

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

STATE OF TENNESSEE v. CHRISTA GAIL PIKE

Criminal Court for Knox County  
No. 58183A

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No. M2020-01156-SC-DPE-DD

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BRIEF AMICUS CURIAE IN SUPPORT OF CHRISTA PIKE BY  
INTERNATIONAL LEGAL SCHOLARS AND FORMER MEMBERS  
AND STAFF OF THE INTER-AMERICAN COMMISSION ON  
HUMAN RIGHTS

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## INTERESTS OF AMICI CURIAE

Amici curiae are international legal scholars who teach, research, and write about international human rights law. Five are former Commissioners or members of the Executive Secretariat of the Inter-American Commission on Human Rights. They share a common view that United States courts should consider and give due regard to the country's human rights obligations under international law. They also support the mission of the Inter-American Commission to monitor and review alleged human rights violations in the Americas, including in the United States.

## SUMMARY OF ARGUMENT

This Court should deny the State's motion to schedule Ms. Pike's execution in light of the interlocutory order by the Inter-American Commission on Human Rights as a matter of comity and to avoid putting the U.S. in breach of its international law obligations. The United States has long recognized the Commission's vital role in monitoring human rights in the Americas—including in the United States—and scheduling Ms. Pike's execution would both undermine the Commission's work and

imperil the United States' reputation within the Organization of American States.

The Inter-American Commission on Human Rights' ("Inter-American Commission" or "Commission") is a respected human rights body with the power to review human rights violations in the United States and to issue recommendations in individual cases. The Commission issues precautionary measures in rare and urgent cases in accordance with a stringent review process. Precautionary measures in capital cases serve a vital function, as they ensure the Commission has the ability to review alleged violations before a condemned prisoner is executed.

Deferring the scheduling of Ms. Pike's execution would allow the Commission time to review submissions by both the petitioner and the State, to analyze the facts, and to issue a final report with recommendations for future action. The Commission's findings will be relevant not only to domestic litigation, but also to any clemency proceedings in Ms. Pike's case. At least two other state courts have deferred the setting of execution dates in response to precautionary measures. While this Court is not bound by those decisions, they provide

useful examples of how domestic courts have shown courtesy and respect for the Inter-American Commission's role while maintaining the option of setting execution dates after the Commission's review is completed.

Rejecting the State's motion to schedule Ms. Pike's execution imposes a minimal burden upon the State. Yet deferring to the Inter-American Commission's precautionary measures upholds the international rule of law and human rights principles while aligning with the United States' own interpretation of the function of the Commission.

## ARGUMENT

### **I. The Inter-American Commission on Human Rights is empowered to review and issue findings regarding human rights violations in Ms. Pike's case.**

The Inter-American Commission on Human Rights was established in 1959 as an autonomous entity of the Organization of American States (OAS). Inter-American Commission on Human Rights, *Statute of the Inter-American Commission on Human Rights*, art. 1, <http://www.oas.org/en/iachr/mandate/basics/statuteiachr.asp#:~:text=1.,the%20Organization%20in%20this%20matter> (last accessed May 15, 2021) [hereinafter IACHR Statute]; *see also* Inter-American Commission



on Human Rights, *What is the IACHR?*, <http://www.cidh.oas.org/what.htm> (last visited May 15, 2021). The OAS is a regional, inter-governmental organization with 35 members, including the United States. *See* Charter of the Organization of American States, art. 1., Apr. 30, 1948, 2 U.S.T. 2394 [hereinafter OAS Charter]; Organization of American States, *Who We Are*, [http://www.oas.org/en/about/who\\_we\\_are.asp](http://www.oas.org/en/about/who_we_are.asp) (last visited May 15, 2021). The Commission's principal function is to "promote the observance and defense of human rights" within the Inter-American system. IACHR Statute, *supra*, art. 1. As an OAS Charter organ, the Commission is entitled to receive and act upon individual petitions charging OAS member States with human rights violations. *Id.* art. 18, 20.

- a. *As a party to the Charter of the Organization of American States, the United States has acknowledged the legitimacy of the Inter-American Commission on Human Rights and fully participates in proceedings before the Commission.*

The United States has signed and ratified the Charter of the Organization of American States as well as the Protocol of Buenos Aires that amended the OAS Charter and established the Commission as a

principal organ through which the OAS would accomplish its purposes. OAS Charter, *supra*; Protocol of Buenos Aires, Feb. 27, 1967, 21 U.S.T. 607, T.I.A.S. No. 6847. Both instruments are ratified treaties of the United States, applying with equal force and supremacy to all states, including Tennessee. Under Article 3(1) of the OAS Charter, member states “proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex.” OAS Charter, *supra*, art. 3. The amended OAS Charter specifically provided that “[t]here shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.” *Id.* art. 106. Under Article 145, the Inter-American Commission is given the responsibility to “keep vigilance over the observance of human rights.” *Id.* art. 145.

