain wiring continues from childhood into adulthood,* Journal of Neuroscience, 31, 10937-10947 (2011)). With regard to communication, the fronto-temporal communication pathways experience the greatest delay in development.

14. Synaptic pruning is another natural structural change process that occurs in the brain between early childhood and adulthood and is also strongly related to maturation of the functional capacities of the brain. While some level of

pruning occurs throughout the lifespan, it is most aggressive in the period from late childhood until adulthood. Synaptic pruning refers to the removal and refinement of connections in the brain whereby unused, unnecessary connections are deleted structurally. During this time, other needed and desirable connections are strengthened and reinforced. Pruning is most aggressive in prefrontal and temporo-parietal regions and most persistent and delayed in dorsolateral, prefrontal regions and in their related communication circuitry, continuing into the mid to late 20s in nearly all cases.

15. The body of scientific research based on longitudinal studies has clearly enhanced our current understanding of the continual maturation of the brain into the third decade of life and beyond and has confirmed most of what was learned from earlier cross-sectional studies. For example, in one of the most comprehensive and well-controlled studies involving longitudinal work conducted by Lebel and Beaulieu (2011, Ibid), employing 103 healthy participants between the ages of 5-32 years who underwent advanced neuroimaging using diffuse tensor tractography (the study of brain connections and circuits) at least twice, demonstrated that white matter tracts showed nonlinear maturational trajectories in the 10 major tracts investigated in that study. Significant intra-subject (within subject) maturation was observed after the age of 18 in white matter association tracts. In addition, volume associated with increased myelination and axon density increased with age for most white matter tracts, and longitudinal imaging demonstrated that the changes that took place after the age of 18 were in multiple

important association tracts. Just as critical, these investigators concluded, based on their findings, that because volumetric increases were not directly associated with specific tensor analytic variables, the observed changes were the result of microstructural maturation rather than simple gross anatomical development.

16. Another study (N.U. Dosenbach, et al., *Prediction of Individual Brain Maturity Using JMRI,* SCIENCE, 329, 1358-1361(2010)) sponsored by National Institutes of Mental Health, and employing 5 minutes of resting-state functional connectivity MRI (fcMRI) from 238 scans from 7-30 year-old healthy volunteers, again replicated the Lebel and Beaulieu findings using a larger number of scans (613) showing that brain maturation continues to take place beyond the age of 18 on into the early and mid-20s. Dosenbach, et al., also concluded that there are qualitative changes in the maturation and that the brain's functional organization "is dominated by more local interactions between brain regions in children and shifts to more distributed architecture in young adults." These findings allow for emphasis on the experiential nature of developing brain-behavior relationships-the maturation of the brain's decisional systems is dependent in part on actual life experience once the architecture is in place.

17. In a similar vein, Pfefferbaum et al. (2013; Ibid), in a well-controlled study examining the longitudinal trajectories over a 1-8 year interval of regional brain volumes in 23 brain regions of interest in healthy male and female participants ages 10-85 years and employing magnetic resonance imaging (MRI), discovered the presence of continuing growth after the age of 18 into the early 20s.

In particular, these investigators noted that the observed volume growth in white matter reflected increased complexity in connectivity with functional and structural development. In addition, these authors indicated that the increased growth and maturation in developmental trajectories "observed suggest a pattern of continuity of growth of white matter through early adulthood," "especially in the frontal regions" through 30 years of age (p. 189).

18. In conclusion, all these investigations from the peer-reviewed scientific literature using modern imaging techniques from neuroscience and related neuropsychological paradigms have demonstrated that the human brain, particularly association tracts and circuits in the frontal lobes of humans, continues to grow and mature well into adulthood, beyond the age of 18 years and unquestionably to the age of 21 years in most typically developing humans. Such changes in structure lead to correlative increases in brain functions and behavioral repertoires that continue to be refined by life experiences and feedback on behavior and its outcomes. Characterological features of behavior are hardly settled in reliably predictable ways by the age of 18 given the amount of neurobiological development yet to occur. Given our review of the scientific evidence, we do not see that there is any scientific basis upon which to draw a significant distinction in the neuropsychological abilities of the 18-20 versus 17-year-olds that would make them more culpable in the face of such criminal charges that could lead to a sentence of death.

19. It is clear to the Academy that, based upon the convergence of strong scientific evidence, that the key aspects of brain development reflecting the characteristics of 17-year-olds as identified by the *Roper* Court as reflecting lesser culpability due to those characteristics, are fully applicable to persons aged 18 years through 20 years. Our review of this evidence leads us to concur with and join in the American Bar Association's call for each jurisdiction that imposes capital punishment to prohibit the imposition of a death sentence on or execution of any individual who was 21 years old or younger at the time of the offense (see the American Bar Association Resolution, Death Penalty Due Process Review Project, Section of Civil Rights and Social Justice, American Bar Association, February, 2018).

20. Accordingly, on September 23, 2020, the AAPdN Board of Directors, on behalf of the AAPdN, by unanimous vote, issued the attached Resolution (Exhibit 1) calling upon the courts, and the State and Federal legislative bodies of the United State to ban the application of death as a penalty to persons committing what is now considered a capital offense where the offense was committed prior to obtaining the age of 21 years.

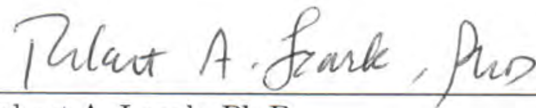
21. Since passage of the AAPdN Resolution relating to the imposition of death as a penalty for persons aged 18 years through 20 years, other organizations have either passed similar resolutions. The Society for Black Neuropsychology Executive Board issued a statement on November 23, 2020 calling upon the courts and the State and Federal legislative bodies of the United States to ban the

application of death as a penalty to persons committing what is now considered a capital offense where the offense was committed prior to the age of 21 years. See attached Exhibit 2. Further, the Asian Neuropsychological Association on December 9, 2020, issued a similar Resolution, attached as Exhibit 3.

22. In light of the current scientific understanding of adolescent brain development, the AAPdN urges the courts, the Governor, and other authorities of the State of Tennessee to refrain from executing any person whose capital offense was committed prior to the age of 21 years.

23. I, Robert A. Leark, am over the age of 21 and in all ways competent to make this declaration. I have reviewed this *Declaration* and the facts and assertions contained within it. I declare that the facts and assertions contained within it are true to the best of my knowledge and belief, and further declare my understanding that they have been made for use as evidence in court and are subject to penalty of perjury.

DATED this 15th day of February, 2021.



Robert A. Leark, Ph.D.,
President, American Academy of
Pediatric Neuropsychology,
on behalf of the Board of Directors
of the Academy following the
Board's unanimous approval of
this Declaration on February 15, 2021.

EXHIBIT 1

Resolution of the AMERICAN ACADEMY OF PEDIATRIC NEUROPSYCHOLOGY relating to the imposition of death as a penalty for persons ages 18 years through 20 years.

The American Academy of Pediatric Neuropsychology (AAPdN) was established as a non-profit organization in 1996 to advocate for board certification in pediatric neuropsychology as a clinical specialty, provide continuing education for practitioners, and allow for collaboration among individuals and professional specialties with a passion for providing the best possible clinical neuropsychological services for children and adolescents, from birth through the age of 21 years. As such, the AAPdN has an interest in promoting best practice in the treatment of persons in this age range in the civil as well as criminal justice systems.

The AAPdN is aware of the US Supreme Court decision in Roper v. Simmons. In deciding Roper v. Simmons, the Supreme Court of the United States held that juvenile offenders under 18 years of age are categorically less culpable than the average criminal and subsequently ruled that application of death as a penalty to persons under age 18 at the time of the crime is unconstitutional. Our reading of this decision indicates the conclusion of lesser culpability was based upon three primary findings by the Roper Court. First, juveniles possess a lack of maturity and an underdeveloped sense of responsibility. Second, juveniles are more vulnerable/susceptible to negative influences, such as peer pressure and other outside pressures. Third, the Court found that the character of juveniles was not as fully formed as that of adults. The AAPdN believes the primary reason these findings are true and accurate is the level of maturity (or immaturity) of the brain at this age. However, there is no bright line regarding brain development nor is there neuroscience to indicate the brains of 18- year-olds differ in any significant way from those of 17-year-olds. An examination of the research on brain development indicates ongoing maturation of the brain through at least age 20. Thus, it is the opinion of the AAPdN that the same prohibitions applied to application of the death penalty to persons aged 17 should apply to persons ages 18 through 20 years and for the same scientific reasons.

Be it resolved by unanimous vote of the AAPdN Board of Directors on behalf of the AAPdN, that for the reasons given above, the AAPdN calls upon the courts, and the State and Federal legislative bodies of the United States to ban the application of death as a penalty to persons committing what is now considered a capital offense where the offense was committed prior to obtaining the age of 21 years.

Approved by the Board of Directors on Wednesday, September 23, 2020

Grace A. Mucci, Ph.D.

Grace A. Mucci, Ph.D., ABPdN
AAPdN President, 2019-2020

5855 E. Naples Plaza, Suite 203
Long Beach, CA 90803
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EXHIBIT 2

Statement from the SOCIETY FOR BLACK NEUROPSYCHOLGY regarding the imposition of death as a penalty for persons ages 18 through 20 years

The Society for Black Neuropsychology (SBN) is a non-profit organization established to promote the discipline and practice of neuropsychology as it pertains to Black populations. We are devoted to furthering the awareness and knowledge of competent practices, research, and advocacy. Among our key foci are the desire to: expand the clinical competence and scientific rigor applied to the practice of neuropsychology and neuropsychological practice within Black populations; engage both the scientific community and the general population with clinical knowledge and research regarding Black health disparities and their impacts on neuropsychological functioning; and develop community outreach and advocacy initiatives that disseminate clinical and research information about brain health to underserved Black communities.

The subject of juvenile capital punishment is one that is uniquely significant to SBN. This is a subject that cuts across the lines of psychological best practices, neuroscience research, social justice, and equality. As professionals dedicated to the application of science that best serves society, SBN is compelled to share our expert perspectives on this subject.

We know that race is a factor that disproportionately impacts conviction rates across all crimes (Ghandnoosh, 2015; Mitchell & MacKenzie, 2004; Nellis, 2016). Murder convictions are no exception—and death row sentencing rates are included in that (Eberhardt, et al., 2006; Sentencing Project, 2013). The proportion of Black people on death row is over 300% of the Black national population (Ford, 2014). We also know that when it comes to young offenders, Black youth are significantly more likely to be convicted and to be given harsher sentences as compared to their White counterparts (Goff, et al., 2014; Morris & Perry, 2016; Spohn, 2017). These aspects of inequality in justice intersect when we examine death row convictions among young people: yet again, Black youth are over-represented among those on death row (Beckett & Evans, 2016). When compared to those who have committed similar crimes, Black young people are more likely to face the death penalty as compared to their White peers.

From a neurodevelopmental standpoint, we know that human cognitive and neuropsychological development does not reach maturation until the 20s (Johnson, et al., 2009). The morphological

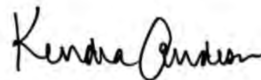
and neuropsychological changes that occur throughout this time are evident in executive functioning and processing tasks (Cohen, et al. 2016). Those in late adolescence are less developmentally mature than those in young adulthood (Harden & Tucker 2011; Steinberg, et al. 2018). And the dividing line of that cognitive maturation does not exist between 17 and 18 years old. Nevertheless, sentencing laws allow 18-year olds to be sentenced to death, despite the fact that research has consistently shown that there is no significant neurodevelopmental difference between a 17-year-old and an 18-year-old.

In Roper v. Simmons, the Supreme Court of the United States held that juvenile offenders under 18 years of age are less culpable than the adults and determined the unconstitutionality of applying the death penalty to persons who were under the age of 18 years old at the time of their crime (2005). This conclusion of the Court was based upon three primary findings. First, juveniles possess a lack of maturity and an underdeveloped sense of responsibility. Second, juveniles are more vulnerable/susceptible to negative influences, such as peer pressure and other outside pressures. Third, the Court found that the character of juveniles was not as fully formed as that of adults. SBN concurs with these findings wherein the Courts have indicated that per the understanding of social and psychological development, it is prudent to prohibit the application of the death penalty to persons aged 17 years or younger. Because of the same scientific evidence, SBN contends that this prohibition should apply to other individuals within the late adolescence period. This includes those who are 18, 19, and 20 years old, and likely to the mid-twenties (Cohen, et al., 2016; Schulman, et al., 2016; Veroude, et al., 2013).

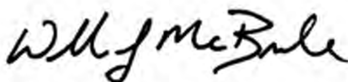
As such, by vote of the executive board of SBN, for the aforementioned reasons, we call upon the courts and the State and Federal legislative bodies of the United States to ban the application of death as a penalty to persons committing what is now considered a capital offense where the offense was committed prior to the age of 21 years.

Approved by the Society for Black Neuropsychology Executive Board on Monday, November 23, 2020

Courtney Ray, MDiv, PhD
President



Kendra Anderson, PhD
Executive Secretary



Willie McBride, PhD
Treasurer

Valencia Montgomery, PsyD, LP
Director of Research Development

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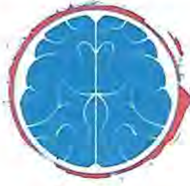
EXHIBIT 3



Asian Neuropsychological Association

1001 Potrero Avenue 7M
San Francisco, CA 94110

BOARD MEMBERS

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Resolution of the ASIAN NEUROPSYCHOLOGICAL ASSOCIATION relating to the imposition of death as a penalty for persons ages 18 years through 20 years.

The Asian Neuropsychological Association (ANA) was established in 2018 to ensure the accessibility and provision of culturally sensitive neuropsychological services for all individuals of Asian descent. ANA also aims to collaborate with a larger multicultural coalition of neuropsychologists and psychologists devoted to providing an active voice and united front to address racial inequities and disparities in our field. We support those who are impacted by societal disparity and injustice within ANA and beyond. As such, the ANA has an interest in promoting best practice in the treatment of persons in the civil as well as criminal justice systems.

The ANA is aware of the US Supreme Court decision in Roper v. Simmons in 2005. In deciding Roper v. Simmons, the Supreme Court of the United States held that juvenile offenders under 18 years of age are categorically less culpable than the average criminal and subsequently ruled that application of death as a penalty to persons under age 18 at the time of the crime is unconstitutional. Our reading of this decision indicates the conclusion of lesser culpability was based upon three primary findings by the Roper Court. First, juveniles possess a lack of maturity and an underdeveloped sense of responsibility. Second, juveniles are more vulnerable/susceptible to negative influences, such as peer pressure and other outside pressures. Third, the Court found that the character of juveniles was not as fully formed as that of adults. The ANA believes the primary reason these findings are true and accurate is the level of maturity (or immaturity) of the brain at this age. However, there is no bright line regarding brain development nor is there neuroscience to indicate the brains of 18 year olds differ in any significant way from those of 17 year olds. An examination of the research on brain development indicates significant ongoing maturation of the brain, especially in those areas related to the executive control systems of the brain, through at least age 20 (and likely beyond this time into the early to mid-twenties). Thus, it is the opinion of the ANA that the same prohibitions applied to application of the death penalty to persons aged 17 should apply to persons ages 18 through 20 years and for the same scientific reasons.

Beyond the issue of brain development, racial injustices that are pervasive throughout the criminal justice system also contribute to disparities in death penalty prosecutions. A report by the Death Penalty Information Center demonstrates the role of racial bias in capital punishment, as evidenced by cases with White victims being more likely to result in the death penalty; exclusion of jurors of color in death-penalty trials; and a disproportionate number of death sentences against defendants of color. In particular, Black individuals are more likely to be given harsher sentences and are over-represented among young people placed on death row.

Be it resolved by unanimous vote of the ANA Board of Directors on behalf of the ANA, that for the reasons given above, the ANA calls upon the courts, and the State and Federal legislative bodies of the United States to ban the application of death as a penalty to persons committing what is now considered a capital offense where the offense was committed prior to obtaining the age of 21 years.

Approved by the Board of Directors on Wednesday, December 9, 2020.

Daryl Fujii Ph.D.,ABPP-CN President

EXHIBIT 6

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE, Movant,	)		
v.	)		KNOX COUNTY
	)	No.	M2020-01156-SC-DPW-DD
CHRISTA GAIL PIKE, Defendant.	)		Death Penalty Case
	)		Trial Court No. 58183A

DECLARATION OF SANDRA BABCOCK

STATE OF NEW YORK)
) ss
COUNTY OF TOMPKINS)

I, Sandra L. Babcock, state as follows:

1. I am a Clinical Professor of Law, the Director of the Human Rights Clinic and the Faculty Director of the Cornell Center on the Death Penalty Worldwide. I received my J.D. from Harvard Law School in 1991.

2. A substantial part of my teaching and scholarship is devoted to the study of the application of international norms in U.S. death penalty cases. I am the founder and editor of *Death Penalty Worldwide,* a publicly available database that tracks developments in the laws and practice of capital punishment in 83 countries and territories around the world, available at www.deathpenaltyworldwide.org. I have also published fifteen articles regarding the intersection of human rights norms and the death penalty, and co-authored three reports surveying global practice relating to capital punishment. I have taught courses on international law and the death penalty at Northwestern Law School and at Tulane University Law School's study abroad program in Amsterdam. Over the last thirty years, I have also served as counsel in numerous death

penalty cases. My c.v. is attached as Appendix A.

3. I have been asked to draft this affidavit to recount my experience with precautionary measures issued by the Inter-American Commission on Human Rights. Specifically, I was asked to answer the following question: Have any domestic courts in the United States agreed to defer the setting of an execution date in response to an order of precautionary measures by the Inter-American Commission?

4. I have been involved in two cases in which domestic courts have refused to schedule execution dates after learning that the Inter-American Commission had issued precautionary measures. I will discuss each of these in turn.

5. The first case involved a Texas death row prisoner, Roberto Moreno Ramos. On October 7, 2002, the Supreme Court denied certiorari in Mr. Moreno Ramos' case, effectively ending his post-conviction appeals. On October 23, 2002, the Hidalgo County District Attorney filed a notice asking the state trial court to schedule Mr. Moreno Ramos' execution for February 12, 2003. The court scheduled a hearing on the matter for November 12, 2002.

6. On October 31, 2002, Mr. Moreno Ramos' legal team filed a petition with the Inter-American Commission on Mr. Moreno Ramos' behalf raising several alleged violations of his rights under the American Declaration on the Rights and Duties of Man. On November 8, 2002, the Commission issued precautionary measures, urging the United States to "take the urgent measures necessary to preserve Mr. Moreno Ramos' life pending the Commission's investigation of the allegations in his petition." Appendix B.

7. I attended a court hearing on November 12, 2002, in which the court considered the request by the District Attorney to schedule an execution date in the case. (I was counsel for the Government of Mexico, which had an interest in the case since Mr. Moreno Ramos was a Mexican

national). I explained to the prosecution and the court that the Commission had issued precautionary measures, and that the Commission would not be able to complete its review of Mr. Moreno Ramos' case by February 12, 2003—the execution date requested by the state of Texas. Neither the prosecution nor the court were familiar with the Commission. Nevertheless, after I explained that the Commission was an established human rights body with the authority to receive and adjudicate petitions filed by individuals in the United States, the court agreed to defer the scheduling of Mr. Moreno Ramos' execution. The court did not issue a published order, as it simply took no action on the prosecution's request. The prosecution did not oppose this outcome.

8. Litigation before the Commission continued throughout 2003 and 2004, culminating in a hearing in March 2004. The state trial court authorized funding for state post-conviction counsel to attend and participate in the hearing in Washington, D.C. In May 2004, the Hidalgo County District Attorney again requested an execution date, expressing dissatisfaction that the Inter-American Commission had not yet issued a decision. As Mexico's counsel, I filed a letter with the court explaining that the Commission's precautionary measures were still in effect, and urged the Court not to accede to the prosecution's request. Appendix C. The court took no action on the prosecution's request. The Commission issued a ruling on the merits on October 28, 2004. Based in part on that ruling, Mr. Moreno Ramos' legal team filed a successive post-conviction application for writ of habeas corpus on March 23, 2005.

9. The state trial court's decision to defer to the Inter-American Commission's proceedings allowed Mr. Moreno Ramos to complete the petition process, and he subsequently brought the Commission's ruling to the attention of state and federal courts as well as the clemency authority. He was ultimately executed on November 14, 2018.

10. The second case I am aware of involved an Ohio death row prisoner named José Loza. On June 29, 2015, the U.S. Supreme Court denied certiorari in Mr. Loza's case, effectively ending his post-conviction appeals. On July 10, 2015, the State filed a motion requesting that the Ohio Supreme Court schedule Mr. Loza's execution.

11. On July 15, 2015, I filed a request for precautionary measures with the Inter-American Commission on Human Rights in conjunction with a petition alleging violations of Mr. Loza's rights under the American Declaration on the Rights and Duties of Man. On August 11, 2015, the Commission issued precautionary measures requesting that the United States take all necessary measures to "preserve the life and physical integrity" of Mr. Loza until the Commission had an opportunity to rule on his petition. Appendix D. On August 14, 2015, Mr. Loza filed a notice with the Ohio Supreme Court advising the court of the precautionary measures issued by the Inter-American Commission. Mr. Loza asked the court to "deny the State of Ohio's current request or [to] defer the setting of an execution date out of comity and respect for the IACHR." Appendix E. On November 10, 2015, the Ohio Supreme Court issued an order denying the state's request to set an execution date. Exhibit F. The Commission subsequently reviewed the merits of Mr. Loza's case, and is now awaiting further input from the U.S. government before publishing its final decision.

12. According to the Commission's rules of procedure, petitioners must first exhaust domestic remedies before filing a petition with the Commission. In a death penalty case, remedies are not fully exhausted until the U.S. Supreme Court has denied certiorari, at the end of the federal habeas process.

13. In most cases, there are two stages of review before the Commission: admissibility and merits. In death penalty cases, the Commission typically merges these two phases in order to

expedite the review process. The length of the review process is variable, and depends in part on how quickly the parties comply with the Commission's requests for information. In a case in which both parties promptly respond to the Commission's requests, the review process can be completed in as little as a year, although it is more typical for the Commission to take two years or more before adopting a final report.

14. The United States routinely participates in death penalty cases before the Commission, both by filing written submissions and by participating in oral hearings. In these proceedings, the United States' legal team is led by lawyers from the U.S. Department of State.

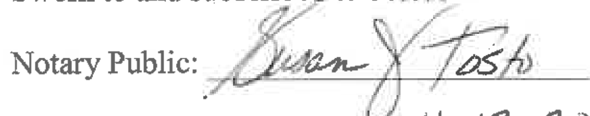
15. The corpus of international human rights law provides the framework for all claims reviewed by the Commission. This body of law is distinct from U.S. constitutional law, and draws from the provisions of ratified international human rights treaties as well as customary international law.

16. I, Sandra Babcock, am over the age of 21 and in all ways competent to make this Declaration. I have reviewed this Declaration and the facts and assertions contained within it. I declare that the facts and assertions contained within it are true to the best of my knowledge and belief, and further declare my understanding that they have been made for use as evidence in court and are subject to penalty of perjury.

DATED this 3rd day of June, 2021.

Sandra L. Babcock

Sworn to and subscribed to before me this 3rd day of June, 2021.

Notary Public: 

My commission expires on: 11-13-2024.

APPENDIX A

SANDRA L. BABCOCK

Cornell Law School
157 Hughes Hall
Ithaca, NY 14853
Tel. 607-255-5278
slb348@cornell.edu

March 2021

TEACHING

Clinical Professor, Cornell Law School 2014-present
Faculty Director, Cornell Center on the Death Penalty Worldwide
Teach clinical and doctrinal courses on international human rights and gender rights. Supervise students on wide variety of human rights projects, including litigation before international tribunals, advocacy before UN bodies, prisoners' rights work in Malawi, capital defense work in the United States, and human rights advocacy in a variety of other countries. Design and run training programs for capital defense lawyers around the world.

Fulbright-Toqueville Distinguished Chair, Université de Caen Fall 2014
First clinical professor awarded the top Fulbright fellowship in France, for a project involving the comparative study of clinical legal education in France and the United States.

Clinical Professor, Center for International Human Rights, Northwestern University Law School 2006-2014
Taught clinical course on human rights advocacy as well as doctrinal classes in the field of international human rights and gender rights. Recipient of Dean's Teaching Award.

Visiting Professor, Università degli Studi di Milano Mar. 2018

Tulane Law School/University of Amsterdam 2004-2012
Amsterdam, The Netherlands

University of Addis Ababa, Ethiopia Dec. 2008

EDUCATION

Harvard Law School, J.D., June 1991
CIVIL RIGHTS/CIVIL LIBERTIES LAW REVIEW, Executive Editor
Harvard Human Rights Program

Johns Hopkins University, B.A. in International Relations, June 1986
Phi Beta Kappa
Harry S. Truman Fellow
Watson Fellow

Bologna Center, Johns Hopkins School of Advanced International Studies, 1984-1985

PUBLICATIONS

Sub-Saharan Africa: The New Vanguard of Death Penalty Abolition, 40 AMICUS JOURNAL 42 (2020).

Navigating the Moral Minefields of Human Rights Advocacy in the Global South, 17 NW. J. HUM. RTS. 51 (2019).

Deciding Who Lives and Who Dies: Eligibility for Capital Punishment Under National and International Law, in Carol Steiker and Jordan Steiker, COMPARATIVE CAPITAL PUNISHMENT LAW (Edward Elgar) (2019).

An Unfair Fight for Justice: Legal Representation of Persons Facing the Death Penalty, in Carol Steiker and Jordan Steiker, COMPARATIVE CAPITAL PUNISHMENT LAW (Edward Elgar) (2019).

La pena di morte negli stati uniti e nel mondo: l'impegno dell'università e delle professioni legali per la tutela dei diritti umani, RIVISTA ITALIANA DI DIRITTO E PROCEDURA PENALE, Anno LXI Fasc. 3 (2018).

Delphine Lourtau, Sandra Babcock, Sharon Pia Hickey, Zohra Ahmed, and Paulina Lucio Maymon, *Judged for More than Her Crime: A Global Overview of Women Facing the Death Penalty*, DEATH PENALTY WORLDWIDE (2018).

Delphine Lourtau, Sandra Babcock, and Katie Campbell, *Justice Denied: A Global Study of Wrongful Capital Convictions*, DEATH PENALTY WORLDWIDE (2018).

Cliniques juridiques, enseignement du droit et accès à la justice, 1 REVUE CLINIQUES JURIDIQUES (2017), https://www.cliniques-juridiques.org/revue/volume-1-2017/cliniques-juridiques-enseignement-du-droit-et-acces-a-la-justice/.

International Law and the Death Penalty: A Toothless Tiger, or a Meaningful Force for Change?, in Margaret M. DeGuzman and Diane Marie Amann, ARCS OF GLOBAL JUSTICE: ESSAYS IN HONOUR OF WILLIAM A. SCHABAS 89 (Oxford 2017).

Capital Punishment, Mental Illness, and Intellectual Disability: The Failure to Protect Individuals With Mental Disorders Facing Execution, in UN High Commissioner on Human Rights, DEATH PENALTY AND THE VICTIMS (2016).

Delphine Lourtau and Sandra Babcock*, Pathways to Abolition of the Death Penalty,* DEATH PENALTY WORLDWIDE (2016).

Le droit international et la peine de mort: Dans le flou entre la théorie et la pratique, in « Vers l'interdiction absolue de la peine de mort : perspectives philosophiques et juridiques », Ecole Normale Supérieure, France (2015).

Death Penalty Worldwide, http://www.deathpenaltyworldwide.org/index-cihr.cfm. The death penalty worldwide project includes a comprehensive database on the laws and practices of more than 80 countries and two territories that continue to apply the death penalty. It represents the first attempt by any academic institution to compile

this information and make it available to the public. The database was launched in Strasbourg at the Council of Europe on April 14, 2010, and is continually updated.

The Mandatory Death Penalty in Malawi: The Unrealized Promise of Kafantayeni, with Ellen Wight, in Peter Hodgkinson and Kerry Ann Akers, THE LIBRARY OF ESSAYS ON CAPITAL PUNISHMENT (Ashgate 2013).

The Limits of International Law: Efforts to Enforce Rulings of the International Court of Justice in U.S. Death Penalty Cases, 62 SYRACUSE L. REV. 183 (2012).

International Standards on the Death Penalty, 28 THOMAS M. COOLEY L. REV. 103 (2011).

Human Rights Advocacy in United States Capital Cases, in THE CONTEMPORARY HUMAN RIGHTS MOVEMENT IN THE UNITED STATES (2007).

The Global Debate on the Death Penalty, in AMERICAN BAR ASSOCIATION, HUMAN RIGHTS, Spring 2007.

The Growing Influence of International Tribunals, Foreign Governments and Human Rights Perspectives in United States Death Penalty Cases, in CENTER FOR CAPITAL PUNISHMENT STUDIES, OCCASIONAL PAPERS vol. 2 (August 2005).

The Role of International Law in United States Death Penalty Cases, 15 LEIDEN J. INT'L LAW (2002).

L'application du droit international dans les exécutions capitales aux Etats-Unis: de la théorie à la pratique, in LA PEINE CAPITALE ET LE DROIT INTERNATIONAL DES DROITS DE L'HOMME, Université Panthéon-Assas (Paris II) (2003)(in English with introduction in French).

Co-author, *Namibia: Constructive Engagement and the Southern Africa Peace Accords*, 2 HARV. HUM. RTS. J. 149 (1989).

GRANTS RECEIVED:

March 2016: Received $3,000,000 grant from the Atlantic Philanthropies to launch International Center on Capital Punishment, providing funding for ongoing research on the application of the death penalty worldwide, clinical advocacy in Sub-Saharan Africa, and a training institute for capital defense lawyers in the global south.

February 2013: Received grant in the amount of $4,000 from the Northwestern Program of African Studies to research laws and practices of African states that retain the death penalty.

September 2010-August 2012: Received three annual grants in the amount of $10,000 (each) from the Proteus Action League for research relating to the *Death Penalty Worldwide* database.

May 2012: Obtained a 3-year grant from the European Union in the amount of $100,000 for ongoing research associated with the *Death Penalty Worldwide* database.

September 2011: Received $4,000 from the French Embassy for ongoing research associated with the *Death Penalty Worldwide* database and translation of database into French

2010: Received €50,000 from the European Union to support research for the *Death Penalty Worldwide* database

HONORS AND AWARDS

2020: Kaplan Family Distinguished Faculty Fellow. Honored for my work on behalf of women facing the death penalty in Tanzania.

2019: Winner of the Global Justice Challenge Award for the Malawi Resentencing Project.

2017: American Lawyer Global Pro Bono Dispute of the Year Award (to the Cornell Center on the Death Penalty Worldwide, jointly with Cleary, Gottlieb, Stein and Hamilton) for our clinical project leading to the release of 125 former death row prisoners in Malawi.

2009: Awarded the Cesare Beccaria medal by the International Society of Social Defense and Humane Criminal Policy for my commitment to the defense of individuals facing the death penalty

2006: Minnesota Association of Criminal Defense Lawyers, Outstanding Legal Achievement Award

2004: Outstanding Legal Service Award, National Coalition to Abolish the Death Penalty

2004: Volunteer Award, Minnesota Advocates for Human Rights

2003: Awarded the *Aguila Azteca* by the Government of Mexico for legal assistance provided to Mexico and Mexican nationals facing the death penalty in the United States. The *Aguila Azteca* is the highest honor bestowed by the Government of Mexico upon citizens of foreign countries.

2003: Access to Justice Award, Minnesota Hispanic Bar Association

1997: "Public Defender of the Year," Hennepin County Public Defender's Office.

Recognized as one of the outstanding criminal defense lawyers in the State of Minnesota by *Minnesota Law and Politics* magazine for five consecutive years.

EXPERIENCE

Reprieve (London) Sept – Dec. 2012
Senior Fellow
Consultant to international team of lawyers providing legal assistance to prisoners facing the death penalty.

Mexican Capital Legal Assistance Program 2000-2006
Director

Directed a national program funded by Mexico to assist Mexican nationals facing capital punishment in the United States. Advised the Mexican Foreign Ministry and Mexican consular officers in the U.S., supervised the work of 14 attorneys, consulted with trial and post-conviction attorneys, experts and investigators, met with diplomats and consular officials, organized training seminars for consular officials and defense attorneys, negotiated with prosecutors, and represented the Government of Mexico in state and federal courts around the United States. Counsel for the Government of Mexico in litigation on behalf of 54 Mexican nationals before the International Court of Justice in *Avena And Other Mexican Nationals (Mex. v. U.S.)*.

Hennepin County Public Defender 1995-1999
Minneapolis, MN
Assistant Public Defender
Trial lawyer. Represented criminal defendants in state court facing felony and misdemeanor charges.

Texas Capital Resource Center 1991-1995
Austin, TX
Supervising Attorney
Litigated capital cases in state and federal habeas corpus proceedings. Represented four foreign nationals under sentence of death; conducted investigation in Mexico, Vietnam, and Canada; and worked closely with government officials to enlist their support of foreign citizens on death row. Wrote briefs, habeas corpus petitions, and petitions for writ of certiorari, often under the pressure of an imminent execution date. Conducted evidentiary hearings, investigated guilt and punishment phases of capital cases, and argued before the United States Court of Appeals for the Fifth Circuit.

LANGUAGES Proficient in French, Spanish and Italian; conversational German

EXPERT WITNESS TESTIMONY:

Harkins v. United Kingdom, European Court on Human Rights, 2016 (provided expert affidavits on the compatibility of life without parole sentences with Article 3 of the European Convention on Human Rights).

State v. Refro, CR-15-6589 (Kootenai Co. Idaho), Sept. 2016 (provided expert testimony on the application of the death penalty under international law).

RECENT LECTURES AND PRESENTATIONS (not a complete list):

Moderator, Cornell Center on the Death Penalty Worldwide webinar series on “Women and Trauma,” Jan. 24, Feb. 4, and March 18, 2021.

Commentator, Book Fest in Honor of Carol Steiker and Jordan Steiker, Austin, Texas, Oct. 23, 2020.

Speaker and Organizer, “Creating Coalitions to End Extreme Sentencing of Women,” September 24-25, 2020. Sessions included “Overview of the Alice Project,” “Framing the Movement,” “Overcoming Obstacles,” and facilitation throughout.

Debate with Paolo Carozza, "A Conversation About the Commission on Unalienable Rights Report," University of Notre Dame Law School, September 18, 2020.

Panelist, “Access to Justice Solutions and Challenges: A Field Report from the 2019 World Justice Challenge Winners,” August 5, 2020.

Keynote address, along with presentations on “Strategic Litigation,” “Introduction to Mental Illness and Intellectual Disability for Lawyers,” “Opening Statement and Creating a Case Narrative,” “Appeals to International Bodies,” “International Law,” Boschendal, South Africa, July 27 – Aug. 8, 2019.

Speaker, “La pena di morte negli Stati Uniti e nel mondo,” Association of Young Italian Lawyers, Bergamo, Italy, 20 July 2018.

Presenter, “International law,” Makwanyane Institute, Cornell Law School, June 21, 2018.

Co-Presenter, “Strategic Litigation,” Makwanyane Institute, Cornell Law School, June 25, 2018.

Keynote Address, Makwanyane Institute, Cornell Law School, June 18, 2018.

Keynote speaker (with Joseph Margulies): “America oggi: giustizia penale e diritti civili negli Usa tra Guantanamo e penal capitale,” at the Quinta Giornata sulla Giustizia, Università degli Studi di Milano, 19 March 2018.

Speaker, “Prisoners’ Rights in Malawi and Tanzania,” and “Capital Punishment” at the 31st Annual Cover Retreat, February 24-25, 2018.

Panelist, “Abolition of the Death Penalty,” at Arcs of Global Justice: Conference Launching Essay Collection in Honour of William A. Schabas, 9 Bedford Row, London, 8 December 2017.

Speaker, “Interviewing the client – establishing a relationship of trust and seeking mitigation information;” “Mental illness as mitigation – recognizing signs of mental illness and intellectual disability,” and “Incorporating regional and international jurisprudence, and submitting appeals to international bodies” at training for Tanzanian capital defense lawyers, Dar es Salaam, November 13, 2017.

Panelist, “The Death Penalty,” at Nigel Rodley Human Rights Conference, University of Cincinnati, October 28, 2017.

Speaker, “The Death Penalty in the 21st Century: Politics, Morality, and Human Rights,” at the International Commemoration of the Abolition of the Death Penalty in Portugal, October 10, 2017, University of Coimbra, Portugal.

Co-presenter, “International law and appeals to international bodies,” Makwanyane Institute, Cornell Law School, June 17, 2017.

Co-presenter, “Working with the Media,” Makwanyane Institute, Cornell Law School, June 17, 2017.

Presentation, “Working with Experts,” Makwanyane Institute, Cornell Law School, June 16, 2017.

Moderator, “Building opportunities for reform out of challenges: impact litigation in Africa and beyond,” Makwanyane Institute, Cornell Law School, June 12, 2017.

Keynote Address, Makwanyane Institute, Cornell Law School, June 12, 2017.

Panelist, “Clinical Legal Education: L’esperienza americana e le prospettive di sviluppo in Italia,” Università degli Studi di Milano, 17 May 2017.

Speaker, “La Pena di Morte negli Stati Uniti e nel Mondo : L’impegno dell’università e delle professioni legali per la tutela dei diritti humani,” (in Italian), Università degli Studi di Milano, 15 May 2017

Keynote Address, “Fragmentation of International Law: A Boon for Human Rights Lawyers?” Inter-University Graduate Conference, April 13, 2017, Ithaca, NY.

Panelist, “Watching Western Sahara: Human Rights and Press Freedom in the Last Colony in Africa,” Roosevelt House Public Policy Institute at Hunter College, NY, Feb. 16, 2017.

Speaker, Cornell Political Union, "Should the United States abolish the death penalty in response to evolving international law and global practice?" Jan. 31, 2017.

Speaker, “International Human Rights as an Advocacy Tool,” People’s School, Cornell University, Jan. 27, 2017.

Moderator, “Building Cross-Border Coalitions to Promote Best Practices,” Expert Roundtable on Protecting Mentally Ill and Intellectually Disabled Persons from the Application of the Death Penalty, NY, NY, Dec. 15, 2016.

Panelist, “Human Rights in an Age of Populism,” Amici di Bologna Fundraiser, New York, NY, Oct. 29, 2016.

Keynote Address, Launch of the Cornell Center on the Death Penalty Worldwide, Ithaca, NY, Oct. 25, 2016.

Moderator, “The Death Penalty Worldwide: Challenges and Opportunities on the Path to Abolition,” Ithaca, NY, Oct. 25, 2016.

Speaker, “New Developments in International Law,” Mexican Capital Legal Assistance Program Annual Meeting, Santa Fe, NM, Oct. 21, 2016.

Moderator, “The Use of the Death Penalty for Persons with Mental Disabilities,” World Congress Against the Death Penalty, Oslo, June 22, 2016.

Keynote Address, “Reflections on a Career in Human Rights,” Johns Hopkins University Bologna Center Reunion, April 8, 2016.

Speaker, “The Evolution of International Law and Practice,” Michigan Journal of Law Reform Symposium: “At a Crossroads: The Future of the Death Penalty,” Ann Arbor, MI, February 6, 2016.

Invited speaker at faculty workshop, Drexel University School of Law, “Lessons Learned from Eight Years of Ambivalent Advocacy in Malawi,” September 9, 2015.

Speaker, “Foreign Nationals Facing Capital Punishment,” Expert meeting organized by the UN High Commissioner on Human Rights, Geneva, Switzerland, June 16, 2015.

Moderator, “Framing the Issues—Women, Prison, and Gender-Based Violence,” 2015 Women and Justice Conference, Washington, D.C., April 15, 2015.

Panelist, “Pursuing a Career in Human Rights Law,” Cornell Advocates for Human Rights, Cornell Law School, Ithaca, NY, April 7, 2015.

Panelist, “Human Rights in Western Sahara: The Right to Self-Determination,” United Nations, Geneva, March 10, 2015.

Speaker, “La peine de mort aux États-Unis,” University of Tours, Tours, France, December 4, 2014.

Speaker, “Pourquoi la peine de mort survit-elle en Amérique ? *Etats-Unis v Mexique,*” Association France-Amériques, Paris, France, December 2, 2014.

Leçon Inaugurale, “Cliniques juridiques, l’enseignement du droit et accès à la justice,” Inaugural lecture as Fulbright-Toqueville chair at Université de Caen, Basse-Normandie, November 19, 2014.

Guest lecture, “Les cliniques juridiques aux États-Unis,” University of Paris-Nanterre, Paris, France, October 20, 2014.

Speaker, “Politique, morale et légalité de la peine de mort au XXIème siècle,” Caen Memorial (World War II Museum), Caen, France, October 8, 2014.

Speaker, “Global Politics, Morality, and the Declining Use of the Death Penalty,” Illinois Wesleyan University, Feb. 6, 2014.

Speaker, “Fair Trial and Due Process Guarantees in the Use of the Death Penalty,” Expert Seminar on Moving Away from the Death Penalty in Southeast Asia, Seminar with Southeast Asian Governments organized by the UN High Commissioner on Human Rights, Bangkok, Oct. 22-23, 2013.

Speaker, “La nécessité de réviser les garanties des droits des personnes passibles de la peine de mort,” (delivered in French), Ecole Normale Supérieure, Paris, Oct. 18, 2013.

Speaker and Chair, “Legal Representation in Capital Cases,” Fifth World Congress Against the Death Penalty, Madrid, June 14, 2013.

Closing speaker, “Contra las penas crueles e inhumanas y la pena de muerte,” Real Academia de Bellas Artes, Madrid, June 11, 2013.

“Réflexions sur la peine de mort,” Speech delivered at the French Ministry of Foreign Affairs, Quai d’Orsay, Paris, on the occasion of World Day Against the Death Penalty, Oct. 9, 2012.

“Methods of Execution as Cruel, Inhuman or Degrading Treatment or Punishment,” Presentation given at expert meeting with UN Special Rapporteurs on Torture and on Extrajudicial, Summary and Arbitrary Executions, June 26, 2012, Harvard Law School, Cambridge, MA.

“The Death Penalty Worldwide: Prospects for Reform and Abolition,” Cornell Law School, April 13, 2012.

Speaker, “Le droit à la vie et la fourniture de substances létales,” and “Les résistances à la abolition de la peine capital”, at workshop hosted by the College de France, Paris, entitled “La protection international du droit à la vie: Mobiliser le système pénal?”, Nov. 18, 2011.

Speaker, "Estrategias de litigio en casos de pena de muerte," Congreso Sobre Abolición Universal de la Pena de Muerte y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, Law Faculty of the University of Buenos Aires, Sept. 21, 2011.

Speaker, "Cross-Examination and Other Litigation Strategies in the U.S. Criminal Justice System," Defensoría General de la Nación, Buenos Aires, Sept. 20, 2011.

Panelist, L'iniezioine letale e la pena di morte," Hands off Cain, Rome, Italy, Dec. 3, 2010.

Speaker, "Reflecciones sobre la pena de muerte," Academic Network Against the Death Penalty, Madrid, Spain, Oct. 4, 2010.

Speaker, "Reflections on the Death Penalty," 16th International Seminar of the Brazilian Institute of Criminal Sciences, Sao Paulo, Brazil, Aug. 26, 2010.

Panelist, "Abolition of the Death Penalty," 16th International Seminar of the Brazilian Institute of Criminal Sciences, Sao Paulo, Brazil, Aug. 27, 2010.

Panelist, "Author Meets Reader – The Next Frontier: National Development, Political change, and the Death Penalty in Asia," Law and Society Association, Chicago, May 28, 2010.

Panelist, "Innovative Models and Solutions: Reducing Prison Overcrowding through Paralegals and Other Programmes," United Nations Office on Drugs and Crime 12th Quinquennial Congress, Salvador, Brazil, Apr. 15, 2010.

Moderator, "Privatization of Prisons: Global Trends and the Growing Debate," United Nations Office on Drugs and Crime 12th Quinquennial Congress, Salvador, Brazil, Apr. 14, 2010.

Panelist, "Death Penalty: Abolition or Moratorium," United Nations Office on Drugs and Crime 12th Quinquennial Congress, Salvador, Brazil, Apr. 13, 2010.

Panelist, "Promoting Abolition Through Academic Research and Collaboration," World Congress Against the Death Penalty, Geneva, Switzerland, Feb. 25, 2010.

Panelist, "Conditions and Limits for International Legal Cooperation Regarding the Death Penalty," Conference sponsored by the Centro de Estudios Políticos y Constitucionales, Madrid, Spain, Dec. 11, 2010 (Presentation given in Spanish).

Speaker, "International Legal Standards and the Death Penalty" and "Challenges in the Application of the Death Penalty: The U.S. Experience," at seminar sponsored by the Moroccan Ministry of Justice and the Centre for Capital Punishment Studies, Rabat, Morocco, Oct. 5-7, 2009.

Panelist, "Unfinished Business: Human Rights Treaties and the Obama Administration," panel organized by the Journal of International Human Rights, Feb. 3, 2009.

Panelist, "International Policy in the Obama Administration," panel organized by Amnesty International and the International Law Society, Jan. 23, 2009.

Panelist: "Retos para el Derecho Internacional post-Medellin y retos para el Estado Mexicano en espera de próximas ejecuciones," Universidad Iberoamericana, October 30, 2008, Mexico City, Mexico.

Presentation for Military Commissions Lawyers on “International Human Rights Law and the Military Commissions Act,” American Civil Liberties Union, September 29, 2008, New York, NY

Panelist, “Relevance of the Use of the Inter-American System for the Protection of Human Rights”, at Conference entitled “The United States and the Inter-American Human Rights System, organized by Columbia University Law School and the Center for Justice and International Law, New York, NY, April 7, 2008

Panelist, “The Quest for International Justice,” at A Celebration of Public Interest, Harvard Law School, March 13-15, 2008.

Speaker, “Client to Cause: locating our work, identifying the tensions, pedagogic opportunities and goals,” Annual Human Rights Clinicians Conference, March 1, 2008.

Yale Law School, September 20, 2006, “Enforcing International Law in U.S. Death Penalty Cases: From The Hague to Houston.”

Keynote Speaker, Amnesty International Human Rights Awards Dinner, University of St. Thomas School of Law, April 19, 2006.

“La Pena de Muerte en Estados Unidos,” Mexican Foreign Ministry, Instituto Matias Romero, lectures given to students in diplomatic academy in 2001, 2002, 2004, and 2005, Mexico City, México.

“International Standards on the Death Penalty,” at the International Leadership Conference on the Death Penalty in Tokyo, Japan, Dec. 7, 2005.

Keynote Speaker, NAACP Legal Defense Fund Annual Conference for Capital Defense Lawyers, Airlie, Virginia, July 23, 2004.

Ford Foundation: “Close to Home: Human Rights and Social Justice Advocacy in the United States,” Panelist, “Human Rights and U.S. Law,” June 21, 2004, New York, New York.

University of Westminster School of Law, London, October 14, 2003, “The Growing Influence of International Tribunals, Foreign Governments and Human Rights Perspectives in United States Death Penalty Cases.”

Avocats San Frontières, “Del Proceso penal inquisitivo hacia el acusatorio,” Bogotá, Colombia, August 4, 2003.

APPENDIX B

INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINE DES DROITS DE L'HOMME

ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 2 0 0 0 6 U.S.A.

November 8, 2002

Ref: Petition N° P4446/2002 – Roberto Moreno Ramos
United States of America

Dear Mr. Sergi:

On behalf of the Inter-American Commission on Human Rights, I wish to acknowledge receipt of your petition dated October 31, 2002, which was received by the Commission on November 4, 2002. I also wish to inform you that, by note of today's date, the Government of the United States has been provided with the relevant parts of your petition and subsequent observations, with a period of two months to provide a response, in accordance with Article 30(3) of the Commission's Rules of Procedure.

This request for information does not constitute a prejudgment with regard to any decision the Commission may adopt on the admissibility of the petition.

In addition, given the information contained in your petition, including your statements that Mr. Moreno Ramos has exhausted domestic remedies available to him, or alternatively should be excused from exhausting domestic remedies, and that a hearing has been scheduled for November 12, 2002 before the courts in Texas to determine whether an execution date should be set, the Commission addressed the Government of the United States in the following terms:

> By this note, the Commission also requests precautionary measures from the United States pursuant to Article 25(1) of its Rules of Procedure,[1] to avoid irreparable damage to the alleged victim in this complaint, Mr. Roberto Moreno Ramos. In this regard, the Petitioner's communication indicates that Mr. Moreno Ramos is a Mexican national who was convicted of capital murder in the State of Texas on March 18, 1993 for the February 1992 murders of his wife and two children and sentenced to death on March 23, 1993. The petition alleges that the United States is responsible for violations of Articles I, II, XV, XVIII, and XXVI of the American Declaration of the Rights and Duties of Man in connection with the criminal proceedings against Mr. Moreno Ramos. More particularly, the petition claims that Mr. Moreno Ramos was not notified of his rights to consular notification and access at the time of his arrest contrary to Article 36 of the Vienna Convention on Consular Relations and Articles I, XV, XVIII and XXVI of the American Declaration.

David K. Sergi
Sergi & Associates, P.L.L.C.
109 East Hopkins, Suite 200
San Marcos, TX 78666

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[1] Article 25(1) of the Commission's Rules of Procedure states: "In serious and urgent cases, and whenever necessary according to the information available, the Commission may, in its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons."

The petition also contends that Mr. Moreno Ramos was the victim of additional human rights violations under Articles I, II, XVIII and XXVI of the American Declaration, in connection with the introduction during the penalty phase of his trial of evidence of an unadjudicated crime for which he was alleged to be responsible, the failure of his attorneys to investigate or present any mitigating evidence during the penalty phase of his trial, inflammatory arguments made by prosecutors designed to draw jurors' attention to Mr. Moreno Ramos' status as an undocumented Mexican immigrant, and the trial court's failure to instruct jurors that Mr. Moreno Ramos would not be eligible for parole for 35 years if given a life sentence.

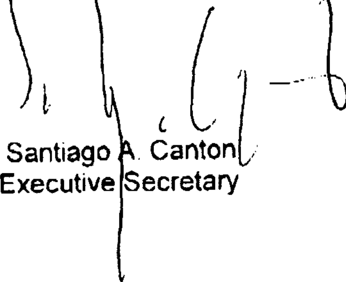
Finally, it is alleged that Mr. Moreno Ramos has exhausted domestic remedies available to him, or alternatively should be excused from exhausting domestic remedies, and that a hearing has been scheduled for November 12, 2002 before the courts in Texas to determine whether an execution date should be set.

If Mr. Moreno Ramos is executed before the Commission has an opportunity to examine his case, any eventual decision will be rendered moot in respect of the efficacy of potential remedies, and he will suffer irreparable damage. Consequently, pursuant to Article 25(1) of its Rules of Procedure, the Commission hereby requests that the United States take the urgent measures necessary to preserve Mr. Moreno Ramos' life pending the Commission's investigation of the allegations in his petition. The Commission respectfully requests an urgent response to this request for precautionary measures

Concerning the November 12, 2002 hearing date to schedule Mr. Moreno Ramos' execution, the petition indicates that the district attorney has requested a February 12, 2002 execution date. In this connection, the Commission wishes to note that, because it must communicate with the United States through federal authorities, and owing to the Commission's procedural requirements which are intended to afford the parties an adequate opportunity to provide observations on a petition, it is unlikely that the Commission will be able to complete its review of Mr. Moreno Ramos' case and issue a final report before February 2003.

We will advise you of any response that the Commission may receive from the State.

Sincerely yours,



Santiago A. Canton
Executive Secretary

APPENDIX C

SANDRA L. BABCOCK
Attorney at Law

June 1, 2004

The Honorable Rodolfo Delgado
93rd District Court
Hidalgo County Courthouse
100 North Closner, 2nd Floor
Edinburg, Texas 78539

RE: *Ex Parte Roberto Moreno Ramos*, Case No. CR-1430-92-B

Dear Judge Delgado:

I am writing in reply to the pleadings filed by the Assistant District Attorney on May 12, 2004, regarding the State's request that an execution date be set in this case.

There have been several important developments that have direct bearing on Mr. Moreno Ramos's case. First, on May 13, 2004, the Oklahoma Court of Criminal Appeals found that the decision of the International Court of Justice in the *Avena* case is binding, and has ordered a hearing on a successive post-conviction application to determine whether a new trial should be ordered. This is the first decision regarding the application of the *Avena* decision, and it is directly relevant to Mr. Moreno Ramos's case. I have enclosed a copy for your review. In addition, the Governor of Oklahoma commuted Mr. Torres's death sentence to life imprisonment, noting his concern over the violation of the Vienna Convention and observing that the judgments of the International Court of Justice are binding. A press release regarding his decision is also attached.

In light of the Oklahoma Court's action, I respectfully suggest that the setting of an execution date would be counter-productive at the present time. I believe there is a strong possibility that the Texas Court of Criminal Appeals will follow the lead of the Oklahoma court, especially in light of the strong parallels between the post-conviction statutes in both states. There is an equally strong chance that the Supreme Court of the United States will grant certiorari in another Mexican national's case when it returns from its summer recess in October. In either event, scheduling an execution date in this case will ultimately result in a stay of execution.

The State's concerns that Mr. Moreno Ramos needs an "incentive" to file a post-conviction petition can be satisfied by scheduling a date for filing a petition. I would suggest a filing deadline sometime in early September, and can promise that Mexico will assist Mr. Sergi in meeting that deadline.

2520 Park Avenue South ~ Minneapolis, MN ~ 55404 ~ Tel. 612.871.5080 Fax. 612.871.5083
sandrababcock@earthlink.net

Second, as I mentioned in my earlier letter, the precautionary measures issued by the Inter-American Commission on Human Rights are still in effect. The United States recognizes that individuals have the right to petition the Commission. Given that the Commission has already heard arguments in Mr. Moreno Ramos's case, and is in the process of preparing a decision, there are compelling justifications for awaiting the Commission's decision. Moreover, setting an execution date in violation of the Commission's precautionary measures would violate due process as well as international law.

Reviewing courts in the Caribbean have been dealing with this issue for some time. In the case of *Thomas v. Basptiste*, [2000] 2 A.C. 1 (P.C. 1999), the Judicial Committee of the Privy Council[1] addressed the rights of a death row inmate in the Republic of Trinidad and Tobago to petition the Inter-American Commission. The Privy Council held that the courts had a duty to stay the execution until the Commission had reached a final decision in the case, so that clemency authorities would have the opportunity to consider the Commission's report before making their life or death decision. The Privy Council affirmed this judgment in *Lewis v. Attorney General of Jamaica*, [2001] 2 A.C. 50 (P.C. 2000), noting that a stay of execution to allow for completion of international legal proceedings satisfied Jamaica's obligations under international law.

The newly-constituted Texas Board of Pardons and Paroles deserves the same opportunity to consider the Commission's report in the case of Mr. Moreno Ramos. The fairness of both judicial and clemency proceedings in this case will be closely scrutinized by the entire international community, and it is in the interests of all parties to ensure that Mr. Moreno Ramos is given the process to which he is due, regardless of the ultimate outcome of the case. Moreover, depriving the clemency board of the opportunity to consider the views of the Inter-American Commission could give rise to additional litigation under *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998).

The setting of an execution date in this case would be counter-productive in other ways, as well. The scheduling of an execution date will create substantial publicity both in the United States and in Mexico, and will bring enormous pressure to bear on all parties, as well as the Court. While the Court may eventually be compelled to take this step, there is simply no persuasive reason to do so now.

Mexico respectfully reiterates its request for an opportunity to be heard on the State's motion, pursuant to Article VI of the Bilateral Convention Between Mexico and the United States. As this Court is well aware, the Bilateral Convention confers rights on Mexican consular officials to address local authorities regarding the treatment of its citizens.

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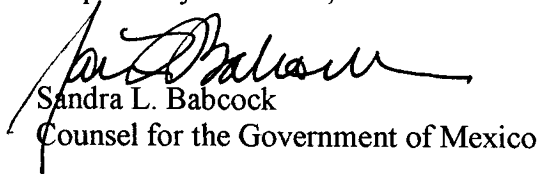
[1] The Judicial Committee of the Privy Council is the highest appellate court for the Commonwealth nations of the Carribbean.

I am available for a status conference on any of the following days: June 2-4, June 8-11, June 14-15, June 17, and June 22-25.

Thank you in advance for your consideration of this matter.

Respectfully submitted,



Sandra L. Babcock
Counsel for the Government of Mexico

cc: Ted Hake
David Sergi
Consul Luis Manuel Lopez Moreno

APPENDIX D

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 27/2015

PRECAUTIONARY MEASURE 304-15[1]
Matter José Trinidad Loza Ventura related to United States
August 11, 2015

INTRODUCTION

1. On July 17, 2015 the Inter-American Commission on Human Rights (hereinafter "Commission" or "IACHR") received a request for precautionary measures presented by Sandra Babcock, Laurence E. Komp and James A. Wilson in favor of José Trinidad Loza Ventura (hereinafter "the proposed beneficiary"), a Mexican national, sentenced to the death penalty in the state of Ohio in the United States. The request for precautionary measures is related to the individual petition P-1010-15, which alleges violations of Articles I (right to life), II (right to equality before the law), XVIII (right to fair trial), XXIV (right of petition), 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 (hereinafter "the American Declaration" or "the Declaration"). The applicants ask the Commission to require the United States of America (hereinafter "the State," "United States" or "U.S.") to stay the execution to ensure that the IACHR has an opportunity to decide on the merits of the petition and to avoid irreparable harm to the proposed beneficiary.

2. After analyzing the factual and legal arguments put forth by the applicants, the Commission considers that, if Mr. José Trinidad Loza Ventura is executed before it has an opportunity to examine the merits of this matter any eventual decision would be rendered moot in respect of the effectiveness of potential remedies resulting in irreparable harm. Consequently, pursuant to Article 25 (1) of its Rules of Procedure, the Commission hereby requests that the United States take the measures necessary to preserve the life and physical integrity of Mr. José Trinidad Loza Ventura until the IACHR has pronounced on his petition so as not to render ineffective the processing of his case before the Inter-American system.

II. BRIEF SUMMARY OF THE INFORMATION AND ARGUMENTS PROVIDED BY THE APPLICANTS

3. According to the request filed by the applicants, the proposed beneficiary was arrested on January 16, 1991, when he was 18 years old, in Ohio and charged with the murder of his girlfriend's mother, as well as three of his girlfriend's siblings. They affirm that the detective of the case was the person who allegedly made the decision to seek the death penalty, a decision that, according to the applicants, is reserved for prosecuting attorneys. The applicants also contend that the confessions extracted from Mr. Loza were obtained through coercive interrogation. On October 31, 1991 the proposed beneficiary was convicted on four counts of murder, and on November 6, 1991 he was sentenced to death by lethal injection by the State of Ohio.

4. Throughout his pre-trial detention, capital murder trial and sentencing the applicants contend that the proposed beneficiary, a Mexican national, was never advised of his right to consular notification and

[1] In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner James Cavallaro, a national of the United States of America, did not participate in the discussion or vote of this precautionary measure.

communication. In addition, they affirm that the consular officers only learned about Mr. Loza's detention when his post-conviction attorney sought their assistance in November of 1995. By the time they found out, Mr. Loza had allegedly given an "inculpatory statement, had been tried twice, his conviction and death sentence had been affirmed on appeal and his request for review by the United States Supreme Court had been denied." According to the applicants, the proposed beneficiary had filed a post-conviction petition for a writ of habeas corpus, "raising among other significant issues both the violation of his consular rights and the racial animus that infected his prosecution" which was denied.

5. On September 24, 1996, Mr. Loza allegedly appealed this denial to the State Court of Appeals which, on October 13, 1997, reportedly affirmed the denial. After the Ohio Supreme Court declined to review his petition, Mr. Loza reportedly filed a habeas corpus petition in the federal district court supported by an amicus brief filed by Mexico.

6. On March 31, 2010 the district court reportedly denied the petition without holding an evidentiary hearing. On September 2, 2014 the U.S. Sixth Circuit Court of Appeals affirmed the denial.

7. The applicants contend that the proposed beneficiary has exhausted all available avenues of appeal, including appeals before state and federal courts. They indicate that on June 29, 2015 the U.S. Supreme Court denied a writ of certiorari filed by the proposed beneficiary where he argued that the Court should accept his case to resolve the question of whether the U.S. courts are empowered to provide judicial remedies for properly-preserved violations of Article 36 of the Vienna Convention on Consular Relations. Applicants state that "the prosecution of Mr. Loza was infused by racial animus and police misconduct" as well as a "failure to comply with consular notification and access requirements" rendering the trial unfair, and depriving a foreign defendant of his right to due process and imposing a death penalty that is "a violation of the right not to be arbitrarily deprived of one's life."

8. On July 10, 2015 the State reportedly filed a motion for the setting of his execution date. According to the applicants, the proposed beneficiary had until July 20, 2015 to file his opposition to the state's motion. However, the applicants contend that the executions are routinely approved, irrespective of the prisoner's opposing brief. In relation to this they highlight that the state of Ohio has allegedly put to death 38 prisoners in the past decade alone, including the execution of Dennis McGuire last year.[2]

9. The applicants affirm that there is no execution date set yet but they contend that "the Commission's precautionary measures are more likely to have their intended effect when issued prior to the actual setting of the execution date." They also affirm that the setting of the execution dates in Ohio is not always sequential and that, despite the fact that executions for this year have been stayed while Ohio officials obtain new supplies of lethal injection drugs and prepare a new execution protocol, seven prisoners have nonetheless been scheduled for execution in 2016. The applicants contend that "given the unpredictability of the date-setting process in Ohio, there is substantial likelihood that Mr. Loza could be executed before the State concerned could receive the Commission's final decision on his claims and, if necessary comply with any recommended remedial measures."

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[2] The applicants contend that, according to witnesses, Mr. McGuire "struggled, heaved, choked and gasped during the 25 minutes it took for him to die after he was injected with an experimental combination of ostensibly lethal drugs."

10. On July 24, 2015, the IACHR received a letter from the petitioners in which they asked that the request for precautionary measures also be registered as "a petition raising violations of the American Declaration on the Rights and Duties of Man."

III. ANALYSIS OF THE ELEMENTS OF GRAVITY, URGENCY AND IRREPARABILITY

11. The mechanism of precautionary measures is part of the Commission's function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter, and in the case of Member States that have yet to ratify the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man. These general oversight functions are set forth in Article 18 of the Commission's Statute, and the mechanism of precautionary measures is detailed in Article 25 of the Commission's Rules of Procedure. According to this Article, the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

12. The Inter-American Commission and Court have repeatedly established the precautionary and provisional measures have a dual nature, precautionary and protective. Regarding the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR. Their precautionary nature aims at preserving those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the ordered reparations. As such, for the purposes of making a decision, and in accordance with Article 25.2 of its Rules of Procedure, the Commission considers that:

a. "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American system;
b. "urgent situation" refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
c. "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

13. The present request for precautionary measures aims to protect the right to life and personal integrity of Mr. José Trinidad Loza Ventura, a Mexican national who has been on death row for nearly 24 years. The request for precautionary measures is related to the individual petition P-1010-15 in which the applicants allege violations of Articles I (right to life, liberty and personal security), II (right to equality before the law), XVIII (fair trial), XXIV (right of petition), XXV (right of protection from arbitrary arrest,), and XXVI (right to due process of law) of the American Declaration.

14. In the present situation, the requirement of gravity is met, in its precautionary and protective aspects; the rights involved include primarily the right to life under Article I of the American Declaration in relation to the risk resulting from the possible application of the death penalty in the state of Ohio, U.S. In this regard, it has been alleged that the criminal proceedings against Mr. José Trinidad Loza Ventura did not observe the rights protected under international human rights law, particularly the rights to life, fair trial and due process under Articles I, XVIII and XXVI of the American Declaration.

15. Regarding the requirement of urgency, the Commission notes that Mr. José Trinidad Loza Ventura could be executed in the near future. In that case, the Commission would be unable to complete an assessment of the allegations of violations of the American Declaration submitted in his petition prior to the execution of the warrant of execution. Consequently, the Commission deems the requirement of urgency satisfied as it pertains to a timely intervention, in relation to the immediacy of the threatened harm argued in the request for precautionary measures.

16. Concerning the requirement of irreparability, the Commission deems the risk to the right to life to be evident in light of the possible implementation of the death penalty; the loss of life imposes the most extreme and irreversible situation possible. Regarding the precautionary nature, the Commission considers that if Mr. José Trinidad Loza Ventura is executed before the Commission has an opportunity to fully examine this matter, any eventual decision would be rendered moot in respect of the efficacy of potential remedies, resulting in irreparable harm.

17. Under Article 25.5 of the Rules of Procedure, the Commission generally requests information from the State prior to taking its decision on a request for precautionary measures, except in a matter such as the present case where immediacy of the potential harm allows for no delay.

IV. DECISION

18. In view of the above-mentioned information, taking into account the human rights obligations of the United States as a member of the OAS, and as part of the Commission's function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter,[3] and in the case of Member States that have yet to ratify the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, the Commission considers that this matter meets prima facie the requirements of gravity, urgency and irreparability set forth in Article 25 of its Rules of Procedure. Consequently, the Commission hereby requests that the United States take the measures necessary to preserve the life and physical integrity of Mr. José Trinidad Loza Ventura until the IACHR decides on his petition so as not to render ineffective the proceedings of his case before the Inter-American system.

19. The Commission also requests that the Government of the United States provide information within a period of 15 days from the date that the present resolution is issued on the adoption of the precautionary measures required and provide updated information periodically.

20. The Commission wishes to point out that, in accordance with Article 25(8) of its Rules of Procedure, the granting of precautionary measures and their adoption by the State shall not constitute a prejudging of any violation of the rights protected in the American Declaration on the Rights and Duties of Man or any other applicable instrument.

21. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the United States of America and to the petitioners.

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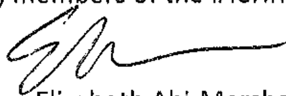
[3] Charter of the Organization of American States, Article 106, http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm

22. Approved on August 11, 2015 by: Rose-Marie Belle Antoine, President; Felipe Gonzalez, Rosa María Ortiz, Tracy Robinson, Paulo Vannuchi, members of the IACHR.



Elizabeth Abi-Mershed
Assistant Executive Secretary

APPENDIX E

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
Appellee,	:	Case No. 1993-1245
	:	
v.	:	
	:	
JOSE TRINIDAD LOZA	:	**Death Penalty Case**
	:	
Appellant.	:	

JOSE TRINIDAD LOZA'S NOTICE THAT THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS HAS ISSUED PRECAUTIONARY MEASURES TO PRESERVE MR. LOZA'S LIFE WHILE IT REVIEWS THE MERITS OF HIS CLAIMS

MICHAEL T. GMOSER (0002132)
Butler County Prosecuting Attorney

LINA A. ALKAMHAWI (#0075462)
Assistant Prosecuting Attorney
Chief, Appellate Division

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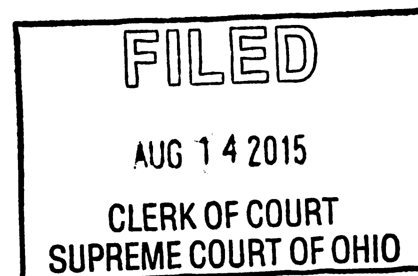


IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
Appellee,	:	Case No. 1993-1245
	:	
v.	:	
	:	
JOSE TRINIDAD LOZA	:	**Death Penalty Case**
	:	
Appellant.	:	

JOSE TRINIDAD LOZA'S NOTICE THAT THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS HAS ISSUED PRECAUTIONARY MEASURES TO PRESERVE MR. LOZA'S LIFE WHILE IT REVIEWS THE MERITS OF HIS CLAIMS

On July 10, 2015, the State of Ohio prematurely moved this Court to set an execution date in the above captioned matter.

On July 17, 2015, Mr. Loza filed a petition with the Inter-American Commission on Human Rights ("IACHR") in Washington, D.C., raising violations of the American Convention on the Rights and Duties of Man and seeking injunctive relief in the form of "precautionary measures." The jurisdiction of the IACHR could not be invoked until the complete exhaustion of usual and non-extraordinary state and federal remedies.

On July 20, 2015, Mr. Loza opposed the setting of the execution date and informed this Court of the newly pending action in front of the IACHR. A premise of part of this request is that Mr. Loza is a Mexican National that was sentenced to death by the State of Ohio, and in so doing, the State of Ohio failed to inform and thereby deprived Mr. Loza of the opportunity to seek the assistance of the Mexican Consulate.

On August 11, 2015, the IACHR unanimously issued provisional measures. Attachment A. In order to prevent its jurisdiction from being rendered moot the IACHR noted:

> Consequently, pursuant to Article 25(1) of its Rules of Procedure, the Commission hereby requests the United States take measures necessary to preserve the life and physical integrity of Mr. Jose Trinidad Loza Ventura until the IACHR has pronounced on his petition so as not to render ineffective the processing of his case before the Inter-American system.

Id. p. 1 par. 2; *see also* p. 4 par. 17.

This Court should honor the IACHR's precautionary measures to allow that body to consider the merits of Mr. Loza's Vienna Convention claim, which has never been reviewed by any state or federal court. *See* 7/20/15 Opposition to Set Execution Date pp. 6-7. At a very minimum, this Court should defer the setting of an execution date out of comity and respect for the IACHR, which is a respected international human rights body supported by the United States government. *Cf. Breard* v. *Greene,* 523 U.S. 371, 375 (1998) (per curiam) (we should give respectful consideration to the interpretation of an international treaty rendered by an international court with jurisdiction to interpret such"); *Medellin, v. Texas*, 552 U.S. 491, 513 n.9 (2008) (same). No rule or legislation *requires* the setting of an execution date for Mr. Loza. This Court retains the discretion to determine when it is appropriate to do so. Given the ongoing proceedings before the Inter-American Commission, the Commission's issuance of precautionary measures, and the Commission's ability to review the undisputed violation of Mr. Loza's rights under Article 36 of the Vienna Convention,[1] this Court should refrain from setting an execution date at this time.

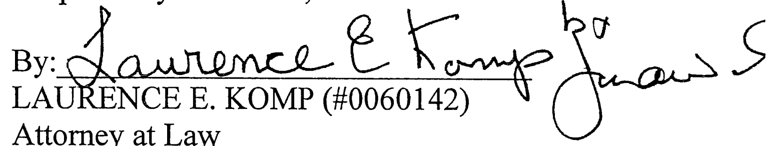
---

[1] At a very minimum, the Commission's review of Mr. Loza's claim will be relevant to the Governor's consideration of Mr. Loza's clemency application in the future. If the Commission's proceedings are rendered moot by Mr. Loza's execution, the Governor will have no ability to consider the Commission's evaluation of the claim in deciding whether clemency is an appropriate remedy in this case.

Conclusion

For the foregoing and previously stated reasons, this Court should deny the State of Ohio's current request or should defer the setting of an execution date out of comity and respect for the IACHR.

Respectfully submitted,

By: 

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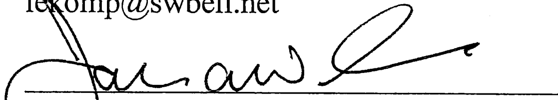

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COUNSEL FOR APPELLANT LOZA

CERTIFICATE OF SERVICE

This is to certify that a fair and accurate copy of the foregoing **JOSE TRINIDAD LOZA'S NOTICE THAT THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS HAS ISSUED PRECAUTIONARY MEASURES TO PRESERVE MR. LOZA'S LIFE WHILE IT REVIEWS THE MERITS OF HIS CLAIMS NOTICE THAT THE INTERAMERICAN COURT OF HUMAN RIGHTS ISSUED PROVISIONAL MEASURES** was served upon the following by regular U.S. mail this 14th day of August, 2015, to: LINA A. ALKAMHAWI (#0075462), Assistant Prosecuting Attorney, Chief, Appellate Division, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011

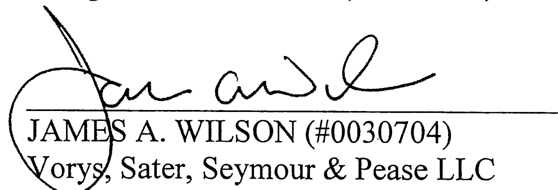

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Exhibit A

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 27/2015

PRECAUTIONARY MEASURE 304-15[1]
Matter José Trinidad Loza Ventura related to United States
August 11, 2015

INTRODUCTION

1. On July 17, 2015 the Inter-American Commission on Human Rights (hereinafter "Commission" or "IACHR") received a request for precautionary measures presented by Sandra Babcock, Laurence E. Komp and James A. Wilson in favor of José Trinidad Loza Ventura (hereinafter "the proposed beneficiary"), a Mexican national, sentenced to the death penalty in the state of Ohio in the United States. The request for precautionary measures is related to the individual petition P-1010-15, which alleges violations of Articles I (right to life), II (right to equality before the law), XVIII (right to fair trial), XXIV (right of petition), 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 (hereinafter "the American Declaration" or "the Declaration"). The applicants ask the Commission to require the United States of America (hereinafter "the State," "United States" or "U.S.") to stay the execution to ensure that the IACHR has an opportunity to decide on the merits of the petition and to avoid irreparable harm to the proposed beneficiary.

2. After analyzing the factual and legal arguments put forth by the applicants, the Commission considers that, if Mr. José Trinidad Loza Ventura is executed before it has an opportunity to examine the merits of this matter any eventual decision would be rendered moot in respect of the effectiveness of potential remedies resulting in irreparable harm. Consequently, pursuant to Article 25 (1) of its Rules of Procedure, the Commission hereby requests that the United States take the measures necessary to preserve the life and physical integrity of Mr. José Trinidad Loza Ventura until the IACHR has pronounced on his petition so as not to render ineffective the processing of his case before the Inter-American system.

II. BRIEF SUMMARY OF THE INFORMATION AND ARGUMENTS PROVIDED BY THE APPLICANTS

3. According to the request filed by the applicants, the proposed beneficiary was arrested on January 16, 1991, when he was 18 years old, in Ohio and charged with the murder of his girlfriend's mother, as well as three of his girlfriend's siblings. They affirm that the detective of the case was the person who allegedly made the decision to seek the death penalty, a decision that, according to the applicants, is reserved for prosecuting attorneys. The applicants also contend that the confessions extracted from Mr. Loza were obtained through coercive interrogation. On October 31, 1991 the proposed beneficiary was convicted on four counts of murder, and on November 6, 1991 he was sentenced to death by lethal injection by the State of Ohio.

4. Throughout his pre-trial detention, capital murder trial and sentencing the applicants contend that the proposed beneficiary, a Mexican national, was never advised of his right to consular notification and

[1] In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner James Cavallaro, a national of the United States of America, did not participate in the discussion or vote of this precautionary measure.

communication. In addition, they affirm that the consular officers only learned about Mr. Loza's detention when his post-conviction attorney sought their assistance in November of 1995. By the time they found out, Mr. Loza had allegedly given an "inculpatory statement, had been tried twice, his conviction and death sentence had been affirmed on appeal and his request for review by the United States Supreme Court had been denied." According to the applicants, the proposed beneficiary had filed a post-conviction petition for a writ of habeas corpus, "raising among other significant issues both the violation of his consular rights and the racial animus that infected his prosecution" which was denied.

5. On September 24, 1996, Mr. Loza allegedly appealed this denial to the State Court of Appeals which, on October 13, 1997, reportedly affirmed the denial. After the Ohio Supreme Court declined to review his petition, Mr. Loza reportedly filed a habeas corpus petition in the federal district court supported by an amicus brief filed by Mexico.

6. On March 31, 2010 the district court reportedly denied the petition without holding an evidentiary hearing. On September 2, 2014 the U.S. Sixth Circuit Court of Appeals affirmed the denial.

7. The applicants contend that the proposed beneficiary has exhausted all available avenues of appeal, including appeals before state and federal courts. They indicate that on June 29, 2015 the U.S. Supreme Court denied a writ of certiorari filed by the proposed beneficiary where he argued that the Court should accept his case to resolve the question of whether the U.S. courts are empowered to provide judicial remedies for properly-preserved violations of Article 36 of the Vienna Convention on Consular Relations. Applicants state that "the prosecution of Mr. Loza was infused by racial animus and police misconduct" as well as a "failure to comply with consular notification and access requirements" rendering the trial unfair, and depriving a foreign defendant of his right to due process and imposing a death penalty that is "a violation of the right not to be arbitrarily deprived of one's life."

8. On July 10, 2015 the State reportedly filed a motion for the setting of his execution date. According to the applicants, the proposed beneficiary had until July 20, 2015 to file his opposition to the state's motion. However, the applicants contend that the executions are routinely approved, irrespective of the prisoner's opposing brief. In relation to this they highlight that the state of Ohio has allegedly put to death 38 prisoners in the past decade alone, including the execution of Dennis McGuire last year.[2]

9. The applicants affirm that there is no execution date set yet but they contend that "the Commission's precautionary measures are more likely to have their intended effect when issued prior to the actual setting of the execution date." They also affirm that the setting of the execution dates in Ohio is not always sequential and that, despite the fact that executions for this year have been stayed while Ohio officials obtain new supplies of lethal injection drugs and prepare a new execution protocol, seven prisoners have nonetheless been scheduled for execution in 2016. The applicants contend that "given the unpredictability of the date-setting process in Ohio, there is substantial likelihood that Mr. Loza could be executed before the State concerned could receive the Commission's final decision on his claims and, if necessary comply with any recommended remedial measures."

---

[2] The applicants contend that, according to witnesses, Mr. McGuire "struggled, heaved, choked and gasped during the 25 minutes it took for him to die after he was injected with an experimental combination of ostensibly lethal drugs."

10. On July 24, 2015, the IACHR received a letter from the petitioners in which they asked that the request for precautionary measures also be registered as "a petition raising violations of the American Declaration on the Rights and Duties of Man."

III. ANALYSIS OF THE ELEMENTS OF GRAVITY, URGENCY AND IRREPARABILITY

11. The mechanism of precautionary measures is part of the Commission's function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter, and in the case of Member States that have yet to ratify the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man. These general oversight functions are set forth in Article 18 of the Commission's Statute, and the mechanism of precautionary measures is detailed in Article 25 of the Commission's Rules of Procedure. According to this Article, the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

12. The Inter-American Commission and Court have repeatedly established the precautionary and provisional measures have a dual nature, precautionary and protective. Regarding the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR. Their precautionary nature aims at preserving those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the ordered reparations. As such, for the purposes of making a decision, and in accordance with Article 25.2 of its Rules of Procedure, the Commission considers that:

a. "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American system;
b. "urgent situation" refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
c. "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

13. The present request for precautionary measures aims to protect the right to life and personal integrity of Mr. José Trinidad Loza Ventura, a Mexican national who has been on death row for nearly 24 years. The request for precautionary measures is related to the individual petition P-1010-15 in which the applicants allege violations of Articles I (right to life, liberty and personal security), II (right to equality before the law), XVIII (fair trial), XXIV (right of petition), XXV (right of protection from arbitrary arrest,), and XXVI (right to due process of law) of the American Declaration.

14. In the present situation, the requirement of gravity is met, in its precautionary and protective aspects; the rights involved include primarily the right to life under Article I of the American Declaration in relation to the risk resulting from the possible application of the death penalty in the state of Ohio, U.S. In this regard, it has been alleged that the criminal proceedings against Mr. José Trinidad Loza Ventura did not observe the rights protected under international human rights law, particularly the rights to life, fair trial and due process under Articles I, XVIII and XXVI of the American Declaration.

15. Regarding the requirement of urgency, the Commission notes that Mr. José Trinidad Loza Ventura could be executed in the near future. In that case, the Commission would be unable to complete an assessment of the allegations of violations of the American Declaration submitted in his petition prior to the execution of the warrant of execution. Consequently, the Commission deems the requirement of urgency satisfied as it pertains to a timely intervention, in relation to the immediacy of the threatened harm argued in the request for precautionary measures.

16. Concerning the requirement of irreparability, the Commission deems the risk to the right to life to be evident in light of the possible implementation of the death penalty; the loss of life imposes the most extreme and irreversible situation possible. Regarding the precautionary nature, the Commission considers that if Mr. José Trinidad Loza Ventura is executed before the Commission has an opportunity to fully examine this matter, any eventual decision would be rendered moot in respect of the efficacy of potential remedies, resulting in irreparable harm.

17. Under Article 25.5 of the Rules of Procedure, the Commission generally requests information from the State prior to taking its decision on a request for precautionary measures, except in a matter such as the present case where immediacy of the potential harm allows for no delay.

IV. DECISION

18. In view of the above-mentioned information, taking into account the human rights obligations of the United States as a member of the OAS, and as part of the Commission's function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter,[3] and in the case of Member States that have yet to ratify the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, the Commission considers that this matter meets prima facie the requirements of gravity, urgency and irreparability set forth in Article 25 of its Rules of Procedure. Consequently, the Commission hereby requests that the United States take the measures necessary to preserve the life and physical integrity of Mr. José Trinidad Loza Ventura until the IACHR decides on his petition so as not to render ineffective the proceedings of his case before the Inter-American system.

19. The Commission also requests that the Government of the United States provide information within a period of 15 days from the date that the present resolution is issued on the adoption of the precautionary measures required and provide updated information periodically.

20. The Commission wishes to point out that, in accordance with Article 25(8) of its Rules of Procedure, the granting of precautionary measures and their adoption by the State shall not constitute a prejudging of any violation of the rights protected in the American Declaration on the Rights and Duties of Man or any other applicable instrument.

21. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the United States of America and to the petitioners.

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[3] Charter of the Organization of American States, Article 106, http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm

22. Approved on August 11, 2015 by: Rose-Marie Belle Antoine, President; Felipe Gonzalez, Rosa María Ortiz, Tracy Robinson, Paulo Vannuchi, members of the IACHR.

Elizabeth Abi-Mershed
Assistant Executive Secretary

APPENDIX F

FILED
NOV 10 2015
CLERK OF COURT
SUPREME COURT OF OHIO

The Supreme Court of Ohio

State of Ohio

v.

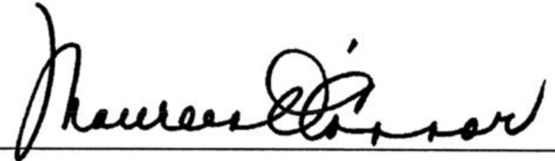
Jose Trinidad Loza

Case No. 1993-1245

ENTRY

This cause came on for further consideration upon the filing of appellee's motion to set execution date. It is ordered by the court that the motion is denied.