Under the Protocol of Buenos Aires, the United States accepted the Commission’s function as one of the core OAS organs. As a consequence, the United States is obligated by treaty to recognize the Commission’s role to promote and protect rights enshrined in Inter-American human rights instruments, as well as its authority to receive and rule on

individual complaints. OAS Charter, *supra*, art. 6 (member States “accept all the obligations inherent in membership” in the OAS); *id.* art. 17 (member States “shall respect the rights of the individual”); *id.* at art 18 (“Respect for and the faithful observance of treaties” enshrined as a standard for member States); *id.* art. 95(c)(3) (priorities of OAS Member States include “the observance of the rights and duties of man”). The United States has repeatedly affirmed its recognition of the Commission’s importance as an organ that monitors compliance with human rights in the Americas. *See, e.g.*, John Kerry, *Remarks at the General Assembly of the Organization of American States Plenary Session*, U.S. Dep’t State (June 5, 2013), <https://2009-2017.state.gov/secretary/remarks/2013/06/210497.htm> (“All of our governments need to be prepared to work with and support the [C]ommission.”); *see also* Michael Camilleri & Danielle Edmonds, *An Institution Worth Defending*, 2 (Rule L. Working Paper, 2017), [http://www.thedialogue.org/wp-content/uploads/2017/06/IACHR-Working-Paper\\_Download-Resolution.pdf](http://www.thedialogue.org/wp-content/uploads/2017/06/IACHR-Working-Paper_Download-Resolution.pdf) (recounting US. recognition of the Commission during the Bush and Obama presidencies).

- b. *The Inter-American Commission's merits ruling will provide critical information for the clemency process and domestic legal proceedings.*

Unlike domestic courts, the Inter-American Commission will assess Ms. Pike's claims under international human rights law, including the American Declaration of the Rights and Duties of Man. Ms. Pike's claims relate to the conduct of her trial, her conditions of confinement, and the failure of multiple state actors to protect her from gender-based violence while she was still a child. Although aspects of these claims have been raised in various domestic proceedings, the Commission will be the first expert body to determine whether the facts alleged by Ms. Pike violate the United States' international human rights obligations.<sup>1</sup> At the conclusion of its review of the merits, the Commission will issue a series of recommendations to the United States with respect to Ms. Pike's case.

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<sup>1</sup> Ms. Pike was unable to present her petition to the Inter-American Commission until she had exhausted her claims under domestic law, or could show that she met an exception to the exhaustion requirement. Inter-American Commission on Human Rights, *Rules of Procedure of the Inter-American Commission on Human Rights*, art. 31, OAS: IACHR <https://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp> (last visited April 30, 2021) [hereinafter IACHR Rules]. For this reason, it is customary for petitioners to wait until the end of their domestic legal proceedings before filing a petition with the Commission. Babcock Aff. ¶ 12.

Among other things, the Commission could recommend a new trial or sentencing proceeding, or a range of other remedies.

The Commission’s findings will be directly relevant to the question of executive clemency. Clemency is a process that allows the decision-maker to take into account any and all factors that call for mercy. The Commission’s findings on whether Ms. Pike has suffered cruel, infamous or unusual punishment<sup>2</sup> while on death row, for example, will be directly relevant to the executive’s consideration of whether a life sentence will constitute adequate punishment for her offence. The Commission’s findings on the United States’ obligations to protect Ms. Pike from gender-based violence in the years leading up to the offense will shed new light on Ms. Pike’s *moral* culpability—another factor that is directly relevant in the clemency process.

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<sup>2</sup> Article XXVI of the American Declaration prohibits cruel, infamous or unusual punishment. While this article has some textual overlap with the eighth amendment, it creates a broader scope of protection under international law. *See, e.g., 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 ¶¶ 109–21 (2020). As relevant to Ms. Pike’s case, the Commission will consider her claims that her 23 years in solitary confinement and Tennessee’s method of execution both violate Article XXVI.

Moreover, although certain courts have held that the Inter-American Commission’s rulings are not binding on the United States,<sup>3</sup> the U.S. Supreme Court has made clear that international law has persuasive power. *See Lawrence v. Texas*, 539 U.S. 558, 572-73, 576-77 (2003) (using foreign law and international rulings to show that the right of homosexuals to engage in intimate, consensual conduct “has been accepted as an integral part of human freedom”); *Graham v. Florida*, 560 U.S. 48, 80-81 (2010) (noting that while international opinion is not binding, it may be relevant and persuasive); *Roper v. Simmons*, 543 U.S. 551, 575-79 (2005) (noting that “[t]he opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our conclusions”). In *Lawrence*, for example, the Supreme Court cited a decision of the European Court of Human Rights—not because it was binding, but because it was relevant to determining state practice. 539 U.S. at 573 (citing *Dudgeon v. United Kingdom*, 45 Eur. Ct. H.R. (ser. A) at ¶ 52 (1981)). State practice, in turn, was relevant to the Court’s analysis of the due process violation alleged

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<sup>3</sup> *E.g.*, *Mitchell v. United States*, 971 F.3d 1081, 1084 (9th Cir. 2020); *Flores-Nova v. Att’y Gen. of the U.S.*, 652 F.3d 488, 493-95 (3d Cir. 2011); *Garza v. Lappin*, 253 F.3d 918, 925-26 (7th Cir. 2001).

there. *See id.* at 576-77. Similarly, the Court has held that international practice is relevant to determining the contours of the Eighth Amendment's prohibition of cruel and unusual punishment. *Roper*, 543 U.S. at 575-78. Under this precedent, the Inter-American Commission's findings could support legal claims raised pursuant to the U.S. Constitution in a successive post-conviction application.

Under international law, any findings by the Commission that the United States violated Ms. Pike's human rights would trigger an obligation on the part of the United States (and Tennessee) to provide repair and redress. Thus, the Inter-American review mechanism carries weighty implications for Ms. Pike's ability to present a comprehensive clemency petition, as well as her ability to frame and support new arguments under domestic law. An assessment by a human rights body that the State has subjected Ms. Pike to cruel treatment, or has failed to take necessary measures to protect her from violence, or has fallen short of its obligations to meet fair trial requirements under international human rights law, could each carry significant weight for state decision-makers. To execute her before the review process has concluded would

deprive both the courts and the clemency body of significant information that may well be dispositive of her claims.

**II. This Court should deny the State’s motion to set Ms. Pike’s execution out of deference to the precautionary measures issued by the Inter-American Commission on Human Rights.**

On November 17, 2020, Ms. Pike filed a petition with the Inter-American Commission setting forth violations of Articles I, XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man (ADRDM or “American Declaration”).<sup>4</sup> Organization of American States,

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<sup>4</sup> The cited articles read as follows:

Article I. Every human being has the right to life, liberty and the security of his person.

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

Article XXV. No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law. No person may be deprived of liberty for nonfulfillment of obligations of a purely civil character. Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.



American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L./V/II.71, doc. 6 rev. 1 (1988). On December 11, 2020, the Commission requested that the government of the United States take necessary measures to preserve Ms. Pike’s life and personal integrity, and refrain from carrying out her execution. *Pike v. United States*, Precautionary Measure No. 1080-20, Inter-Am. Comm’n H.R., Res. 95/2020 ¶ 45 (2020). The Inter-American Commission stated that such measures were necessary for it to review the merits of human rights violations alleged in Ms. Pike’s petition. Ultimately, the Commission will determine whether the United States, through the State of Tennessee,

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

For a full copy of the American Declaration, see Inter-American Commission on Human Rights, *American Declaration of the Rights and Duties of Man* (1948), <https://www.cidh.oas.org/basicos/english/basic2.american%20declaration.htm>.

would be in violation of its obligations under the American Declaration by executing Ms. Pike. *Id.* at ¶ 41.

As amici, we agree with the Commission that its precautionary measures and eventual merits findings in the case of Ms. Pike constitute an authoritative determination of the United States' binding obligations under international law. The Inter-American Commission is the principal human rights organ of the Organization of American States (OAS). The United States, as a member state of the OAS, is subject to the Commission's jurisdiction to consider petitions that allege violations by the United States or its constituent states of an individual's rights under the ADRDM. Statute of the IACHR, *supra*, art. 20. The American Declaration prescribes the basic human rights that all OAS member States must guarantee to persons under their authority or control, including the right to life, the right to a fair trial, and the right to due process. *See supra* note 4.

This Court, however, need neither assess nor determine the legal force of the Commission's precautionary measures under U.S. law. It is sufficient, rather, to simply apply the United States' own interpretation of precautionary measures and grant them deference as persuasive

recommendations. This is consistent with the United States’ own response to Ms. Pike’s request for precautionary measures, wherein the government noted: “should the Commission adopt a precautionary measures resolution in this matter, the United States would take it under advisement and construe it as recommendatory.”<sup>5</sup> *Pike*, Precautionary Measure No. 1080-20, Inter-Am. Comm’n H.R., at ¶ 27. It is important to clarify, however, that the Commission’s orders and findings represent authoritative pronouncements of the United States’ obligations as a matter of *international* law—notwithstanding the United States’ position

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<sup>5</sup> This view embodies the position of the United States that decisions from the Inter-American Commission constitute “nonbinding recommendations.” *See, e.g., Saldaño v. United States*, Case 12.254, Inter-Am. Comm’n H.R., Report No. 24/17, OEA/Ser.L/V/161, doc. 31 ¶ 263 (2017) (recognizing that the U.S. government had both “taken under advisement” the Commission’s merits decision in the case of Victor Saldaño and acknowledging that he was still subject to precautionary measures); *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 ¶ 101 (2018) (noting that the U.S. government had “taken under advisement” the recommendations from the Commission’s merits decision in *Bucklew* and forwarded the report to Missouri Governor and Attorney General for consideration); *see also Medellín v. United States*, Case 12.644, Inter-Am. Comm’n H.R., Report No. 90/09, OEA/Ser.L/V/y II.135, doc. 37 ¶ 162 (2009) (noting that the United States had forwarded the Commission’s Merits decision in the case of José Medellín to the state Governor, Attorney General, and the Presiding Officer of the Board of Pardon and Paroles).

regarding their status under *domestic* law. In other words, executing Ms. Pike in violation of the Commission's precautionary measures would violate the United States' international obligations, notwithstanding any determination by the U.S. government that they are not legally binding on U.S. courts.