(Butler County Court of Appeals; No. CA91110198)



Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at http://www.supremecourt.ohio.gov/ROD/docs/

EXHIBIT 7

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE, Movant,	))
v.	))
CHRISTA GAIL PIKE, Defendant.	)))
COUNTY OF DAVIDSON	)

DECLARATION ON BEHALF OF ARIEL DULITZKY, CLINIC PROFESSOR, UNIVERSITY OF TEXAS SCHOOL OF LAW

AND FORMER ASSISTANT EXECUTIVE SECRETARY, INTER-AMERICAN COMMISSION OF HUMAN RIGHTS

I, Ariel Dulitzky, state as follows:

1. I am a Clinical Professor of Law, the Director of the Human Rights Clinic and the Director of the Latin America Initiative at the University of Texas School of Law. Prior to joining the University of Texas, I served as Assistant Executive Secretary of the Inter-American Commission of Human Rights (IACHR). Through my past experiences working for and litigating cases in front of the IACHR, I have become an expert on their precautionary measures process. I have more than 25 years of experience writing, studying, and teaching the Inter-American human rights system, and have written an article specifically on precautionary measures. Furthermore, I led the University of Texas'

Human Rights Clinic, of which I serve as Founder and Director, to write a report on precautionary measures, which is the most comprehensive analysis on precautionary measures to date. As the Assistant Executive Secretary at IACHR, I gained a rare and unique perspective on the Commission's procedures for adopting precautionary measures.

2. The mechanism for precautionary measures is found in Article 25 of the IACHR's Rules of Procedure. For over thirty years, precautionary measures have been used within the inter-American human rights system and have appeared in the IACHR's Rules of Procedure. The Rules establish that in serious and urgent situations that risk irreparable harm, the Commission may, on its own volition or because of a request from an outside party, request that a State adopt precautionary measures. Since the inception of the precautionary measures process, the practice has transformed from a discretionary one to a quasi-judicial and detailed procedure. When the practice began in the 1980's, the process was a simple one that failed to involve all stakeholders, was not standardized, and lacked clarity. The Commission issued precautionary measures through notes that lacked any strong requirements for the relevant government. In 2013, however, the Commission amended its Rules of Procedure to create a regulated and standardized process that explicitly laid out the requirements to file a precautionary measure and the factors that the Commission considers when adopting measures.

3. On August 1st, 2013, the Commission adopted its amended Rules of Procedure which held that "the decisions, granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions." With these amendments, I can personally attest that the application process for precautionary measures became one that is detailed, regulated, and incorporated into the IACHR's Rules of Procedure. It has transformed into a

clear, homogenous procedure that is uniformly applied to every precautionary measure issued regardless of the topic or country. Of utmost importance were two impactful improvements. First, the rules evolved to become much more specific on the requirements, procedures, and resolutions. Second, the Commission altered its practice to one that exercised a complete analysis prior to issuing any precautionary measures. These two changes were implemented to create a more transparent process, secure more due process and protection to the States, allow the Commission to gather more information, and to provide more reasoned decisions.

4. The Rules are specific on the requirements, procedure, and resolutions. Requests to the Commission for precautionary requests must include identifying information for those individuals that would benefit from the issuance of the measure, a detailed and chronological description of the facts, and a description of the requested measures of protection. Prior to adopting precautionary measures, the Commission requests more information from the State involved. When considering the request, the Commission takes context and several elements into account. These elements include: (1) whether the situation has already been brought to the attention of the relevant authorities, and if not, why it was not possible to do so; (2) the identification of those individuals or the group that would be beneficiaries from the precautionary measures; and (3) the consent of those beneficiaries if the request is presented by a third party.

5. The Commission performs a complete analysis before issuing precautionary measures. When evaluating its decision to grant, modify, extend, or lift precautionary measures, the Commission produces a report that includes a description of the situation and its beneficiaries, the information presented by the State, the time period for which the

measures will be in effect, and the votes of the members of the Commission. This extremely detailed report compiled by the Secretariat and the Commission meticulously analyzes the factors of gravity, urgency, and irreparability that would accompany an adoption of precautionary measures. The Commission involves its Secretariat, desk officers for the specific State, and a specialized unit within the IACHR that specifically deals with precautionary measures. The practice has evolved to include both the petitioner and the State, making it a much more public process compared to the prior one that was exclusively an IACHR internal review.

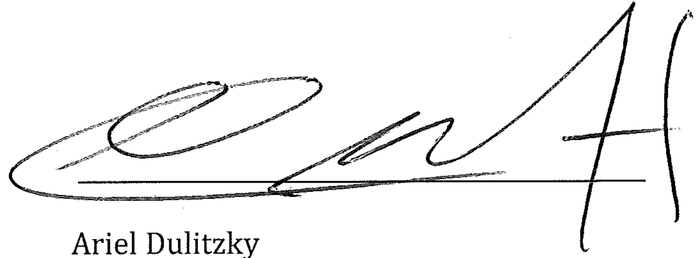
6. These reports are based on a review of official documents and the usage of the Commission's Individual Petition System Portal which is a database that systematizes the more than 7,000 requests for precautionary measures that is has received since 2008. The IACHR took steps to reduce its procedural backlog through the expansion of the Commission's technical and administrative staff, which has doubled since 2016. The implementation of Resolution 3/2018 significantly improved the method for initial evaluation of precautionary measures requests, which are now evaluated the day that they are received. Furthermore, the IACHR launched a specific form for precautionary measures requests that is available through its System Portal. The Commission continues to streamline the process and strengthen the process, as is evident from its adoption of Resolution 2/2020 in April 2020. *See* The Inter-American Council on Human Rights, *Strengthening of the Monitoring of Precautionary Measures in Force: Resolution 2/2020.* (Apr. 15, 2020), https://www.oas.org/en/iachr/decisions/pdf/Resolution-2-20-en.pdf.

7. In 2019, the latest publicly available data disclosure, the Commission only granted 5.5% of precautionary measures requests. This decrease in precautionary measure

adoptions can be attributed to the rigorous, standardized process that the IACHR implemented. Furthermore, these changes in practice, such as bringing in all stakeholders, publishing reports, and creating a public database, have promoted increased transparency and accountability to the precautionary measures procedure. In November 2018, the Human Rights Clinic at the University of Texas Law, under my supervision, wrote a report analyzing the IACHR's system for precautionary measures. *See* Human Rights Clinic: The University of Texas School of Law, *Prevenir Daños Irreperables* (November 2018), https://law.utexas.edu/clinics/2018/12/12/strengthening-iachr/ . The report was based on a review of official documents, interviews with practitioners and users of the precautionary measures system, and usage of the IACHR's precautionary measures database. Based on this report, I can attest that human rights lawyers believe that the amendments granted more protection to State interests. By allowing opportunities for the State to input its views before the Commission adopts the precautionary measures, human rights and civil society organizations argue that the process gives too much deference to States. Furthermore, the standardization of the process has been accompanied by further criticism from activists who claim that the process is now too judicial and formalized for their petitioners. In other words, the requesters of precautionary measures recognize that currently, the Commission has a much more stringent process in granting such orders.

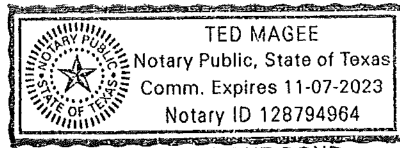
8. I, Ariel Dulitzky, am over the age of 21 and in all ways competent to make this *Declaration*. I have reviewed this *Declaration* and the facts and assertions contained within it. I declare that the facts and assertions contained within it are true to the best of my knowledge and belief, and further declare my understanding that they have been made for use as evidence in court and are subject to penalty of perjury.

DATED this 25 day of May, 2021.



Ariel Dulitzky
Clinical Professor and Director of Human Rights Clinic, University of Texas School of Law
Former Assistant Executive Secretary, Inter-American Commission on Human Rights

WITNESSED BY THEODORE MAGEE, NOTARY PUBLIC



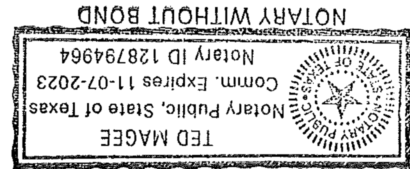


EXHIBIT 8

(Only the Petition is attached here. The Appendices to the Petition are uploaded individually)

TO THE HONORABLE MEMBERS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ORGANIZATION OF AMERICAN STATES:

PETITION ALLEGING VIOLATIONS OF THE HUMAN RIGHTS OF CHRISTA PIKE BY THE UNITED STATES OF AMERICA

AND

REQUEST FOR PRECAUTIONARY MEASURES

By the undersigned, appearing as counsel for the Petitioner under the provisions of Article 23 of the Commission's Regulations, on behalf of Christa Pike

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Submitted November 16, 2020

INTRODUCTION

Christa Pike, the youngest woman sentenced to death in the United States post-*Furman*, is currently facing the risk of imminent execution in the state of Tennessee. She petitions this Honorable Commission for relief from ongoing violations of her human rights and the imposition of a death sentence in contravention of binding treaty obligations and customary international law.

Christa Pike in court in 1996, moments after she was sentenced to death

The violations set forth in this petition began when Christa Pike was a child, at a time when she was entitled to special protection from the United States by virtue of her age and gender. Instead of providing that protection, the United States left her in the care of a family that repeatedly abused and neglected her. Before she was eighteen years old, Ms. Pike had been raped twice, sexually assaulted, and repeatedly beaten. She had twice attempted suicide. Although state actors were well aware of her history of abuse and trauma, they failed to take sufficient measures to protect her or to investigate the gender-based violence she endured.

Ms. Pike's vulnerabilities are extensive. Growing up, she developed Bipolar Disorder and suffered from severe Post-Traumatic Stress Disorder as a result of her abuse. Yet she was consistently deprived of appropriate treatment or care. This lethal combination of mental illness and abuse culminated in the crime for which she was convicted and sentenced to death—the murder of another teenager and romantic rival, Colleen Slemmer. Yet during her trial, her appointed lawyer—who had never before defended a capital case—failed to present any evidence of her history of sexual violence and child abuse to the jury, leaving the jurors with no reason to spare her life.

Ultimately, Ms. Pike was sentenced to death in 1996 after years of state failure to protect her from gender-based violence and a trial that fell short of international standards of fairness in violation of international law. Ms. Pike is the only woman on Tennessee's death row, and remains one of the youngest individuals to be sentenced to death in Tennessee. The facts of her case give rise to several violations of Ms. Pike's rights under the American Declaration of the Rights and Duties of Man (hereinafter ADRDM). This petition raises five of these claims.

First, the United States failed to protect Ms. Pike from severe abuse, neglect and gender-based violence in violation of Articles I, II, and VII, despite the awareness of State actors of the violence and neglect she had experienced.

Second, the United States provided Ms. Pike with incompetent lawyers who failed to present substantial mitigating evidence at her trial in violation of Articles XVIII and XXVI.

Third, the United States' planned execution of Ms. Pike, a mentally ill, brain-damaged, trauma survivor who was eighteen at the time of her offense, would violate her right to life and her right to be free from cruel, infamous or unusual punishment.

Fourth, the United States has subjected Ms. Pike to torture; cruel, infamous and unusual punishment; and inhumane treatment in violation of Articles XXVI and XXV by subjecting her to twenty-three years in solitary confinement on death row.

Fifth, Tennessee's execution methods would subject Ms. Pike to cruel, infamous or unusual punishment in violation of Article XXVI because the execution method denies her adequate notice or information and will subject her to an unnecessary risk of pain.

ADMISSIBILITY

I. COMPETENCE OF THE COMMISSION

Petitioner asserts that the United States has violated her rights under Article I (right to not be arbitrarily deprived of life), Article II (right to equality under the law), Article VII (right of the child to special protection), Article XVIII (right to a fair trial), Article XXV (right to humane treatment in custody), and Article XXVI (right to due process and right not to receive cruel, unusual, or infamous punishment) of the ADRDM. The Commission has competence over a claim where the alleged victim is a natural person "whose rights are protected under the American Declaration, the provisions of which the State is bound to respect in conformity with the OAS

Charter, Article 20 of the Commission's Statute and Article 49 of the Commission's Rules of Procedure." *Abdur'Rahman v. United States*, Case 136.02, Inter-Am. Comm'n H.R., Report No 39/03, OEA/Ser.L/V/II.118, doc. 70 rev. 2 ¶ 22 (2003). Petitioner is a natural person. The events raised in Petitioner's claim occurred while the alleged victim was within United States territory and jurisdiction and subsequent to its ratification of the OAS Charter. Counsel for the Petitioner is authorized under Article 23 of the Commission's Rules of Procedure to represent her before the Commission. Therefore, the Commission is competent to hear this claim.

II. EXHAUSTION OF DOMESTIC REMEDIES

Two of the legal claims Ms. Pike raises in this petition have been fully exhausted: (1) that she was provided incompetent legal representation at trial; and (2) that her mental illnesses, severe brain damage, and age at the time of the crime preclude her execution. Ms. Pike's remaining claims have not been fully exhausted—but for the reasons outlined below, her failure to exhaust those claims is justifiable and presents no bar to admissibility.

A. The Federal Courts Reviewed Ms. Pike's Ineffective Assistance of Counsel and Mental Illness Claims and Denied Relief.

In a petition for writ of habeas corpus filed in the Federal District Court for the Eastern District of Tennessee, Ms. Pike argued that her trial lawyers were grossly ineffective and that to execute a mentally ill, brain-damaged young woman for a crime committed when she was only 18 years old would violate the U.S. Constitution. Ms. Pike petitioned the U.S. Supreme Court for a writ of certiorari based on both of these claims on February 21, 2020. The U.S. Supreme Court denied her petition on June 8, 2020.

B. Due Diligence and Conditions of Confinement Claims

Exhaustion is not required for consideration of the merits of Ms. Pike's due diligence and conditions of confinement claims. Rule 31 of this Commission's Rules of Procedure expressly provides that exhaustion is not required where:

a. the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated;
b. the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

Specifically, this Commission has previously determined that where a petitioner's presentation of legal claims to domestic courts would have "no reasonable prospect of success," domestic remedies are not "effective" under international law. *Gary T. Graham v. United States*, Case 11.193, Inter-Am. Comm'n H.R., Report No. 51/00, OEA/Ser.L/V/II.111, doc. 20 rev. ¶¶ 60–61 (2000); *Ramón Martinez Villareal v. United States*, Case 11.753, Inter-Am. Comm'n H.R., Report No. 108/00, OEA/Ser.L/V/II.111, doc. 20 rev., ¶ 70 (2000). As outlined below, the unexhausted claims in this petition have no prospect of success, and should therefore be deemed admissible under Article 31 of the Commission's Regulations. *See Graham*, Case 11.193, at ¶ 61; *Ramón Martinez Villareal*, Case 11.753, at ¶ 70.

1. Due Diligence Claim

Ms. Pike is not required to exhaust her due diligence claim because her claim would have "no reasonable prospect of success" under the U.S. Supreme Court's established jurisprudence. In

Castle Rock v. Gonzales, the petitioner, Jessica Gonzales, had sought a remedy for the government's failure to enforce a protective order against her abusive ex-husband, who ultimately kidnapped and killed her daughters. *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748 (2005). The Court rejected her claim, holding that an individual has no protected right to have "someone else arrested for a crime." *Id.* at 768 (2005). Similarly, in *DeShaney v. Winnebago Cnty. Dept. of Soc. Servs.*, the Court held that the Due Process Clause of the U.S. Constitution did not "requir[e] the State to protect the life, liberty, and property of its citizens against invasion by private actors." *DeShaney v. Winnebago Cnty. Dept. of Soc. Servs.*, 489 U.S. 189, 195 (1989). Under these binding precedents, it would be an exercise in futility to seek to exhaust Ms. Pike's due diligence claim in national courts.

2. Conditions of Confinement Claim

On August 27, 2020, the state of Tennessee moved to set Ms. Pike's execution date. There is a serious risk that an execution date could be scheduled shortly. Under these circumstances, Ms. Pike is effectively prevented from exhausting her remedies arising from this claim, as to do so would delay her filing before this Commission until it was potentially too late for the Commission to weigh the facts in deciding whether to issue precautionary measures. The Commission has previously weighed the timeliness and opportunity of petitioners to exhaust all domestic remedies, as further discussed below, and has previously noted that "the rule of prior exhaustion of domestic remedies should not lead to the result that access to international protection is detained or delayed to the point of being ineffective." *See Julius Omar Robinson v. United States*, Case 13.361, Inter-Am. Comm'n H.R., Report No. 210/20, OEA/Ser.L/V/II, doc. 224 ¶¶ 16–18 (2020); *Victor Hugo Saldaño v. United States*, Case 12. 254, Inter-Am. Comm'n H.R., Report No. 24/17, OEA/Ser.L/V/161, doc. 31 ¶ 82 (2017).

C. Even if Ms. Pike Attempted to Present her Due Diligence Claim in Federal Court, It Would Be Procedurally Defaulted.

Finally, Ms. Pike is barred from presenting her due diligence claim by federal legislation imposing draconian limitations on the presentation of "successive" post-conviction petitions. Under 28 U.S.C. §2244 (b), Ms. Pike is barred from litigating her claim unless she can demonstrate that her petition rests on (1) newly discovered evidence of innocence; *or* (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court that was previously unavailable. But Ms. Pike's claim does not rest on newly discovered evidence of innocence, nor has the United States Supreme Court issued an opinion affirming the rights Ms. Pike seeks to vindicate.

This Commission has previously held that where a death row inmate was precluded from exhausting her domestic remedies by virtue of the draconian limits on post-conviction appeals imposed by state and federal legislation, her petition was admissible under Article 31 of the Commission's Regulations. *Gary T. Graham v. United States*, Case 11.193, Inter-Am. Comm'n H.R., Report No. 51/00, OEA/Ser.L/V/II.111, doc. 20 rev. ¶ 59 (2000). This holding reflects the established principle that domestic remedies must be both adequate, in the sense that they must be suitable to address an infringement of a legal right, and effective, in that they must be capable of producing the result for which they were designed.[1] *See Velásquez Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 64–66 (July 29, 1988).

[1] It is well established that when domestic remedies are unavailable as a matter of fact or law, the requirement that they be exhausted is excused. *See* Inter-Am. Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Art. 46.1, 46.2.a and 46.2.b American Convention on Human Rights, Advisory Opinion OC-11/90, (ser. A) No. 11, ¶ 17 (August 10, 1990). *See also* Organization of American States, American Convention on Human Rights art. 46.2, 1144 U.N.T.S. 123 (exhaustion is not required where (1) the legislation of the State concerned fails to afford due

III. DUPLICATION

A petition raising the claims presented herein has never been submitted to any other international organization, nor is the subject matter of the petition "pending settlement before an international governmental organization," nor does it duplicate a petition "pending or already examined and settled by the Commission or by another international governmental organization of which the State concerned is a member." The petition therefore complies with Article 33 of the Commission's Rules of Procedure.

IV. TIMELINESS OF THE PETITION

This petition also meets the terms of Article 32(2) of the Rules of Procedure: "In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. . . [considering] the date on which the alleged violation of rights occurred and the circumstances of each case." As noted above, Ms. Pike's appeals have all been denied. The U.S. Supreme Court denied certiorari on June 8, 2020.

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process for the protection of the right allegedly violated; and (2) the party alleging the violation has been hindered in his or her access to domestic remedies).

STATEMENT OF FACTS[2]

The United States' violations of Christa Pike's rights began long before her arrest on charges of capital murder.[3] Beginning when she was a child, and continuing into her adolescence, the United States repeatedly failed to protect Christa from gender-based violence, to investigate acts of sexual violence, to shield her from profound abuse and neglect, and to provide adequate treatment for her trauma and mental illness. During her capital murder trial, the United States appointed a lawyer who neglected to present critical mitigating evidence—including the extent of her sexual abuse and mental illness—that would have explained to the jury why an eighteen-year-old girl would have committed such a violent act. Since she was sentenced to death at the age of twenty, Christa has been detained in solitary confinement under conditions that amount to torture under international law.[4]

As a child, Christa was repeatedly physically abused and neglected by her caretakers.

Christa's childhood was marked by violence, abuse, and neglect. Before she was even born, Christa's mother, Carissa Hansen, caused permanent damage to her daughter's developing brain by drinking throughout her pregnancy. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #39–40. As a result, Christa was born with organic brain damage that caused

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[2] The following sources are cited throughout this application: (1) the criminal trial transcript conducted in 1996 in Criminal Court for Knox County, Division 3, in Tennessee; (2) the evidentiary hearing transcript from the evidentiary hearings conducted during post-conviction proceedings in both state and federal post-conviction proceedings; and (3) various sources relevant to arguments raised in this petition. References to the record will be as follows: Ex._, Exhibit Name, App. #1, Pg. #1. The page number for each appendix is in bold at the top middle of each page of the appendix.

[3] In 1996, Christa Pike was sentenced to death in Tennessee for the murder of another teenager, Colleen Slemmer, after the two had been engaged in a long-standing feud while participating in the Job Corps. Ex. A, Verdict from the Penalty Phase, App. #1, Pg. #2.

[4] Christa was put into solitary confinement in the first year of her sentence for a behavioral infraction. Whilst she was there, the Tennessee Department of Corrections (TDOC) enacted a policy of mandatory segregation for death row inmates. She has been in solitary confinement ever since.

her to have seizures as an infant. *Id.* at Pg. #40–43. When Christa was fourteen months old, her doctor performed an electroencephalogram (EEG) on her which showed "abnormal" brain activity consistent with frontal temporal lobe damage. *Id.* at Pg. #39–40. The EEG also revealed a heterotopia, which often occurs when the mother drinks during pregnancy. *Id.*

Because of her brain damage, Christa struggled to conform her behavior to her parents' and society's expectations. Her brain damage is located in the area of the brain where moral teaching is encoded. *Id.* at Pg. #41. Damage to this area of the brain limits a person's ability to conform to ethical standards and follow instructions. *Id.* As a result, Christa struggled to follow instructions from a young age. Ex. C, Post-Conviction Testimony of Carrie Ross, App. #1, Pg. #183. Her sister, Alicia Wills, stated that when told what to do, Christa would often "blank out" and become unresponsive. Ex. D, Post-Conviction Testimony of Alicia Wills, App. #1, Pg. #470–71. Instead of responding to Christa with empathy, however, Christa's family abused and neglected her. When Christa was just fourteen months old and experiencing one of her seizures, Christa's mother was out drinking and refused to return home until persuaded that Christa was worthy of being checked on. Ex. E, Trial Testimony of Carrie Ross, App. #1, Pg. #340–41. As a little girl, Christa's father, Glenn Pike, often beat her with a belt when he thought she was disobeying him. Ex. G, Post-Conviction Testimony of Glenn Pike, App. #1, Pg. #379.

As Christa got older, Glenn's punishments became even more extreme. Homework became a point of contention between the two, and Glenn beat Christa until she was "black and blue" if she did not complete it as he wished. *Unforbidden Truth, Interview with Christa Pike Part I* (October 6, 2020) (downloaded using Spotify). When using the belt, Glenn would bend Christa over to expose her skin before hitting her, sometimes up to six times a day. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #51–53. To increase the pain Christa felt,

Glenn folded the belt in half to double the thickness. Christa still has scars on her back from the beatings her father inflicted upon her.[5] *Id.*

In Christa's family, violence was commonplace. Family folklore on both sides glorified violence as a means of problem solving.[6] Her extended family, including her maternal grandmother and grandfather, taught Christa and her sister to respond to any form of attack with physical violence. Ex. C, Post-Conviction Testimony of Carrie Ross, App. #1, Pg. #170–71.

Christa's parents routinely left her with abusive caretakers. Christa's maternal grandmother, Zola Fotos, was an alcoholic who resented taking care of her granddaughter and beat Christa regularly. *Id.* at Pg. #187–88. This was a pattern replicated by all of Christa's caregivers. Christa's mother had a long line of boyfriends who consistently abused Christa. One of her mother's boyfriends, Steve Kyaw, was charged with assaulting Christa after he punched her in the nose. Ex. G, Post-Conviction Testimony of Carissa Hansen, App. #1, Pg. #445. Another, Danny Thompson, constructed an instrument specifically for beating Christa. He fixed a leather strap to a wooden handle and hung it on Christa's bedroom wall as if it were a "decoration;" it served as a constant threat of violence. *Unforbidden Truth, Interview with Christa Pike Part I* (October 6, 2020) (downloaded using Spotify). It was when Carissa first brought Thompson into Christa's life that Christa began to run away from home.

<u>Christa's caretakers failed to respond appropriately to the sexual violence Christa endured.</u>

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[5] Dr. Pincus, a neurologist hired by Christa's defense team for post-conviction proceedings, stated, "Some of them were an inch or two long. They looked as if they had been produced by a belt or a switch and—but one that was not given nicely. She's got scars on her face. She has scars . . . under her chin and her eyebrows and she could give me the stories that went with them." Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Page #50.

[6] When she was five years old, Christa used to spend time with her grandfather in his slaughterhouse. Ex. C, Post-Conviction Testimony of Carrie Ross, App. #1, Pg. #233–34. There, Christa watched as he cut the animals' throats, drained their blood and dissected them. *Id.* at Pg. #235–39.

Christa was raped at the age of nine, and again when she was seventeen. When she was nine years old, a man named Claude Davis, who lived in the same trailer park as Christa and her family, grabbed Christa and threw her into the bushes. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #42. He stuck his fingers and sticks into her vagina and had his dog lick her vagina while he held her down. *Id.* While Davis was eventually charged with the crime, the charges were reduced. Ex. G, Post-Conviction Testimony of Carissa Hansen, App. #1, Pg. #447–48. He only spent two weeks in jail. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #42.

Christa responded to the rape by withdrawing from everything around her. She became inattentive in school and refused to do her class work and homework. Shortly after the rape, Christa attempted suicide by overdosing on Tylenol. Her mother, Carissa, took her to the hospital where a psychiatrist informed Carissa that Christa was depressed. Ex. G, Post-Conviction Testimony of Carissa Hansen, App. #1, Pg. #446. At only nine years old, Christa relied upon her mother and the psychiatrist to monitor her mental health and ensure she received appropriate treatment. Yet neither the psychiatrist nor Carissa monitored Christa's compliance with her medication regimen, guaranteeing that Christa would retreat back into an unhealthy cycle of depression and inattentiveness. *Id.* at Pg. #446–47.

When Christa was on the cusp of puberty, her mother's then-boyfriend, Steven Kyaw, entered Christa's life. He was the most abusive of Carissa's boyfriends. When Christa was only thirteen years old, Kyaw sexually assaulted her by twisting her nipples. Ex. I, Post-Conviction Testimony of Dr. William Kenner, App. #2, Pg. #162. Christa's friend, Carol Goehring, witnessed another incident between Kyaw and Christa where Kyaw shoved Christa into her bedroom. Ex. J, Post-Conviction Testimony of Carol Goehring, App. #2, Pg. #537. To protect Carroll from Kyaw,

Christa told Carol to wait outside. *Id.* The next time Carol saw Christa, Christa was running out of the house with a knife and adjusting her pants. *Id.*

Following the Steve Kyaw assault, Child Protective Services removed Christa from her home when she was fourteen years old and placed her in a residential facility called Sheaffer House. Ex. K, Post-Conviction Testimony of Kerry Sherrill, App. #2, Pg. #285–86. After only three months there, they returned her to the custody of her mother. There was minimal follow-up to ensure Christa's safety. *Id* at Pg. #296.

Christa was raped again when she was seventeen years old. Ex. G, Post-Conviction Testimony of Carissa Hansen, App. #1, Pg. #448–49. This time, a stranger chased her down the street and pulled her by her hair up a hill. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #42. He threw her against the ground and raped her, all while repeatedly hitting her head against a rock. He only stopped because a car drove by causing him to flee. *Id.* While there are hospital records confirming the rape, the police never did more than a preliminary investigation. Ex. L, UNC Hospital Records, App. #2, Pg. #323–34.[7]

Christa's caretakers robbed her of any sense of safety. Her home was not a refuge but a place of danger to be avoided. To make matters worse, the state failed to properly investigate the sexual violence and abuse she endured. As explained below, multiple state actors knew about the sexual violence and abuse Christa experienced while growing up—including the police, doctors, her teachers, and social workers. Yet all failed to properly protect Christa from more violence.

[7] There is also evidence that at the age of two, Christa was sexually abused by her paternal grandmother's boyfriend, Ernest. Ex. C, Post-Conviction Testimony of Carrie Ross, App. #1, Pg. #190–91. When Christa slept over at her paternal grandmother's house, she would sleep in between her grandmother and Ernest. *Id.* At the time, Christa exhibited behaviors consistent with sexual abuse. *Id.* She stroked her grandmother's breasts inappropriately, and in first grade drew pornographic pictures in class. *Id.* at Pg. #190–193. All this suggests early and inappropriate exposure to sex. *Id.*

Christa was neglected by everyone but her paternal grandmother when she was growing up.

In addition to being marked by violence and abuse, Christa's upbringing was also defined by instability and neglect. Neither of Christa's biological parents, who divorced when Christa was young, wanted to take responsibility for her care. Ex. G, Post-Conviction Testimony of Glenn Pike, App. #1, Pg. #384–85. Christa's mother once sent Christa to live with her father after her boyfriend gave an her an ultimatum: "Christa or him." *Id.* at Pg. #377. As a result of constantly being sent back and forth between her parents, Christa never received a stable education. While Christa was a child of above-average intelligence, she failed the seventh grade because she changed schools so many times that year. Ex. M, Post-Conviction Testimony of Dr. Diana McCoy, App. #3, Pg. #76. Meanwhile, her mental health continued to deteriorate.

All Christa wanted was to be closer to her mother, Carissa. Ex. N, Post-Conviction Testimony of Onas Perry, App. #3, Pg. #300. But her mother was never available when she needed her. *Id.* at Pg. #301. Christa felt as if she "didn't count for anything in anybody's estimation. Her mother didn't care for her, and . . . wasn't committed to her good health, happiness, welfare, and life. Her life was threatened and her corporeal integrity was threatened in her own home as a little girl." Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #54. Carissa directly endangered Christa's safety by allowing violent boyfriends in the home. Ex. K, Post-Conviction Testimony of Kerry Sherrill, App. #2, Pg. #285–86. Because Carissa spent money on alcohol, there were times when they had no food in the house. Ex. D, Post-Conviction Testimony of Alicia Wills, App. #1, Pg. #279-84. Christa's sister has previously stated that, "[Carissa] put her pleasures and her happiness before her children." *Id.* at Pg. #279.

Christa took solace in her relationship with her paternal grandmother, Delpha Pike. Ex. O, Trial Testimony of Carissa Hansen, App. #3, Pg. #334. Delpha was the only nurturing person in

Christa's life. Ex. D, Post-Conviction Testimony of Alicia Wills, App. #1, Pg. #277. Delpha became very sick with cancer when Christa was young and eventually died when Christa was twelve years old. *Id.* This was when "everything changed." *Id.* at Pg. #277. Christa was devastated by her death. Ex. O, Trial Testimony of Carissa Hansen, App. #3, Pg. #334. She became hysterical at the funeral, did not attend school for days, and blamed herself for her grandmother's death. *Id.* Shortly after her grandmother died, Christa attempted suicide for the second time. *Id.* Today, Christa believes that if she had grown up living with her grandmother, she "wouldn't have turned out like this." *Unforbidden Truth, Interview with Christa Pike Part I* (October 6, 2020) (downloaded using Spotify).

Christa's Bipolar Disorder and PTSD were never properly managed.

State actors were aware that Christa was struggling while growing up, but failed to provide her with adequate mental healthcare. A social worker who treated Christa when she was a teenager witnessed Christa's drastic mood changes and knew Christa was depressed. Ex. P, Post-Conviction Testimony of Kristina Hargis, App. #3, Pg. #355–60. Additionally, another counselor described Christa as "really out of control," skipping school, running away, and exhibiting impulsive behavior. Ex. Q, Post-Conviction Testimony of Peggy Hamlett, App. #3, Pg. #379.[8] While at least two counselors were aware of Christa's needs, Christa ultimately received minimal mental health treatment because her mother failed to consistently bring her to counseling sessions. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #40.

[8] In unstructured, abusive and neglectful environments, people with Bipolar Disorder can seem "out of control." Ex. I, Post-Conviction Testimony of Dr. William Kenner, App. #2, Pg. #193–98.

If Christa had received adequate medical attention, she would have been diagnosed with Bipolar Disorder. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #72. All the evidence was there: loss of appetite, insomnia, impulsivity, suicidal tendencies, and an inability to "put on the brakes." *Id.* at Pg. #71–72. Yet because she did not receive proper care for her mental illness as a teenager, Christa had no way to manage the symptoms. It wasn't until Christa was imprisoned that she was properly diagnosed with Bipolar Disorder and Post-Traumatic Stress Disorder, finally clarifying her racing thoughts, impulsivity, insomnia, and dissociation as symptoms of her illness. Ex. I, Post-Conviction Testimony of Dr. William Kenner, App. #2, Pg. #89.

As a teenager, Christa often went days without sleeping. Bipolar Disorder. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #69–72. Her undiagnosed Bipolar Disorder caused her to suffer from severe insomnia. *Id.* Sometimes, she would lay awake four days at a time, and then crash for multiple days, exhausted by her sleepless nights. *Unforbidden Truth, Interview with Christa Pike Part I* (October 6, 2020) (downloaded using Spotify). Her teenage years were marked by these cycles of sleeplessness and recovery. *Id.* To cope with her insomnia, Christa escaped to the beach. The ocean soothed her; she could finally calm herself when looking at the sea. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #64.

Those around her misinterpreted her insomnia as laziness and rebellion. Christa's mother would yell at her for spending hours on the couch, unable to move. *Unforbidden Truth, Interview with Christa Pike Part I* (October 6, 2020) (downloaded using Spotify). Rather than examining why Christa needed to escape, the State punished Christa for running away because she missed school. Ex. K, Post-Conviction Testimony of Kerry Sherrill, App. #2, Pg. #286. In an attempt to

discipline her, the State even placed her in a group home, called the Sheaffer House, for three months. *Id.*[9] But if Christa couldn't calm herself, she felt her mental illness would take over. As she puts it: "I was screaming on the inside after being awake for days on end. My skin hurt. My hair hurt…and I couldn't fix it." *Unforbidden Truth, Interview with Christa Pike Part I* (October 6, 2020) (downloaded using Spotify).

The Job Corps was meant to be an opportunity for Christa to "make something" of herself; instead, Christa learned that violence was a means of survival.

Despite the various forms of trauma Christa experienced growing up, she remained a resilient and intelligent young girl who cared deeply for those around her. Christa's teachers described her as "bright," and Christa scored in the top ten percent nationwide in academic achievement on standardized tests. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #64. Christa was also described as "personable" and "intent on helping others." Ex. R, Post-Conviction Testimony of Debby Burchfield, App. #3, Pg. #400. One of her teachers saw "flashes that there's something special, something different, something that set her apart from the other students." Ex. S, Post-Conviction Testimony of Frederic Muse, App. #3, Pg. #427. Christa did what others would hesitate to do; when one of her friends was facing homelessness, she brought her to live with her and her family. Ex. T, Clinical Interviews with Christa Pike, App. #4, Pg. #29. Passionate about caring for others, Christa joined the Job Corps program in 1994 in order to pursue a career in nursing. Ex. R, Post-Conviction Testimony of Debby Burchfield, App. #3, Pg. #400. The Job Corps was an opportunity for Christa to "make something" of herself and to make her parents proud. Ex. G, Post-Conviction Testimony of Carissa Hansen, App. #1, Pg. #453.

[9] Christa found ways of remaining at this group home and prolonging her stay. The home provided Christa with structure and consistency for the first time in her life. *Unforbidden Truth, Interview with Christa Pike Part I* (October 6, 2020) (downloaded using Spotify).

The Job Corps is marketed as a government-run residential program designed to help troubled teens gain job skills. In actuality, the administrators who ran Jobs Corps tolerated violence and neglected their young residents. When she arrived at the Job Corps program, Christa experienced even more state-sanctioned violence. Ex. U, Post-Conviction Testimony of William Joseph Mode, App. #4, Pg. #49. Students routinely carried razor blades or box cutters for protection at the Job Corps. Gangs were commonplace, which led to violence among the students. Ex. V, Post-Conviction Testimony of Andrew Scott Drace, App. #4, Pg. #56. Christa learned that violence was a means of survival. The administrators at the Job Corps created an environment in which Christa was forced to rely upon her family's earlier teachings: violence is always the answer.

At the Job Corps, Christa became involved with her boyfriend, Tadaryl Shipp, another student at the Job Corps. Tadaryl controlled Christa, demanding she stay beside him at all times and forbidding her to speak to other boys. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #50–52. Yet Tadaryl's abuse was not just emotional. Ex. T, Clinical Interviews with Christa Pike, App. #4, Pg. #12. An administrator at the Job Corps witnessed Tadaryl push Christa's head against the wall, smack her repeatedly, and kick her in the lower back. *Id.* Christa began to learn about Satanism through Tadaryl, who was obsessed with witchcraft. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #50–52. Satanism became a defining feature of their relationship. *Id.* Tadaryl's violence was not just directed at Christa, though. He walked around the Job Corps building carrying a razor blade in his mouth. *Id.* All the other students were "scared shitless of him." *Id.*

Christa's fixation with Tadaryl led to conflict with another student at the Job Corps, Colleen Slemmer. After returning from visiting her family for Christmas, Christa began to suspect that Colleen was interested in Tadaryl. Ex. W, Trial Testimony of Dr. Eric Engum, App. #4, Pg.

#118. Tension between the two only escalated. One night, Christa woke up to find Colleen in her bedroom with a box cutter going through her things. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #56–57. That same night, Colleen tore apart Christa's photographs of her beloved grandmother. Ex. T, Clinical Interviews with Christa Pike, App. #4, Pg. #4. Christa felt as if Colleen was intentionally tormenting her.

Ultimately, in the grips of her mental illness, Christa killed Colleen. Psychiatrist Dr. Stuart Grassian summarized her mental state:

> "She is an individual with a history of severe childhood sexual and physical abuse, whose emotional development and experience has often been chaotic, explosive and volatile. Powerful emotion can overwhelm a vulnerable person's capacity to reason, reflect, and choose; . . . such individuals generally have an enormously difficult time tolerating stress – often reacting explosively, blinded by rage and fear, and without reason."

Ex. X, Report of Dr. Stuart Grassian, App. #4, Pg. #151. The lethal cocktail of Christa's failed upbringing, her mental illness, brain damage, and her unhealthy relationship with a violent man created a perfect storm that overwhelmed her limited capacity for self-control.

While Christa and Tadaryl murdered Colleen together, Christa received a greater sentence.[10] She took the blame for the murder and confessed, mirroring behaviors her mother engrained in her to protect the men around her. During post-conviction proceedings, though, Tadaryl stated that if he had been asked to testify at the original trial, he would have made it clear that he was the one to plan and initiate the murder. Ex. Y, Post-Conviction Testimony of Tadaryl Shipp, App. #4, Pg. #189.

At trial, the State appointed a lawyer who had never defended a capital murder case.

[10] At 17 years old, Tadaryl was not death eligible. While the State sought life without parole in his case, he received life with the possibility of parole. Tadaryl is up for parole in January 2021.

Both of Christa's court appointed attorneys, Julie Rice and William Talman, were inexperienced and unprepared to defend her. Prior to serving as Christa's lawyer, Talman had never represented anyone charged with a capital crime. Ex. Z, Post-Conviction Testimony of William Talman, App. #4, Pg. #215. Rice, on the other hand, had only been a practicing lawyer for three and a half years, and had never before tried a murder case. Ex. AA, Post-Conviction Testimony of Julie Martin Rice, App. #5, Pg. #12–14. Fifty-five days before Christa's trial was set to begin, the trial court agreed to appoint Rice on the condition that Rice not seek a continuance to prepare for trial. Ex. BB, Pretrial Motion Hearing Transcript January 19, 2006, App. #5, Pg. #219–20. This meant that when Christa's case began, Rice had not read the powerful social history report prepared by the mitigation specialist Dr. McCoy, nor had she spoken with the defense team's psychologist Dr. Engum. Ex. AA, Post-Conviction Testimony of Julie Martin Rice, App. #5, Pg. #23–26.

Because of their inexperience and lack of preparation, Christa's lawyers failed to present mitigating evidence that could have persuaded the jury to spare her life. Prior to trial, the psychologist hired by Talman as a mitigation specialist, Dr. McCoy, prepared three volumes of social history containing numerous interviews she conducted with Christa's family and friends documenting Christa's history of abuse and neglect. Talman, however, did not use any of this information at trial. In the end, Talman only called three witnesses at the penalty phase who all happened to be present in the court room: Christa's maternal aunt, her father, and her mother. Ex. CC, Christa Pike Federal Habeas Petition, App. #5, Pg. #257. Talman failed to present any mitigating information or facts about Christa's sexual abuse. He also failed to properly investigate Christa's history of mental illness.

The full details of Christa's upbringing and the inadequacies of her trial lawyers only came to light in post-conviction proceedings following her death sentence. As the only woman on Tennessee's death row, Christa is now housed in solitary confinement where the State continues to abuse and neglect her. As of January 2021, Christa Pike will have spent 24 years in solitary confinement for a crime she committed when she was only 18 years old. Her current living conditions amount to state sanctioned torture.

LEGAL ARGUMENT

Article XXVI of the American Declaration states: "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." The Commission has also looked to Article 14 of the International Covenant on Civil and Political Rights (ICCPR) as guidance for the minimum guarantees tribunals must grant individuals facing criminal charges, which include "a fair and public hearing by a competent, independent and impartial tribunal established by law." International Covenant on Civil and Political Rights art. 14, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

This Commission specifically applies a "heightened scrutiny" to all cases "involving the death penalty." *Julius Omar Robinson v. United States*, Case 13.361, Inter-Am. Comm'n H.R., Report No. 210/20, OEA/SER.L/V/II, doc. 224, ¶ 55 (2020). The Commission has applied this standard to ensure that, when enforcing the death penalty, state parties must ensure the most rigid possible compliance with the requirements of the American Declaration. *Id.* at ¶ 56. The ICCPR also imposes specific requirements courts must meet before sentencing individuals to death: "[S]entence of death may be imposed only for the most serious of crimes in accordance with the

law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant ... This penalty can only be carried out pursuant to a final judgment rendered by a competent court." ICCPR, art. 6. *See also* Economic and Social Council Res. 1984/50 Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty (May 25 1984) ("Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial."). In considering the petitions before it, the Commission has emphasized that the guarantees enumerated in both the ICCPR and the Safeguards serve as the minimum threshold for a state's obligations when seeking the death penalty, and that capital proceedings specifically are held to the "strictest standards" of due process. *Bernardo Aban Tercero v. United States*, Case 12.994, Inter-Am Comm'n H.R., Report No. 79/15, OEA/Ser.L/II.156, doc. 32 ¶¶ 29, 30 (2015).

I. THE UNITED STATES VIOLATED ITS OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW TO PROTECT CHRISTA PIKE FROM ABUSE, NEGLECT, AND GENDER-BASED VIOLENCE THROUGHOUT HER CHILDHOOD IN VIOLATION OF ARTICLES I, II, AND VII OF THE AMERICAN DECLARATION.

A. Christa's Childhood was Characterized by Abuse, Neglect, and Violence. State Actors Were Aware of the Mistreatment She Endured but Did Nothing to Prevent It.

"My monsters were all people I knew." – Christa Pike

Christa's life was ravaged by abuse, neglect, violence, and trauma, beginning before she was even born.[11] Throughout her childhood, Christa faced physical and sexual violence, emotional abuse, and neglect from every adult charged with her care. By the time she was eighteen, Christa had been raped twice and sexually abused by at least three other individuals. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #54–66. She had been physically abused by at least seven different family members. *Id.* Multiple State actors were aware

[11] *See supra* Statement of Facts.

of, or had reason to be aware of, the abuse and neglect that plagued Christa's childhood, but all failed to intervene. The State's repeated failure to protect Christa from gender-based violence and neglect violated her rights under the American Declaration.

The State had reason to know that Christa was experiencing sexual violence and child abuse beginning when she was in the first grade. In fact, there were strong indications that Christa had been sexually abused by her grandmother's boyfriend starting at the age of two. When Christa was approximately six years old, her public-school first-grade teacher saw her drawing pictures of sexual organs and pornographic materials in class. Ex. C, Post-Conviction Testimony of Carrie Ross, App. #1, Pg. #193. The school called her mother, Carissa, about the concerns and referred Christa and Carissa to counseling. *Id.* Yet there was no other State action or institutional response to ensure attendance at counselling or to investigate Christa's exposure to age-inappropriate materials in her home environment.

When Christa was nine, she was raped by Claude Davis. Multiple State actors knew about this incident. Christa alerted a teacher's aide about this incident the day after it occurred. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #54–56. The teacher's aide then informed the school, who called Carissa and encouraged her to report the incident to the police. *Id.* at Pg. #56. Claude Davis was arrested and charged in the North Carolina General Court of Justice with taking "immoral, improper, and indecent liberties" with a child under the age of 16. *Id.* at Pg. #54–59. The charges were reduced, and Davis was told by State actors to stay away from school buses and young children after spending only two weeks in jail. No victim services or other care services were ever provided to Christa.

The State was also aware that Steve Kyaw, one of Christa's mother's boyfriends, was physically and sexually abusive to Christa. State records document Kyaw admitting to an incident

of sexual assault where he painfully groped Christa and twisted her nipples. Kyaw also admitted to State actors that he beat Christa, hitting her with a belt and spanking her multiple times. Ex. DD, Mediation Notes Relating to 1991 Incident Between Steve Kyaw and Christa Pike, App. #5, Pg. #348. During one beating, Kyaw hit Christa across the face with a belt. Ex T, Clinical Interviews with Christa Pike, App. #4, Pg. #6. At the time, Christa was twelve years old. In another, Kyaw punched Christa in the face after attempting to sexually assault her. Kyaw was charged with assault for this incident and Kyaw, Carissa, and Christa had to attend State-facilitated mediation. Ex. DD, Mediation Notes Relating to 1991 Incident Between Steve Kyaw and Christa Pike, App. #5, Pg. #347–55; Ex J, Post-Conviction Testimony of Carol Goehring, App. #2, Pg. #269–71. The mediation ended because Carissa pressured Christa into dropping the charges against Kyaw. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #63.

When Christa was fourteen years old, Child Protective Services in Orange County opened a case against Steve Kyaw based on child abuse and neglect. Ex. DD, Mediation Notes Relating to 1991 Incident Between Steve Kyaw and Christa Pike, App. #5, Pg. #355. While investigating the Steve Kyaw allegation, a Child Protective Services' social worker, Kerry Sherrill, learned that Carissa had neglected Christa and that she and others had abused Christa throughout her childhood. Ex. EE, Sheaffer House Records, App. #5, Pg. #372. Sherrill was also aware Christa was running away from home at least once a month and skipping school up to five times a week. Ex. EE, Sheaffer House Records, App. #5, Pg. #373. Social services records show that the agency was aware that Christa had likely been sexually abused by her grandmother's boyfriend at age two and had been raped at age nine. Child Protective Services supported an out-of-home placement for Christa because of the neglectful and abusive conditions she was being raised in. Ex. K, Post-Conviction Testimony of Kerry Sherrill, App. #2, Pg. #285–286. Christa was subsequently

removed from her home and placed in a State-run residential facility called Sheaffer House. Ex. K, Post-Conviction Testimony of Kerry Sherrill, App. #2, Pg. #286.

While at Sheaffer House, a State social worker noted that Carissa was unwilling to protect Christa's best interests and ensure that she could safely return home. Ex. EE, Sheaffer House Records, App. #5, Pg. 357–500; Ex. K, Post-Conviction Testimony of Kerry Sherrill, App. #2, Pg. #293, 299–300. The social worker also documented emotional abuse by Christa's father, Glenn Pike. Ex. EE, Sheaffer House Records, App. #5, Pg. #372. Despite their awareness of neglect and violence by other family members and caregivers, Child Protective Services closed the case when Steve Kyaw moved out of the house. Ex. DD, Mediation Notes Relating to 1991 Incident Between Steve Kyaw and Christa Pike, App. #5; Ex. K, Post-Conviction Testimony of Kerry Sherrill, App. #2, Pg. #291. There was no follow up to ensure Christa's wellbeing upon her return home. Further, Child Protective Services failed to investigate the abuse, neglect, and violence Christa suffered from Carissa, Glenn, or other adults in Christa's life. No care services, victim services, or counselling was ever provided for Christa. She was returned to her home after only three months.

In 1991, when Christa was fifteen years old, she was adjudicated delinquent for breaking and entering and was sent to Swannanoa, a State-run juvenile detention center in North Carolina.[12] A psychological evaluation conducted by the Juvenile Court psychologist, Dr. Wilson noted signs of dissociation and emotional compartmentalization when Christa was discussing the past abuse she had experienced.[13] But Swannanoa, a State-run juvenile detention center, focused on protecting

[12] Christa was adjudicated delinquent for misdemeanor breaking, entering, or larceny for stealing some food from a concession stand on one of her runaway attempts and placed on a year of supervised probation. Due to her continued runaway attempts which violated her conditions of probation, she was institutionalized at Swannanoa. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #45–46.

[13] Dr. Wilson's evaluation was yet another instance where the State knew about the violence and neglect Christa endured. In her evaluation with Dr. Wilson, Christa shared details about "physical abuse by her mother's past boyfriend, about frequent moves, which had led to her never staying in one school for more than two years, and

the community, not on providing treatment for the juveniles housed there. Ex. Q, Post-Conviction Testimony of Peggy Hamlett, App. #3, Pg. #384. Christa occasionally met with a psychologist and attended group therapy, but did not receive the continuous care and treatment that would have helped her heal from the abuse and neglect she endured for years. Other State mental health workers recognized at the time that she was mentally ill. Records from the North Carolina Division of Mental Health noted that Christa was a sexual abuse victim and had symptoms consistent with Post-Traumatic Stress Disorder. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #66. Dr Wilson, the Juvenile Court psychologist, noted "[Christa] experiences considerable internal stress related to depression and anger over an unmet need for nurturing. The losses and disruptions that have been constant in her social environment have not supported the development of adequate impulse control." Ex. FF, 1991 Psychological Evaluation of Christa Pike by Rosemary Wilson, Ph.D., App. #5, Pg. #506.

While at Swannanoa, Christa frequently spoke about her history of sexual violence. Debby Burchfield, a social worker, learned of the rape while conducting Christa's intake social history in 1991. Ex. R, Post-Conviction Testimony of Debby Burchfield, App. #3, Pg. #405–06. Another staff member at Swannanoa, Onas Perry, learned about Christa's sexual abuse history in late night conversations throughout the fifteen months Christa was at Swannanoa. Perry recognized the ways in which the abuse still plagued Christa, affecting her ability to sleep and contributing to her mood swings and other mental illness symptoms. Ex. N, Post-Conviction Testimony of Onas Perry, App. #3, Pg. #302. Despite this awareness, Perry never took steps to ensure Christa was getting appropriate care to heal from the violence she endured. Nor did any other State actor.

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about being victimized as a young child by her older sister." Ex. FF, 1991 Psychological Evaluation of Christa Pike by Rosemary Wilson, Ph.D, App. #5, Pg. #503–04.

Employees at Swannanoa knew that Christa did not wish to leave the institution because she did not want to return to the conditions she lived in at home. Ex. P, Post-Conviction Testimony of Kristina Hargis, App. #3, Pg. #360–61. Notwithstanding their knowledge of the conditions of her home environment and the violence Christa experienced there, Christa was sent home from Swannanoa fifteen months after she was first admitted. She received no ongoing mental health treatment or therapy at Swannanoa or elsewhere after her release.

In 1993, less than a year after she was released from Swannanoa, Christa was raped by a stranger who pulled her into an alley during a trip to the store. Christa was only seventeen years old. She went to a State-run hospital, where she reported the rape and was given a rape kit. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #66; Ex. L, University of North Carolina Hospital Records, App. #2, Pg. #306–35. Although the hospital records confirmed her rape, no further State action was taken. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #66. No more than a preliminary investigation was conducted, no charges were brought, and no victim services were provided.

Apart from its actual knowledge of the sexual violence and abuse Christa had endured, the State knew of behaviors that corroborated her victimization. Specifically, State actors knew that Christa was often truant and had run away from home on several occasions, well-known signals that a young child is experiencing violence and neglect at home. Christa began running away at age twelve, when her mother's ex-husband, Danny Thompson, subjected her to physical abuse and intentional food deprivation. A State social worker, Kerry Sherrill, documented these behaviors in a social history conducted after the Steve Kyaw incident. Ex. EE, Sheaffer House Records, App. #5, Pg. #372–373. On several occasions—even after the Child Protective Services investigation had been closed—Carissa called Sherrill to enlist her help in locating Christa. Ex. K, Post-

Conviction Testimony of Kerry Sherrill, App. #2, Pg. #297–298. On at least ten different occasions between 1989 and 1993, public school teachers and police documented these behaviors, suspending Christa for truancy and filing missing persons reports. Ex. GG, Christa Pike School Records, App. #5, Pg. #508–09. Police were consistently involved in locating Christa and returning her to her home after these reports were made. Law enforcement failed to recognize that these runaway attempts were a sign of the violence Christa was experiencing—a failure of the State's obligation to ensure law enforcement actors are trained to respond to gender-based violence and child abuse. Ex. G, Post-Conviction Testimony of Carissa Hansen, App. #1, Pg. #486; Ex. B, Dr. McCoy Social History Synopsis, App. #2, Pg. #45–47. There was no cross-agency coordination to address the cause of this continued behavior even though it was documented over the course of eight years by various State actors. Ex. G, Post-Conviction Testimony of Carissa Hansen, App. #1, Pg. #450, 486; Ex. K, Post-Conviction Testimony of Kerry Sherrill, App. #2, Pg. #296–300; Ex. Q, Post-Conviction Testimony of Peggy Hamlett, App. #3, Pg. #379–80; Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #63–68.

Public school records also indicate that Christa's ability to learn was affected by the abuse she was facing. After Claude Davis raped her, Christa had to repeat third grade; after Kyaw's abuse, she had to repeat seventh grade. Moreover, Christa's third grade records also documented a drastic mood change, showing Christa as inattentive in school, withdrawn, and distracted, failing her classes despite scoring in the top ten percent on nationwide scholastic achievement testing. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. # 35–36. No further State intervention was conducted to investigate the underlying causes of these red flags. Because there was no investigation into these signs, Christa never received adequate counseling or care services. Instead

of receiving aid, Christa was institutionalized and punished by the State for these signs of the violence she was enduring.

Finally, Job Corps, a State-run program, was aware that Christa was at risk of further violence in the Tennessee program Christa attended during the months leading up to the crime. Ex. G, Post-Conviction Testimony of Carissa Hansen, App. #1, Pg. #454–55; Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. # 53. Christa reported to Job Corps that someone attacked her and attempted to rape her. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #49. Nothing was done to follow up on this report. The State-run Knoxville dormitory was covered in blood and gang signs. In 1995, a U.S. Senate Hearing was held on the danger and violence in Job Corps programs across the country. *See generally* Ex HH, U.S. Senate Hearing on Violence at Job Corps, App. #6, 7. One witness in the hearing described the culture of violence prominent at Jobs Corps across the county, saying, "Students come to Job Corps to leave drug abuse and violence in their communities only to find the same conditions exist at the Job Corps centers." Ex. HH.1, U.S. Senate Hearing on Violence at Job Corps, App. #6, Pg. #31. No steps were taken to reduce the risk of violence to Christa or other participants. Ex. G, Post-Conviction Testimony of Carissa Hansen, App #1, Pg. #482–483; Ex. C, Post-Conviction Testimony of Carrie Ross, App. #1, Pg. #196, 204–05; Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #51.

The State was also aware that Tadaryl Shipp, Christa's boyfriend at the time, was physically violent and abusive. Ex. H, Dr. McCoy Social History Synopsis , App. #2, Pg. #50–51. Mama Betty, an R.A. for the Job Corps dorm in Knoxville, witnessed Christa and Tadaryl in a physical and verbal altercation where Tadaryl hit Christa's head against a wall, smacked her in the face, and kicked her in the lower back. Ex. T, Clinical Interviews with Christa Pike, App. #4, Pg.

#12. There was no intervention to ensure that Christa was safe, to protect her from future abuse from Tadaryl, or to ensure non-repetition of the abusive behavior that was witnessed by the State.

B. International Law Recognizes that Gender-based Violence Is a Form of Gender Discrimination.

Article II of the American Declaration on the Rights and Duties of Man obliges States to ensure that all persons are equal before the law, regardless of their gender. This Commission has recognized that gender-based violence is "one of the most extreme and pervasive forms of discrimination" under Article II. *Jessica Lenahan (Gonzales) et al. v. United States*, Case 12,626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶ 110 (2011); *see generally Case of González et al. ("Cotton Field") v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (2009). Women and girls in the region often grow up in a context of violence, which "is closely linked to structural discrimination against women and gender stereotypes existing throughout the hemisphere." INTER-AM. COMM'N ON HUM. RTS., VIOLENCE AND DISCRIMINATION AGAINST WOMEN AND GIRLS: BEST PRACTICES AND CHALLENGES IN LATIN AMERICA AND THE CARIBBEAN, OEA/Ser.L/V/II., Doc. 233 ¶ 4(2019). The Commission has accordingly emphasized that "[t]he right of women and girls to live free from violence is a fundamental principle of international human rights law [that]. . . goes hand in hand with legal duties relating to eradicating violence and discrimination." INTER-AM. COMM'N ON HUM. RTS., VIOLENCE AND DISCRIMINATION AGAINST WOMEN AND GIRLS: BEST PRACTICES AND CHALLENGES IN LATIN AMERICA AND THE CARIBBEAN, OEA/Ser.L/V/II., Doc. 233 ¶ 1 (2019). States must not only prevent and eradicate violence against women, but also eliminate direct and indirect forms of

discrimination." *Gonzales*, Case 12,626, at ¶ 120. Other human rights bodies have reached similar conclusions.[14]

Under the American Declaration, gender-based violence is "understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm." Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, art. 1 (1994). Gender-based violence affects women of all "ages, ethnicities, races, and social classes." *Gonzales*, Case 12,626, at ¶¶ 111, 113. Gender-based violence can have profound effects on victims. For example, the Inter-American Court has recognized that rape can have severe psychological and physical consequences, not all of which can be overcome simply through the passage of time. *Case of V.R.P, V.P.C, et al. v. Nicaragua*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 163 (Mar. 8, 2018). Other common consequences of gender-based violence can include "depression, anxiety disorders, and post-traumatic stress disorders," on top of any physical injuries that a victim might suffer. INTER-AM. COMM'N ON HUM. RTS., VIOLENCE AND DISCRIMINATION AGAINST WOMEN AND GIRLS: BEST PRACTICES AND CHALLENGES IN LATIN AMERICA AND THE CARIBBEAN, OEA/Ser.L/V/II., Doc. 233 ¶ 263 (2019).

International law obliges States to act with due diligence to prevent, protect, investigate, punish, and provide redress for all instances of gender-based violence. *Maria da Penha Fernandes v. Brazil*, Case 12.051, Inter-Am. Comm'n H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. ¶ 60 (2001); *Case of González et al. ("Cotton Field") v. Mexico*, at ¶ 258; *Gonzales*, Case

[14] *See e.g.*, Committee on the Elimination of Discrimination Against Women, *General Recommendation No.35 on Gender- Based Violence Against Women*, U.N. Doc CEDAW/C/GC/35, § 1 (2017); *Vienna Declaration and Programme of Action*, *Adopted by the World Conference on Human Rights in Vienna*, (June 25, 1993) https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx (recognizing that gender-based violence is a form of gender discrimination and establishing the Special Rapporteur on violence against women); *Opuz v. Turkey*, Eur. Ct. H. R., App. No. 33401/02, §§ 184–189 (2009); Office of the High Commissioner for Human Rights Res. 2003/45, Elimination of Violence Against Women (Apr. 23, 2003).

12,626, at ¶ 110. Due diligence is broadly understood as a customary norm required to prevent, address, and eradicate gender-based violence. *Gonzales*, Case 12,626, at ¶¶ 122–25. In accordance with these international obligations, States must act with due diligence to prevent and address risks of gender-based violence perpetrated by private actors when they know or should have known of the risk of violence. *Case of González et al. ("Cotton Field") v. Mexico*, at ¶ 280. State failure to act with due diligence to combat gender-based violence is a violation of Article II of the American Declaration. *Gonzales*, Case 12,626, at ¶ 170; *see generally Maria da Penha Fernandes*, Case 12.051.

To comply with their due diligence obligations, States are required to adopt comprehensive measures to prevent, protect, investigate, punish, and provide redress. *Case of González et al. ("Cotton Field") v. Mexico*, at ¶ 258. These measures include having both "an appropriate legal framework for protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to the respective complaints." *Id.* Due diligence measures should be "holistic, multisectoral, and integrated." INTER-AM. COMM'N ON HUM. RTS., VIOLENCE AND DISCRIMINATION AGAINST WOMEN AND GIRLS: BEST PRACTICES AND CHALLENGES IN LATIN AMERICA AND THE CARIBBEAN, OEA/Ser.L/V/II., Doc. 233 ¶ 240 (2019). States must provide a remedy, not simply in the form of judicial accountability but by facilitating access to health, education, and other services in order to make victims whole. State measures should be uniquely tailored to the needs and vulnerabilities of the woman based on her age, gender, and individual experiences. *Id.* at ¶¶ 250, 263. Where the State cannot restore the victim to her prior situation because of irreversible harms to her physical, sexual, or psychological integrity, it should consider compensation, rehabilitation, guarantees of non-repetition, and a measure of satisfaction.

INTER-AM. COMM'N ON HUM. RTS., ACCESS TO JUSTICE FOR WOMEN VICTIMS OF SEXUAL VIOLENCE IN MESOAMERICA, OEA/Ser.L/V/II., Doc.63, ¶ 108, (2011).

The Commission has found that a state's due diligence obligations were triggered when law enforcement agencies have signaled there is a risk of violence by receiving a report, issuing a restraining order, initiating a criminal investigation, or filing charges against someone for a violent act against a woman. *Gonzales*, Case 12,626, at ¶¶ 138–145. Given the often-hidden nature of gender-based violence, the Commission has held that States are obliged to act with due diligence where there is a known risk of violence, even where a victim of gender-based violence withdraws their complaint to law enforcement. *Id.* at ¶ 134.

The failure to protect an individual from gender-based violence under the due diligence standard can also give rise to violations of the right to life under Article I of the American Declaration. *Id.* at ¶¶ 128–129. The right to life, liberty, and security of person as encompassed in Article I is defined as "a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation." *The Haitian Centre for Human Rights et al. v. United States*, Case 10.675, Inter-Am. Comm'n H.R., Report No. 51/96, OEA/Ser.L/V/II.95, doc. 7 rev. ¶ 170 (1997). Preventing someone from "conditions that guarantee a dignified existence" also violates Article I. *Villagrán Morales et al. v. Guatemala (Case of the "Street Children")*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 144 (Nov. 19, 1999). Being subjected to "physical or mental pain or suffering" can also infringe on the right to life. General Comment No. 36 (2018) on Art. 6 of the International Covenant on Civil and Political Rights, on the Right to Life, U.N. Doc. CCPR/C/G/36, ¶¶ 8, 54, 56 (Human Rights Committee, Oct. 30, 2018). States have affirmative obligations to protect people within their jurisdiction from violations of the right to life, "*Street*

Children" at ¶ 166 and these obligations are a critical component of the State's due diligence obligations. *Gonzales*, Case 12,626, at ¶ 128.

C. International Law Recognizes that Girl-Children Are Uniquely Vulnerable, and Therefore Requires States to Provide Special Care on the Basis of Both a Woman's Gender and Age. This Intersection Creates a Heightened Obligation to Protect and Nurture Girl-Children.

Article VII of the American Declaration imposes a duty to provide special protection to children. The Commission has recognized that "children and adolescents are more vulnerable to human rights violations," in part because of their age, individual conditions, and degree of development. INTER-AM. COMM'N ON HUM. RTS., VIOLENCE AND DISCRIMINATION AGAINST WOMEN AND GIRLS: BEST PRACTICES AND CHALLENGES IN LATIN AMERICA AND THE CARIBBEAN, OEA/Ser.L/V/II., doc. 233 ¶ 252 (2019). Children do not have the capacity to "personally ensure the respect of their rights." "*Street Children*" at ¶ 185. For that reason, States are required "to take every measure necessary to ensure the effective realization of the rights of children, and that their rights are respected in all settings, both public and private." INTER-AM. COMM'N ON HUM. RTS., THE RIGHT OF BOYS AND GIRLS TO A FAMILY. ALTERNATIVE CARE. ENDING INSTITUTIONALIZATION IN THE AMERICAS, OEA/Ser.L/V/II.doc 54/13, ¶¶ 115–116, (2013). *See also* INTER-AM. COMM'N ON HUM. RTS., REPORT ON CORPORAL PUNISHMENT AND HUMAN RIGHTS OF CHILDREN AND ADOLESCENTS, OEA/Ser.L/V/II.135, ¶ 69, (2009). Eliminating violence against children and adolescents is vital part of protecting children's rights and ensuring that they are nurtured throughout their development. INTER-AM. COMM'N ON HUM. RTS., REPORT ON CORPORAL PUNISHMENT AND HUMAN RIGHTS OF CHILDREN AND ADOLESCENTS, OEA/Ser.L/V/II.135, ¶ 1 (2009).

This Commission has determined that States are obligated to protect children from various forms of violence, including "abuse or violence within the family, at school, or in their community

perpetrated either by adults or their peers;" "a lack of family care and of support from State institutions;" and "the absence of real opportunities to pursue their goals in life due to structural conditions of social exclusion." INTER-AM. COMM'N ON HUM. RTS., VIOLENCE, CHILDREN AND ORGANIZED CRIME, OEA/Ser.L/V/II., doc. 40/15 ¶ 60 (2015). Infringements of children's rights and the different forms of violence they experience are often overlapping and interconnected, which can be difficult to remedy if not addressed promptly and effectively. *Id.* at ¶ 61.

States' elevated obligations to girl-children reflect a widespread concern over the devastating impact of childhood violence, particularly when the violence is committed by adults charged with the care of the child. These elevated obligations are essential because "[t]he impacts of violence and infringement of rights during early childhood can have consequences later on during adolescence." *Id.* For example, the Commission has urged States to recognize the grave physical and psychological consequences of rape, noting that child victims face heightened trauma, particularly where an offender "maintains a bond of trust and authority" with the child. INTER-AM. COMM'N ON HUM. RTS., VIOLENCE AND DISCRIMINATION AGAINST WOMEN AND GIRLS: BEST PRACTICES AND CHALLENGES IN LATIN AMERICA AND THE CARIBBEAN, OEA/Ser.L/V/II., doc. 233 ¶¶ 247, 263 (2019).

In order to protect children's human rights, States must ensure "non-discrimination, special assistance for children deprived of their family environment, the guarantee of survival and development of the child, the right to an adequate standard of living, and the social rehabilitation of all children who are abandoned or exploited." "*Street Children*" at ¶ 196. Allowing at-risk children to live under conditions that violate their rights can violate a child's "physical, mental, and moral integrity and even their lives." *Id.* at ¶ 191. *See also* INTER-AM. COMM'N ON HUM. RTS., VIOLENCE, CHILDREN AND ORGANIZED CRIME, OEA/Ser.L/V/II., doc. 40/15 ¶¶ 120, 124 (2015).

Protection of children's rights must therefore be uniquely tailored to understand the intersectional needs of the child, including consideration of how age, gender, and development can create greater risks for some children. INTER-AM. COMM'N ON HUM. RTS., VIOLENCE AND DISCRIMINATION AGAINST WOMEN AND GIRLS: BEST PRACTICES AND CHALLENGES IN LATIN AMERICA AND THE CARIBBEAN, OEA/Ser.L/V/II., doc. 233 ¶ 13 (2019).

International law broadly recognizes that States have an "especially rigorous" duty to protect the right to life of girl-children. *Gonzales*, Case 12,626, at ¶ 129. When a girl-child is subject to gender-based violence, States therefore have heightened due diligence obligations under Article II of the American Declaration. *See Case of González et al. ("Cotton Field") v. Mexico*, at ¶ 408 (recognizing that the special protection owed to children is in and of itself a right that compliments and strengthens other obligations owed). The Commission has emphasized that protection measures are "particularly critical in the case of girl-children . . . since they may be at a greater risk of human rights violations based on two factors, their sex and age." *Gonzales*, Case 12,626, at ¶ 113. Girl-children are more commonly victims of gender-based violence, which "violates the [girl-child's] right to physical and psychological integrity, in addition to undermining the protection and comprehensive care a child should receive from his or her family." INTER-AM. COMM'N ON HUM. RTS., VIOLENCE, CHILDREN AND ORGANIZED CRIME, OEA/Ser.L/V/II., doc. 40/15 ¶¶ 58, 205 (2015).

The Commission has recognized that the needs of teenagers like Christa are often overlooked. INTER-AM. COMM'N ON HUM. RTS., VIOLENCE AND DISCRIMINATION AGAINST WOMEN AND GIRLS: BEST PRACTICES AND CHALLENGES IN LATIN AMERICA AND THE CARIBBEAN, OEA/Ser.L/V/II., doc. 233 ¶ 11 (2019). When considering their unique vulnerabilities to violence, this Commission has noted that young women are "at particular risk for various forms of sexual

violence, exploitation, cruel, humiliating and degrading treatment, and murder…." *Id.* at ¶ 191. States have an obligation to be aware of the different signs that girl-children are experiencing violence and to train State actors to recognize these different signs. *Id.* at ¶ 252. Inadequate training does not excuse the State's failure to act with due diligence in the case of girl-children. *Case of González et al. ("Cotton Field") v. Mexico*, at ¶ 540. States should ensure coordination between branches of government to ensure that state actors identify and follow up on signs of violence. *Gonzales*, Case 12,626 at ¶ 137. *See also* INTER-AM. COMM'N ON HUM. RTS., VIOLENCE AND DISCRIMINATION AGAINST WOMEN AND GIRLS: BEST PRACTICES AND CHALLENGES IN LATIN AMERICA AND THE CARIBBEAN, OEA/Ser.L/V/II., doc. 233 Recommendation 4 Pg. 141 (2019).

D. The United States Failed to Act with the Required Due Diligence and Failed to Provide Christa with the Special Care Afforded to Girl-Children Under International Law.

1. *The United States failed to act with due diligence.*

Christa was uniquely vulnerable to gender-based violence, abuse, and neglect because of her status as a girl-child. Gender-based violence committed by family members and loved ones is uniquely perilous because the threat of harm resides at home, a place where children expect to find refuge, care, and peace. For Christa, her home was a war zone she could not escape. She faced physical, sexual, and/or emotional violence from nearly every adult in her life. As a child, she did not have the means, maturity, or agency to be able to prevent, or escape from, the violence she experienced. The State became an accessory to the violence and neglect Christa endured when not a single actor stepped in to protect her from harm or to provide her the care and support owed to her under international law. The State likewise failed to respond in a way that was adequately tailored to address Christa's unique vulnerabilities as a girl-child.

a. <u>The State knew or had reason to know that Christa was experiencing violence and neglect</u>.

The United States was aware that Christa was experiencing violence and neglect at home. As detailed above, the State had direct knowledge of the sexual violence she endured both within and outside her home, as well as of her parents' abuse and neglect. Even on occasions when State actors had no direct knowledge, there were unmistakable warning signs that Christa was being subjected to gender-based violence. Christa increasingly experienced trauma responses, including dissociative episodes, flashbacks, behavioral problems, and truant and runaway behaviors. This Commission has recognized that "[a]dolescent girls, who are victims of sexual violence in their homes, often resort to leaving home as a measure to put an end to the abuse, when there is no other alternative left to protect themselves or other alternatives are inaccessible or unreliable." INTER-AM. COMM'N ON HUM. RTS., VIOLENCE AND DISCRIMINATION AGAINST WOMEN AND GIRLS: BEST PRACTICES AND CHALLENGES IN LATIN AMERICA AND THE CARIBBEAN, OEA/Ser.L/V/II., doc. 233 ¶ 237 (2019).

b. The State failed to adequately investigate multiple incidents of gender-based violence, abuse and neglect, and to protect Christa from future harm.

Although multiple State actors knew of Christa's abuse (and risk of future abuse) or had reason to know of the abuse, the State took no action to protect her or to reasonably investigate the evidence of abuse. State actors sporadically took minimal action to follow up on the known instances of violence, but none were adequate to ensure her freedom from future violence. The results of the actions always left Christa in the same place: living in the house where she was at risk of experiencing more violence and where her caretakers refused to give her the care and support required to heal. The State's failure to adequately investigate and respond to the violence she experienced put her at greater risk of future violence, including the risk that she would commit acts of violence. As this Commission has observed, "*adolescents performing acts of violence have often themselves been victims of violence or abuse, or else they have witnessed them, or have had*

their own fundamental rights violated." INTER-AM. COMM'N ON HUM. RTS., VIOLENCE, CHILDREN AND ORGANIZED CRIME, OEA/Ser.L/V/II., doc. 40/15 ¶ 61 (2015) (emphasis added).

The United States failed to properly investigate or hold anyone accountable for the gender-based violence Christa experienced. When Christa was raped at age nine, the State arrested Claude Davis, but his only punishment was two weeks of jail time and a warning to stay away from children and the neighborhood. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #105–08. State authorities never prosecuted Steve Kyaw for the sexual violence he perpetrated against Christa. Christa dropping the charges against Kyaw did not excuse the State of its obligation to investigate the incident and protect Christa from harm. There was no real investigation into the stranger who raped Christa, despite her call to the police shortly afterwards, as well as her hospital records and rape kit. *Id.* at Pg. #65–66. The State never investigated Christa's parents' neglect and physical violence, despite documenting concerns about it in the Kyaw Child Protective Services files and while Christa was at Swannanoa. The State, due to its failure to investigate any of these and other instances of known violence, failed to prevent future violence from occurring, to protect Christa, and to punish anyone for the profound violence Christa experienced at the hands of most of her family members and a number of other private actors.

c. The State failed to provide redress for acts of gender-based violence.

The United States likewise failed to take measures to provide redress and healing for Christa. Christa spent the majority of her adolescence in and out of institutions. State institutions failed to provide adequate care and redress for the gender-based violence and neglect Christa experienced. Child Protective Services knew of and documented concerns about Carissa's failure to care for Christa, but instead of investigating the conditions in Christa's home, they returned her to her abusive and neglectful parents. Multiple state actors were aware of the sexual violence Christa survived but they never referred her to victim services or trauma counseling. The State

also never provided adequate mental health treatment to Christa, including providing her with appropriate medication for her mental illnesses. Social workers and staff at Swannanoa were aware of the physical beatings Christa endured from her father and other men in her life, but failed to ensure she received psychological or medical care. After her attempted suicide at age nine, Christa was referred to counseling but there was no follow up on her wellbeing and recovery after she discontinued the prescribed psychiatric medication. Ex. G, Post-Conviction Testimony of Carissa Hansen, App. #1, Pg. #446–447. Instead of healing, Christa's mental health continued to deteriorate as her trauma went unaddressed. The State's failure to protect her and provide redress has had a lifelong impact on her mental wellbeing, and arguably led to the offense for which she was convicted and sentenced to death.

d. The State failed to provide a coordinated response to Christa's abuse.

The United States failed to adequately oversee and regulate the institutions Christa interacted with in a way that would have ensured she received the care and attention she was entitled to under international law. A range of State actors were aware of the violence Christa suffered. Doctors, psychologists, social workers, judges, teachers, and police officers all learned about and/or responded to at least one distinct report or warning sign of the violence she endured at home and in her life. The State should have established an effective mechanism for information sharing across its agencies to reasonably ensure that risks of violence and known instances of actual violence were not slipping through the cracks. Instead, Christa was punished by the State, disciplined with school suspensions and juvenile detention, causing even more harm to her healthy development and healing.

e. The United States' failures in Christa's case are emblematic of a nationwide failure to protect girls subjected to gender-based violence and abuse.

The United States likewise failed to address the systemic violence and neglect Christa was experiencing and vulnerable to throughout her childhood. In the United States, 82% of all child victims of sexual violence are female. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sexual Assault of Young Children as Reported to Law Enforcement (2000). Child victims of sexual abuse are significantly more likely to develop Post-Traumatic Stress Disorder, depression, and a reliance on drugs. *See* Heidi M. Zinzow et al. *Prevalence and Risk of Psychiatric Disorders as a Function of Variant Rape Histories: Results from a National Survey of Women*, 47 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 893, 893–902 (2012). Children who come from lower socioeconomic backgrounds are at higher risk of sexual abuse. *See generally* Eyglo Runanrsdottir et al., *The Effects of Gender and Family Wealth on Sexual Abuse of Adolescents*, 16 INT'L J. ENV'T RES. & PUB. HEALTH 1788 (2019). The United States is aware of the systemic violence women and girls experience within their borders and the intersectional risks that put certain women and girls at a heightened risk to experience violence.[15] The United States has passed and reauthorized federal legislation specifically focused on addressing and eradicating gender-based violence experienced by women and girls within its borders. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified in relevant part at 42 U.S.C. § 13981 (1994)). Despite this attention, the efforts have been ineffective at combatting gender-based violence. Thousands of women and girls still experience gender-based violence every year in the United States.[16]

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[15] The United States Department of Justice's Bureau of Justice Statistic routinely researches and publishes information on the prevalence of intimate partner violence occurring across the county. *See Publications & Products: Intimate Partner Violence*, Bureau of Justice Statistics, https://www.bjs.gov/index.cfm?ty=pbse&sid=78 (last accessed Nov. 16, 2020).

[16] *Violence Against Women in the United States: Statistics*, National Organization for Women, https://now.org/resource/violence-against-women-in-the-united-states-statistic/ (last accessed Nov. 16, 2020).

2. *Christa was consistently deprived of her right to life, liberty, and personal security throughout her childhood.*

The State's failure to act with due diligence and provide the legally-required special care owed to girl-children deprived Christa of her life, liberty, and personal security. Christa grew up in a household without any care for her wellbeing. Christa was deprived of the basic necessities for her development as a child, including adequate nourishment, sanitary living conditions, and a stable learning environment. These deficiencies in her home environment, and their impact on her education and wellbeing, all undermined Christa's ability to fully develop. Christa was also deprived of the necessary medical and psychological care to manage and accommodate her mental illnesses and the resulting impacts of the trauma she experienced. Christa was subjected to physical and mental suffering by the private actors who physically, sexually, and emotionally abused her. These actors infringed on her personal and physical autonomy and, at times, put her life at risk.

The State, through its failure to exercise due diligence, made it impossible for Christa to lead a dignified life. As a girl-child, she was unable to ensure the enforcement of her rights through her own actions alone. Christa was never nurtured or supported by the adults entrusted with her care. She grew up with the mental torment of believing she was worthless, being humiliated or rejected first by her mother and then by the State when she sought confirmation that the violence she experienced was not normal. At every turn, Christa was told explicitly or implicitly to accept gender-based violence and neglect as an unfortunate, but inevitable, aspect of her existence.

The State's infringement of Christa's right to life persists to this day. The violence and neglect Christa endured had lasting consequences on her mental health, resulting in Post-Traumatic Stress Disorder. The abuse also exacerbated her bipolar symptoms. Christa's Post-Traumatic Stress Disorder continues to plague her. She still experiences invasive flashbacks and trauma responses such as dissociative episodes. Christa's profound trauma history makes her more

susceptible to the negative effects of prolonged solitary confinement. As detailed below, the conditions of Christa's confinement over the last twenty-three years have significantly exacerbated the symptoms of her mental illnesses.

3. *Conclusion/ Remedy*

Had the State adequately fulfilled its due diligence obligations under Article II and provided the special care Christa was entitled to as a girl-child under Article VII, it is likely Christa would not be incarcerated today. Christa's offense, properly contextualized, happened in the midst of a dissociative episode resulting from her profound mental illness combined with her unique trauma history. There is no way to know how she would have acted on January 12, 1995 had she not been subjected to a lifetime of gender-based violence and neglect. Although we can never know how her life would have been different had she received appropriate care, one thing is certain: her profound trauma history should have been considered in her capital trial. But rather than provide redress for its failure to protect her as a child, the State sentenced her to death for a crime she committed when she was only eighteen years old.

II. THE UNITED STATES VIOLATED CHRISTA PIKE'S RIGHT TO COMPETENT AND EFFECTIVE LEGAL REPRESENTATION IN A CAPITAL PROCEEDING UNDER ARTICLES XVIII AND XXVI OF THE AMERICAN DECLARATION.

The United States provided Christa Pike with trial counsel that failed to investigate and present crucial mitigation evidence during her capital murder trial. As a result, she did not receive a fair trial or due process of law, and the United States is responsible for violating her right to a fair trial under Articles XVIII and XXVI of the American Declaration of the Rights and Duties of Man.

A. Ms. Pike Was Entitled to Competent and Effective Legal Representation.

In any death penalty case, the most important procedural safeguard to ensure the accused receives a fair trial is the appointment of competent defense counsel. This Commission has emphasized that effective representation "is crucial to the fairness of a proceeding, in part because it is intimately connected with the right of a defendant to adequate time and means for the preparation of her defense. This requires, first and foremost, that counsel be competent and effective." *Abdur'Rahman v. United States*, Case 136.02, Inter-Am. Comm'n H.R., Report No 39/03, OEA/Ser.L/V/II.118, doc. 70 rev. 2 ¶ 55 (2003). In fact, standards for adequate legal representation are even higher in capital proceedings. Because the right to life is the supreme right of every human being, "[t]he Commission therefore considers 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." *Roberto Moreno Ramos v. United States*, Case 12.430, Inter-Am. Comm'n H.R., Report No. 1/05, OEA/Ser.L./V/II.124, doc. 5 ¶ 43 (2005). *See also* Human Rights Council Res. 42/24 The Question of the Death Penalty (Sept. 27, 2019) ("[P]articularly in capital punishment cases, States are required to ensure that all persons benefit from a fair trial and a guarantee of due process and to provide adequate assistance of legal counsel at every stage of the proceedings, including during detention and arrest, without discrimination of any kind.").

Where a defendant is indigent, it is the State's obligation to provide counsel who is "competent." *See Moreno Ramos v. United States*, Case 12.430, at ¶¶ 52-55. Thus it is not enough for the United States to provide appointed counsel; counsel must be qualified and capable. *Medellín, Ramírez Cárdenas & Leal García v. United States*, Case 12.644, Inter-Am. Comm'n H.R., Report No. 90/09, OEA/Ser.L/V/II.135, doc. 37 at ¶ 137 (2009). *See also Ivan Teleguz v. United States*, Case 12.864, Inter-Am. Comm'n H.R., Report No. 53/13 (2013) at ¶ 94; *Clarence*

Allen Lackey et al.; Miguel Ángel Flores, and James Wilson Chambers v. United States, Cases 11.575, 12.333 and 12.341, Inter-Am Comm'n H.R., Report No. 52/13 at ¶ 202 (2013); *Lezmond C. Mitchell v. United States*, Case 13.570, Inter-Am. Comm'n H.R., Report No. 211/20 at ¶ 111 (2020).