Consistent with this interpretation, and in light of Commission's position as a specialized body authorized to determine the content of U.S. obligations under international human rights law in the American system, this Court should reject the State's motion to set an execution date for Christa Pike. Specifically, it should defer to the Commission's precautionary measures as a matter of comity and allow the Commission time to review the merits of Ms. Pike's case.

**III. The Inter-American Commission only issues precautionary measures in unique and extreme circumstances to preserve the status quo and prevent irreversible harm.**

Precautionary measures are an exceptional tool the Inter-American Commission only employs in extreme and rare cases. As explained below, the Commission uses a rigorous process to assess whether a particular case merits precautionary measures. Given that Ms. Pike's case passed

the Commission's exacting standard, this Court should pay due regard to the Commission's request to delay her execution.

- a. *The Commission employs a careful and methodical procedure when adopting precautionary measures.*

Precautionary measures have been utilized by the Inter-American human rights system for over 30 years. *See* Inter-American Commission on Human Rights, *About Precautionary Measures*, OAS: IACHR, <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/decisions/about-precautionary.asp> (last visited May 15, 2021). Adopted by the Commission in serious and urgent situations that risk irreparable harm, precautionary measures are designed to “preserve the exercise of human rights,” and specifically preserve those rights at issue in the petition filed before the Commission until it is resolved. *Id.* The Commission can request that States adopt precautionary measures on a State's own volition or because of a Petitioner's request. *See* Inter-American Commission on Human Rights, *Chapter II: The System of Petitions and Cases, Friendly Settlements and Precautionary Measures, in Annual Report 2020 25* (2020) [hereinafter Ch. II IACHR Annual Report 2020]. When measures are ordered by the Commission, they “may be intended

to prevent execution of judicial, administrative or other measures when it is alleged that their execution could render the IACHR's eventual decision on an individual petition moot." Inter-American Commission on Human Rights, *About Precautionary Measures*, OAS: IACHR, <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/decisions/about-precautionary.asp> (last visited May 15, 2021).

The Commission's practice of adopting precautionary measures has evolved from an unregulated process to one that is standardized and transparent. *See* Inter-American Commission on Human Rights, *The History and Legal Framework of Precautionary Measures*, OAS: IACHR, <https://www.oas.org/en/IACHR/jsForm/?File=/en/IACHR/decisions/MC/history.asp> (last visited May 15, 2021). In 2013, the Inter-American Commission amended its Rules of Procedure to incorporate a uniform process for adopting precautionary measures, regardless of the topic or country. *Id.* The Commission amended Article 25 with the goal of preventing ongoing human rights violations "in serious and urgent situations." IACHR Rules, *supra* note 1, art. 25. The amendments to Article 25 standardized the factors that the Commission considers when adopting measures and stated that "[t]he decisions granting, extending,

modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” *Id.* art. 25. The practice evolved to become one that includes both the petitioner and the State, thus increasing transparency and accountability. *See* Ch. II IACHR Annual Report 2020, *supra*, at 172-75.

Over time, the Commission’s rules regarding the requirements and procedures for issuing precautionary measures have become more rigorous. *See* Inter-American Commission on Human Rights, *Precautionary Measures: Their Practice as a Guarantee of Respecting Fundamental Rights and Preventing Irreparable Damage*, OAS: IACHR,

<https://www.oas.org/en/IACHR/jsForm/?File=/en/IACHR/decisions/MC/about-precautionary.asp> (last visited May 15, 2021). Requests to the Commission for precautionary measures 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. *See* Inter-American Commission on Human Rights, *Factsheet on How to Request Precautionary Measures Before the Inter-American Commission on*

*Human Rights*, OAS: IACHR, [https://www.oas.org/es/cidh/docs/pdfs/2020/FactSheets\\_MedidasCautelares-EN.pdf](https://www.oas.org/es/cidh/docs/pdfs/2020/FactSheets_MedidasCautelares-EN.pdf) (last visited May 15, 2021). Before adopting precautionary measures, the Commission requests more information from the involved State. *See* Inter-American Commission on Human Rights, *Precautionary Measures: Their Practice as a Guarantee of Respecting Fundamental Rights and Preventing Irreparable Damage*, OAS: IACHR,

<https://www.oas.org/en/IACHR/jsForm/?File=/en/IACHR/decisions/MC/about-precautionary.asp> (last visited May 15, 2021). After compiling this information, the Commission takes the context of the situation and other elements into account. IACHR Rules, *supra* note 1, art. 25(6). These elements include whether (a) the situation has already been brought to the attention of the relevant authorities, and if not, why it was not possible to do so; (b) the identification of those individuals or the group that would be beneficiaries from the precautionary measures; and (c) the consent of those beneficiaries if the request is presented by a third party. *Id.*



Furthermore, the Commission altered its practice to one that requires a detailed analysis prior to issuing any precautionary measures. *See id.* art. 25(5). The Secretariat, which is the leadership of the Commission, and the Commission as a whole, analyzes the gravity, urgency, and irreparability of the case. *See id.* art. 25(1)-(2). After analyzing these three factors, the Commission produces a report with 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. *See id.* art. 25(7).

In 2018, the Commission adopted Resolution 3/2018, which improved the method for initial evaluation of precautionary measures by reducing the Commission's procedural backlog and requiring that requests be evaluated on the day that they are received. *See Inter-American Commission on Human Rights, Resolution 3/2018, Strengthening of the Processing of Requests for Precautionary Measures* (2018), <https://www.oas.org/en/iachr/decisions/pdf/Resolution-3-18-en.pdf>. Two years later, in Resolution 2/2020, the Commission further strengthened the monitoring of precautionary measures in force by

reaffirming the process, procedure, and temporary nature of precautionary measures. *See* Inter-American Commission on Human Rights, *Resolution 2/2020, Strengthening of the Monitoring of Precautionary Measures in Force* ¶¶ 1–11 (2020), <http://www.oas.org/en/iachr/decisions/pdf/Resolution-2-20-en.pdf>. These Resolutions streamlined and standardized the processes for compiling reports, enhancing accountability and efficiency.

b. *The Commission rarely issues precautionary measures.*

The Commission does not issue precautionary measures in every case. Rather, precautionary measures are reserved for those cases presenting the greatest risk of irreparable harm to the individual. The Commission’s annual reports reveal how rare it is for the Commission to issue precautionary measures.

In 2018, the Commission received the highest number of requests for precautionary measures it had ever received. *See* Inter-American Commission on Human Rights, *Chapter II: System of Individual Petitions and Cases, in Annual Report 2018* 59 (2018). Petitioners from Member states filed a total of 1,618 requests for precautionary measures. *Id.* at 77. Evaluating these requests under the procedures outlined in

Article 25 of the Rules of Procedure, the Commission granted precautionary measures in only 120 cases. *Id.* at 79. This “was at once its highest number in one year, and the highest percentage of precautionary measures adopted (7.2 percent) relative to the number received since the amendment of its Rules of Procedure in 2013.” *Id.* at 92.

Of the 3,034 petitions submitted to the Commission in 2019, 1,160 petitions contained requests for precautionary measures. *See* Inter-American Commission on Human Rights, *Chapter II: The Petitions, Cases and Precautionary Measures System, in Annual Report 2019* 184 (2019). The Commission granted precautionary measures in only 64 of those cases, a rate of only 5.5%. *Id.* In 2020, the Commission received a total of 1,170 requests for precautionary measures. *See* Ch. II IACHR Annual Report 2020, *supra*, at 212-46. The Commission granted precautionary measures in only 58 cases, a rate of 4.9%. *Id.*

Year	Total Petitions Received by IACHR	Total Requests for Precautionary Measures	Precautionary Measures Granted
2016	2567	1061	42
2017	2494	1037	45
2018	2957	1618	120
2019	3034	1160	64
2020	2448	1170	58

The Commission issues very few precautionary measures in cases arising from the United States. Out of the 111 petitions received from the United States in 2019, 61 contained requests for precautionary measures. *See* Inter-American Commission on Human Rights, *Statistics*, OAS: IACHR, <https://www.oas.org/en/iachr/multimedia/statistics/statistics.html> (last visited May 15, 2021). The Commission did not grant precautionary measures in any of these cases. *Id.* In 2020, the Commission received 41 requests for precautionary measures in cases from the United States. The Commission only granted precautionary measures in three of these cases. *Id.* Of three cases in which precautionary measures were issued by the Commission, two concerned the death penalty. *See* Inter-American Commission on Human Rights, *Precautionary Measures: Grants and*

*Extensions,*

OAS:

IACHR,

<https://www.oas.org/en/iachr/decisions/MC/precautionary.asp?Year=2020&Country=USA>

(last visited May 15, 2021). This reflects the Commission’s awareness that death penalty cases pose a high risk for irreparable harm and are grave enough to warrant precautionary measures. Without them, there is a risk that the petitioner will die before the Commission is able to make a determination in the case.