Nevertheless, the United States has repeatedly failed to provide competent legal representation in capital cases. And in virtually every case where the Commission has found a violation of due process linked to incompetent legal representation, counsel failed to present available mitigating evidence to the jury responsible for deciding on the appropriate sentence. *See, e.g.*, *Felix Rocha Diaz v. United States*, Case 12.833, Inter-Am. Comm'n H.R., Report No. 11/15, OEA/Ser.L/V/II.154, doc. 5 at ¶ 78 (2015); *Edgar Tamayo Arias v. United States*, Case 12.873, Inter-Am. Comm'n H.R., Report No. 44/14, OEA/Ser.L/V/II.151, doc. 9 at ¶ 151 (2014); *Medellín*, Case 12.644, at ¶¶ 128, 130. The Commission has observed that before imposing a death sentence, States must ensure the defendant has "had an adequate opportunity to present, and the sentencing authority has had an opportunity to consider, evidence and arguments as to whether the death penalty may not be an appropriate or permissible form of punishment in the circumstances of a particular offender or offense." *Abdur'Rahman*, Case 136.02, at ¶ 56. *See also* General Comment No. 36 (2018) on Art. 6 of the International Covenant on Civil and Political Rights, on the Right to Life, U.N. Doc. CCPR/C/G/36, ¶ 37 (Human Rights Committee, Oct. 30, 2018). ("In all cases involving the application of the death penalty, the personal circumstances of the offender and the particular circumstances of the offence, including its specific attenuating elements, must be considered by the sentencing court.").

Thus, in cases alleging lack of adequate legal counsel in capital proceedings, the Commission has found defense counsel's failure to present mitigating evidence, specifically

testimony about the defendant's "upbringing and social history," such as a background of childhood trauma, especially prejudicial.[17] *See, e.g.*, *Rocha*, Case 12.833, at ¶¶ 21–27, 71; *Tamayo*, Case 12.873, at ¶¶ 97–102.

The Commission has also stressed that defense counsel's prompt investigation of mitigating evidence is critical to a fair trial in capital cases. *See, e.g.*, *Rocha*, Case 12.833, at ¶ 73; *Medellín*, Case 12.644, at ¶ 134. When determining the adequacy of provided legal representation, the Commission has considered whether or not a reasonable investigation would have revealed potentially relevant mitigating evidence. It has routinely found that the failure to present such mitigating evidence amounts to a violation of Art. XVIII and XXVI of the American Declaration. *Rocha*, Case 12.833 at ¶ 78; *Tamayo*, Case 12.873, at ¶ 151 (finding defense counsel "failed to develop and present potentially mitigating evidence"); *Medellín*, Case 12.644, at ¶ 142. The Commission has explained that failure to investigate and present such evidence "[deprives the petitioner] of the benefit of the jury's consideration of potentially significant information in determining his punishment." *Moreno*, Case 12.430, at ¶ 54. Thus, failure to produce available and relevant testimony about the defendant's character and history also constitutes a deprivation of the petitioner's right to present mitigating evidence. *Tamayo*, Case 12.873 at ¶ 145.

B. Ms. Pike's Defense Counsel Failed to Investigate and Present Powerful Mitigating Evidence for the Jury's Consideration, Depriving Her of a Fair Trial.

Ms. Pike's lead defense counsel, William Talman, had never handled a death penalty case before being appointed to represent Ms. Pike. Ex. Z, Post-Conviction Testimony of William

[17] The Commission has additionally previously relied upon the American Bar Association guidelines for presenting mitigation evidence in death penalty cases and emphasized the need to present "anything in the life of the defendant which might militate against the appropriateness of the death penalty for the defendant." American Bar Association, Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (Revised editions) (February 2003) http://www.abanet.org/legalservices/downloads/sclaid/deathpenaltyguidelines.pdf, Guideline 10.7 – Investigation., qtd. in *Moreno*, Case 12.430, at ¶ 49.

Talman, App. #4, Pg. #208. To make matters worse, he was joined by an even more inexperienced attorney, Julie Martin Rice, who was appointed on January 23, 1996, only fifty-five days before trial began. Ex. BB, Pretrial Motions Hearing Transcript January 19, 2006, App #5, Pg. #219–20. Prior to Ms. Pike's case, Rice had never handled a murder case, or even a case more serious than a class B felony such as aggravated robbery or assault. Ex. AA, Post-Conviction Testimony of Julie Martin Rice, App. #5, Pg. #12–14. Despite Rice's inexperience, Talman delegated to her the presentation of family witnesses—who would become the sole witnesses for the defense in the penalty phase of Ms. Pike's trial. Talman later justified this as a strategic decision, believing that a female attorney would provide a "softer appearance to the jury." *Id.* at Pg. #12. Yet at the time of Rice's appointment less than two months before the trial, she had not reviewed the extensive social history report prepared by mitigation specialist Dr. McCoy, nor had she met with the defense's psychologist, Dr. Engum. *Id.* at Pg. #23, 25–26. Despite her lack of preparation and assistance from lead counsel, Rice did not seek a continuance. In fact, her appointment was contingent on Rice's pledge to the trial court that she not seek a continuance. Ex. BB, Pretrial Motions Hearing Transcript January 19, 2006, App. #5, Pg. #219–20. Likewise, Talman also did not seek a continuance despite earlier opportunities, noting in the federal habeas evidentiary hearing, "In hindsight, there were a number of times I should have asked for a continuance in Christa's case, in honest reflection. Probably the number one time is when I got a plea offer. . . I should have asked for a continuance to try and possibly settle the case." Ex. II, Federal Habeas Testimony of William Talman, App #7, Pg. #198. At the time, Talman was confident[18] in his case

[18] The State offered Ms. Pike life without parole, reflecting a belief that death was not the only or the most just punishment for her. His confidence in his case, however, resulted in Talman's failure to meaningfully inform Ms. Pike about this offer.

and was convinced that the jury would have a hard time finding Ms. Pike to be capable of such a crime, just as he was,[19] so he did not believe they would sentence her to death.

Talman's approach to the penalty phase of Ms. Pike's case—the most important part of her trial, given the overwhelming evidence of her guilt—was haphazard and negligent. He pinned his entire case on the work of mitigation specialist Dr. Diana McCoy, who had compiled an extensive 3-volume social history report that included numerous interviews with family and friends of Ms. Pike as well as Ms. Pike's education and health records. Talman planned on calling Dr. McCoy as the sole defense witness at the penalty phase. *See* Ex. Z, Post-Conviction Testimony of William Talman, App. #4, Pg. #289; Ex. M, Post-Conviction Testimony of Dr. Diana McCoy, App. #3, Pg. #102, 128. But he failed to disclose Dr. McCoy's report to the prosecution until March 29, 1996–even though the report had been finalized five days earlier. Ex. M, Post-Conviction Testimony of Dr. McCoy, App. #3, Pg. #128. When he presented the social history at an unrecorded *in camera* meeting with both parties, the prosecution objected to the late disclosure. *Id.* at Pg. #127. Talman, flustered by the prosecution's objection to Dr. McCoy's testimony, called Dr. McCoy to say that he had lied to the court and prosecutors, and told them that he had only received the social history materials the night before. *Id.*

In reality, although the finalized version of the social history had been given to Talman five days earlier, the material contained in the report had been available to Talman for months. Dr. McCoy had repeatedly asked Talman when she should provide him the materials. During her post-conviction testimony, Dr. McCoy stated that Talman was not "in any hurry to get [the social history volumes]" and was going to "wait until the last possible minute to give it to the prosecutor." *Id.* at

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[19] During the federal habeas evidentiary hearing, Talman stated that he himself had trouble reconciling Christa's personality with her crime. He referred to her as a "sweet little girl" and repeated that "I was surprised when I met her that she was the person that was charged with this crime, because she just seemed so sweet." Ex. II, Federal Habeas Testimony of William Talman, App #7, Pg. #125.

Pg. #63. According to Dr. McCoy, this was a purposeful decision intended to fluster and upset the prosecutors: "It was kind of a joke that he was going to just give this to the prosecutor when Christa was found guilty and that would be really funny to see Bill Crabtree's [the lead prosecutor] reaction." *Id.* at Pg. #64. When this backfired and Dr. McCoy refused to corroborate the lie that he told the court, Talman panicked and decided not to have Dr. McCoy testify at all. Had Talman been more experienced, he would have known that under the Tennessee rules of evidence, counsel is only required to disclose material used by expert witnesses if it contains opinion evidence and if the expert witness is going to give their opinion during their testimony. Tenn. R. Evid. 703, 705. Since Dr. McCoy was not giving her opinion but rather background material on Ms. Pike's life, Talman actually did not need to disclose the social history volumes at all.

Having no other witnesses or backup plan for the penalty phase, Talman decided on the spot to call three witnesses from Ms. Pike's family that were in court that day: Ms. Pike's mother, father, and aunt. None of them were prepared to testify. Ex. G, Post-Conviction Testimony Carissa Hansen, App. #1, Pg. #422–23; 428; Ex. C, Post-Conviction Testimony of Carrie Ross, App. #1, Pg. #162-64; Ex. F, Post-Conviction Testimony of Glenn Pike, Pg. #355–56; Ex. M, Post-Conviction Testimony of Dr. Diana McCoy, App. #3, Pg. 129–30. All three of these people were complicit in Christa's abuse during her childhood and teenage years and thus had their own motives to downplay the tragedies Ms. Pike suffered during her lifetime. As a direct result of Talman's efforts to save his own reputation—rather than the life of his client—the jury never heard powerful mitigating evidence relating to Ms. Pike's history of trauma and abuse. This resulted in a very abbreviated penalty phase. The entire penalty phase of the case, including verdict, comprises only 121 pages of the trial transcript, and lasted barely a day.

During post-conviction proceedings, Talman gave a number of reasons to explain his sudden change in litigation strategy twelve hours before the penalty phase began, one of which was that that he was keeping the negative information uncovered in Dr. McCoy's report away from the jury. Ex. Z, Post-Conviction Testimony of William Talman, App. #4, Pg. #309. But because Talman had already given the social history materials to the prosecutorial team, they freely drew upon this negative information during cross-examination of Ms. Pike's family members without the benefit of having Dr. McCoy physically present to explain her findings and statements made by the family witnesses. Rice as co-counsel said that she attempted to do her best but admitted that she struggled without an expert to help her "connect the dots" between Ms. Pike's turbulent and abusive past and the violent behavior that brought her to trial. *Pike v. State*, No. E2009-00016-CCA-R3-PD (Tenn. Crim. App. Apr. 25, 2011) at 36.

Talman called a mental health expert to testify during the culpability phase of the trial—psychologist Dr. Eric Engum.[20] Ex. Z, Post-Conviction Testimony of William Talman, App. #4, Pg. #289. Dr. Engum had diagnosed Ms. Pike with borderline personality disorder based on his assessment of Ms. Pike at the time. But his diagnosis—which was problematic for reasons outlined below—failed adequately to explain Christa's actions at the time of the crime. Without Dr. McCoy's testimony to explain how Ms. Pike's family background exacerbated her mental illnesses, the jury was deprived of important context for Dr. Engum's testimony. Evidence and examples of how Ms. Pike's mental illnesses affected her life became another set of "unconnected dots" that Rice could not explain.

[20] Dr. Engum, although a practitioner of both Neuropsychology and Forensic Psychology, was never certified in either subject by the Board of Examiners of Psychology in Tennessee. He is, however, certified in Clinical Psychology. Ex. W, Trial Testimony of Dr. Eric Engum, App. #4, Pg. #91.

For his part, Dr. Engum misread the symptoms of Ms. Pike's Bipolar Disorder and Post-Traumatic Stress Disorder. These illnesses were only discovered years later, when her post-conviction counsel conducted an in-depth social history investigation and provided that information to mental health experts. In post-conviction proceedings, Dr. William Kenner, a psychiatrist, interviewed Christa eight times and consulted other mental health professionals. Ex. I, Post-Conviction Testimony of Dr. Kenner, App. #2, Pg. #76. After his clinical evaluations and review of her life history, Dr. Kenner concluded that Ms. Pike suffers from Bipolar Disorder. Ex. I, Post-Conviction Testimony of Dr. Kenner, App. #2, Pg. #76, 85–86. This diagnosis was confirmed when Ms. Pike was experimentally put on lithium carbonate, which is commonly used to stabilize individuals with Bipolar Disorder. Ms. Pike reported feeling significantly less irritable and uncomfortable on lithium. The success of this medication regimen disproved Dr. Engum's previous diagnosis of borderline personality disorder.[21] *Id.* at Pg. #211.

Dr. Jonathan Pincus, the Chief of Neurology at the Veterans Administration Hospital in Washington D.C., and a Professor of Neurology at Georgetown University School of Medicine, also testified during post-conviction proceedings. He noted that not having access to the social history would have "crippled" Dr. Engum's ability to provide an accurate diagnosis. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #129. Dr. Engum, as well as Dr. McCoy and Dr. Bernet, the other two experts Talman consulted for Ms. Pike's case, were

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[21] Dr. Kenner opined that the reason why Dr. Engum misdiagnosed Ms. Pike is simply because he did not have enough contact with Ms. Pike over a long enough period of time to get a full picture of her mental health status. Ex. I, Post-Conviction Testimony of Dr. Kenner, App. #2, Pg. #135–36 (describing the need of mental health professionals to observe individuals through manic cycle periods in order to accurately diagnose). Dr. Engum's report was also missing crucial information from the social history volumes Dr. McCoy had prepared, which Dr. Kenner noted as being unusual and could only be attributed to Dr. Engum's lack of access to those materials. *Id.* at Pg. #80. Dr. McCoy also confirmed during post-conviction proceedings that she only made three copies of the social history in addition to her own copy: enough to give one copy each to Talman, to the judge, and to the prosecution. Ex. M, Post-Conviction Testimony of Dr. McCoy, App. #3, Pg. #59.

completely isolated from one another and communicated solely through Talman. They had very little access to each other's materials and were unable to efficiently communicate what they had learned, which Dr. Kenner noted was not the usual practice for expert teams. Ex. I, Post-Conviction Testimony of Dr. Kenner, App. #2, Pg. #79–80.

Dr. Engum's diagnosis indicated that he either had no access to the social history volumes or had failed to read them. In his post-conviction testimony, Dr. Kenner was able to point to several textbook examples of common bipolar symptoms. For example, Ms. Pike had been suffering from long periods of insomnia and trouble sleeping accompanied by periods of manic energy throughout her life, and this was well known by her friends and family. *Id.* at Pg. #86–87. These cycles of sleep deprivation were accompanied by irritability. *Id.* at 6784. Many of Ms. Pike's associates commented that she seemed to experience severe mood swings and could go from "zero to 100." Ex. JJ, Post-Conviction Testimony of Orlando Powell, App. #7, Page #207–08. *See also* Ex. P, Post-Conviction Testimony of Kristina Hargis, App. #3, Pg. #360; Ex. R, Post-Conviction Testimony of Debby Burchfield, App. #3, Pg. #411–12; Ex. N, Post-Conviction Testimony of Onas Perry, App. #3, Pg. #308. Dr. Kenner also noted that what her parents sometimes characterized as reckless behavior was sparked by a sense of grandiosity and imperviousness to harm that is symptomatic of Bipolar Disorder-affected individuals during manic periods, and is far beyond the usual adolescent's sense of untouchability. Ex. I, Post-Conviction Testimony of Dr. Kenner, App. #2, Pg. #92. This sense of invulnerability, in addition to the impulsivity that characterizes individuals with Bipolar Disorder, leads to rash decision-making. *Id.* at Pg. #89. The flip side of these cycles of mania is depression, which Dr. Kenner said explains Ms. Pike's three suicide attempts during her adolescence. *Id.* at Pg. #90.

In addition to failing to present adequate and accurate evidence of Ms. Pike's mental illnesses, Talman also failed to investigate clear signs of Ms. Pike's extensive brain damage. For example, Dr. McCoy's social history revealed that Ms. Pike's mother, Carissa Hansen, recognizes that she has had a dependency on alcohol for most of Ms. Pike's upbringing. Ex. H, Dr. McCoy Social History Synopsis, App. #2, Pg. #13. Ms. Pike's father, Glenn Pike, not only confirmed this, but also added that he did not recall Hansen stopping her drinking habits during her pregnancy. *Id.* at #16, 22. Ms. Pike's half-sister, Alicia Wills, also recalls her mother drinking a lot during their childhood, even with her two young daughters around. Ex. D, Post-Conviction Testimony of Alicia Wills, App. #1, Pg. #281. Ms. Pike was also born prematurely after Carissa, a nurse, was shoved at work and fell through swinging doors, landing on a supply cart. She began leaking amniotic fluid and went into labor shortly thereafter. Ex. G, Post-Conviction Testimony of Carissa Hansen, App. #1, Pg. #432–33.

With Ms. Pike's premature birth and strong evidence that Carissa drank heavily during pregnancy, Talman should have suspected that Ms. Pike might have suffered brain damage while in the womb on this basis alone. But Ms. Pike's behavior as a child was also consistent with brain damage. Family members testified that she would "blank out" when given instructions and did not seem to understand what people wanted her to do. Ex. C, Post-Conviction Testimony of Carrie Ross, App. #1, Pg. #185–87; Ex. D, Post-Conviction Testimony of Alicia Wills, App. #1, Pg. #270–71. Ms. Pike also suffered from epileptic seizures as a child, prompting doctors to give her an electroencephalography (EEG) test when she was 14 months old. Ex. LL, Electroencephalography Records of Christa Pike, App. #6, Pg. #230; Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #38. In postconviction proceedings, Dr. Pincus explained that the results of the EEG were "abnormal"; they showed high voltage spikes

coming from her right frontal temporal lobe and were indicative of damage there. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #38. Yet Talman failed to follow up on this evidence or present it to the jury.

In post-conviction proceedings, Dr. Pincus explained that the abnormal results of Ms. Pike's EEG pointed to a heterotopia in her right frontal temporal lobe, which he also corroborated by conducting an MRI scan on Ms. Pike. The heterotopia was visible on Ms. Pike's MRI scans to the naked eye, which was remarkable because most heterotopia are only visible on an MRI scan through a microscope. *Id.* at Pg. #42. The visibility of this particular heterotopia implies much more extensive and networked damage through Ms. Pike's brain that would not be visible on an MRI, according to Dr. Pincus. *Id.* at Pg. #42–43. In his assessment of Ms. Pike's brain, Dr. Pincus said, "Her frontal lobes aren't put together properly. One of the more important features of the frontal lobes is moral and ethical standards, the ability to say, 'No, don't say that; no, don't do that' to yourself." *Id.* at Pg. #41.

After conducting a physical examination of Ms. Pike, Dr. Pincus added that she also had damage to the basal ganglia at the center of her brain, which influence movement and thinking. *Id.* at Pg. #32. Thus, Ms. Pike suffers from a devastating combination of both brain damage and mental illness that prevents her from making good decisions. Her brain damage prevents her from learning moral standards and aligning her behavior accordingly, compromising her ability to conform to societal ethical ideals potentially before she was even born. This evidence, had it been presented to the jury alongside her abusive upbringing and mental illness, would have enabled the jury to empathize with the teenager who sat before them, whose violent behavior was attributable to brain damage and mental illness she was powerless to control. Had the jury been able to hear her complete story, they would have had been able to understand the context of her history of abuse

and trauma. This evidence would have been profoundly humanizing, providing a convincing alternative to the prosecution's clichéd portrait of Ms. Pike as a promiscuous, drug-addled teenager who was beyond redemption.

Without this evidence, Talman offered a pathetic rationale for not sentencing Ms. Pike to death: he argued that the jury should sentence Ms. Pike to life imprisonment to deny her need for "notoriety." Ex. MM, Sentencing Phase Opening Argument, App. #7, Pg. #236–237.

C. The State Knew About Her Defense Counsel's Incompetence and Personal Ethical Failings, and Nonetheless Appointed Him to Represent Her in a Capital Proceeding.

While he was defending Ms. Pike in her capital murder trial, Talman was facing ethical misconduct allegations for fraud against the Indigent Defense Fund by overbilling in excess of $67,000. He frequently charged the Fund for more than twenty-four hours in a day and was under investigation by the Tennessee Board of Personal Responsibility. Ex. NN, Comptroller's Report, App. #8, Pg. #16–18. Talman did inform Ms. Pike of this conflict at the outset, but as a mentally ill eighteen-year-old, she was not able to appreciate the consequences of what he was telling her. One day after the Tennessee Supreme Court denied a rehearing in Ms. Pike's capital case, the Board of Professional Responsibility stripped Talman of his law license for eleven months and twenty-nine days. He also paid a fine of $67,000. Ex. OO, Tennessee Board of Professional Responsibility Report, App. #6, Pg. #34.

In Tennessee, when lawyers are implicated in ethical conflicts, they are obligated to subsequently report themselves to the Board of Professional Responsibility, as Talman did in his own case. Ex. Z, Post-Conviction Testimony of William Talman, App. #4, Pg. #218. The Board of Professional Responsibility then presented a settlement offer to the Tennessee Supreme Court for Talman, the result of which was that he paid fines in the amount of $67,000. These facts were known to all of the members of the court during Ms. Pike's murder trial. In fact, the prosecutorial

team pursuing charges of murder against Ms. Pike was the same prosecutorial team then deciding whether or not to press criminal charges against Talman himself for his theft. He thus had his own personal reasons to appease the prosecution, which may well have factored into his decision to first ask Dr. McCoy to corroborate his lies to the trial court and prosecution, and then not to call her at all as a witness. The trial court judge, Judge Leibowitz, was also aware of Talman's misconduct at the time of trial. During post-conviction proceedings, Judge Leibowitz admitted, "[Talman] did have a problem, and I think it was generally known in the courts in Knox County ... I knew; we all knew Mr. Talman had his own problems." Ex. PP, Post-Conviction Testimony of Judge Leibowitz, App. #8, Pg. #117. Knowing of his personal conflicts and ethical issues, as well as his general inexperience with capital cases, the State still appointed Talman to represent Ms. Pike in a highly publicized murder trial.

By failing to provide adequate legal counsel and then by failing to protect her from her defense counsel's inadequacies, the United States violated Ms. Pike's rights to a fair trial and due process of law under Art. XVIII and XXVI of the American Declaration.

III. THE UNITED STATES VIOLATED ARTICLES I, XVIII, AND XXVI OF THE AMERICAN DECLARATION, AS WELL AS CUSTOMARY INTERNATIONAL LAW, BY SENTENCING CHRISTA PIKE TO DEATH DESPITE HER SEVERE MENTAL ILLNESS AND HER AGE AT THE TIME OF HER CRIME.

At the time of the crime, Christa Pike was an eighteen-year-old girl living with brain damage, untreated mental illness, and a history of trauma and abuse. In sentencing her to death, the United States has elected to execute one of its most vulnerable, a decision completely at odds with international law and the protections guaranteed in the American Declaration. To be explicit, Ms. Pike's mental illness and brain damage mean that executing her would contravene her right to humane treatment, and her right to be free from cruel, infamous or unusual punishment.

Furthermore, her functional juvenile status at the time of her crime means that executing her would be an arbitrary deprivation of life contrary to Article I.

A. Christa Pike Suffers from the Brain Damage and Severe Mental Illness, Such that Executing Her Would Be Inhumane, and Cruel, Infamous or Unusual Punishment.

Under the strict standard of review inherent in this Commission's judgment, the execution of a mentally ill, brain damaged survivor amounts to cruel or inhumane treatment. When reviewing the standard inherent in Articles XXV and XXVI, this Commission should note the broad consensus that States may neither sentence individuals to death nor execute them if they suffer from mental disabilities. The Human Rights Committee (HRC) has ordered States to refrain from imposing death sentences on individuals with "serious psycho-social and intellectual disabilities." General Comment No. 36 (2018) on Art. 6 of the International Covenant on Civil and Political Rights, on the Right to Life, U.N. Doc. CCPR/C/G/36, ¶ 49 (Human Rights Committee, Oct. 30, 2018). Further, the HRC made clear in *Sahadath v. Trinidad and Tobago* that the issuance of an execution warrant in the case of a mentally ill prisoner violated Article 7 of the ICCPR. *Sahadath v. Trinidad and Tobago*, Communication No. 684/1996, U.N. Doc. CCPR/C/74/D/684/1996 ¶ 7.2 (Human Rights Committee, Apr. 15, 2002). Similarly, the UN Human Rights Commission has repeatedly called upon States that retain the death penalty "[n]ot to impose the death penalty on a person suffering from *any* form of mental disorder." UN Commission on Human Rights Res. 1999/61, Question of the Death Penalty (28 Apr. 1999) (available at: https://www.refworld.org/docid/3b00f03e40.html); UN Commission on Human Rights Res. 2000/65, Question of the Death Penalty (27 Apr., 2000) (emphasis added) (available at https://www.refworld.org/publisher,UNCHR,RESOLUTION,,3b00f29a14,0.html). And the UN General Assembly has repeatedly urged States not to impose capital punishment on individuals suffering from "mental or intellectual disabilities." *See, e.g.*, G.A. Res. 69/186, (Dec. 18, 2014).

Christa Pike has lived through horrors that most people never have to face. Those challenges began before her birth and carry through to this day. Together, the facts of her life make abundantly clear that executing her would contravene any semblance of humane treatment.

Christa Pike has a damaged brain. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #41. Due to her mother's drinking, Christa grew up with a frontal lobe that was not "put together properly." *Id.* Dr. Pincus also identified a "subcortical dysfunction involving the basal ganglia and possibly the thalamus." *Id.* at Pg. #35. The first manifestation of this impairment was an onset of epilepsy at fourteen months. *See id.* at Pg. #38. Yet the true damage was to Christa's development and growth.

The frontal lobe regulates "moral and ethical standards." *Id.* at Pg. #41. Essentially, it allows a person to regulate their behavior. *See id.* When the frontal lobe isn't working properly, it's as if the mind is operating without brakes. *Id.* at Pg. #69–70. Yet the impact isn't limited to behavior; an impaired frontal lobe stunts moral and ethical learning. *Id.* at Pg. #41. Someone with a damaged frontal lobe may struggle to understand instructions, or to internalize moral teaching. *See id.* For Christa, this impediment meant that she couldn't understand basic instructions as a child, prompting the adults in her life to beat her.

Christa's impediments were both neurological and psychological. Before she received treatment, her bipolar disorder meant that she was always living at extremes. During her "hypomanic" periods, she would go days without eating or sleeping, sometimes as many as four days without more than ninety minutes of sleep here and there. *Id.* at Pg. #70–71. During this period, she would feel completely "invulnerable," as if she could do anything, uninhibited by "what is allowed in society." *Id.* at Pg. #42.

Yet that invulnerability was accompanied by an escalating erosion of mental control. Her thoughts would race, and she would be governed by impulsivity and irritability. Ex. I, Post-Conviction Testimony of Dr. William Kenner, App. #2, Pg. #89–90. Her decision making would be compromised, untethered by her simultaneous inability to focus and feelings of "omnipotence and grandiosity." *Id.*

Because of her bipolar disorder, the mental distortion of Christa's hypomania alternated with periods of debilitating and severe depression. After days of rampant insomnia and hyperactivity, Christa would spend fourteen to eighteen hours in bed. Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #71. In this state, Christa would be completely depleted, emotionally and physically. She would cry and turn her thoughts to suicidal ideation. *Id.* at Pg. #72. Her weight would fluctuate, going from 92 to 170 pounds. *Id.* at Pg. #71. Most importantly, she had neither internal mental stability nor consistency. Depression is not a period of rest; it is internal self-torture.

Christa lived like this until she finally received adequate medical treatment whilst incarcerated. Her reaction to that treatment is itself illustrative. Dr. Kenner noted that she has a "new capacity to reflect on her thoughts and feelings." Ex. I, Post-Conviction Testimony of Dr. William Kenner, App. #2, Pg. #117. Most significantly, her "moods had begun to make sense to her for the first time that she could recall." *Id.*

As if her bipolar disorder was not enough, Christa also suffers from post-traumatic stress disorder (PTSD), a byproduct of her childhood, and Obsessive-Compulsive Disorder (OCD). *See id.* at 197-202; Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #142–44. To experience PTSD means to relive the original trauma. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 309.81 (F43.10) (5th ed. 2013). It

is a re-infliction of pain upon the mind. This internal instability is then exacerbated by Ms. Pike's OCD. Dr. Pincus noted that "people with OCD have thoughts of the violent kind that she has, and they keep coming again and again." Ex. B, Post-Conviction Testimony of Dr. Jonathan Henry Pincus, App. #1, Pg. #142. Her own mind is a source of disruption, terror, and powerlessness.

Ms. Pike's mental illness and brain damage cannot be separated from the cruel neglect and abuse inflicted by her caregivers. Together, these facets of her life produce a unique vulnerability; executing her violates any semblance of humane treatment.

B. Because of the Functional Equivalence Between a Seventeen-Year-Old and Christa Pike at the Age of Her Offense, Executing Her Amounts to an Arbitrary Deprivation of Life.

There is now no question that the prohibition on executing adolescents is a universally applicable *jus cogens* norm. *Michael Domingues v. United States*, Case 12.285, Inter-Am. Comm'n H.R., Report No. 62/02, doc. 5 rev.1 ¶ 85 (2002). In addition to the innate cruelty of executing a child, caselaw discussing the prohibition on executing adolescents recognizes that people below the age of eighteen cannot be reliably culpable for the kind of crimes that trigger the death penalty. *See Roper v. Simmons*, 543 U.S. 551, 568–69 (2005). In its seminal decision, *Roper v. Simmons*, the United States Supreme Court noted three general differences that differentiated adolescents from adult offenders: (1) a lack of maturity and an underdeveloped sense of responsibility, (2) a heightened vulnerability to negative influences and outside pressure, and (3) the transitory and unsettled character of juveniles. *Id.* at 569–70. The assumption at the heart of this categorical prohibition is that all children become adults at the same time. This assumption is rejected by modern scientific research.

A recently published article surveyed empirical studies assessing the psychological and neurological development of adolescents for any perceived uniformity. *See generally* B.J. Casey

et al., *Healthy Development as a Human Right: Insights from Developmental Neuroscience for Youth Justice*, 16 ANN. REV. L. & SOC. SCI. 203 (2020). In fact, the article noted that: (1) adolescents have a protracted psychological development, differing substantially from the generally uniform psychological ability of adults; and (2) different psychological capacities (whether cognitive, emotional, or social) mature at different ages. *Id.* at 211–16. The article noted that as to both psychological and neurological development, empirical data conclusively demonstrates that not all children become adults at the same time. *Id.*

The authors canvassed empirical testing on the development of cognitive and psychosocial abilities. *Id.* at 221. Although the "developmental asymptote in cognitive performance" was reached at sixteen or seventeen, "socioemotional abilities did not plateau until the early twenties." *Id.* In concluding, the authors rejected a "magical age when all psychological capacities mature." *Id.* Instead, they note simply that "different psychological abilities mature at different ages," reaching into the "early twenties." *Id.*

This finding was mirrored in the authors' review of data on neurological developments. Specifically, the authors proposed a hierarchical understanding of adolescent brain development. *Id.* at 214–15. Adolescents transition through stages of neurological development, progressively attaining adulthood at their individual pace. *Id.* As with the psychosocial and cognitive data, the authors note that empirical data on neurological development "contrasts sharply with the assumption of the age-of majority model that. . . people are magically endowed with full adult capacity by their eighteenth birthday." *Id.* The significance of this data is that even a healthy individual, raised in a stable environment, may only reach cognitive maturity or adulthood in their early twenties.

The conclusion of scientific research is that an eighteen-year-old may be functionally equivalent to someone exempted from execution by a *jus cogens* norm. That equivalence is heightened here, given Christa's extensive and profound vulnerabilities. Accordingly, to execute her would be nothing less than arbitrary deprivation of life contrary to Article I. This conclusion is bolstered by the State's decision to seek a life sentence[22] in the case of Christa's equally, if not more culpable co-defendant, Tadaryl Shipp, who was only seventeen years old at the time of the offense.[23]

IV. BY HOLDING CHRISTA PIKE IN PROLONGED SOLITARY CONFINEMENT ON DEATH ROW FOR 23 YEARS, THE UNITED STATES HAS SUBJECTED HER TO CRUEL, INFAMOUS AND UNUSUAL PUNISHMENT AND INHUMANE TREATMENT IN VIOLATION OF ARTICLES XXVI AND XXV IN THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN.

The confinement of Christa Pike is an illustration of institutionalized cruelty. Relegating a mentally ill person to twenty-three years on death row is, by itself, a stark example of cruel, inhuman, or degrading treatment. That she has undergone this punishment entirely in solitary confinement means the United States has subjected her to torture in violation of international law.

A. Christa Pike Has Spent the Last Twenty Years in the Most Extreme Form of Solitary Detention Available in Tennessee.

By January 2021, Christa Gail Pike will have spent twenty-four years in solitary confinement awaiting execution. As Tennessee's only female death row inmate, the Tennessee

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[22] The State sought life without the possibility of parole for Tadaryl Shipp. The jury sentenced him to life.

[23] Further, this case highlights the arbitrariness of the US cutoff at age 18. See *Pike v. Gross*, 936 F.3d 372, 382–86 (2019) (Stranch, J., concurring). Judge Stranch recognized that Christa's case "presents an issue with which our society must be concerned—whether 18-year-olds should be sentenced to death. Had she been 17 rather than 18 at the time of her crime, like her codefendant Tadaryl Shipp, Christa Pike would not be eligible for the death penalty." Id. at 383. Accordingly, Judge Stranch noted her belief "that society's evolving standards of decency likely do not permit the execution of individuals who were under 21 at the time of their offense." Id. at 385. However, within the strictures of AEDPA, the court was powerless to grant relief based on those principles. This Commission is not similarly constrained.

Department of Correction (TDOC) has deliberately chosen to keep Ms. Pike in permanent solitary confinement, depriving her of human contact and enforcing living conditions that no human being should endure.

When Ms. Pike received her original sentence, she was assigned to a prison system that did not have a female death row ward. Instead of keeping Ms. Pike in general population, TDOC adopted a new policy, mandating that inmates under a sentence of death be housed in Maximum Security Administrative Segregation.[24] *See* Ex. QQ, Tennessee Department of Corrections Housing Policy, App. #8, Pg. #125 ("The purposeful separation of inmates…under the sentence of death."). She has been in solitary confinement ever since.[25]

For the last twenty-three years, Ms. Pike has spent twenty-two to twenty-three hours a day in a room smaller than a parking space. Ex. RR, Affidavit of Dr. Ali Winters, App. #8, Pg. #133. Her cell is part of a pod of twenty-four other cells, with cells like Christa's blocked from the outside world with a plate of glass covering their steel doors. *Id.* at Pg. #132–33. Those doors have a small window that allows constant, bright florescent light to shine through, and a small unlockable flap to deliver food. *Id.* Inside, there is a narrow bed with a small round seat connected to a pole at its foot. *Id.* at Pg. #133. There is a small desk, a bookcase, a sink, and a toilet. *Id.* All the furniture is metal and bolted to the floor. *Id.* Ms. Pike's cell has one small outward facing slit in the wall, three

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[24] Ms. Pike was originally put in general population after her conviction and then moved to solitary confinement for punitive reasons within the first year of her conviction. While she was in solitary confinement, the TDOC enacted a policy relegating female death row inmates to mandatory segregation. She has been in solitary confinement ever since. *See* Ex. RR, Affidavit of Dr. Ali Winters, App. #8, Pg. #132.

[25] In 2001, Ms. Pike was charged with attempted murder for an altercation with another prisoner during a fire evacuation. *See* Ex. RR, Affidavit of Dr. Ali Winters, App. #8, Pg. #132. This incident happened twenty years ago, and punitive segregation for two decades could never be justified under international human rights law. G.A. Res. 70/174, the Nelson Mandela Rules at Rule 45(1) (Dec. 17, 2015) ("Solitary confinement shall only be used in exceptional cases as a last resort…").

to four feet tall and three to four inches wide. *Id.* If she tilts her head slightly, Ms. Pike can see the outside world. *Id.*

Ms. Pike is allowed outside of her cell three times a week to shower and five times a week to participate in an hour of "recreation." *Id.* This means that she usually spends at least twenty-three hours a day trapped in the small room; she cannot leave at all on weekends. *Id.* "Recreation" means being escorted by guards, chained and manacled, to a cage—a sort of human kennel—no bigger than her cell just outside of the prison. *Id.* Once she is in the cage, her manacles and chains are removed, and the door is locked behind her. *Id.* The hour the prison gives her to pace in an outdoor cage is Ms. Pike's only chance to speak directly to other inmates who may be in nearby cages at the same time. *Id.*

Those inmates are not fellow death row detainees, but women the prison has punitively, administratively, or protectively sanctioned or confined. *See id.* at Pg. #133–34; *see also See* Ex. QQ, Tennessee Department of Corrections Housing Policy, App. #8, Pg. #125. This includes people who suffer from extreme mental illness or psychosis, people who are at dire risk of suicide, people who cannot be safely detained with the general prison population, and people the prison is punishing for behavioral infractions. These prisoners, who may be in one of the other cells in Ms. Pike's pod, cycle through solitary sometimes for years, but usually for fifteen days or less. Ex. RR, Affidavit of Dr. Ali Winters, App. #8, Pg. #133–34. None have ever come close to nearing Ms. Pike's time in solitary.

Ms. Pike has used her permanent position in solitary confinement to advocate for her fellow inmates, particularly those who are older or in need of medical assistance. *Id.* at Pg. #134. She frequently lobbies guards, medical staff, or even the warden to get ailing inmates the medical attention they need. *Id.* If she cannot attract the attention of a nearby guard, she will bang on her

cell window until someone notices. *Id.* Her mental health care provider, Dr. Winters, noted that "one of Christa's most critical interests is to get older inmates the medical care that they need." *Id.* Indeed, when a new inmate arrives in her pod, Ms. Pike will often send them a packet of coffee as a gesture of friendship. *Id.*

1. *This confinement has caused irreparable damage to Ms. Pike's psychological, emotional, and physical well-being.*

Despite the wealth of empirical studies on the effects of solitary confinement, no one truly knows what twenty-three years in solitary confinement does to a human being. This kind of cruelty is not subject to scientific testing. Nonetheless, as Dr. Winters notes, Ms. Pike's prolonged solitary confinement has had an irreparable impact on her psychological, emotional, and physical well-being. *Id.* at Pg. #135.

As is typical in severe, prolonged solitary confinement, Ms. Pike's senses have been cruelly warped by her experience. *Id.* She no longer has long-distance vision due to the prolonged exposure to the small, cramped dimensions of her cell. *Id.* She has also lost all sensitivity to light due to the permanent beam of fluorescent light that shines through her doorway. *Id.* At the same time, she has developed a hypersensitivity to sound and smell. *Id.* She can now hear noises from across the pod, even through the glass plate that covers her steel door to muffle her connection to the outside world. *Id.* She cannot tolerate intrusion or change, and becomes distressed if a guard so much as changes his aftershave. *Id.* She rarely has access to the touch of another human being and has not had physical contact with anyone who was not a guard or a doctor since 2016. *Id.* at Pg. #137.

These physical changes are merely the outward expression of the transformative, torturous effect of Ms. Pike's prolonged solitary confinement. Ms. Pike suffers from multiple, severe mental illnesses that have all been severely exacerbated by her prolonged solitary confinement. *Id.* at Pg.

#135–36. Dr. Winters observes that Ms. Pike has lost all ability to concentrate or focus, has rapid and explosive mood changes, and displays consistent emotional instability. *Id.* at Pg. #136. Her life is punctuated by cycles of hypomanic agitation where she will pace endlessly through her cell, bang on her door, or convulse and tense her whole body. *Id.* Those sleepless, manic phases alternate with periods of depression characterized by hopelessness, powerlessness, tearfulness, and thoughts of suicide.[26] *Id.*

Because of her pre-existing trauma, neglect, and mental illness, Ms. Pike was already a vulnerable figure when the state subjected her to permanent solitary confinement at the age of twenty. As Dr. Stuart Grassian noted when evaluating the impact of solitary confinement on Ms. Pike's mental health in 2001:

> She is an individual with a history of severe childhood sexual and physical abuse, whose emotional development and experience has often been chaotic, explosive and volatile. Powerful emotion can overwhelm a vulnerable person's capacity to reason, reflect, and choose; even without the added dimension of solitary confinement, such individuals generally have an enormously difficult time tolerating stress – often reacting explosively, blinded by rage and fear, and without reason.[27]

Ex. X, Report of Dr. Stuart Grassian, App. #4, Pg. #151. Dr. Grassian further noted that as an individual who has "grown up with a profound experience of childhood abandonment," Ms. Pike "has a particular difficulty tolerating feelings of attachment, dependency, and abandonment." *Id.*

[26] Ms. Pike's most recent suicide attempt was in July of 2020. After a mental breakdown, she slit her wrists during the night.

[27] Dr. Grassian was retained by Ms. Pike's defense team to evaluate Ms. Pike after she tried to drop her appeal in 2001. Ms. Pike was twenty-five at the time and had, as Dr. Grassian noted, "been housed continuously in the segregation unit at the Nashville Women's Prison…. ever since she was 19 years old…almost exclusively in 23-hour lock up." Ex. X, Report of Dr. Stuart Grassian, App. #4, Pg. #150. Ms. Pike's attorneys retained Dr. Grassian to assess whether Ms. Pike's decision to drop her appeal and ask the state to set a date for her execution had been the function of her impaired decision-making, undermined by "the severe stress of prolonged solitary confinement." *Id.* at Pg. #157. Dr. Grassian ultimately concluded that these concerns were "well-founded." *Id.*

For her, these feelings are "terrifying and disorganizing . . .[and] can become blinding, screaming[,] all-consuming." *Id.*

In the nineteen years since that statement was written, Ms. Pike has lived in solitary confinement near psychotic, mentally ill, violent individuals who cycle through her environment in periods ranging from fifteen days to a couple years. She is frequently exposed to people who suffer from severe psychosis and are at high risk of suicide, all while navigating her own mental illness, and in permanent contemplation of her impending execution.