<b>Year</b>	<b>Total Petitions Received from the United States</b>	<b>Requests for Precautionary Measures (United States)</b>	<b>Precautionary Measures Granted (United States)</b>
2016	112	38	2
2017	109	51	5
2018	91	58	5
2019	111	61	0
2020	75	41	3

As noted above, on November 17, 2020, the Commission received a request for precautionary measures in Christa Pike’s case. *Pike v. United States*, Precautionary Measure No. 1080-20, Inter-Am. Comm’n H.R., Res. 95/2020 ¶ 1 (2020). Following the procedures outlined in Article 25, the Commission solicited the input of the U.S. Government. The U.S. Government submitted lengthy observations to the Commission, arguing

that precautionary measures were not warranted. *Id.* at ¶ 25. The United States’ participation in the adjudicatory process enabled the Commission to weigh the evidence and arguments of both sides, before determining that Ms. Pike’s case met “the requirements of seriousness, urgency and irreparable harm.” *Id.* at ¶ 32. The Commission subsequently requested that the United States “adopt the necessary measures to protect the life and personal integrity of Christa Pike” and “refrain from carrying out the death penalty” until the Commission could adjudicate the merits of her case. *Id.* at ¶ 45.

The Commission’s decision to issue precautionary measures in Ms. Pike’s case was taken only after a careful, deliberative process that gave both parties an opportunity to raise relevant evidence and arguments. This Court should now allow the Commission the time that it requires to review the merits of Ms. Pike’s claims. The United States represents the interests of the State before the Commission, and has participated fully in the proceedings so far. The country’s participation reflects its respect for the adjudicatory authority of the Commission—respect that would be undermined if Ms. Pike were to be executed in violation of the precautionary measures.

**IV. Other jurisdictions have agreed not to allow executions to proceed out of deference to the Inter-American Commission's precautionary measures.**

- a. *Courts in Ohio and Texas have agreed not to schedule executions in deference to the Commission's review process.*

Domestic tribunals have recognized the legitimacy of the Inter-American Commission by giving it time to adjudicate alleged violations of the American Declaration. Specifically, in the cases of José Loza in Ohio and Roberto Moreno Ramos in Texas, domestic courts delayed setting an execution date in order to give the Commission an opportunity to fully adjudicate their cases. In both cases, the State had asked courts to set execution dates. In both Mr. Loza's case and Mr. Ramos' case, the courts declined to set a date after the petitioners alerted them to the existence of the Commission's precautionary measures. These courts did not expressly hold that the Inter-American Commission's precautionary measures were binding. Rather, the courts merely postponed any action in the case, consistent with the Commission's request.

## 1. The Case of José Loza

In July 2015, the Commission received a request for precautionary measures on behalf of José Loza, a Mexican national on death row in Ohio. *See Loza v. United States*, Precautionary Measure No. 304-15, Inter-Am. Comm'n H.R., Res. 27/2015 ¶ 1 (2015) (Ex. A, Affidavit of Sandra L. Babcock, App. D). Mr. Loza petitioned the Commission alleging several violations of his rights under the American Declaration on the Rights and Duties of Man. *Id.* He requested precautionary measures to ensure that the Commission had “an opportunity to decide on the merits of the petition and to avoid irreparable harm.” *Id.*

When Mr. Loza filed his request for precautionary measures with the Commission, no execution date had yet been set. Ohio, however, had a record of consistently and quickly executing prisoners on death row. In the previous decade alone, Ohio had executed 38 prisoners. *Id.* at ¶ 8. In July 2015, in line with this trend, Ohio filed a motion with the Ohio Supreme Court requesting that the court set an execution date for Mr. Loza. *See 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 at 1, *State of Ohio v. Loza*, Case No. 1993-1245 (Ohio 2015) (Ex. A, Affidavit of Sandra L. Babcock, App. E).

In August 2015, the Commission issued precautionary measures in Mr. Loza's case, recognizing the potential for irreparable harm posed by the possibility Ohio would set an execution date in his case. Ex. A, Affidavit of Sandra L. Babcock, ¶ 11. By issuing these precautionary measures, the Commission aimed to protect Mr. Loza's right to life and personal integrity. *See Loza v. United States*, Precautionary Measure No. 304-15, Inter-Am. Comm'n H.R., Res. 27/2015 ¶ 2 (2015). As in Ms. Pike's case, the Commission found that Mr. Loza had satisfied the requirements of gravity, urgency, and irreparable harm. *Id.* at ¶ 18. Following the Commission's issuance of precautionary measures, the Ohio Supreme Court in November 2015 declined to set an execution date in Mr. Loza's case. *State v. Loza*, No. 1993-1245 (Ohio Nov. 15, 2015) (Ex. A, Affidavit of Sandra L. Babcock, App. F). By doing so, the Ohio Supreme Court gave the Commission time to review the merits and issue a decision in Mr. Loza's case.

## 2. The case of Roberto Moreno Ramos

A state district court in Texas likewise agreed to defer the setting of an execution date out of respect for the proceedings before the Inter-American Commission in the case of Roberto Moreno Ramos. In October 2002, the State of Texas noticed its intent to seek an execution date for Mr. Moreno Ramos. Babcock Aff. ¶ 5. On November 4, 2002, Mr. Moreno Ramos submitted a petition to the Commission raising several alleged violations of his rights under the American Declaration on the Rights and Duties of Man. *See Roberto Moreno Ramos v. United States*, Report No. 1-05, Inter-Am. Comm'n H.R., ¶ 1 (2005), available at [http://www.worldcourts.com/iacmhr/eng/decisions/2005.01.28\\_Moreno\\_Ramos\\_v\\_United\\_States.htm](http://www.worldcourts.com/iacmhr/eng/decisions/2005.01.28_Moreno_Ramos_v_United_States.htm). The Commission subsequently issued precautionary measures. Babcock Aff. ¶ 6, App. B. After a November 2002 hearing where the Mexican Government highlighted and explained the Commission's precautionary measures to the court, the court agreed to defer scheduling Mr. Ramos's execution. *Id.* ¶ 7. When the State made a successive request for an execution date in 2004, the court again took no action after the Mexican government sent a letter explaining that the precautionary measures were still in effect. *Id.* ¶ 8, App. C. In doing so,

the court deferred to the Commission's request "to preserve Mr. Moreno Ramos' life and physical integrity" pending the Commission's review of his case. *See Roberto Moreno Ramos v. United States*, at ¶ 76.

- b. *Foreign courts have held that condemned prisoners have a due process right to complete international review mechanisms before their executions are carried out.*

As the most authoritative interpreter of British common law, the rulings of the Privy Council have long been recognized and consulted by U.S. courts. *See United States v. Raddatz*, 447 U.S. 667, 679 (1980) (citing with approval a Privy Council decision on evidentiary requirements); *Kilbourn v. Thompson*, 103 U.S. 168, 186 (1881) (citing Privy Council decision on legislative authority to punish for contempt); *see also Fisher v. United States*, 328 U.S. 463, 488 (1946) (Frankfurter, J., dissenting) (noting that the Court, when reviewing fairness of death sentence, should be guided, as was the Privy Council, "by broad considerations of justice").

In 1999, the Judicial Committee of the Privy Council recognized that executing an inmate before he has completed the petition process before an international tribunal violates due process. In *Thomas v.*

*Baptiste*, the court therefore stayed the execution of two death row prisoners “until their current petitions to the [Inter-American Commission] have been determined and any report of the [Commission] or ruling of the Inter-American Court of Human Rights has been considered by the authorities of Trinidad and Tobago.” *Thomas v. Baptiste* [1999] 3 W.L.R. 249 (Conclusion). The Privy Council affirmed this ruling in *Lewis et al. v. Jamaica*, when it held that the petitioners had a right not to be executed before the Inter-American Commission on Human Rights or the United Nations Human Rights Committee had a chance to review their respective petitions. *Lewis v. Att’y Gen. Jam.*, 3 WLR 1785, ¶ 86 (2000); *see also Bradshaw v. Att’y Gen.*, 1 WLR 936, 6 (PC) (1995) (staying an execution while review was pending before the United Nation Human Rights Committee); *Pratt v. Attorney-General for Jamaica* [1994] 2 A.C. (finding it reasonable to delay executions for up to eighteen months when petitions are pending before international bodies such as the Inter-American Commission). The Caribbean Court of Justice, the institution that replaced the Privy Council as the court of last resort for Barbados, Belize, Dominica, and Guyana, upheld the importance of international review when it held that moving forward

with an execution while an inmate had a petition pending before the Inter-American Commission on Human Rights violated that inmate's right to the protection of the law. *Att'y Gen. v. Joseph*, CCJ I, ¶ 128 (AJ) (2006).

These rulings provide persuasive authority for deferring the scheduling of Ms. Pike's execution to allow the Commission to complete its review of Ms. Pike's case.

### CONCLUSION

Amici Curiae respectfully request that this Court align itself with the human rights order this country subscribes to and refrain from setting an execution date until, at a minimum, the Inter-American Commission on Human Rights issues a report on the merits of Ms. Pike's claims.

Respectfully submitted,

/s/ Zohra Ahmed

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/s/ Gary C. Shockley

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## **CERTIFICATE OF COMPLIANCE**

In accordance with Tennessee Supreme Court Rule 46 § 3.02, the total number of words in this brief, exclusive of the Title/Cover page, Table of Contents, Table of Authorities, and this Certificate of Compliance is 5,863. This word count is based upon the word processing system used to prepare this brief.

/s/ Gary C. Shockley

**EXHIBIT A**



IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

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

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**DECLARATION OF SANDRA BABCOCK**

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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](http://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 3<sup>rd</sup> 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](mailto: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 31<sup>st</sup> 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 umani,” (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’iniezione 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,” 16<sup>th</sup> International Seminar of the Brazilian Institute of Criminal Sciences, Sao Paulo, Brazil, Aug. 26, 2010.

Panelist, “Abolition of the Death Penalty,” 16<sup>th</sup> 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 12<sup>th</sup> Quinquennial Congress, Salvador, Brazil, Apr. 15, 2010.

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

Panelist, “Death Penalty: Abolition or Moratorium,” United Nations Office on Drugs and Crime 12<sup>th</sup> 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 INTERAMÉRICAINÉ DES DROITS DE L'HOMME



**ORGANIZATION OF AMERICAN STATES**  
 WASHINGTON, D.C. 20006 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,<sup>1</sup> 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

<sup>1</sup> 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.