2. *Ms. Pike's solitary confinement results from an institutional policy of gender discrimination.*

All this stems from an institutional policy of applied gender discrimination. Men on death row are housed together, outside of solitary confinement. They are allowed to work and have regular access to their spiritual advisors and their legal teams with contact visits. In stark contrast, Ms. Pike has not had consensual human contact in more than four years. Ex. RR, Affidavit of Dr. Ali Winters, App. #8, Pg. #137. In the brief period where she was allowed to work cleaning parts of the prison, she did so while manacled and supervised by two attending guards. When she tried to negotiate better access to work with the warden, the warden dismissed her and said to a passing guard, "The bitch wants me to let her out. I'll let her out when they come to kill her."[28]

B. Prolonged Solitary Confinement Constitutes Torture.

In 2015, the United Nations adopted the revised Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules) to provide a minimum threshold of acceptable treatment of prisoners consistent with international law. G.A. Res. 70/174, the Nelson Mandela

[28] In 2019, Ms. Pike submitted an internal Title IX grievance complaint to the prison warden. *See* Ex. SS, Title IX Complaint Filed Oct. 6rh, 2019, App. #8, Pg. #144. Ms. Pike noted in her complaint that male death row inmates are allowed to have contact visits with their legal teams, free access to spiritual advisors, and are allowed to work. *Id.* at Pg. #141. Ms. Pike is denied access to all of these basic rights. Yet the most glaring inequality is the one that goes to the heart of Ms. Pike's detention; male death row inmates are not sentenced to permanent solitary confinement.

Rules (Dec. 17, 2015). In addition to condemning both prolonged and indefinite solitary confinement as examples of torture or cruel, inhuman or degrading punishment, the Rules defined solitary confinement:

> [S]olitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

Id. Rule 44 at 17/33. The Rules go on to note that solitary confinement should only ever be used "in exceptional cases as a last resort, for as short a time as possible…It shall not be imposed by virtue of a prisoner's sentence." *Id.* Rule 45 at 17/33.

There is no dispute that Ms. Pike has been subjected to solitary confinement for the entirety of her incarceration. As noted above, she remains in her cell for 22-24 hours a day every weekday and does not leave at all on weekends. Disturbingly, the functional outcome of the TDOC policy mandating her segregation is that she has suffered permanent solitary confinement "by virtue" of her sentence.

1. *International human rights tribunals and experts agree that these conditions constitute torture.*

The right to humane treatment protects against gradations of impermissible state behavior including torture and cruel, inhuman or degrading treatment. Here, the United States' treatment of Ms. Pike, a mentally ill, brain-damaged trauma survivor, is nothing less than torture.

This Commission has already recognized that twenty years of solitary confinement on death row constitutes "a form of torture." *Victor Saldaño v. United States*, Case 12.254, Inter-Am. Comm'n H.R., Report No. 24/17, OEA/Ser.L/V/161, doc. 31 ¶ 252 (2017). In its *Saldaño* decision, this Commission noted that the sixteen years Victor Saldaño spent in solitary, in a confinement comparable to Ms. Pike's, inflicted a "severe and irreparable detriment" upon both his "personal integrity," and "especially, his mental health." *Id.* Indeed, Ms. Pike's case presents a graver set of

facts; by the time of this petition she will have spent seven more years in solitary confinement awaiting death than Victor Saldaño. *See id.* at ¶ 249.

The jurisprudence of the European Court on Human Rights is consistent with this approach. In *Ilașcu and Others v. Moldova and Russia*, four Moldovan political activists were convicted of murder; Mr. Ilașcu was sentenced to death and held in solitary confinement for eight years. *See generally Ilașcu and Others v. Moldova and Russia,* App. No. 48787/99 (July 8, 2004), https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-61886%22]} The applicants claimed, among other things, that their treatment was in violation of Article 3 of the European Convention. *Id.* at ¶ 419.[29] In evaluating whether the "severity" of the applicants' treatment violated Article 3, the Court conducted a case-specific analysis into the duration of the treatment, the physical and mental effects it had on the victims, and the specific traits of the victims themselves. *Id.* at ¶ 427. Citing *Soering*, the Court paid due regard to the specific psychological harm inherent in a prolonged period whilst awaiting death. *Id.* at 430 (citing *Soering v. the United Kingdom*, App. No. 14038/88, ¶ 104, (July 7, 1989), https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-57619%22]}. Further, the Court reiterated its position that "complete sensory isolation, coupled with total social isolation can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason." *Id.* at ¶ 432.

The Court ultimately found that Mr. Ilașcu had been subjected to torture in contravention of Article 3 of the European Convention. *Id.* at ¶ 440. In making this decision, it specifically noted the suffering Mr. Ilașcu endured whilst awaiting death in extreme solitary confinement. *Id.* at ¶¶ 435-36. The conditions of his confinement were particularly severe; he was unable to contact his

[29] Article 3 of the European Convention provides that: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

lawyer or receive visits from his family, and he was only able shower once a month. *Id.* at ¶ 438. The Court's decision underscored the psychological consequences of solitary under "the constant shadow of death," always "in fear of execution." *Id.* at ¶¶ 435–36. Ultimately the Court found that the combination of his death sentence and the conditions of his confinement met the standard for torture as prohibited under the European Convention.[30] *Id.* at ¶ 440.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment adopted this view of solitary confinement in his interim report to the General Assembly in 2011. He noted the specific violations at issue in prolonged solitary confinement:

> Given its severe adverse health effects, the use of solitary confinement itself can amount to acts prohibited by article 7 of the International Covenant on Civil and Political Rights, torture as defined in article 1 of the Convention against Torture, or cruel, inhuman or degrading punishment as defined in article 16 of the Convention.[31]

U.N. SECRETARY-GENERAL, INTERIM REPORT OF THE SPECIAL RAPPORTEUR OF THE HUMAN RIGHTS COUNCIL ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, U.N. Doc. A/66/28, ¶ 70 (2011).

In evaluating whether prolonged solitary confinement constitutes torture,[32] the Special Rapporteur recommends a case specific analysis, attentive to the "purpose of the application of

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[30] Of the remaining three applicants, the Court found that Mr. Ivanţoc had been subject to torture, and Mr. Leşco and Mr. Petrov-Popa had both had been subject to cruel, inhuman or degrading treatment. *See id.* at ¶¶ 447, 452. The Court noted that Mr. Ivanţoc was subject to solitary confinement from 1993 through to the Court's judgment while under a sentence of death in an unheated, badly ventilated cell. *Id.* at ¶¶ 444-45. The Court found that this constituted torture. *Id.* at ¶ 447. Regarding Mr. Leşco and Mr. Petrov-Popa, only Mr. Petrov-Popa was detained in solitary confinement, being confined there for the eleven years preceding the Court's decision. *Id.* at ¶ 451. This, coupled with the additional abuses such as denying food, discretionary visits from families, and denial of medical assistance, constituted cruel, inhuman or degrading treatment. *See id.* at ¶¶ 450-54.

[31] This is consistent with the conclusions of the Human Rights Committee, which noted in General Comment No. 20 that prolonged solitary confinement of a detainee may amount to acts prohibited by article 7. General Comment No. 20 (1992) on Art. 7 of the International Covenant on Civil and Political Rights, on the Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. HRI/GEN/1/Rev.9, ¶ 6 (Human Rights Committee, Mar. 10, 1992).

[32] The definition of torture itself comes from Article 1 of the Convention Against Torture, a treaty the United States has ratified.

solitary confinement, the conditions, length and effects of the treatment and, of course, the subjective conditions of each victim that make him or her more or less vulnerable to those effects." U.N. SECRETARY-GENERAL, INTERIM REPORT OF THE SPECIAL RAPPORTEUR at ¶ 71. In noting the length of solitary confinement that would amount to torture, the Special Rapporteur noted that "any imposition beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment, depending on the circumstances." *Id.* at ¶ 76.

In comparing Ms. Pike's confinement to the treatment at issue in *Saldaño* and *Ilașcu* and determining whether her treatment constitutes torture, three facts are determinative: (1) Ms. Pike has spent twenty-three years in solitary confinement, a period of time that violates all international standards[33] and is *per se* cruel, inhuman or degrading treatment; (2) Ms. Pike suffers from severe mental illnesses and a history of trauma that make her particularly vulnerable to the effects of prolonged solitary confinement; and (3) Ms. Pike has spent the entirety of her confinement awaiting death, an aggravating factor that carries its own psychological harm and exacerbates the severity of solitary confinement.

The duration of a person's solitary confinement is relevant when considering whether their treatment constitutes torture because of the profound harm innate to prolonged solitary confinement. Essentially, the longer an inmate remains in solitary, the greater their exposure to its harmful effects. Dr. Grassian has detailed the plethora of harmful effects resulting from solitary

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> For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed…

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art 1, Apr. 18, 1988, 1465 U.N.T.S. 85 (entered into force June 26, 1987).

[33] As this Commission has noted, "[i]n no instance should the solitary confinement of an individual last longer than thirty days." INTER-AM. COMM'N ON HUM. RTS.H.R., REPORT ON THE HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY IN THE AMERICAS, OEA/Ser.L/V/II. Doc 64, ¶ 411 (2011).

confinement. Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. UNIV. J.L. & PUB. POL'Y 325 (2006). As a threshold matter, he notes that although the psychological harm caused by solitary will vary based on the stability of the affected person, "all of the individuals will still experience a degree of stupor, difficulties with thinking and concentration, obsessional thinking, agitation, irritability, and difficulty tolerating external stimuli." *Id.* at 332. He enumerated the specific psychological symptoms that inmates may experience: hyperresponsivity to external stimuli; perceptual distortions, illusions, and hallucinations; panic attacks; difficulties with thinking, concentration, and memory; intrusive obsessional thoughts about violence; overt paranoia; and problems with impulse control. *Id.* at 335–36. Subjecting someone to solitary confinement means placing them in an environment that exposes them to these horrifying psychological harms. As Dr. Grassian notes, a greater exposure risks a "permanent" effect. See *id.* at 332.

This risk of permanent psychological damage is exacerbated when an inmate suffers from pre-existing mental illness. As Dr. Craig Haney has noted in his research on solitary confinement:

> Although in my experience, virtually everyone in these units suffers, prisoners with pre-existing mental illnesses are at a greater risk of having this suffering deepen into something more permanent and disabling. Those at greatest risk include, certainly, people who are emotionally unstable, who suffer from clinical depression or other mood disorders, who are developmentally disabled, and those whose contact with reality is already tenuous.

Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ 124, 142 (2003).

Ms. Pike suffers from both Bipolar Disorder and Severe Post-Traumatic Stress Disorder, and has developed Obsessive-Compulsive Disorder during the course of her confinement. *See* Ex. X, Report of Dr. Stuart Grassian, App. #4, Pg. #151 ("[Ms. Pike] has, since her incarceration in solitary, apparently developed a major psychiatric illness – Obsessive Compulsive Disorder.").

The impact of her pre-existing mental illness is two-fold. First, it means that she is acutely vulnerable to the effects of solitary confinement. *See* Grassian, *Psychiatric Effects of Solitary Confinement* at 348 (noting that psychologically vulnerable individuals are more susceptible to the harmful effects of solitary). Second, it means that her pre-existing symptoms will inevitably be exacerbated by her solitary confinement. *Id.* at 333 (noting that solitary confinement usually causes either severe exacerbation or recurrence of preexisting illness). Indeed, Dr. Winters concluded that, although Ms. Pike had already been suffering from her mental illness for years before she began treating her, "[s]olitary confinement has been ruinous for [her] mental health….All of the symptoms that she experiences from her illnesses are severely exacerbated." *See* Ex. RR, Affidavit of Dr. Ali Winters, App. #8, Pg. #135.

These vulnerabilities must be considered alongside Ms. Pike's confinement on death row, an experience that has been recognized as psychologically traumatic. Courts use the term "death row phenomenon" to describe the anxiety, dread, fear, and psychological anguish that often accompanies long-term incarceration on death row. *See* Note, *Mental Suffering Under Sentence of Death: A Cruel and Unusual Punishment*, 57 IOWA L. REV. 814, 814 (1972). The term gives expression to the unique mental distress triggered when a person has been sentenced to death and awaits her execution. Although death row phenomenon itself is not a medical diagnosis, the underlying symptoms may be detected through a clinical assessment.

The Commission itself has recognized death row phenomenon and the profound harm that comes when people are forced to wait for years for their own execution. *See* INTER-AM. COMM'N ON HUM. RTS., THE DEATH PENALTY IN THE INTER-AMERICAN RIGHTS SYSTEM: FROM RESTRICTIONS TO ABOLITION, REPORT ON THE HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY IN THE AMERICAS, OEA/Ser. L/V/II, doc. 68 ¶ 136 (2011); *see also*, *Julius Omar Robinson v.*

United States, Case 13.361, Inter-Am. Comm'n H.R., Report No. 210/20, OEA/Ser. L/V/II, doc. 224 ¶¶ 115–18 (2020). In *Bucklew*, the Commission canvassed international caselaw on death row phenomenon to ground its conclusion that twenty years on death row is facially inhumane, and amounts to cruel, infamous, or unusual punishment.[34] *Russell Bucklew v. United States*, Case 12.958, Inter-Am. Comm'n H.R., Report No. 71/18, OEA/Ser. L/V/II.168, doc 81 ¶ 91 (2018). Significantly, in *Bucklew*, *Robinson*, and *Saldaño*, the Commission emphasized that prolonged time on death row is conclusive evidence of a violation of the American Declaration.

> The Commission notes that the very fact of spending 20 years on death row is, by any account, excessive and inhuman, and is aggravated by the prolonged expectation that the death sentence could be executed.

Robinson, Case 13.361 at ¶ 118; *see also Bucklew*, Case 12.958 at ¶ 91 ("The very fact of spending 20 years on death row is, by any account, excessive and inhuman."); *Victor Saldaño v. United States*, Case 12.254, Inter-Am. Comm'n H.R., Report No. 24/17, OEA/Ser.L/V/161, doc. 31 ¶ 252 (2017) ("holding Victor Saldaño on death row for more than 20 years in solitary confinement has constituted a form of torture").

Indeed, this Commission has noted that four years alone is already too long, and amounts to inhumane treatment. *Aitken v. Jamaica*, Case 12.275, Inter-Am Comm'n H.R., Report No. 58/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 ¶¶ 133–34 (2002). At twenty-three years and counting, Ms. Pike's detention is a uniquely tragic example of the United States' impermissible and illegal treatment of one of its citizens.

[34] The Commission recognized the *Soering v. United Kingdom* decision by the European Court of Human Rights wherein the court noted the "anguish" caused by living in the "ever-present shadow of death." citing *Soering v. the United Kingdom*, App. No. 14038/88, ¶ 106, (July 7, 1989), https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-57619%22]}. Likewise, the Commission relied on *Pratt & Morgan*, where the Judicial Committee of the Privy Council noted that a lengthy delay between sentencing and execution constitutes "inhuman punishment." Indeed, the Privy Council noted that "in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute 'inhuman or degrading punishment or other treatment.'" *Pratt and Morgan v. Jamaica*, U.N. Doc. Supp. No. 40 (A/44/40) ¶ 77 (1989).

The convergence of these factors guarantees that Ms. Pike's treatment by the United States constitutes torture. Since she was twenty years old, all she has known is solitary confinement while awaiting a date with the executioner. Despite the unknowable torment and despair inherent in her isolation, she continues to battle against the state's attempts to end her life.

2. *The United States' treatment of Ms. Pike violates its obligations under numerous treaties and jus cogens norms prohibiting torture.*

As the Inter-American Court has noted, "[t]he absolute prohibition of torture, in all its forms, is now part of international *jus cogens*." *Cantoral-Benavides v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 69, ¶ 92 (Aug. 18, 2000). The International Court of Justice has also recognized that the prohibition against torture is a peremptory norm. *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, 2012 I.C.J. 139, ¶ 99 (July 20). In addition to the *jus cogens* obligation, torture presumptively violates the right to humane treatment under Article XXV and the right to be from cruel, infamous or unusual punishment under Article XXVI of the American Declaration on the Rights and Duties of Man.

Moreover, the United States has additional substantive obligations to refrain from the treatment at issue in Ms. Pike's case. This treatment violates Article V of the American Convention on Human Rights.[35] Furthermore, this treatment also violates Article 1 of the Convention against Torture, and Article 7 of the International Covenant on Civil and Political Rights, both of which have been ratified by the United States.

3. *At a minimum, the United States has violated Ms. Pike's right to humane treatment.*

[35] The United States has signed but has not ratified the American Convention on Human Rights. Nonetheless, it is still obligated to not defeat the object and purpose of the treaty under Article 18 of the Vienna Convention on the Law of Treaties. Vienna Convention on the Law of Treaties, art. 18, Apr. 24, 1970, 1155 U.N.T.S. 331 (*entered into force* Jan. 27, 1980). Subjecting an inmate to torture would violate the object and purpose of the American Convention.

If this Commission is unable to find that Ms. Pike's prolonged solitary confinement constitutes torture, it should at least find that her treatment violates her right to humane treatment under Article XXV of the American Declaration and her right to be free of cruel, infamous or unusual punishment. As, this Commission has explicitly recognized, twenty years on death row is "excessive and inhuman" and amounts to a *per se* violation of Articles XXV and XXVI of the American Declaration. *Julius Omar Robinson v. United States*, Case 13.361, Inter-Am. Comm'n H.R., Report No. 210/20, OEA/Ser. L/V/II, doc. 224 ¶¶ 115–18 (2020).

Furthermore, the Inter-American Court has repeatedly recognized that prolonged solitary confinement is an example of cruel, inhuman and degrading treatment.

> [P]rolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for [her] inherent dignity as a human being.

See Bámaca Velásquez v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No, 70, ¶ 150 (Nov. 24, 2000); *Maritza Urrutia v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶ 87 (Nov. 27, 2003).

The Court reached this conclusion by noting the grave harm inherent in prolonged solitary confinement, noting that it "produces moral and psychological suffering in the detainee, placing [her] in a particularly vulnerable position." *Maritza Urrutia* at ¶ 87. Nowhere is that vulnerability more obvious than in a twenty-year-old, mentally ill, traumatized woman sentenced to permanent solitary confinement on death row simply because of her gender.

V. THE METHODS OF EXECUTION EMPLOYED BY TENNESSEE WOULD SUBJECT MS. PIKE TO CRUEL, INFAMOUS, OR UNUSUAL PUNISHMENT, IN VIOLATION OF ARTICLE XXVI.

Although the State of Tennessee has requested that a date be set for Ms. Pike's execution, it is not yet clear how Tennessee intends to execute her. Under applicable law, Christa is given the

choice of selecting either death by electrocution or death by lethal injection as the method of her execution. Tenn. Code Ann. §40-23-114(b) (2010). Both of the available methods carry a high risk of severe anguish and agony in violation of Article XXVI's prohibition against cruel, infamous, or unusual punishment. This choice places Ms. Pike in the untenable position of having to choose between two methods that contravene international law.

A. Ms. Pike Has Not Received Sufficient Notice or Information About Either Method of Execution.

States have "an enhanced obligation to ensure that the person sentenced to death has access to all the relevant information regarding the manner in which he or she is going to die." *Julius Omar Robinson v. United States*, Case 13.361, Inter-Am. Comm'n H.R., Report No. 210/20, OEA/SER.L/V/II, doc. 224 ¶ 109 (2020). Death-sentenced individuals "must have the opportunity to challenge every aspect of the execution procedure and such information is necessary to file a challenge." *Id.* at ¶ 110. Such a challenge is not exclusively limited to only conviction and post-conviction proceedings. *Id.* Notice is required so that individuals are able to ensure that their execution does not run afoul of "the right to be executed in a manner devoid of cruel and unusual suffering." *Id.*

1. *Tennessee's execution protocol fails to provide sufficient notice regarding how electrocution would be carried out.*

Tennessee has not performed autopsies on the last four individuals executed by electrocution despite autopsies being common protocol after executions are carried out.[36] Autopsies provide vital information about how the execution actually killed the individual, how long the death took, and whether the execution method worked properly. By not conducting these

[36] Kimberlee Kruesi, *Tennessee did not perform autopsies on last 4 inmates executed by electric chair*, TENNESSEAN (updated Feb. 19, 2020), https://www.tennessean.com/story/news/crime/2020/02/13/tennessee-did-not-perform-autopsies-inmates-executed-electric-chair/4749187002/.

procedures, Tennessee has deprived Ms. Pike of the information necessary to understand the risk of cruel and unusual suffering were she to elect electrocution for her execution.

2. *Tennessee's execution protocol fails to provide sufficient notice about the contents and production of the lethal injection drugs the State intends to use to execute Ms. Pike.*

Although Tennessee's current protocol requires that prisoners be executed by three drugs injected in succession (midazolam, vecuronium bromide, and potassium chloride), Ex. TT, Tennessee Lethal Injection Protocol, App. #8, Pg. #182, the state of Tennessee has refused to disclose how it will procure these drugs. The protocol requires that they either be obtained from an FDA-approved commercial manufacturer or will be prepared by a compounding pharmacy. *Id.* The protocol does not require Tennessee to release any information about which option was the source of the drugs being used in the particular execution. Nor is Tennessee required under its own protocol to share any information about the production process or the results of the independent testing of the drugs required under the protocol and the state has never disclosed this information.

B. The Tennessee Execution Scheme Deprives Ms. Pike of Her Right to Challenge the Method of Her Execution, Contrary to International Law.

This Commission has held that condemned prisoners have the right "to challenge every aspect of the execution procedure" to ensure that an execution will be conducted in "a manner devoid of cruel and unusual suffering." *Robinson*, Case 13.361, at ¶ 110. The choice of method afforded under Tennessee law is a false choice. Were Ms. Pike to elect electrocution as her execution method to avoid the risk of pain and suffering inherent in Tennessee's lethal injection protocol, she would be foreclosed from challenging the electrocution protocol as cruel and unusual punishment.[37] Five of the seven individuals most recently executed in Tennessee selected

[37] Domestic case law has foreclosed challenging electrocution as unconstitutional in Tennessee if an individual facing execution in Tennessee elects electrocution over lethal injection. The individual is found to have "waived" their right to challenge the method as cruel and unusual. *See Stanford v. Parker*, 266 F.3d 442, 462 (6th Cir. 2001) (holding that the plaintiff would waive his challenge to electrocution if he chose electrocution over lethal injection).

electrocution because "they fear being frozen in place and feeling intense discomfort while drugs work to kill them" under the lethal injection protocol.[38]

C. The United States Bears the Burden of Showing that Its Method of Execution Will Not Cause Excessive and Avoidable Pain and Suffering.

The United States, in shifting the burden of proving that an execution method will not cause pain and suffering onto the individual, violates international human rights law. The United States Supreme Court has held that prisoners bear the burden of demonstrating the unconstitutionality of a particular method of execution. In *Glossip v. Gross*, the Court held that the prisoner must establish "that any risk of harm [from the challenged execution protocol] was *substantial* when compared to a known and available alternative method of execution." *Glossip v. Gross*, 135 S. Ct. 2726, 2738 (2020) (emphasis added). Thus, a prisoner not only must establish the risk of substantial harm caused by a particular execution method, but also that a less harmful method of execution exists.

The United States' approach is at odds with international human rights standards relating to the application of the death penalty[39] and unfairly burdens the prisoner. International law mandates States "to ensure that the method of execution does not constitute cruel, infamous or unusual punishment." *Robinson*, Case 13.361, at ¶ 110; *Lezmond C. Mitchell v. United States*, Case

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[38] Rick Rojas, *Why This Inmate Chose the Electric Chair Over Lethal Injection*, N.Y. TIMES (Feb. 19, 2020), https://www.nytimes.com/2020/02/19/us/electric-chair-tennessee.html.

[39] It is well settled that in capital prosecutions, the burden remains with the prosecution throughout the culpability and sentencing phase. It is never up to the defense to prove that death is not the appropriate sentence. Rather, the prosecution must prove beyond reasonable doubt the existence of any aggravating factors in the case and must negate beyond reasonable doubt any mitigating factors relied on by the prisoner. *See, e.g., S. v. Makwanyane and Another* 1995 (3) SA 391 (CC) at 46; *Moise v. The Queen* (unreported), Crim. App. No. 8 of 2003, Eastern Caribbean Court of Appeal, at 17; *Pipersburgh v R.***,** [2008] UKPC 11, at 32.

13.570, Inter-Am. Comm'n H.R., Report No. 211/20, OEA/Ser.L/V/II doc. 224, ¶ 128 (2020). Neither available method under Tennessee's law avoids a risk of severe pain, agony, and suffering.

As a practical matter, the State is better positioned than the prisoner to prove that a particular method of execution causes minimal suffering because the State has all of the relevant information at its disposal. There is an asymmetry in information between Tennessee and Ms. Pike. For example, Tennessee's protocol for lethal injection allows the drugs to be obtained from either a commercial manufacturer or from a compounding pharmacy. Ex TT, Tennessee Lethal Injection Protocol, App. #8, Pg. #182–186. Only government officials are permitted to decide where to obtain the drugs from, which in turn may determine whether the drugs are likely to cause Ms. Pike excessive pain and suffering.

Assuming Tennessee uses a compounding pharmacy to obtain the drugs necessary to carry out Ms. Pike's execution, she will not have access to the name of the pharmacy, the procedure the pharmacy used to create the drug, or the results from any testing that might be done on the compounded drug.[40] There is also no guarantee that the compounding pharmacy will not change the chemical solution production process without notifying the state. The same information asymmetry exists if Tennessee obtains the drugs from a commercial manufacturer. Again, Ms. Pike would not have access to the procedure used, testing results, or receive any guarantees that the drugs are functioning in the way they are supposed to. Moreover, the State has had months—years even—to develop its lethal injection protocol, whereas Ms. Pike will have a scant two weeks

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[40] Chris McDaniel, *Inmates Said The Drug Burned As They Died. This Is How Texas Gets Its Execution Drugs*, Buzzfeed News (Nov. 28, 2018), https://www.buzzfeednews.com/amphtml/chrismcdaniel/inmates-said-the-drug-burned-as-they-died-this-is-how-texas; https://www.tennessean.com/get-access/?return=https%3A%2F%2Fwww.tennessean.com%2Fstory%2Fnews%2Flocal%2Fdavidson%2F2018%2F06%2F13%2Flethal-injection-tennessee-must-rely-black-market-drugs-executions-attorney-says%2F695846002%2F.

to try to obtain information regarding the origin of the drugs and the exact composition of the drugs Tennessee intends to use and the risk they will cause her severe pain and suffering.

As a matter of international law and common sense, the state of Tennessee should therefore bear the burden of proving that whatever method it ultimately uses to execute Ms. Pike will not cause her cruel, infamous, or unusual punishment under Article XXVI of the American Declaration. Absent such a showing, Ms. Pike is entitled to the presumption that whatever method Tennessee ultimately uses will violate her right to be free from cruel and infamous punishment.

D. An Unnecessary Risk of Pain is Inherent in Both of Tennessee's Available Methods of Execution.

1. *Lethal injection*

Tennessee's lethal injection process is a midazolam-based three-drug protocol. Under this protocol, the condemned prisoner is first injected with midazolam by anonymous executioners. Following this, she is injected with vecuronium bromide. Finally, the executioners inject a lethal dose of potassium chloride. The midazolam is intended to sedate the individual while the vecuronium bromide paralyzes the muscles and then the potassium chloride stops the heart.[41] Without effective sedation, vecuronium bromide and potassium chloride cause "agonizing suffering and pain."[42]

Midazolam is a sedative and not a paralytic like the first drug used in other three-drug lethal injection protocols. Midazolam supposedly ensures the individual does not feel pain. In fact, none of midazolam's properties shield an individual from pain. Midazolam renders individuals

[41] Ben Bryant, *Life and Death Row: How the lethal injection kills*, BBC (Mar. 5, 2018), https://www.bbc.co.uk/bbcthree/article/cd49a818-5645-4a94-832e-d22860804779.

[42] Erik Echolm, *One Execution Botched, Oklahoma Delays the Next*, N.Y. TIMES (Apr. 29, 2014), https://www.nytimes.com/2014/04/30/us/oklahoma-executions.html.

unconscious but was not manufactured with the purpose of making them insensate to the pain from the other drugs. Midazolam is also not Food and Drug Administration[43] approved for use as a general anesthetic. Because of concerns that midazolam does not render someone unconscious and the resulting agony from being sensate during the remaining protocol, many states have moved away from using midazolam.[44] Research has suggested that lethal injection involving midazolam causes excruciating pain. Autopsies conducted on individuals executed using lethal injection showed that 87 percent of individuals executed with midazolam experienced pulmonary edema during the execution.[45] Pulmonary edema, a buildup of fluid in the lungs, feels like drowning and in any other situation besides an execution would be considered a medical emergency that would necessitate intervention.[46] The buildup itself can create intense feelings of fear and panic. Medical witnesses describe pulmonary edema as "painful, both physically and emotionally, inducing a sense of drowning and the attendant panic and terror, much as would occur with the torture tactic known as waterboarding."[47] Evidence from some of the autopsies showed "bloody froth that oozed

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[43] The Food and Drug Administration is a governmental agency that is responsible regulating the production, efficacy, and security of pharmaceutical drugs. This regulation process includes authorizing drug use for specific purposes.

[44]Kent Faulk, *The weak sedative behind botched executions*, AL.COM (updated Jan 13., 2019), https://www.al.com/news/birmingham/2017/02/midazolam_from_colonoscopies_t.html#:~:text=The%20other%20states%20are%20Florida,%2C%20Ohio%2C%20Virginia%20and%20Arizona.&text=In%20court%20actions%20in%20the,a%20replacement%20for%20the%20drug.

[45] Noah Caldwell, *Gasping For Air: Autopsies Reveal Troubling Effects of Lethal Injection*, NPR (Sept. 21, 2020), https://www.npr.org/2020/09/21/793177589/gasping-for-air-autopsies-reveal-troubling-effects-of-lethal-injection.

[46] Liliana Segura, *Ohio's Governor Stopped an Execution Over Fears it Would Feel Like Waterboarding*, THE INTERCEPT (Feb. 7, 2019, 7:55 AM), https://theintercept.com/2019/02/07/death-penalty-lethal-injection-midazolam-ohio/.

[47] Noah Caldwell, *Gasping For Air: Autopsies Reveal Troubling Effects of Lethal Injection*, NPR (Sept. 21, 2020), https://www.npr.org/2020/09/21/793177589/gasping-for-air-autopsies-reveal-troubling-effects-of-lethal-injection.

from the lungs during the autopsy—evidence that the buildup had been sudden, severe, and harrowing."[48]

Protocols involving midazolam have caused many recent botched executions across the United States. At least seven recent executions involved unanticipated problems or side effects because of midazolam-based three drug protocols.[49] Kenneth Williams, executed in 2017 in Arkansas, violently convulsed six times during his execution after only being administered midazolam.[50] Robert Van Hook, executed in Ohio in 2018, gasped and wheezed throughout his execution loudly enough "to be heard from the witness room."[51] Clayton Lockett, executed in Oklahoma in 2014, began to writhe in pain and attempted to rise from the table over fifteen minutes after the supposed sedative was administered and after the doctor administering the protocol declared him unconscious.[52] Lockett's heart "essentially exploded" as a result of the midazolam based protocol not working properly, dying ultimately of a cardiac arrest nearly thirty minutes after the drugs were administered.[53] Because of the use of midazolam, Williams, Van Hook, and Lockett were all able to feel the excruciating pain of what was happening to them.

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[48] Liliana Segura, *Ohio's Governor Stopped an Execution Over Fears it Would Feel Like Waterboarding*, THE INTERCEPT (Feb. 7, 2019, 7:55 AM), https://theintercept.com/2019/02/07/death-penalty-lethal-injection-midazolam-ohio/.

[49] Clayton Lockett, Robert Van Hook, Billy Ray Irick, Joseph Wood, Kenneth Williams, Dennis McGuire, and Ronald Smith all experienced botched executions using midazolam based lethal injection protocols.

[50] Phil McCausland, *Arkansas Execution of Kenneth Williams 'Horrifying': Lawyer*, NBC News (Apr. 27, 2017), https://www.nbcnews.com/storyline/lethal-injection/arkansas-executes-kenneth-williams-4th-lethal-injection-week-n752086.

[51] Liliana Segura, *Ohio's Governor Stopped an Execution Over Fears it Would Feel Like Waterboarding*, THE INTERCEPT (Feb. 7, 2019, 7:55 AM), https://theintercept.com/2019/02/07/death-penalty-lethal-injection-midazolam-ohio/.

[52] Erik Echolm, *One Execution Botched, Oklahoma Delays the Next*, N.Y. TIMES (Apr. 29, 2014), https://www.nytimes.com/2014/04/30/us/oklahoma-executions.html.

[53] Andrew Cohen, *How Oklahoma's Botched Execution Affects the Death-Penalty Debate*, THE ATLANTIC (Apr. 30, 2014), https://www.theatlantic.com/national/archive/2014/04/Oklahoma/361414/.

Tennessee itself has conducted prior botched executions relying on midazolam. Billy Ray Irick, executed in Tennessee in 2018, showed signs of pulmonary edema throughout his execution, choking and straining against his restraints.[54] Medical experts confirmed that he "was aware and sensate during his execution and would have experienced the feeling of choking, drowning in his own fluids, suffocating, being buried alive, and the burning sensation caused by the injection of the potassium chloride."[55]

2. *Electrocution*

Electrocution also presents a significant risk of severe pain, agony, and suffering. In fact, the majority of states in the United States have either abolished electrocution as an execution method or rely on it infrequently for this reason. The process of watching someone being electrocuted is considered by most to be too barbaric to conform with the standards of common decency required under domestic law for punishment. *See Trop v. Dulles*, 356 U.S. 86, 101 (1958). Despite the real risk of pain, the majority of individuals executed by Tennessee over the last few years have elected electrocution as the method of their execution, in fear of the potential for pain and suffering seen in Tennessee's lethal injection protocol.[56]

Some have likened electrocution to being "burned alive and mutilated."[57] Electrocution can heat an individual to a temperature of 200 degrees. Skin is burned and blistered, sometimes

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[54] *Tennessee Executes Billy Ray Irick in First Execution Since 2009*, DEATH PENALTY INFORMATION CENTER (Aug. 10, 2018), https://deathpenaltyinfo.org/news/tennessee-executes-billy-ray-irick-in-first-execution-since-2009.

[55] *Medical Expert: Billy Ray Irick Tortured to Death in Tennessee Execution*, DEATH PENALTY INFORMATION CENTER (Sept. 14, 2018), https://deathpenaltyinfo.org/news/medical-expert-billy-ray-irick-tortured-to-death-in-tennessee-execution.

[56] Rick Rojas, *Why This Inmate Chose the Electric Chair Over Lethal Injection*, N.Y. Times (Feb. 19, 2020), https://www.nytimes.com/2020/02/19/us/electric-chair-tennessee.html.

[57] Nidhi Subbaraman & Chris McDaniel, *Here's The Horrifying History of The Electric Chair That Might Soon Kill An Inmate In Tennessee*, Buzzfeed News (updated Oct. 12, 2018), https://www.buzzfeednews.com/article/nidhisubbaraman/electric-chair-tennessee-edmund-zagorski.

falling off the body before the execution is complete. *Dawson v. State*, 554 S.E.2d 137, 141 (Ga. 2001). This has caused legs and arms to catch on fire during executions.[58] The heat can also cause an individual's body to swell so much that the eyeballs pop out or melt during the execution. *Glass v. Louisiana*, 471 U.S. 1080, 1087 (1985) (Brennan, J., dissenting). The current has also caused people to vomit blood and to become incontinent. *Id.*

Electrocution can "repetitively activate the brain, causing the perception of excruciating pain and a sense of extreme horror." *Dawson*, 554 S.E.2d at 141. There is a high risk that individuals can regain consciousness, despite electrocution protocols stating that the first jolt of electricity shuts down consciousness. *State v. Mata*, 745 N.W.2d 229, 271–72 (Neb. 2008). There is also a strong likelihood that individuals will be conscious enough to experience the feelings of being burned alive.[59]

Individuals have different thresholds for withstanding electrical current and for pain. They also experience different physiological effects in response to the electric current. Individuals require different amounts of electricity applied for different lengths of time to make them unconscious. All of these factors amount to an overwhelming risk of potential pain, suffering, and anguish for Ms. Pike were she to be electrocuted. There is no humane way to test these procedures to avoid these risks in a given execution.

While botched electrocutions happen at a lower rate than botched lethal injections, they still happen.[60] Jesse Joseph Tafero, executed in 1990, had six-inch flames erupt from his head

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[58] *Executions gone wrong*, Toronto Sun (Apr. 30, 2014), https://torontosun.com/2014/04/30/executions-gone-wrong.

[59] Grace Wyler, *Tennessee Is Bringing Back the Electric Chair*, VICE (May 25, 2014, 8:00 AM), https://www.vice.com/en/article/jmbjvk/how-you-die-in-an-electric-chair.

[60] Botched executions "involv[e] unanticipated problems or delays that caused, at least arguably, unnecessary agony for the prisoner or that reflect gross incompetence of the executioner." *Botched Executions*, Death Penalty Information Center (last visited Nov. 16, 2020), https://deathpenaltyinfo.org/executions/botched-executions.

during his electrocution and required three administrations of electricity for his heart to stop beating.[61] A crown of foot high flames flared up during Pedro Medina's execution in 1997, accompanied by thick smoke that gagged witnesses in the adjoining room.[62] During Allen Lee Davis' execution in 1999, blood poured out of Davis' mouth and oozed from his chest through the leather chest strap fastening him to the chair before he was pronounced dead.[63]

Tennessee's electric chair itself presents a significant risk that any execution conducted with it will depart from the expected protocol. The chair was built and installed in 1988 by Fred A. Leuchter, who was charged with fraud for practicing engineering without an electrical engineering license.[64] In 1994, officials tested the chair and discovered it did not deliver an adequate current to carry out an execution and required at least fourteen different modifications. [65] *See also* Ex UU, Documents Related to Tennessee Electric Chair, App. #8, Pg. #252–253, 255.

Tennessee did not immediately make all the required modifications. Ex UU, Documents Related to Tennessee Electric Chair, App. #8, Pg. #256–257. Tennessee has since made further modifications, but none ensure that the chair will maintain an adequate current to carry out an

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[61] Cynthia Barnett, Tafero Meets Grisly Fate in Chair, GAINESVILLE SUN, May 5, 1990, at 1; Cynthia Barnett, A Sterile Scene Turns Grotesque, GAINESVILLE SUN, May 5, 1990, at 1; Bruce Ritchie, Flames, Smoke Mar Execution of Murderer, FLORIDA TIMES-UNION (Jacksonville), May 5, 1990, at 1; Bruce Ritchie, Report on Flawed Execution Cites Human Error, FLORIDA TIMES-UNION (Jacksonville), May 9, 1990, at B1.

[62] Doug Martin, Flames Erupt from Killer's Headpiece, GAINESVILLE SUN, March 26, 1997, at 1.

[63] Davis Execution Gruesome, GAINESVILLE SUN, July 8, 1999, at 1A.

[64] *5 things to know about Tennessee electric chair ahead of Stephen Michael West execution*, TENNESSEEAN (updated Aug. 15, 2019, 4:07 PM), https://www.tennessean.com/story/news/2018/12/05/execution-electric-chair-tennessee-what-know/2217350002/; *An 'Expert' on Executions is Charged With Fraud*, N.Y. TIMES (Oct. 24, 1990), https://www.nytimes.com/1990/10/24/us/an-expert-on-executions-is-charged-with-fraud.html; Nidhi Subbaraman & Chris McDaniel, *Here's The Horrifying History of The Electric Chair That Might Soon Kill An Inmate In Tennessee*, BUZZFEED NEWS (updated Oct. 12, 2018), https://www.buzzfeednews.com/article/nidhisubbaraman/electric-chair-tennessee-edmund-zagorski.

[65] Michael Decourcy Hinds, *Making Execution Humane (Or Can It Be?)*, N.Y. TIMES (Oct. 13, 1990), https://www.nytimes.com/1990/10/13/us/making-execution-humane-or-can-it-be.html.

execution. Leuchter has since raised concerns publicly that the chair will "hurt someone or cause problems," most recently in 2018, saying, "I don't think it's going to be humane."[66]

The process of electrocution, even without the risk of pain and suffering, is dehumanizing and humiliating. The protocol requires the individual being electrocuted to be completely shaved in the final hours before their execution. The individual is then strapped to the electric chair with sponges soaked with saltwater to increase electrical conductivity. They are in this position, shaved completely, and in full view of the witnesses, as they make their final statements. They are also in full view of the witnesses as the execution is carried out to completion. In their final moments, the individual's face is covered up. Any modicum of dignity or humane treatment in the individual's final moments is stripped from them. Ex. VV, Tennessee Electrocution Protocol, App. #8, Pg. #322–24.

Based on the above, the Commission should find that the United States has violated Ms. Pike's right to be free from cruel and infamous punishment. The uncertain nature of both Tennessee's lethal injection procedure and its electrocution procedure, along with the lack of adequate notice, violates Article XXVI of the ADRDM. Furthermore, the United States, and not Ms. Pike, should bear the burden of demonstrating that whatever method of execution it intends to employ causes the least possible physical and mental suffering. Absent such a showing, the Commission should find that Tennessee's method of execution causes cruel and infamous punishment in violation of Article XXVI.

REQUEST FOR PRECAUTIONARY MEASURES

[66] Travis Loller, *Builder of Tennessee's electric chair worried Zagorski execution won't be successful*, ASSOCIATED PRESS (Oct. 31, 2018), https://apnews.com/article/c1aa2c9828be4b9fb6bffc2b88d04242.

The Petitioner respectfully requests that the Commission exercise its authority under Article 25 of its Rules of Procedure and request precautionary measures on her behalf from the state of Tennessee.

CONCLUSION

Ms. Pike respectfully requests that this Commission issue precautionary measures calling upon the United States to preserve her life while this Commission examines the merits of her petition. She further requests that the Commission order the United States to provide an effective remedy for the violations set forth above, which includes providing Ms. Pike with a new trial and sentencing hearing in accordance with her rights to equality, due process, a fair trial, and humane treatment under the ADRDM.

Respectfully submitted,

Sandra L. Babcock
Zohra Ahmed
Stephen Ferrell
Joshua Howard
Rosalind Major
Sophie Miller
Victoria Pan

November 16, 2020

EXHIBIT 9

United States Department of State

United States Permanent Mission to the Organization of American States

Washington, D.C. 20520

November 30, 2020

Dr. Joel Hernandez Garcia
President
c/o Inter-American Commission on Human Rights
Organization of American States
Washington, D.C. 20006

Re: Christa Pike
Request for Information No. MC-1080-20
Response of the United States to Request for Information

Dear Dr. Hernandez:

We appreciate the opportunity to provide observations on the request for information forwarded to the United States in the above-referenced matter on behalf of Christa Pike ("Petitioner"), which your office transmitted to the United States via letter on November 24, 2020.

The United States respectfully submits that the Commission should refrain from requesting precautionary measures in this case because the Commission lacks the authority to do so with respect to the United States. Moreover, such measures are not warranted in any event for the reasons set forth below.

Precautionary measures

The request for precautionary measures in this matter does not satisfy the requirements of Article 25(1) of the Commission's Rules of Procedure, which provides that precautionary measures "shall concern serious and urgent situations presenting a risk of irreparable harm." While Petitioner requests the recommendation of precautionary measures in this matter, the Petition includes no justification in support of recommendation of such measures in accordance with the

criteria set out at Article 25 of the Rules.[1] On August 27, 2020, the State of Tennessee requested that the Supreme Court of Tennessee to set a date for Petitioner's execution.[2] Petitioner's lawyers were given until December 7, 2020 to respond to that motion.[3] Nothing about this sequence of events warrants a recommendation of precautionary measures.

In its letter transmitting the Petition, the Commission appears to supplement the Petition with its own justification for precautionary measures on the basis, "inter alia, that the proposed beneficiary finds herself in a situation of risk given that she has been in solitary confinement on death row for 23 years."[4] The time that has elapsed since Petitioner's conviction of a 1995 murder, during which time she has pursued various avenues of appeal in U.S. courts, is insufficient to substantiate a request for precautionary measures under Article 25 of the Rules.

First, Petitioner has not demonstrated that her ongoing detention constitutes a "serious situation." Article 25(2)(a) defines "serious situation" to refer to "a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the inter-American system." There is no indication that Petitioner's ongoing detention constitutes a "serious situation" within the meaning of Article 25(2)(a). Second, Petitioner's ongoing detention does not present an "urgent situation." Article 25(2)(b) of the Rules of Procedure provides that an "urgent situation" refers to a "risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action." There is no indication that Petitioner's ongoing detention constitutes an "urgent situation" within the meaning of Article 25(2)(b). Finally, Petitioner has not demonstrated the likelihood of irreparable harm in relation her ongoing detention. Article 25(2)(c) of the Rules of Procedure provides that "irreparable harm" refers to "injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation." The fact of Petitioner's ongoing detention does not present a likelihood of "irreparable harm" within the meaning of Article 25(2)(c) to justify precautionary measures.

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[1] Petition at 87-88.
[2] State v. Pike, No. 03S01-9712-CR-00147, Motion to Set Execution Date (Aug. 27, 2020).
[3] State v. Pike, No. 58183A, Order, No. M2020-01156-SC-DPE-DD (Tenn. Sept. 2, 2020).
[4] Letter from Mario López-Garelli, IACHR, to Mike Pompeo, U.S. Secretary of State (Nov. 24, 2020).

With respect to the Commission's other requests for information, there is no indication in the Petition that Petitioner has been unable to access courts or the clemency process, or that the COVID-19 pandemic has adversely impacted her legal representation. The United States notes that the record in Petitioner's case indicates that her mental health was taken into consideration as a mitigating factor by the jury that sentenced her to death.[5]

Exhaustion of Domestic Remedies

Petitioner has failed to exhaust domestic remedies with respect to claims pertaining to "due diligence" and the conditions of her confinement. The Statute of the Commission ("Statute") requires the Commission to "verify, as a *prior condition* to the exercise of the powers granted under [Article 20(b)], whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted."[6] The Commission has repeatedly emphasized that a petitioner has the duty to pursue and exhaust all available domestic remedies. Consistent with the Statute, with respect to a request for precautionary measures, Article 25(6)(a) of the Rules of Procedure ("Rules") adopted by the Commission directs the Commission to take into account "whether the situation has been brought to the attention of the pertinent authorities or the reasons why it would not have been possible to do so." This provision reflects the exhaustion requirement, a general principle of law, also included at Article 31 of the Rules, which states that, "[i]n order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law."

[5] *See, e.g.*, State v. Pike, 978 S.W.2d 904 (Tenn. 1998) ("the defendant offered proof to show that she was young when the offense was committed, that she had no prior history of criminal activity, that she was under the influence of extreme mental or emotional disturbance when the murder occurred, that her capacity to appreciate the wrongfulness of her conduct or to conform her conduct to the requirements of the law was substantially impaired as a result of mental disease or defect, that she had a difficult childhood, and that she had a personal and family history of substance abuse. . . . Considering the proof in this record, we are of the opinion that the evidence is sufficient to support the jury's finding that the aggravating circumstances outweighed mitigating circumstances beyond a reasonable doubt."). *Cf.* Pike v. Gross, No. 16-5854, Opinion (6th Cir. Aug. 22, 2019) (Attachment 1).

[6] IACHR Statute Art. 20(c) (emphasis added) (The Commission's powers listed at Article 20(b) are "to examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it.").

As the Commission is aware, the requirement of exhaustion of domestic remedies is embedded in the international legal system as a means of respecting State sovereignty. It ensures that the State on whose territory a human rights violation allegedly has occurred has the opportunity to redress the allegation by its own means within the framework of its own domestic legal system.[7] A State conducting such judicial proceedings has the sovereign right to be given the opportunity to determine the merits of a claim and decide the appropriate remedy before resort may be had to an international body.[8] The Inter-American Court of Human Rights has remarked that the exhaustion requirement is of particular importance "in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction."[9] The Commission has repeatedly made clear that petitioners have the duty to pursue available domestic remedies.[10] And, as the Commission has stated, "[m]ere doubt as to the prospect of success in going to court is not sufficient to exempt a petitioner from exhausting domestic remedies."[11] Exhaustion is only realized where such remedy has been pursued to the highest appellate level, resulting in a final judgment.[12]

In the Petition, Petitioner seeks exemption from the requirement to exhaust domestic remedies.[13] Petitioner's rationale for declining to pursue remedies with respect to her "due

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[7] *See, e.g.* Interhandel Case (Switzerland v. United States) [1959] I.C.J. 6, 26–27; Panevezys-Saldutiskis Railway Case (Estonia v. Lithuania), 1939 P.C.I.J., Ser. A/B, No. 76.

[8] THOMAS HAESLER, THE EXHAUSTION OF LOCAL REMEDIES IN THE CASE LAW OF INTERNATIONAL COURTS AND TRIBUNALS (1968) at 18–19.

[9] Velásquez Rodríguez Case, Judgment of July 29, 1988, ¶ 61, Inter-Am. Ct. H.R. (Ser. C) No. 4 (1988).

[10] *See, e.g.* Páez Garcia v. Venezuela, Petition No. 670-01, Report No. 13/13, Mar. 20, 2013, Analysis § B(1) & Conclusions, ¶ 35 (finding petition inadmissible for failure to exhaust because petitioner did not avail himself of remedies available to him in the domestic system).

[11] Sánchez et al. v. United States ("Operation Gatekeeper"), Petition No. 65/99, Inadmissibility ("Operation Gatekeeper Inadmissibility Decision"), ¶ 67.

[12] *See also* Draft Articles on State Responsibility, [2001] 2 Y.B. Int'l L. Comm'n 26, U.N. Doc. A/CN.4/SER/A/2001/Add.1 (Part 2), art. 44; Draft Articles on Diplomatic Protection, [2006] 2 Y.B. Int'l L. Comm'n 24, U.N. Doc. A/CN.4/SER.A/2006/Add.l (Part 2), art. 14, ¶¶ 1–2; cmt. 4 ("[I]t is clear that the foreign national must exhaust all the available judicial remedies provided for in the municipal law of the respondent State. If the municipal law in question permits an appeal in the circumstances of the case to the highest court, such an appeal must be brought in order to secure a final decision in the matter. Even if there is no appeal as of right to a higher court, but such a court has discretion to grant leave to appeal, the foreign national must still apply for leave to that court.").

[13] Petition at 4-7.

diligence" claim is unavailing.[14] As is Petitioner's rationale for failing to pursue remedies to challenge the conditions of her confinement during here more than twenty years of incarceration, only to claim at this late stage she is now "effectively prevented from exhausting her remedies arising from this claim" because "an execution date could be scheduled shortly."[15] Petitioner had decades to pursue remedies regarding the conditions of her confinement and cannot now use her decision not to do so as a rationale for bypassing the requirement that a petitioner exhaust domestic remedies before petitioning the Commission.

Statute of Limitations

The United States further notes that the Petition is not timely. Under Article 32(1) of the Rules, the Commission will only consider "petitions that are lodged within a period of six-months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies." Here, the Commission appears to have received the Petition more than twenty years after both the trial court entered its final order in Petitioner's case and the Tennessee Supreme Court affirmed Petitioner's conviction.[16] The United States Supreme Court denied *certiorari* in 1999,[17] however the United States observes (with strenuous objection) that the Commission considers appeal to the United States Supreme Court to constitute an "extraordinary remedy" rather than part of the exhaustion of direct appeal.[18] In accordance with the Commission's position on the exhaustion of domestic remedies, Petitioner exhausted domestic remedies with her direct appeal, in which a decision was rendered October 5, 1998; this is the point at which Petitioner was notified of the decision that exhausted domestic remedies within the meaning of Article 32(1). By

[14] Although Petitioner appears to have neither pursued nor exhausted any domestic remedy with respect to her "due diligence" claim, the precedents to which Petitioners cites to support her claim of futility are inapposite. Petitioner does not appear to complain of failure to enforce a protective order, nor infringement of Constitutional due process interests (to which the cited authorities pertain). Rather, Petitioner seems to allege, *inter alia*, that certain state authorities were negligent in the performance of their duties. Petitioner could have pursued a tort action against those authorities she believes to have acted negligently in the performance of their duties, or otherwise brought such concerns to the attention of relevant authorities. Petitioner's failure to pursue such remedies renders these claims unexhausted.

[15] Petition at 6.

[16] State v. Pike, 978 S.W.2d 904 (Tenn. 1998).

[17] Pike v. Tennessee, 526 US. 1147 (1999).

[18] *See, e.g.*, Rahman et al. v. United States, Report No. 103/20, Petition 417-20, para. 14 ("the Commission considers that the alleged victims were not obliged to bring a writ of certiorari (an extraordinary remedy) in order to fulfil the requirements of Article 31.1 of the Commission's Rules of Procedure.").

the Commission's reasoning, the subsequent extraordinary remedies Petitioner has pursued in the intervening period are not relevant to the admissibility of the Petition, and Petitioner's post-conviction litigation through successive appeals cannot transform her Petition into a timely one.[19]

Fourth Instance Doctrine

To the extent that Petitioner claims to have pursued and exhausted domestic remedies with respect to her remaining claims (i.e., concerning "incompetent legal representation" and due consideration of her mental illness),[20] the Petition plainly constitutes an effort by Petitioner to use the Commission as a "fourth instance" body to review claims already heard and rejected by U.S. courts. The Commission has repeatedly stated that it may not "serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction," a doctrine the Commission calls the "fourth instance formula."[21] To the extent that Petitioner raises claims in the petition and request for precautionary measures for which she has pursued and exhausted domestic remedies, those claims are foreclosed by the Commission's fourth instance doctrine and do not provide any basis for the recommendation of precautionary measures sought by Petitioner in this matter.

The fourth instance doctrine recognizes the proper role of the Commission as subsidiary to States' domestic judiciaries,[22] and nothing in the American Declaration, the OAS Charter, the Commission's Statute, or the Rules gives the Commission the authority to act as an appellate body. As the Commission has explained, "[t]he Commission…lacks jurisdiction to substitute its judgment for that of the national courts on matters that involve the interpretation and explanation of domestic law or the evaluation of the facts."[23] Petitioner's claims concerning ineffective

[19] To the extent that Petitioner continued to pursue "extraordinary" *habeas* remedies with respect to her claims pertaining to ineffective assistance of counsel and due consideration of her mental health, the United States Court of Appeals for the Sixth Circuit rendered its decision on that *habeas* petition on August 22, 2019. By the Commission's reasoning, that decision represented notification of the exhaustion of that remedy, at which point the six-month period under Article 32(1) began to run with respect to that claim. *See* Pike v. Gross, No. 16-5854, Opinion (6th Cir. Aug. 22, 2019) (Attachment 1).

[20] Petition at 4.

[21] *See* Marzioni v. Argentina, Case No. 11.673, Report No. 39/96, Inadmissibility, Oct. 15, 1996, ¶ 51 (hereinafter "*Marzioni* Inadmissibility Report").

[22] *See* Castro Tortrino v. Argentina, Case No. 11.597, Report 7/98, Admissibility, Mar. 2, 1998, ¶ 17.

[23] Macedo García de Uribe v. Mexico, Petition No. 859-03, Report No. 24/12, Inadmissibility, Mar. 20, 2012, ¶ 40.

assistance of counsel and due consideration of her mental illness have been exhaustively considered by U.S. courts in the course of Petitioner's attempt to vacate her sentence.[24] It is not the Commission's place to sit in judgment as another layer of appeal, second-guessing the considered decisions of a State's domestic courts in weighing evidence and applying domestic law. Under the fourth instance doctrine, the Commission's review of these claims is precluded.

The Commission must consequently decline this invitation to sit as a court of fourth instance. Acting to the contrary would have the Commission second-guessing the legal and factual determinations of U.S. courts, conducted in conformity with due process protections under U.S. law and fully consistent with U.S. commitments under the American Declaration.[25] In this regard, the United States notes that the proposed beneficiary does not allege that the domestic remedies she has pursued with respect to the claims she represents to have exhausted have suffered any due process deficiency that the Commission might rely upon to justify circumventing the fourth instance doctrine in this matter. The Commission has long recognized that "if [a petition] contains

[24] The disposition of these claims indicates that Petitioner has failed to state facts that tend to establish a "violation" of the American Declaration with respect to these claims, rendering them inadmissible under Article 34(a) of the Rules: *see, e.g.*, Pike v. Gross, No. 16-5854, Opinion (6th Cir. Aug. 22, 2019) (Attachment 1).

[25] The United States has consistently maintained that the American Declaration is a nonbinding instrument and does not create legal rights or impose legal duties on member States of the Organization of American States ("OAS"). U.S. federal courts of appeals have independently held that the American Declaration is nonbinding and that the Commission's decisions do not bind the United States. *See, e.g.*, Mitchell v. United States, 971 F.3d 1081, 1084 (9th Cir. 2020); *accord, e.g.*, Garza v. Lapin 253 F.3d 918, 925 (7th Cir. 2001); Flores-Nova v. Attorney General of the United States, 652 F.3d 488, 493–94 (3rd Cir. 2011); In re Hicks, 375 F.3d 1237, 1241 n.2 (11th Cir. 2004). As explained by the U.S. Court of Appeals for the Seventh Circuit in Garza, "[n]othing in the OAS Charter suggests an intention that member states will be bound by the Commission's decisions before the American Convention [on Human Rights] goes into effect. To the contrary, the OAS Charter's reference to the Convention shows that the signatories to the Charter intended to leave for another day any agreement to create an international human rights organization with the power to bind members. The language of the Commission's statute similarly shows that the Commission does not have the power to bind member states." *Accord* the language of the Commission's Statute, art. 20 (setting forth recommendatory but not binding powers). As the American Declaration is a non-binding instrument and does not create legal rights or impose legal duties on member States of the OAS, the United States understands that a "violation" in this context means an allegation that a country has not lived up to its political commitment to uphold the American Declaration. The United States respects its political commitment to uphold the American Declaration. For a further discussion of the U.S. position regarding the nonbinding nature of the American Declaration, *see* Request for an Advisory Opinion Submitted by the Government of Colombia to the Inter-American Court of Human Rights Concerning the Normative Status of the American Declaration of the Rights and Duties of Man, Observations of the United States of America, 1988.

nothing but the allegation that the decision [by a domestic court] was wrong or unjust in itself, the petition must be dismissed under [the fourth instance doctrine]."[26] The Commission has reiterated that "the fact that the outcome [of a domestic proceeding] was unfavorable … does not constitute a violation."[27] The fourth instance doctrine precludes the review sought by the proposed beneficiary.

* * *

The United States reaffirms its longstanding position that the Commission lacks the authority to require that States adopt precautionary measures. We respectfully refer the Commission to past submissions, which state the reasons for the U.S. position on precautionary measures in detail.[28] Because the United States is a not a Party to the American Convention, the Commission has only the authority "to make recommendations … to bring about more effective observance of fundamental human rights."[29] As such, should the Commission adopt a precautionary measures resolution in this matter, the United States would take it under advisement and construe it as recommendatory.

The United States also notes with concern the Commission's recent practice of forwarding petitions and requesting responses from the United States within a matter of days. In this instance, for example, the Commission forwarded a nearly 100-page-long petition with some 3,000 pages of attachments and requested the United States to respond within five days, which time period included both a weekend and a federal holiday. This request was unreasonable and the time afforded to the United States to respond was plainly insufficient to enable a comprehensive response. Requests such as this one are not productive and place the United States in a position where it is difficult to engage constructively with the Commission.

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[26] *Marzioni* Inadmissibility Report at ¶ 51.
[27] *Id.* at ¶ 58.
[28] *See, e.g.,* Kadamovas et. al. v. United States, Petition No. P-1285-11, Response of the United States, Sept. 2, 2015, § D.
[29] Commission Statute, art. 20(b).

Please accept renewed assurances of my highest consideration.

Sincerely,

(Endorsed electronically)

Bradley Freden

Deputy Permanent Representative

Enclosure:

1. Pike v. Gross, No. 16-5854, Opinion (6th Cir. Aug. 22, 2019).

ENCLOSURE

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 19a0205p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CHRISTA GAIL PIKE, *Petitioner-Appellant*, v. GLORIA GROSS, Warden, *Respondent-Appellee*.	No. 16-5854

Appeal from the United States District Court
for the Eastern District of Tennessee at Chattanooga.
No. 1:12-cv-00035—Harry S. Mattice, Jr., District Judge.

Argued: October 17, 2018

Decided and Filed: August 22, 2019

Before: COOK, GRIFFIN, and STRANCH, Circuit Judges.

COUNSEL

ARGUED: Stephen A. Ferrell, FEDERAL DEFENDER SERVICES OF EASTERN TENNESSEE, INC., Knoxville, Tennessee, for Appellant. Richard D. Douglas, OFFICE OF THE TENNESSEE ATTORNEY GENERAL, Nashville, Tennessee, for Appellee. **ON BRIEF:** Stephen A. Ferrell, FEDERAL DEFENDER SERVICES OF EASTERN TENNESSEE, INC., Knoxville, Tennessee, for Appellant. Jennifer L. Smith, OFFICE OF THE TENNESSEE ATTORNEY GENERAL, Nashville, Tennessee, for Appellee.

GRIFFIN, J., delivered the opinion of the court in which COOK and STRANCH, JJ., joined. STRANCH, J. (pp. 15–18), delivered a separate concurring opinion.

OPINION

GRIFFIN, Circuit Judge.

Petitioner Christa Gail Pike, a Tennessee death-row inmate, appeals the district court's denial of her petition for habeas corpus under 28 U.S.C. § 2254. Because we conclude that the state court's determination that she is unable to establish prejudice on her claims of ineffective assistance of counsel during the penalty phase of her capital trial was not an unreasonable application of clearly established federal law, we affirm.

I.

A.

This case began with the horrific and brutal 1995 murder of Colleen Slemmer. Pike and Slemmer were both students at the Job Corps Center in Knoxville, Tennessee at the time. *State v. Pike*, 978 S.W.2d 904, 907–08 (Tenn. 1998). They had a strained relationship; Pike claimed that Slemmer "had been 'trying to get [her] boyfriend' and . . . 'running her mouth' everywhere." *Id*. at 909. These bad feelings unfortunately resulted in the following events, as the Tennessee Supreme Court explained in a detailed opinion:

> [O]n January 11, 1995, [Pike], a student at the Job Corps Center in Knoxville, told her friend Kim Iloilo, who was also a student at the facility, that she intended to kill another student, Colleen Slemmer, because she "had just felt mean that day." The next day, January 12, 1995, at approximately 8:00 p.m., Iloilo observed Pike, along with Slemmer, and two other Job Corps students, Shadolla Peterson and Tadaryl Shipp, Pike's boyfriend, walking away from the Job Corps center toward 17th Street. At approximately 10:15 p.m., Iloilo observed Pike, Peterson, and Shipp return to the Center. Slemmer was not with them.
>
> Later that night, Pike went to Iloilo's room and told Iloilo that she had just killed Slemmer and that she had brought back a piece of the victim's skull as a souvenir. Pike showed Iloilo the piece of skull and told her that she had cut the victim's throat six times, beaten her, and thrown asphalt at the victim's head. Pike told Iloilo that the victim had begged "them" to stop cutting and beating her, but Pike did not stop because the victim continued to talk. Pike told Iloilo that she had thrown a large piece of asphalt at the victim's head, and when it broke into

> smaller pieces, she had thrown those at the victim as well. Pike told Iloilo that a meat cleaver had been used to cut the victim's back and a box cutter had been used to cut her throat. Finally, Pike said that a pentagram had been carved onto the victim's forehead and chest. Iloilo said that Pike was dancing in a circle, smiling, and singing "la, la, la" while she related these details about the murder. When Iloilo saw Pike at breakfast the next morning she asked Pike what she had done with the piece of the victim's skull. Pike replied that it was in her pocket and then said, "And, yes, I'm eating breakfast with it."
>
> During a class later that morning, Pike made a similar statement to Stephanie Wilson, another Job Corps student. Pike pointed to brown spots on her shoes and said, "that ain't mud on my shoes, that's blood." Pike then pulled a napkin from her pocket and showed Wilson a piece of bone which Pike said was a piece of Slemmer's skull. Pike also told Wilson that she had slashed Slemmer's throat six times and had beaten Slemmer in the head with a rock. Pike told Wilson that the victim's blood and brains had been pouring out and that she had picked up the piece of skull when she left the scene.

Id. at 907–08.

None of Pike's friends or colleagues reported the crime to the police, but a University of Tennessee Grounds Department employee nonetheless found Slemmer's body on January 13. *Id*. at 908. That employee later "testified that the body was so badly beaten that he had first mistaken it for the corpse of an animal," before realizing it was a human female when he saw the victim's clothes and her exposed breast. *Id*. The investigating police quickly discovered Pike's connection to the crime and interviewed her on January 14. *Id*. at 909. Pike waived her *Miranda* rights and gave a complete statement to the police about her involvement in the murder. As recounted by the Tennessee Supreme Court:

> Pike claimed that she had not planned to kill Slemmer, but she had instead planned only to fight Slemmer and let her know "to leave me the hell alone." However, Pike admitted that she had taken a box cutter and a miniature meat cleaver with her when she and the victim left the Job Corps Center. Pike said she had borrowed the miniature meat cleaver, but refused to identify the person who had loaned it to her.
>
> According to Pike, she asked Slemmer to accompany her to the Blockbuster Music Store, and as they were walking, Pike told Slemmer that she had a bag of "weed" hidden in Tyson Park. Though Pike refused to name the other parties involved in the incident, she said the group began walking toward the [University of Tennessee] campus. Upon arriving at the steam plant on [the University of Tennessee]'s agricultural campus, Pike and Slemmer exchanged words. Pike then

began hitting Slemmer and banging Slemmer's head on her knee. Pike threw Slemmer to the ground and kicked her repeatedly. According to Pike, as she slammed Slemmer's head against the concrete, Slemmer repeatedly asked, "Why are you doing this to me?" When Slemmer threatened to report Pike so she would be terminated from the Job Corps program, Pike again repeatedly kicked Slemmer in the face and side. Slemmer lay on the ground and cried for a time and then tried to run away, but another person with Pike caught Slemmer and pushed her to the ground.

Pike and the other person, who Pike referred to as "he," held Slemmer down until she stopped struggling, then dragged her to another area where Pike cut Slemmer's stomach with the box cutter. As Slemmer "screamed and screamed," Pike recounted how she began to hear voices telling her that she had to do something to prevent Slemmer from telling on her and sending her to prison for attempted murder.

At this point Pike said she was just looking at Slemmer and "just watching her bleed." When Slemmer rolled over, stood up and tried to run away again, Pike cut Slemmer's back, "the big long cut on her back." Pike said Slemmer repeatedly tried to get up and run. Pike recounted how Slemmer bargained for her life, begging Pike to talk to her and telling Pike that if she would just let her go, she would walk back to her home in Florida without returning to the Job Corps facility for her belongings. Pike told Slemmer to "shut up" because it "was harder to hurt somebody when they're talking to you." Pike said the more Slemmer talked, the more she kicked Slemmer in the face.

Slemmer asked Pike what she was going to do to her, at which point Pike thought she heard a noise. Pike left the scene to check out the surrounding area to make sure no one was around. When she returned, Pike began cutting Slemmer across the throat. When Slemmer continued to talk and beg for her life, Pike cut Slemmer's throat several other times. Pike said that Slemmer continued to talk and tried to sit up even though her throat had been cut several times, and that Pike and the other person would push her back on the ground.

Slemmer attempted to run away again, and Pike threw a rock which hit Slemmer in the back of the head. Pike stated that "the other person" also hit Slemmer in the head with a rock. When Slemmer fell to the ground, Pike continued to hit her. Eventually Pike said she could hear Slemmer "breathing blood in and out," and she could see Slemmer "jerking," but Pike "kept hitting her and hitting her and hitting her." Pike eventually asked Slemmer, "Colleen, do you know who's doing this to you?" Slemmer's only response was groaning noises. At this point, Pike said she and the other person each grabbed one of Slemmer's feet and dragged her to an area near some trees, leaving her body on a pile of dirt and debris. They left Slemmer's clothing in the surrounding bushes. Pike said the episode lasted "for about thirty minutes to an hour." Pike admitted that she and the other person had forced the victim to remove her blouse and bra during the incident to keep Slemmer from running away. Pike also admitted that she had removed a rag from

> her hair and tied it around Slemmer's mouth at one point to prevent Slemmer from talking. Pike denied carving a pentagram in the victim's chest, but said that the other person had cut the victim on her chest.

Id. at 909–10.

B.

The state of Tennessee prosecuted Pike for Slemmer's murder. At trial, much of Pike's unsuccessful defense centered on her mental health. Dr. Eric Engum testified that he had examined Pike and, although she suffered from no symptoms of brain damage or insanity, she did suffer from "very severe borderline personality disorder" and exhibited signs of cannabis dependence and a depressive disorder. On this basis, Dr. Engum testified that, while there was no question Pike killed Slemmer, it was his opinion that she did not act with deliberation or premeditation and simply lost control, consistent with Pike's diagnosis of borderline personality disorder. Additionally, Dr. William Bernet, a forensic psychiatrist with a specialty in satanic rituals, testified that he reviewed Pike's statements and the medical/psychological reports prepared by the other professionals involved in the case, and concluded that though the crime had "satanic elements," it appeared more indicative of "an adolescent dabbling in Satanism." He also discussed the phenomenon of collective aggression, in which a group of people become emotionally aroused and "the end result is that they engage in some kind of violent, extremely violent activity." It was his opinion that Slemmer's murder was consistent with that phenomenon.

The jury convicted Pike of premeditated first-degree murder and conspiracy to commit first-degree murder under Tennessee law. The Tennessee trial judge sentenced Pike to twenty-five years' imprisonment on the conspiracy conviction and held a sentencing hearing to allow the jury to determine whether to sentence Pike to death for the murder conviction. Pike's attorney, William Talman, originally intended to rely solely on the testimony of Dr. Diana McCoy, a mitigation expert hired by the defense. But shortly before the sentencing hearing, Talman switched his plan and called only Pike's aunt, father, and mother. All three testified about Pike's difficult childhood, and her exhibition of behavioral problems throughout her adolescence. Ultimately, the jury sentenced Pike to death by electrocution, finding that "[t]he murder was

especially heinous, atrocious or cruel in that it involved torture or serious physical abuse beyond that necessary to produce death," and "[t]he murder was committed for the purpose of avoiding, interfering with or preventing a lawful arrest or prosecution of the defendant or another." *See* Tenn. Code Ann. § 39–13–204(i)(5), (6) (listing aggravating circumstances a jury must find to sentence a person to death).

Pike appealed her convictions and sentences, but both the Tennessee Court of Criminal Appeals, *State v. Pike*, No. 03C01-CR-00408, 1997 WL 732511, at *1 (Tenn. Crim. App. 1997), and the Tennessee Supreme Court, *Pike*, 978 S.W.2d at 907, affirmed. Pike then filed a petition for postconviction relief in the state trial court. The postconviction court denied relief, concluding as relevant to this appeal that Pike's trial counsel was not ineffective for failing to present alternative expert testimony or additional lay testimony on compelling mitigation in her life history. The Tennessee Court of Criminal Appeals affirmed the denial of Pike's postconviction petition. *Pike v. State*, No. E2009-00016-CCA-R3-PD, 2011 WL 1544207, at *1 (Tenn. Crim. App. 2011). The Tennessee Supreme Court denied her application for permission to appeal, *id*., and the United States Supreme Court denied certiorari, *Pike v. Tennessee*, 568 U.S. 827 (2012).

C.

This habeas petition followed. Pike argues that her trial counsel was ineffective during the penalty phase of trial for failing to present mitigating evidence he discovered during the investigation and for failing to discover other relevant and compelling mitigating evidence, among other reasons. The parties filed cross-motions for summary judgment, and the district court held a two-day evidentiary hearing on Pike's petition and the parties' motions. The district court granted respondent's motion for summary judgment and dismissed Pike's habeas petition. We granted her a limited certificate of appealability, restricted to whether she received ineffective assistance of counsel during the penalty phase of her trial.

II.

"In an appeal from the denial of habeas relief, we review the district court's legal conclusions de novo and its factual findings for clear error." *Scott v. Houk*, 760 F.3d 497, 503

(6th Cir. 2014). Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), we may only overturn a state conviction for an issue adjudicated on the merits if it (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;" or (2) "was based on an unreasonable determination of the facts in light of the evidence presented" to the state court. 28 U.S.C. § 2254(d). A claim for habeas relief based on the "unreasonable application" prong must show more than that the state court's ruling was merely incorrect—"an *unreasonable* application of federal law is different from an *incorrect* application of federal law." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Williams v. Taylor*, 529 U.S. 362, 410 (2000)). Indeed, "[a] state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Id.* (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). "This is a difficult to meet and highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (internal quotation marks and citations omitted).

III.

As in all cases alleging ineffective assistance of counsel, we turn to *Strickland v. Washington*'s two-part framework: a criminal defendant claiming ineffective assistance must prove that (1) counsel's performance was objectively unreasonable, and (2) the deficient performance actually prejudiced the defense. 466 U.S. 668, 687 (1984). Because a party alleging that claim has the burden of proof on both prongs and her failure on either thwarts relief, we can address an ineffective-assistance claim in any order we choose. *See Smith v. Spisak*, 558 U.S. 139, 151 (2010) (assuming deficient performance but denying relief for lack of prejudice).

In this case, "[w]e choose to focus on the prejudice prong of the *Strickland* test because it is easier to resolve, and there can be no finding of ineffective assistance of counsel without prejudice." *Phillips v. Bradshaw*, 607 F.3d 199, 216 (6th Cir. 2010) (citation omitted). Under *Strickland*'s prejudice prong, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been

different." 466 U.S. at 694. Put differently, Pike bears the burden of showing that a reasonable probability exists that, but for counsel's deficient performance, the jury would have selected a different sentence. *Wong v. Belmontes*, 558 U.S. 15, 19–20 (2009) (per curiam).

Counsel's failure to either present mitigating evidence at sentencing, *Williams*, 529 U.S. at 394–96, or discover all reasonably available mitigating evidence, *Wiggins v. Smith*, 539 U.S. 510, 521–24 (2003), can support a finding of ineffective assistance. But "the failure to present additional mitigating evidence that is 'merely cumulative' of that already presented does not rise to the level of a constitutional violation." *Broom v. Mitchell*, 441 F.3d 392, 410 (6th Cir. 2006). "[T]he new evidence that a habeas petitioner presents must differ in a substantial way—in strength and subject matter—from the evidence actually presented at sentencing." *Clark v. Mitchell*, 425 F.3d 270, 286 (6th Cir. 2005) (quoting *Hill v. Mitchell*, 400 F.3d 308, 319 (6th Cir. 2005)); *see also Sears v. Upton*, 561 U.S. 945, 954 (2010) (per curiam) ("[T]here is no prejudice when the new mitigating evidence 'would barely have altered the sentencing profile presented' to the decisionmaker . . . .").

Pike's claim really presents two separate issues. First, she argues that her trial counsel was ineffective for failing to present the testimony of her mitigation expert, Dr. McCoy, at her sentencing hearing. Second, she contends that counsel was ineffective for failing to discover other compelling mitigation evidence, such as Pike's organic brain damage, bipolar disorder, post-traumatic stress disorder, and lay witnesses who could have provided a more-complete picture of Pike's humanity.

A.

Turning first to Dr. McCoy, it is unclear what substantially different mitigating evidence she would have offered by way of her testimony and the "social history" that she prepared of Pike. Dr. McCoy's social history provided an extensive examination of Pike's entire life and explained many of the life events and childhood difficulties that led her to the murder. For example, Dr. McCoy's report notes that "[i]t ha[d] been suggested that [the boyfriend of Pike's grandmother] may have sexually abused [Pike]" as a child, though other members of Pike's family, including her father, questioned the truthfulness of that accusation. The social history

also noted that Pike's mother had a number of boyfriends and relationships in Pike's youth, with many of the men treating Pike in an abusive or sexually inappropriate manner. But, again, Pike's accusations were met with doubt and outright opposition by members of her family. The social history also noted that Pike believed her paternal grandmother was the only person that ever loved her, was inconsolable for days after her grandmother's death, and actually attempted suicide for the first time after her grandmother passed away. In sum, the social history laid out an upbringing of substantial difficulty and strife.

While that "social history" document was certainly thorough, and we will assume for the sake of argument that Dr. McCoy would have been able to testify consistently with the evidence she accumulated and compiled therein, the jury already got much of the social history's general content during the penalty phase of the trial. Pike's mother, Carissa Hansen, testified that Pike spent much of her childhood with her paternal grandmother because neither Hansen nor her husband were ever really home. Hansen testified that she was a drug abuser and heavy drinker during Pike's childhood, which also contributed to Pike spending time with her grandmother. Hansen also testified that Pike first attempted suicide after her grandmother's death in 1988, but that Hansen had not gotten her much psychiatric or psychological help in the aftermath. At least once Hansen chose one of her husbands over Pike, sending Pike away when there was conflict between them. She also admitted to smoking marijuana both in front of and, on at least one occasion, with Pike during her teenage years. On cross-examination, Hansen testified that when Pike was twelve years old she threatened one of Hansen's boyfriends with a butcher knife and that Pike had been a troubled child for years. But Hansen did state that Pike's "troubles" were Hansen's fault, and she blamed herself for Pike's behavior.

Pike's father, Glenn Pike, also testified on her behalf. Glenn admitted rejecting Pike during her childhood and telling her that she could no longer come to his home where he lived with a new wife and family. He testified that he had picked his new wife and children over Pike and sent her away when there was conflict between them. He testified that, another time, he kicked Pike out of his home for doing poorly in school. And yet another time Glenn "rejected" Pike and even signed adoption papers to allow her to be adopted, though this was shortly before her eighteenth birthday and an adoption never came to fruition.

Pike's aunt, Carrie Ross, also testified. Ross noted that Pike's care and upbringing fell mostly on the shoulders of her paternal grandmother and that the two were inseparable. She noted that Pike's childhood home was constantly filthy to the point that Pike, as a baby, would be "crawling around through piles of dog stool all over the house." Ross also testified that Pike "was not brought up by" her mother because her mother was never at home, instead always working or choosing to be "out partying." Ross noted that, on one occasion, Ross and Hansen were out at a bar when Hansen received a phone call that Pike, then a toddler, was experiencing severe seizures that eventually required hospitalization. While Ross thought they should return home to care for Pike, Hansen was unconcerned and wanted to remain at the bar. This was merely indicative of the constant relationship between Hansen and Pike—whenever Hansen had to act in either her own interest or Pike's, Hansen always put herself first. Ross also discussed the frequency with which Pike's extended family all faced issues with substance abuse, as well as numerous family members who were either physically or verbally abusive to their children and grandchildren, including Pike.

All in all, the jury heard a clear story: Pike's childhood and upbringing were very difficult and, in some ways, explained how she became a person capable of such a brutal murder.

Pike now claims the jury should have received the more in-depth testimony on these points that Dr. McCoy could have provided, but she fails to adequately explain how Dr. McCoy's testimony would "differ in a substantial way—in strength and subject matter—from the evidence actually presented at sentencing." *Clark*, 425 F.3d at 286. Although she argues on appeal that the jury never heard that Pike's parents' inconsistency and lack of attention to her well-being caused her "out of control" behavior, that point was made multiple times at the penalty-phase hearing, with her mother even explicitly blaming herself for Pike's behavior. Thus, the evidence counsel presented to the jury encompassed the types of mitigating evidence the Supreme Court has found valuable in other cases. *See Sears*, 561 U.S. at 948 (finding relevant mitigating evidence in verbal and physical parental abuse, inappropriate parental discipline, and behavioral disorders); *Wiggins*, 539 U.S. at 534–35 (finding "powerful" mitigating evidence in the defendant's early childhood privation and abuse, an alcoholic and absentee mother, and the physical abuse the defendant experienced). And, because the jury

heard largely the same narrative as Pike now presents, the Tennessee Court of Criminal Appeals' conclusion that Pike failed to establish prejudice from Talman's decision not to call Dr. McCoy at the penalty-phase hearing, *Pike*, 2011 WL 1544207, at *51–52, was not an unreasonable application of federal law under AEDPA. 28 U.S.C. § 2254(d).

B.

Pike next challenges Talman's failure to investigate and discover other mitigating evidence. The first evidence Pike claims Talman failed to discover was her diagnoses of bipolar disorder, organic brain damage, and post-traumatic stress disorder (PTSD). She bases this argument on her post-sentencing examination by Dr. Jonathan Pincus, who determined that she actually suffered from organic brain damage, bipolar disorder and PTSD, rather than the borderline personality disorder Dr. Engum diagnosed. Her argument fails for multiple reasons.

First, "[a]bsent a showing that trial counsel reasonably believed that [the expert] was somehow incompetent or that additional testing should have occurred, simply introducing the contrary opinion of another mental health expert during habeas review is not sufficient to demonstrate the ineffectiveness of trial counsel." *Hill v. Mitchell*, 842 F.3d 910, 944 (6th Cir. 2016) (alterations in original) (quoting *McGuire v. Warden, Chillicothe Corr. Inst.*, 738 F.3d 741, 758 (6th Cir. 2013)). Here, Dr. Engum testified that his expert opinion, after numerous meetings with Pike and "fairly lengthy testing," was that she suffered from "very severe borderline personality disorder." And he specifically testified that he tested Pike for brain damage and his testing "unequivocally showed that she did not suffer any signs of brain damage." Dr. McCoy also testified at a postconviction hearing that she concurred in Dr. Engum's medical assessment throughout her mitigation work on Pike's case. So Talman had two separate experts tell him that the correct diagnosis was borderline personality disorder. Even assuming, for the sake of argument, that Dr. Pincus's diagnoses of organic brain damage, bipolar disorder, and PTSD are *contrary* to Dr. Engum's diagnosis of borderline personality disorder, nothing in the record shows that Talman should have reasonably believed that additional testing was necessary. *See id.*

Furthermore, it is difficult to see how this alleged failure prejudiced Pike, when the jury considered Dr. Engum's testimony that Pike suffered from borderline personality disorder. Pike does not specifically argue that the particular medical differences between borderline personality disorder, bipolar disorder, PTSD, and organic brain damage would have influenced the jury in its decision to sentence her to death. Instead, Pike argues that the presentation of evidence of bipolar disorder and organic brain damage would have been relevant to prove to the jury that Pike's moral reasoning and impulse control were impaired—two deficits typically caused by both organic brain damage and bipolar disorder. But the jury heard Dr. Engum testify that Pike "did not act with deliberation, with premeditation, but instead, acted in a manner consistent with her diagnosis, borderline personality disorder, which meant that *she basically went out of control*. *She basically lost any sense of what she was doing*." (Emphasis added). In other words, the jury was already well aware of a medical expert's opinion that her moral reasoning and impulse control were not present during the murder of Colleen Slemmer. We doubt that the substitution of bipolar disorder, PTSD, and organic brain damage for borderline personality disorder would have affected the jury's deliberations on this point. *See Clark*, 425 F.3d at 286; *Sears*, 561 U.S. at 954.