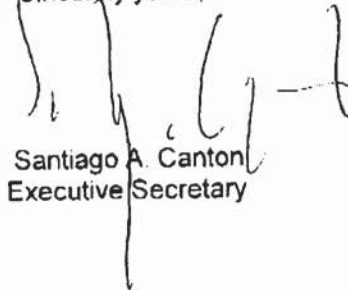
Finally, it is alleged that Mr. Moreno Ramos has exhausted domestic remedies available to him, or alternatively should be excused from exhausting domestic remedies, and that a hearing has been scheduled for November 12, 2002 before the courts in Texas to determine whether an execution date should be 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  
93<sup>rd</sup> District Court  
Hidalgo County Courthouse  
100 North Closner, 2<sup>nd</sup> 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

Document received by the TN Supreme Court.

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. Baptiste*, [2000] 2 A.C. 1 (P.C. 1999), the Judicial Committee of the Privy Council<sup>1</sup> 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.

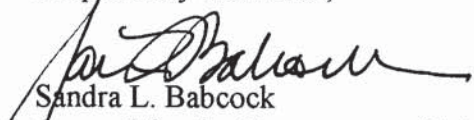
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<sup>1</sup> The Judicial Committee of the Privy Council is the highest appellate court for the Commonwealth nations of the Caribbean.

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<sup>1</sup>  
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

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<sup>1</sup> 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.<sup>2</sup>

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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<sup>2</sup> 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,<sup>3</sup> 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.

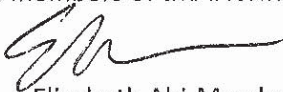
20. The Commission wishes to point out that, in accordance with Article 25(8) of its Rules of Procedure, the granting of precautionary measures and their adoption by the State shall not constitute a prejudging of any violation of the rights protected in the American Declaration on the Rights and Duties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

---

<sup>3</sup> 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](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,

v.

JOSE TRINIDAD LOZA

Appellant.

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:  
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:  
:  
:

Case No. 1993-1245

Death Penalty Case

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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

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MICHAEL T. GMOSE (0002132)  
Butler County Prosecuting Attorney

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

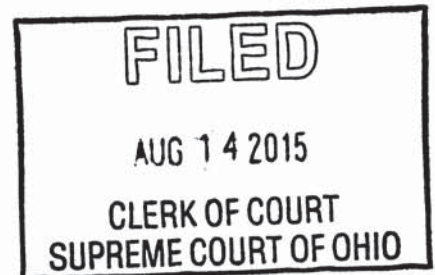
Government Services Center  
315 High Street, 11th Floor  
Hamilton, Ohio 45011  
(513) 887-3474  
(513) 785-5206 - Fax  
alkamhawiln@butlercountyohio.org

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COUNSEL FOR APPELLANT LOZA



Document received by the TN Supreme Court.

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
Appellee,	:	Case No. 1993-1245
	:	
v.	:	
	:	
JOSE TRINIDAD LOZA	:	<b>Death Penalty Case</b>
	:	
Appellant.	:	

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**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**

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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,<sup>1</sup> this Court should refrain from setting an execution date at this time.

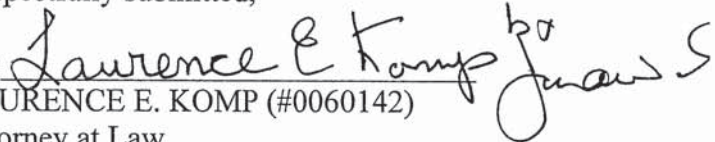
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<sup>1</sup> At a very minimum, the Commission's review of Mr. Loza's claim will be relevant to the Governor's consideration of Mr. Loza's clemency application in the future. If the Commission's proceedings are rendered moot by Mr. Loza's execution, 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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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 14<sup>th</sup> 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

  
JAMES A. WILSON (#0030704)

Vorys, Sater, Seymour & Pease LLC

# Exhibit A

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 27/2015**

PRECAUTIONARY MEASURE 304-15<sup>1</sup>  
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

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<sup>1</sup> 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.<sup>2</sup>

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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<sup>2</sup> 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,<sup>3</sup> 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.

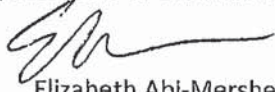
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21. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the United States of America and to the petitioners.

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<sup>3</sup> 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](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

The Supreme Court of Ohio NOV 10 2015

CLERK OF COURT  
SUPREME COURT OF OHIO

State of Ohio

v.

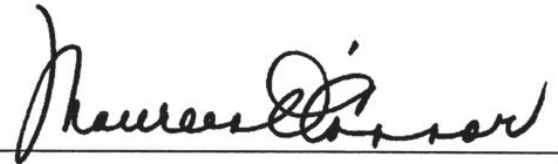
Jose Trinidad Loza

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