Pike also argues that her trial counsel was ineffective for failing to present various other lay witnesses who could have testified about their relationships with Pike, what they thought of her, and how she had described her tumultuous childhood in conversations. For example, she argues that counsel should have presented the testimony of Marshall Muse, Pike's teacher, who would have testified that he saw "flashes [of] something special" in her. Or counsel should have called an acquaintance named Onas Perry, who could have testified about her late-night talks with Pike and how Pike had described a difficult childhood and home life. But, as noted above, Pike has not persuaded us that this other testimony would have been significantly different in strength or subject matter from the testimony of Pike's mother, father, and aunt. *Clark*, 425 F.3d at 286. In sum, none of the evidence Pike now points to substantially differs from the mitigation case that was presented to the jury.

C.

Finally, our conclusion is bolstered by the aggravating evidence before the jury. *See Bobby v. Van Hook*, 558 U.S. 4, 12–13 (2009) (per curiam) (noting that the strength of the aggravating evidence against the defendant significantly diminished any effect additional mitigating evidence might have had). The jury heard evidence that Pike and her accomplices lured the victim into a lethal trap before torturing and taunting the victim until they killed her. Pike left Slemmer's body so badly beaten that the person who discovered it thought it was the corpse of an animal before realizing it was a human body. *Pike*, 978 S.W.2d at 908. The jury also heard Pike's confession in which she admitted to slashing Slemmer's throat multiple times, throwing asphalt at her head, and even keeping a piece of her skull as a souvenir. *Id*. Tennessee law allows a jury to impose a death sentence when a "murder [i]s especially heinous, atrocious or cruel in that it involved torture or serious physical abuse beyond that necessary to produce death," *see* Tenn. Code Ann. § 39–13–204(i)(5). This crime fits that description.[1]

It is true that "[t]he prejudice prong is satisfied if 'there is a reasonable probability that at least one juror would have struck a different balance.'" *Dickerson v. Bagley*, 453 F.3d 690, 699 (6th Cir. 2006) (quoting *Wiggins*, 539 U.S. at 537), *abrogated in part on other grounds by Bobby*, 558 U.S. at 8–9. But a fairminded jurist could conclude that there is no such probability here, where Pike's desired evidence was mostly cumulative and insufficient to overcome the heinous nature of her crime. Even were the jury to hear everything that Pike now wishes had been presented, a fairminded jurist could conclude that the sheer weight and degree of aggravation evidence before the jury outweighs the mitigation evidence raised on appeal. *Cf. Porter v. McCollum*, 558 U.S. 30, 41 (2009) (per curiam). Thus, the state court's conclusion that Pike could not establish *Strickland* prejudice, *Pike*, 2011 WL 1544207, at *51–52, was not an unreasonable application of federal law. *See Harrington*, 562 U.S. at 101–03. In short, because

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[1]The jury also found that death was warranted because "[t]he murder was committed for the purpose of avoiding, interfering with or preventing a lawful arrest or prosecution of the defendant or another." *See* Tenn. Code Ann. § 39–13–204(i)(6). Presumably, the jury came to this conclusion based upon Pike's confession that she heard "voices telling her that she had to do something to prevent Slemmer from telling on her and sending her to prison for attempted murder." *Pike*, 978 S.W.2d at 909. Pike did not refute this evidence, and this serves as another basis for the death sentence.

Pike fails to meet AEDPA's stringent requirements, *see* 28 U.S.C. § 2254(d), she is ineligible for habeas relief.

IV.

Because Petitioner cannot establish that the Tennessee Court of Criminal Appeals' adjudication of her claims of ineffective assistance of counsel was an unreasonable application of clearly established federal law, we affirm the judgment of the district court.

CONCURRENCE

JANE B. STRANCH, Circuit Judge, concurring. I join the opinion in this case but write separately because it presents an issue with which our society must be concerned—whether 18-year-olds should be sentenced to death. Had she been 17 rather than 18 at the time of her crime, like her codefendant Tadaryl Shipp, Christa Pike would not be eligible for the death penalty.

The difficulty of this case is not just age; the gravest concern arises from the combination of Pike's youth and the nature of her crime. Capital cases involve heinous and inexplicable crimes, and Pike's case presents no exception. But in sentencing Pike to death, we rule out the possibility that her crime was a product of the immature mind of youth rather than fixed depravity. And we presume that she is incapable of reform even though the stories of other teenage killers, many of whom have been rehabilitated behind bars, reveal other possibilities.[1]

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[1]A few examples of teenagers initially sentenced to life in prison help explain the point.

Andrew Hundley was 15 years old when he killed a 14-year-old girl "whose body was found burned and badly beaten behind a grocery store." Grace Toohey, *The Power of Second Chances: How this 37-year-old, Once in Prison, Is Now an LSU Grad*, The Advocate, May 10, 2019, https://www.theadvocate.com/baton_rouge/news/crime_police/article_03c590ae-72a9-11e9-8d2b-4b78d19fcd5b html. Now 37, Hundley helped found the Louisiana Parole Project and completed college coursework while in prison; he finished his bachelor's degree in sociology after being released on parole and plans to pursue a master's degree in criminology. *Id.*

Bosie Smith was 16 when he stabbed another youth to death after an argument. Ted Roelofs, *In Prison for Decades, One Juvenile Lifer's Quest for Redemption*, Bridge Magazine, Aug. 26, 2016, https://www.mlive.com/politics/2016/08/in_prison_for_decades_one_juve.html. Once in prison, Smith took advantage of every rehabilitative program available to him, training Greyhounds so that they can be adopted by families and winning the warden's support for his release. *Id.*

When he was 16 years old, Kempis Songster stabbed another teenage runaway to death; after nearly three decades in prison, he "is training to be a yoga instructor, leading workshops in cultural awareness, studying philosophy and history . . . . He is doing everything, anything, really, to better himself, create a persona separate from his crime and crushing sentence. He wants to make amends." Amy S. Rosenberg, *Teen Killers, Prison Lifers, Given a Ray of Hope*, Philadelphia Inquirer, Feb. 7, 2016, https://www.inquirer.com/news/inq/teen-killers-prison-lifers-given-ray-hope-20160206 html.

Amaury Rosario was 17 when he, along with his codefendants, shot and killed four unarmed people during a robbery gone wrong. *United States v. Rosario*, 99-cr-533, 12-cv-3432, 2018 WL 3785095, at *2 (E.D.N.Y. Aug. 9, 2018). After two decades in prison, guards as well as inmates attested to his character and positive influence; moreover, mental-health experts working for both the defense and the prosecution at his resentencing agreed that "he had been rehabilitated and . . . no longer poses a significant risk to the public." *Id.* at *4.

The judgment that she merits the most severe punishment is in tension with Supreme Court precedent focusing on the lesser blameworthiness and greater prospect for reform that is characteristic of youth.

In a series of cases starting with *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme Court made clear that children are different from adults for purposes of the Eighth Amendment. First, in *Roper*, the Court held that the Eighth Amendment's "evolving standards of decency" prohibit the imposition of death sentences on those who were under 18 at the time of their crimes. *Id.* at 561, 571. Next, in *Graham v. Florida*, the Court concluded that juvenile offenders who commit non-homicide offenses could not constitutionally be sentenced to life without parole. 560 U.S. 48, 74–75 (2010). Then, in *Miller v. Alabama*, the Court determined that even juvenile homicide offenders could be sentenced to life without parole only after an individualized sentencing hearing and a finding that their crime was not the product of "unfortunate yet transient immaturity." 567 U.S. 460, 479–80 (2012). Finally, in *Montgomery v. Louisiana*, the Court held that *Miller* was retroactively applicable because it announced a new substantive rule—namely, "that sentencing a child to life without parole is excessive for all but 'the rare juvenile offender whose crime reflects irreparable corruption.'" 136 S. Ct. 718, 734 (2016) (quoting *Miller*, 567 U.S. at 479–80). Taken as a whole, these cases stand for the principle that "[b]ecause juveniles have diminished culpability and greater prospects for reform . . . , 'they are less deserving of the most severe punishments.'" *Miller*, 567 U.S. at 471 (quoting *Graham*, 560 U.S. at 68).

This line of cases relied on three findings about the "significant gaps between juveniles and adults" that make children "constitutionally different from adults for purposes of sentencing." *Id.* "First, children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking. Second, children 'are more vulnerable . . . to negative influences and outside pressures' . . . . And third, a child's character is not as 'well formed' as an adult's . . . ." *Id.* (quoting *Roper*, 543 U.S. at 569–70). These conclusions "rested not only on common sense . . . but on science and social science as well." *Id.*; *see also id.* at 472 n.5 ("The evidence presented to us in [*Miller*] indicates that the

science and social science supporting *Roper*'s and *Graham*'s conclusions have become even stronger.").

Recent research in neuroscience and developmental psychology indicates that individuals between the ages of 18 and 21 share many of these same characteristics. Since *Roper* was decided, scientists have established that "biological and psychological development continues into the early twenties." Elizabeth S. Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 642 (2016). Brain-imaging studies "have shown continued regional development of the prefrontal cortex, implicated in judgment and self-control[,] beyond the teen years and into the twenties." Alexandra O. Cohen et al., *When Does a Juvenile Become an Adult?*, 88 Temp. L. Rev. 769, 783 & n.63 (2016) (collecting articles). Researchers have found that in "negative emotional situations," such as conditions of threat, young adults between the ages of 18 and 21 perform significantly worse than adults in their mid-20s—and more like those under 18. Alexandra O. Cohen et al., *When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 Psychol. Sci. 549, 559–60 (2016). "It is also well established that young adults, like teenagers, engage in risky behavior, such as . . . criminal activity, to a greater extent than older adults." Scott et al., *supra*, at 642. In short, empirical research has found that "[a]lthough eighteen to twenty-one-year-olds are in some ways similar to individuals in their midtwenties, in other ways, young adults are more like adolescents in their behavior, psychological functioning, and brain development." *Id.* at 646.

Reflecting a long-held societal understanding of this point, we already recognize 21 as the age of majority in a number of contexts. Individuals are required to be 21 to consume alcohol or marijuana (where legal), purchase tobacco in many jurisdictions, or to rent a car. Similarly, federal law prohibits licensed gun dealers from selling handguns and ammunition to those under 21, *see* 18 U.S.C. § 922(b)(1), (c)(1), while immigration law allows U.S. citizens to request immigrant visas for unmarried children under the age of 21, *see* 8 U.S.C. §§ 1101(b)(1), 1151(b)(2)(A)(i). In fact, 21 has traditionally marked the ascension to full adulthood: "[T]he term 'minor' or 'infant'—as those terms were historically understood—applied to persons under the age of 21 . . . . The age of majority at common law was 21, and it was not until the 1970s

that States enacted legislation to lower the age of majority to 18." *NRA v. ATF*, 700 F.3d 185, 201 (5th Cir. 2012).

For these reasons, I believe that society's evolving standards of decency likely do not permit the execution of individuals who were under 21 at the time of their offense. But, because we review this case under the strictures of AEDPA, we may grant Pike relief only if the state court's adjudication of her case was either (1) contrary to or unreasonably applied Supreme Court precedent, or (2) "resulted in a decision that was based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d). And the Supreme Court has not extended *Roper* to 18-year-olds. I therefore reluctantly concur because I agree that the state court's decision denying Pike's postconviction petition did not unreasonably apply *Strickland*'s prejudice prong.

EXHIBIT 10

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 95/2020

Precautionary Measure No. 1080-20
Christa Pike regarding the United States of America
December 11, 2020
Original: English

I. INTRODUCTION

1. On November 17, 2020, the Inter-American Commission on Human Rights ("the Inter-American Commission", "the Commission" or "the IACHR") received a request for precautionary measures filed by Sandra L. Babcock, Zohra Ahmed, Joshua Howard, Rosalind Major, Sophie Miller and Victoria Pan of Cornell Law School, and Stephen Ferrell of the Federal Defender Services of Eastern Tennessee, Inc. ("the applicants"). The application urges the Commission to require that the United States of America ("the State" or "United States") adopt the necessary measures to protect the rights of Christa Pike ("the proposed beneficiary"), the only woman on death row in the state of Tennessee, where she has been held in solitary confinement for 23 years. This request for precautionary measures is linked to petition 2254-20 in which the applicants allege violations of Article I (right to life, liberty and personal security), Article II (right to equality before the law), Article VII (right of the child to special protection), Article XVIII (right to a fair trial), Article XXV (right to humane treatment in custody) and Article XXVI (right to due process of law and right not to receive cruel, infamous or unusual punishment) of the American Declaration of the Rights and Duties of Man ("American Declaration" or "Declaration").

2. Pursuant to Article 25.5 of its Rules of Procedure, the IACHR requested information from the State on November 24, 2020. The State presented its observations on November 30, 2020. The applicants presented additional information on December 2, 2020.

3. Having analyzed the submissions of fact and law presented by the parties, the Commission considers that the information submitted demonstrates prima facie that there is a serious and urgent risk of irreparable harm to Ms. Pike's rights to life and personal integrity in accordance with Article 25 of its Rules of Procedure. Moreover, in the event that Ms. Pike is executed before the Commission has the opportunity to examine the merits of her petition, any eventual decision would be rendered moot, leading to irreparable harm. Consequently, the Commission requests that the United States of America: a) adopt the necessary measures to protect the life and personal integrity of Christa Pike; b) refrain from carrying out the death penalty on Christa Pike; c) ensure that Christa Pike's detention conditions are consistent with international standards, giving special consideration to her personal conditions; and, d) agree on the measures to be adopted with the beneficiary and her representatives.

II. SUMMARY OF FACTS AND ARGUMENTS

1. Information provided by the applicants

4. The application alleges that Christa Pike, the youngest woman sentenced to death in the United States post-*Furman*,[1] is currently facing the risk of imminent execution in the state of Tennessee, where she has been held in solitary confinement on death row for 23 years.

i. The proposed beneficiary's background

5. The application alleges that Ms. Pike's childhood was marked by physical and sexual violence, abuse and neglect. She was born with organic brain damage that caused her to have seizures as an infant, due to the fact that her mother drank while she was pregnant.[2]

6. Growing up, the proposed beneficiary was repeatedly beaten by her father, maternal grandmother and several of her mother's boyfriends, one of whom was charged with assaulting Christa after he punched her in the nose. When she was 9 years old, Ms. Pike was raped by a man who lived in the same trailer park as her and her family. The application states that, shortly after the rape, the proposed beneficiary attempted suicide by overdosing on Tylenol. She was diagnosed with depression by a psychiatrist, however, she reportedly did not receive appropriate treatment, and the relevant State authorities did not follow up on her well-being and recovery after she discontinued the prescribed psychiatric medication. Ms. Pike attempted suicide again when she was 12 years old following the death of her paternal grandmother, allegedly "the only nurturing person in Christa's life".

7. At the age of 13, Ms. Pike was sexually assaulted by her mother's then boyfriend. Following the assault, Child Protective Services removed her from her home and placed her in a residential facility called Sheaffer House. However, she was returned to her mother's custody after only 3 months. The application alleges that there was minimal follow-up to ensure Christa's safety back at home. Ms. Pike was raped again when she was 17 years old by a stranger. The application indicates that, while there are hospital records confirming the rape, the police never did more than a preliminary investigation.

8. The application also states that growing up Ms. Pike developed Bipolar Disorder and Obsessive-Compulsive Disorder, and suffered from severe Post-Traumatic Stress Disorder as a result of her abuse. However, she was consistently deprived of appropriate treatment or care, and was only ultimately properly diagnosed when she was imprisoned.

ii. The crime that led to Christa Pike's conviction and death sentence

9. In 1994, Ms. Pike joined the Job Corps program in order to pursue a career in nursing. According to the application, while the Job Corps is marketed as a "government-run residential program designed to help troubled teens again job skills", in actuality, "the administrators who ran Job Corps tolerated violence

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[1] In *Furman v. Georgia* (1972), the U.S. Supreme Court held that the death penalty was unconstitutional on the grounds of the Eighth Amendment's prohibition on cruel and unusual punishment. Following this decision, the use of the death penalty was put on hold while states revised criminal statutes to ensure that the death penalty was not applied arbitrarily or discriminatorily. The death penalty was then reinstated after the 1976 case of Gregg v. Georgia. See: *Furman v. Georgia*, 408 U.S. 238 (1972); *Gregg v. Georgia*, 428 U.S. 153 (1976); Cornell University. Legal Information Institute. Furman v. Georgia (1972).

[2] The application indicates that, when Ms. Pike was 14 months old, her doctor preformed an electroencephalogram (EEG) on her, which showed "abnormal" brain activity consistent with frontal temporal lobe damage. The EEG also revealed a heterotopia which often occurs when the mother drinks during pregnancy.

and neglected their young residents".[3] In this sense, when Ms. Pike arrived at the Job Corps program, she allegedly experienced even more state-sanctioned violence, noting that students regularly carried razor blades or box cutters for protection and gangs were commonplace.

10. At the Job Corps, the proposed beneficiary became involved with her then-boyfriend Tadaryl Shipp, another student, who physically and emotionally abused her. Mr. Shipp allegedly forbade Christa from speaking with other boys and demanded that she stay beside him at all times. On one occasion, an administrator at the Job Corps witnessed Mr. Shipp push Ms. Pike's "head against the wall, smack her repeatedly and kick her in the lower back".

11. According to the application, Ms. Pike's fixation with her then-boyfriend led to a conflict with another student at the Job Corps, Colleen Slemmer. After returning from visiting her family for Christmas, the proposed beneficiary began to suspect that Ms. Slemmer was interested in Mr. Shipp. One night, the proposed beneficiary woke up to find Ms. Slemmer in her bedroom with a box cutter going through her things. That same night, Ms. Slemmer allegedly tore apart Ms. Pike's photographs of her deceased grandmother. Ultimately, in the grips of her mental illnesses, the proposed beneficiary killed Ms. Slemmer.

iii. Allegations of the proposed beneficiary's failed legal defense

12. The application states that both of the proposed beneficiary's state appointed lawyers were inexperienced and unprepared to defend her. One had never represented anyone charged with a capital crime, while the other had only been a practicing lawyer for three and a half years, and had never before tried a murder case. Given their inexperience and lack of preparation, Ms. Pike's lawyers allegedly failed to present any mitigating evidence of her history of sexual violence and child abuse to the jury, leaving the jurors with no reason to consider an alternative sentence to the death penalty. In this sense, the application indicates that, prior to trial, a psychologist hired by one of Ms. Pike's lawyers prepared three volumes of social history containing "numerous interviews conducted with Christa's family and friends documenting Christa's history of abuse and neglect". However, none of this information was ultimately presented at trial and only three witnesses were called: Christa's maternal aunt, mother and father. The application indicates that the entire penalty phase of the case lasted barely a day. The full details of Ms. Pike's upbringing and the inadequacies of her trial lawyers only came to light in post-conviction proceedings following her death sentence.

13. Moreover, the application states that while on one occasion the State offered Ms. Pike a plea deal –life sentence without parole–, her lawyer failed to inform her of this offer, deciding to decline it instead and proceed with trial, given his confidence that he would win the case. This same lawyer was facing ethical misconduct allegations for fraud against the Indigent Defense Fund for overbilling, at the time that he was defending Ms. Pike in her capital murder trial.

iv. The proposed beneficiary's conviction and death sentence

[3] In this sense, the application states that, in 1995, a U.S. Senate Hearing was held on the danger and violence in Job Corps programs across the country. One witness in the hearing described the culture of violence prominent at Jobs Corps across the country, saying, "students come to Job Corps to leave drug abuse and violence in their communities only to find the same conditions exist at the Job Corps centers".

14. Ms. Pike was sentenced to death in 1996 for a crime she committed when she was 18 years old. Her conviction and sentence were affirmed by the Supreme Court of Tennessee on direct appeal.[4] The U.S. Supreme Court denied certiorari.[5]

15. Following this sentence, the proposed beneficiary filed a petition for post-conviction relief in the trial courts, which was denied following an evidentiary hearing. The Court of Criminal Appeals affirmed the judgement, and the both Supreme Court of Tennessee[6] and the U.S. Supreme Court denied review.[7]

16. Ms. Pike subsequently filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of Tennessee in which she argued that "her trial lawyers were grossly ineffective and that to execute a mentally ill, brain-damaged young woman for a crime committed when she was only 18 years old would violate the US Constitution". The Court granted the warden's motion for summary judgement, dismissed the petition and denied a certificate of appealability. The Sixth Circuit Court of Appeals granted Ms. Pike a certificate of appealability but ultimately rejected her claims and affirmed the denial of habeas relief on August 22, 2019.[8] Subsequently, on February 21, 2020, Ms. Pike petitioned the U.S. Supreme Court for a writ of certiorari, which was denied on June 8, 2020.[9]

17. In this same sense, the application argues that Ms. Pike "is barred from presenting a due diligence claim by federal legislation which imposes draconian limitations on the presentation of 'successive' post-conviction petitions". This means that she is barred from litigating her claim unless she can demonstrate that her petition rests on: (1) newly discovered evidence of innocence; or, (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court that was previously unavailable. The application indicates that Ms. Pike's claim does not rest on either of these two premises.

v. The proposed beneficiary's current conditions of detention

18. The application states that the proposed beneficiary was placed in solitary confinement in the first year of her sentence for a behavioral infraction. Whilst she was there, the Tennessee Department of Corrections enacted a policy of mandatory segregation for death row inmates. Consequently, Ms. Pike has been held in solitary confinement ever since, which will amount to 24 years in January 2021. She is the only woman on death row in Tennessee.

19. In this sense, for the last 23 years, the proposed beneficiary has spent between 22 to 23 hours a day in a "room smaller than a parking space". Her cell's "door has a small window that allows constant, bright florescent light to shine through, and a small unlockable flap to deliver food. Inside, there is a narrow bed with a small round seat connected to a pole at its foot. There is a small desk, a bookcase, a sink, and a toilet. All the furniture is metal and bolted to the floor. Ms. Pike's cell has one small outward facing slit in the wall, three to four feet tall and three to four inches wide". She is allowed outside of her cell three times a week to shower and five times a week to participate in an hour of "recreation". The application states that "recreation" means "being escorted by guards, chained and manacled, to a cage –a sort of human kennel– no bigger than her cell just outside of the prison. Once she is in the cage, her manacles and chains are removed, and the door is locked behind her. The hour the prison given her to

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4 *State v. Pike*. 978 S.W.2d 904 (Tenn. 1998).
5 *Pike v. Tennessee*. 526 U.S. 1147 (1999).
6 *Pike v. State*. No. E2009-00016-CCA-R3-PD. 2011 WL 1544207 (Tenn. Crim. App. Apr. 25, 2011).
7 *Pike v. Tennessee*. 568 U.S. 827 (2012).
8 *Pike v. Gross*. 936 F.3d 372 (6th Cir. 2019).
9 *Pike v. Gross*. No. 19-1054. 2020 WL 3038298 (2020).

pace in an outdoor cage is Ms. Pike's only chance to speak directly to other inmates who may be in nearby cages at the same time".

20. The application indicates that, according to the proposed beneficiary's mental health care provider, Ms. Pike's prolonged solitary confinement has had "an irreparable impact on her psychological, emotional and physical well-being":

> "As is typical in severe, prolonged solitary confinement, Ms. Pike's senses have been cruelly warped by her experience. She no longer has long-distance vision due to the prolonged exposure to the small, cramped dimensions of her cell. She has also lost all sensitivity to light due to the permanent beam of fluorescent light that shines through her doorway. At the same time, she has developed a hypersensitivity to sound and smell. She can now hear noises from across the pod, even through the glass plate that covers her steel door to muffle her connection to the outside world. She cannot tolerate intrusion or change, and becomes distressed if a guard so much as changes his aftershave. She rarely has access to the touch of another human being and has not had physical contact with anyone who was not a guard or a doctor since 2016."

21. Further, according to the application, the proposed beneficiary lives with multiple, severe mental illnesses that have all been severely exacerbated by her prolonged solitary confinement:

> "Ms. Pike has lost all ability to concentrate or focus, has rapid and explosive mood changes, and displays consistent emotional instability. Her life is punctuated by cycles of hypomanic agitation where she will pace endlessly through her cell, bang on her door, or convulse and tense her whole body. Those sleepless, manic phases alternate with periods of depression characterized by hopelessness, powerlessness, tearfulness, and thoughts of suicide."

22. The application further alleges that the proposed beneficiary's solitary confinement stems from an institutional policy of applied gender discrimination, noting that men on death row are housed together, outside of solitary confinement. They are allowed to work, and have regular access to their spiritual advisors and their legal teams with contact visits. In stark contrast, Ms. Pike has not had consensual human contact in more than four years. The application indicates that, when the proposed beneficiary tried to negotiate better conditions with the warden, the warden dismissed her and allegedly said to a passing guard: "This bitch wants me to let her out. I'll let her out when they come to kill her".[10]

23. Based on all of the foregoing, the application argues that Ms. Pike's prolonged solitary confinement constitutes torture.

vi. Execution date

24. On August 27, 2020, the state of Tennessee filed a motion before the Supreme Court of Tennessee to set an execution date for Ms. Pike, given that "she has completed the standard three-tier appeals process"[11]. In response, the proposed beneficiary filed a motion for a 90-day extension of time to file a response to the state's motion, which was granted on September 2, 2020. Subsequently, on December 2, 2020, the Court granted a second time extension ordering that Ms. Pike file her response to the State's motion by March 8, 2021[12]. The application notes that it is not yet clear how the State intends to execute

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[10] The application states that, in 2019, Ms. Pike submitted an internal Title IX grievance complaint to the prison warden. She noted in her complaint that male death row inmates are allowed to have contact visits with their legal teams, free access to spiritual advisors and are allowed to work. Further, male death row inmates are not sentenced to permanent solitary confinement.

[11] *Tennessee v. Pike*. No. 03S01-9712-CR-00147. Supreme Court of Tennessee. August 27, 2020.

[12] *State v. Pike*. Supreme Court of Tennessee. No. M2020-01156-SC-DPE-DD. December 2, 2020.

her, indicating that the proposed beneficiary will be given the choice of selecting either death by electrocution or death by lethal injection as the method of execution.

2. Information provided by the State

25. The United States informed that, on August 27, 2020, the state of Tennessee requested the Supreme Court of Tennessee to set a date for Ms. Pike's execution[13] and that her lawyers were given until December 7 to respond to that motion.[14] The State argues that "nothing about this sequence of events warrants a recommendation of precautionary measures". Further, the State indicates that the proposed beneficiary has not demonstrated that her ongoing detention constitutes a serious or urgent situation or presents the likelihood of irreparable harm.

26. In addition, the United States informs that there is no indication that Ms. Pike "has been unable to access courts or the clemency process, or that the COVID-19 pandemic has adversely impacted her legal representation". Further, the State notes that the record in the proposed beneficiary's case "indicates that her mental health was taken into consideration as a mitigating factor by the jury that sentenced her to death".

27. Moreover, the State argues that the proposed beneficiary has failed to exhaust domestic remedies with respect to the present request for precautionary measures, as well as the accompanying petition, emphasizing the importance of this requirement under international law. The United States also alleges that the precautionary measures request and accompanying petition is an effort by Ms. Pike "to use the Commission as a 'fourth instance' body to review claims already heard and rejected by U.S. courts" and therefore, should be declined by the IACHR. Lastly, the State reaffirms "its longstanding position that the Commission lacks the authority to require that States adopt precautionary measures". In this sense, given that the United States is not a party to the American Convention, the Commission only has the authority to make recommendations with regards to it. Consequently, "should the Commission adopt a precautionary measure resolution in this matter, the United States would take it under advisement and construe it as recommendatory". Based on the foregoing, the State submits that the Commission should refrain from requesting precautionary measures in the present matter.

III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABILITY

28. The precautionary measures mechanism is part of the Commission's functions of overseeing Member States' compliance with the human rights obligations established in Article 106 of the Charter of the Organization of American States ("OAS"). These general functions are set forth in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR. Moreover, the precautionary measures mechanism is enshrined in Article 25 of the Rules of Procedure, by which the Commission grants precautionary measures in serious and urgent situations, where such measures are necessary to prevent irreparable harm.

29. The Inter-American Commission and the Inter-American Court of Human Rights ("the Inter-American Court" or "I/A Court H.R.") have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary. Regarding their protective nature, these measures seek to avoid irreparable harm and to protect the exercise of human rights. With regards to

[13] *State v. Pike*. No. 03S01-9712-CR-00147. Motion to Set Execution Date. August 27, 2020.
[14] *State v. Pike*, No. 58183A, Order, No. M2020-01156-SC-DPE-DD. Tennessee. September 2, 2020.

their precautionary nature, these measures aim to preserve legal situations while the bodies of the inter-American system analyze a petition or case. Their objective and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the *effet utile* of the final decision. In this regard, precautionary or provisional measures allow the State concerned to comply with the final decision and if necessary, implement the ordered reparations. For such purposes, according to Article 25.2 of the Rules of Procedure, the Commission considers that:

a. “Serious situation” refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American System;

b. “Urgent situation” is determined by means of the information provided and refers to risk of threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and,

c. “Irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

30. In analyzing these requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. Rather, the purpose of the assessment of the information provided should be to determine prima facie if a serious and urgent situation exists.[15]

31. As a preliminary observation, the Commission considers it necessary to highlight that, according to its mandate, it is not called upon to make a determination on the criminal responsibility of individuals in relation to their alleged commission of crimes or infractions. Additionally, the IACHR does not have the mandate, through the precautionary measures mechanism, to determine whether the State has incurred violations of the American Declaration as a result of the alleged events. In this sense, the Commission reiterates that, with respect to the precautionary measures procedure, it is only called upon to analyze whether the proposed beneficiary is in a situation of seriousness and urgency facing harm of an irreparable nature, as established in Article 25 of its Rules of Procedure. With regards to P-2254-20, which alleges violations of the rights of the proposed beneficiary, the Commission recalls that the analysis of these claims will be carried out in compliance with the specific procedures of its Petition and Case System, in accordance with the relevant provisions of its Statute and Rules of Procedure.

32. The Commission also finds it pertinent to underscore that, while the exhaustion of domestic remedies is indeed a requirement for the admissibility of petitions in accordance with Article 31 of its Rules of Procedure, this same requirement does not apply to the granting of precautionary measures. In this sense, Article 25.6.a of the Rules of Procedure establishes that whether the situation has been brought to the attention of the pertinent authorities should be taken into account when reviewing a request for precautionary measures. However, such actions do not bar the Commission from granting precautionary measures under the consideration of the requirements of seriousness, urgency and irreparable harm.

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[15] See in this regard: I/A Court H.R. *Matter of Residents of the Communities of the Miskitu Indigenous People of the North Caribbean Coast Region regarding Nicaragua.* Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018. Considerandum 13; I/A Court H.R. *Matter of the children and adolescents deprived of their liberty in the “Complexo do Tatuapé” of the Fundação CASA*. Request for extension of precautionary measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

Additionally, as indicated above, the Commission's competence to grant precautionary measures extends to all Member States of the OAS and does not derive from the American Convention on Human Rights.

33. Additionally, the Inter-American Commission recalls that the death penalty has been subject to strict scrutiny within the inter-American human rights system.[16] While most OAS Member States have abolished the death penalty, a significant minority still hold on to this form of punishment.[17] With regards to the States that maintain the death penalty, there are a series of restrictions and limitations established in regional human rights instruments that States are bound to comply with in accordance with international law.[18] These restrictions and limitations are based on the broad recognition of the right to life as the supreme human right and as the sine qua non of the enjoyment of all other rights, thus requiring greater scrutiny to ensure that any deprivation of life resulting from the application of the death penalty complies strictly with the requirements of the applicable inter-American human rights instruments, including the American Declaration.[19] In this sense, the Commission has underlined that the right to due process plays an essential role in guaranteeing the protection of the rights of persons who have been sentenced to death. In order to protect due process guarantees, States have the obligation to ensure the exercise of the right to a fair trial, the strictest compliance with the right to defense, and the right to equality and non-discrimination.[20]

34. In the present matter, the Commission considers that the requirement of seriousness has been fulfilled. With regards to the precautionary dimension, the Commission observes that, according to petition 2254-20 presented by the applicants, the legal proceedings which led to Ms. Pike's death sentence allegedly did not comply with her rights to a fair trial and due process of law. In particular, the applicants claim that, during the criminal proceedings, Ms. Pike's state appointed lawyers allegedly failed to present mitigating evidence of her history of sexual violence and child abuse to the jury, leaving the jurors with no reason to consider an alternative sentence to the death penalty. Further, the applicants emphasize that the proposed beneficiary, a person living with mental illnesses, was 18 years old at the time of commission of the crime. In this regard, while the imposition of the death penalty is not prohibited per se under the American Declaration,[21] the Commission has recognized systematically that the possibility of an execution in such circumstances is sufficiently serious to permit the granting of precautionary measures to the effect of safeguarding a decision on the merits of the petition filed.[22]

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16 IACHR. Press Release No. 248/20. "The IACHR stresses its call for the abolition of the death penalty in the Americas on the World Day Against the Death Penalty". October 9, 2020.

17 IACHR. The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition. OAS/Ser.L/V/II Doc. 68. December 31, 2011, paras. 12 & 138; IACHR. Press Release No. 248/20. "The IACHR stresses its call for the abolition of the death penalty in the Americas on the World Day Against the Death Penalty". October 9, 2020.

18 IACHR. The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition. OAS/Ser.L/V/II Doc. 68. December 31, 2011, paras. 138-39.

19 IACHR. Report No. 210/20. Case 13.361. Admissibility and Merits (Publication). Julius Omar Robinson. United States of America. August 12, 2020, para. 55; IACHR. Report No. 200/20. Case 13.356. Admissibility and Merits (Publication). Nelson Ivan Serrano Saenz. United States of America. August 3, 2020, paras. 44-45; IACHR. Report No. 211/20. Case 13.570. Admissibility and Merits (Publication). Lezmond C. Mitchell. United States of America. August 24, 2020, paras. 72-73.

20 IACHR. The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition. OAS/Ser.L/V/II Doc. 68. December 31, 2011, para. 141.

21 IACHR. The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition. OAS/Ser.L/V/II Doc. 68. December 31, 2011, para. 2.

22 See, in this regard: IACHR. Resolution 77/2018. Precautionary Measure No. 82-18. Ramiro Ibarra Rubí regarding the United States of America. October 1, 2018; IACHR. Resolution 32/2018. Precautionary Measure No. 334-18. Charles Don Flores regarding the United States of America. May 5, 2018 (available only in Spanish); IACHR. Resolution 41/2017. Precautionary Measure No. 736-17. Rubén Ramírez Cárdenas regarding the United States of America. October 18, 2017; IACHR. Resolution 21/2017. Precautionary

35. Regarding the protective dimension, the Commission observes that Ms. Pike remains on death row in Tennessee and as of January 2021, will have been held in solitary confinement for 24 years while awaiting execution. The Commission has stated that "in no instance should solitary confinement of an individual last longer than thirty days"[23]. It has further concluded that "it is widely established in international human rights law that solitary confinement for extended periods of time constitutes at the very least a form of cruel, inhuman or degrading treatment or punishment".[24] As for the impact that solitary confinement may cause on the rights to life and personal integrity of an individual, the former United Nations Special Rapporteur on Torture, Juan E. Mendez, has stated that:

> Individuals held in solitary confinement suffer extreme forms of sensory deprivation, anxiety and exclusion, clearly surpassing lawful conditions of deprivation of liberty. Solitary confinement, in combination with the foreknowledge of death and the uncertainty of whether or when an execution is to take place, contributes to the risk of serious and irreparable mental and physical harm and suffering to the inmate. Solitary confinement used on death row is by definition prolonged and indefinite and thus constitutes cruel, inhuman or degrading treatment or punishment or even torture.[25]

36. The Commission further emphasizes the serious impacts of long term deprivation of liberty on death row, known as the "death row phenomenon", which:

> (…) consists of a combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death. Those circumstances include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held. Death row conditions are often worse than those for the rest of the prison population, and prisoners on death row are denied many basic human necessities.[26]

37. In this sense, in the case of Russell Bucklew, the IACHR found that "the very fact of spending 20 years on death row is, by any account, excessive and inhuman".[27] In the case of Víctor Saldaño, the Commission concluded that "holding Víctor Saldaño on death row for more than 20 years in solitary confinement has constituted a form of torture, with severe and irreparable detriment to his personal integrity and, especially, his mental health".[28]

Measure No. 250-17. Lezmond Mitchell regarding the United States of America. July 2, 2017; IACHR. Resolution 14/2017. Precautionary Measure No. 241-17. Matter of Víctor Hugo Saldaño regarding the United States of America. May 26, 2017; IACHR. Resolution 9/2017. Precautionary Measure No. 156-17. William Charles Morva regarding the United States of America. March 16, 2017.

[23] IACHR. Report No. 29/20. Case 12.865. Merits (Publication). Djamel Ameziane. United States. April 22, 2020, para. 151; IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas. OEA/Ser.L/V/II. Doc. 64. December 31, 2011, para. 411.

[24] IACHR. Report No. 29/20. Case 12.865. Merits (Publication). Djamel Ameziane. United States. April 22, 2020, para. 152; IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas. OEA/Ser.L/V/II. Doc. 64. December 31, 2011, para. 413.

[25] United Nations General Assembly. Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/67/279. August 9, 2012, para. 48.

[26] United Nations General Assembly. Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/67/279. August 9, 2012, para. 42; IACHR. Report No. 24/17. Case 12.254. Merits. Víctor Saldaño. United States. March 18, 2017, para. 241; IACHR. Report No. 200/20. Case 13.356. Admissibility and Merits (Publication). Nelson Ivan Serrano Saenz. United States of America. August 3, 2020, para. 69; IACHR. Report No. 210/20. Case 13.361. Admissibility and Merits (Publication). Julius Omar Robinson. United States of America. August 12, 2020, para. 115; IACHR. Report No. 211/20. Case 13.570. Admissibility and Merits (Publication). Lezmond C. Mitchell. United States of America. August 24, 2020, para. 132; IACHR. Report No. 71/18. Case 12.958. Merits. Russell Bucklew. United States. May 10, 2018, paras. 85-91.

[27] IACHR. Report No. 71/18. Case 12.958. Merits. Russell Bucklew. United States. May 10, 2018, para. 91.

[28] IACHR. Report No. 24/17. Case 12.254. Merits. Víctor Saldaño. United States. March 18, 2017, para. 252.

38. According to the information provided by the applicants, for the last 23 years, Ms. Pike has been held in a "room smaller than a parking space". She rarely ever leaves her cell, except to shower three times a week and to participate in an hour of "recreation" five times a week. The lights are kept on 24 hours a day and the lighting does not vary. She has extremely limited access to other prisoners, and has not had physical contact with anyone who was not a guard or a doctor since 2016. The application alleges that these conditions of detention have had an irreparable impact on Ms. Pike's psychological, emotional and physical well-being.

39. The Commission observes that the United States did not controvert the proposed beneficiary's alleged conditions of confinement in its report, nor did it inform of any measures being adopted by domestic courts or administrative authorities to ensure humane detention conditions and to prevent any harm to Ms. Pike.

40. In view of these aspects, and without prejudice to the petition presented, the Commission concludes that the rights of Ms. Pike are prima facie at risk due to the possible execution of the death penalty and its subsequent effects on her petition which is currently under the Commission's analysis, as well as her ongoing conditions of detention in solitary confinement on death row and their impact on her rights to life and personal integrity.

41. The Commission considers that the requirement of urgency has been fulfilled. With regards to the precautionary dimension, according to the information presented by the applicants, on June 8, 2020, the U.S. Supreme Court denied the proposed beneficiary's writ of certiorari. Subsequently, on August 27, 2020, the State of Tennessee moved to set Ms. Pike's execution date. In view of the foregoing, and before the imminent possibility that the death penalty is applied, the Commission considers it necessary to adopt precautionary measures in order to examine the petition presented by the applicants.

42. In this same sense, regarding the protective dimension, the Commission considers that the risk to the proposed beneficiary's rights requires immediate measures given the severe conditions of her detention in solitary confinement on death row and before the possible execution of the death penalty.

43. The Commission considers that the requirement of irreparability has been fulfilled, insofar as the potential impact on the rights to life and personal integrity of the proposed beneficiary constitutes the maximum situation of irreparability. Further, the IACHR considers that if Ms. Pike is executed before the Commission has had the opportunity to evaluate P-2254-20, any eventual decision on the merits of the case would be rendered moot, given that the situation of irreparable harm would already have materialized.

IV. BENEFICIARY

44. The Commission declares that the beneficiary of this precautionary measure is Christa Pike, who is duly identified in this proceeding.

V. DECISION

45. The Inter-American Commission on Human Rights concludes that the present matter meets prima facie the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the IACHR requests that the United States of America:

a) adopt the necessary measures to protect the life and personal integrity of Christa Pike;

b) refrain from carrying out the death penalty on Christa Pike;

c) ensure that Christa Pike's detention conditions are consistent with international standards, giving special consideration to her personal conditions; and,

d) agree on the measures to be adopted with the beneficiary and her representatives.

46. The Commission requests the United States of America to inform, within a period of 15 days from the date of this resolution, on the adoption of the precautionary measures requested and to update such information periodically.

47. The Commission emphasizes that, in accordance with Article 25(8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute prejudgment of any violation of the rights protected in the applicable instruments.

48. The Commission instructs its Executive Secretariat to notify the United States of America and the applicants of this resolution.

49. Approved on December 11, 2020 by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay; Julissa Mantilla Falcón; and, Edgar Stuardo Ralón Orellana, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary