CAUSE NO. 07-CR-0885

IN THE 138TH JUDICIAL DISTRICT COURT
OF CAMERON COUNTY, TEXAS

	§	Texas Court of Criminal Appeals
THE STATE OF TEXAS	§	
	§	
VS.	§	Cause No. WR-72,702
	§	
MELISSA E. LUCIO	§	
	§	
	§	
	§	

EXHIBITS IN SUPPORT OF
MOTION TO RECONSIDER STATE'S MOTION TO SET EXECUTION DATE AND TO WITHDRAW OR MODIFY THE EXECUTION DATE

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1	Order Denying Motion Requesting Execution Date, *Ex Parte Tony Ford*, No. 930D03565 (34th Judicial District Court, El Paso Co., Texas, Jan. 23, 2020)
2	Order Denying State's Motion Requesting Execution Date, *Ex Parte Rigoberto Avila, Jr.*, No. 20000D01342, (41st Judicial District Court, El Paso Co.,Texas, Oct. 20, 2020)
3	Order Withdrawing Execution Date, *State v. Trevino*, No. 1997CR1717D (290th Judicial District Court, Bexar Co., Texas, Sept. 15, 2020)
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7 Texas Department of Criminal Justice, Correctional Institutions Division, Execution Protocol, April 2021

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9 Order Staying Execution, *Barbee v. Collier et. al.*, No. 4:21-cv-3077 (S.D. Tex. Houston Div., Oct. 7, 2021)

10 Order granting Barbee's motion to stay the case and denying the State's motion to dismiss, *Barbee v. Collier et. al.*, No. 4:21-cv-3077 (S.D. Tex. Houston Div., Nov. 29, 2021)

11 Declaration of Deborah Miora, Ph.D.

EXHIBIT 1

IN THE 34TH JUDICIAL DISTRICT COURT
OF EL PASO COUNTY, TEXAS

2019 JAN 28 PM 1:47

Ex Parte TONY EGBUNA FORD,

Defendant.

CAUSE NO. 930D03565
(Original Cause No. 69441)

ORDER DENYING MOTION REQUESTING EXECUTION DATE

On October 3, 2019, the District Attorney requested that the Court set an execution date for Mr. Ford. The Court held two hearings on the motion at which counsel from the District Attorney's office and counsel for Mr. Ford were present and were heard by the Court.

In the first hearing, October 7, 2019, counsel for Mr. Ford informed the Court that, by December 10, 2019, he would file a petition for writ of certiorari in the Supreme Court of the United States seeking review of the September 11, 2019 decision of the Texas Court of Criminal Appeals dismissing Mr. Ford's subsequent habeas corpus application. For this reason, the Court deferred decision on the District Attorney's motion to set an execution date, and scheduled a second hearing, on December 11, 2019.

In that hearing, counsel for Mr. Ford provided the Court a copy of the petition for writ of certiorari that had been filed the preceding day. Counsel for Mr. Ford discussed with the Court and the Assistant District Attorney the availability of federal habeas corpus review of some of the claims raised in Mr. Ford's subsequent habeas corpus application, if necessary, following the Supreme Court's disposition of the certiorari petition.

DISTRICT COURTS
EL PASO COUNTY, TEXAS

In light of the information provided in these hearings, and after due consideration, the Court DENIES the District Attorney's motion without prejudice, for the reasons set forth below.

The Court has determined that further judicial proceedings are necessary in Mr. Ford's case, including but not limited to:

(a) a petition for writ of certiorari to the Supreme Court of the United States, seeking review of the September 11, 2019 decision of the Texas Court of Criminal Appeals dismissing Mr. Ford's subsequent habeas corpus application, which has been filed and is still pending; and

(b) if certiorari is denied, a successive federal habeas petition based on 28 U.S.C. §§ 2244(b)(2)(B)(i) (a constitutional claim whose factual predicate could not have reasonably been discovered at the time the first federal petition was filed) and (b)(2)(B)(ii) (facts demonstrating actual innocence of capital murder), drawing on the claims and facts presented in the subsequent habeas corpus application dismissed by the Court of Criminal Appeals on September 11, 2019.

The Court's determination that these further judicial proceedings are necessary is based on the Court's view that the claims that are or will be presented in these proceedings – drawn from the claims raised in the subsequent habeas corpus application – are not frivolous.

To enable the Court to continue to monitor the additional judicial proceedings in this case, the Court will set a hearing in May, 2020, to review the current status of those proceedings.

The District Attorney may renew his request for the setting of an execution date after the above-described proceedings have concluded.

Entered this 23rd day of January, 2020.

William E. Moody, Judge Presiding
34th Judicial District Court

A TRUE COPY, I CERTIFY
NORMA FAVELA BARCELEAU
District Clerk
BY _____ Deputy

FEB 25 2020

DISTRICT COURTS
EL PASO COUNTY, TEXAS

EXHIBIT 2

IN THE 41ST JUDICIAL DISTRICT COURT
EL PASO COUNTY, TEXAS

Ex parte	§	
	§	
Rigoberto Avila, Jr.,	§	CAUSE NO. 20000D01342
	§	
Defendant.	§	

ORDER DENYING STATE'S MOTION REQUESTING EXECUTION DATE

On this date, this Court came to consider the State's Motion Requesting Execution Date for Defendant Rigoberto Avila, Jr. After considering the State's Motion, the Defendant's response brief, and the arguments of counsel, the court hereby DENIES the State's motion without prejudice, for the reasons set forth below:

1. On August 7, 2020 Mr. Avila filed a petition for writ of certiorari in the United States Supreme Court, seeking review of the Court of Criminal Appeals' March 2020 decision rejecting this Court's recommendation that Mr. Avila should receive a new trial. *Avila v. Texas*, No. 20-5342 (U.S. Sup. Ct., pending).
2. Defendant fully intends to seek clemency if the courts do not grant him a new trial.
3. Due to the COVID-19 pandemic, counsel cannot presently meet with Mr. Avila because all visitation in TDCJ remains suspended until further notice.
4. Due to the COVID-19 pandemic, counsel cannot presently meet with Mr. Avila because travel to his TDCJ facility poses significant health risks and subsequent extended quarantine requirements.

5. During the pandemic, the execution process poses an unnecessary risk to TDCJ personnel, the members of the public who would be participating, the victim's family, and the defendant's family.
6. At this time, there is no clear indication (supported by current science and data) when the health risks posed by the COVID-19 virus will end.

This matter will be set for status in March 2021. The specific date and time will be provided under separate order.

SIGNED this the 20th day of October, 2020.

JUDGE ANNABELL PEREZ

EXHIBIT 3

CAUSE NO. 1997CR1717D

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	290TH JUDICIAL DISTRICT
CARLOS TREVINO	§	BEXAR COUNTY, TEXAS

ORDER WITHDRAWING EXECUTION DATE

The Court considered Defendant's Motion to Withdraw Order Setting Execution Date and Warrant of Execution.

Carlos Trevino is scheduled to be executed September 30, 2020, pursuant to an execution warrant issued by this Court on April 16, 2020. On March 13, 2020, Governor Abbott declared a disaster in Texas due to the threat posed by COVID-19, a disease caused by a novel coronavirus. That same date, the Texas Supreme Court issued its First Emergency Order Regarding the COVID-19 State of Disaster pursuant to Texas Government Code § 22.0035(b). That order provided, inter alia, that "all courts in Texas may in any case, civil or criminal - and must to avoid risk to court staff, parties, attorneys, jurors, and the public - without a participant's consent... [m]odify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than 30 days after the Governor's state of disaster has been lifted." This Order was renewed on June 29, 2020, (Eighteenth Emergency Order Regarding the COVID-19 State of Disaster) and August 6, 2020 (Twenty-Second Emergency Order Regarding the COVID-19 State of Disaster), which extended the Court's powers until September 30, 2020.

Because of the foregoing, and the current COVID-19 conditions in Texas, this Court ORDERS that the previous warrant of execution, setting the Defendant's execution date for September 30, 2020, be withdrawn and the death warrant be recalled.

It is also ORDERED that the Bexar County District Clerk's Office to communicate with Joni White, Assistant Director of Records and Classification, Texas Department of Criminal Justice, Institutional Division (or other such required personnel of the Texas Department of Criminal Justice, Institutional Division), immediately upon signing of this order, that the warrant of execution has been recalled until further ordered by this Court.

It is also HEREBY ORDRERED that the parties are to reconvene for a hearing before this court to reset the execution date, said hearing to take place March 5, 2021, at 9:00 a.m.

The Bexar County District Clerk's Office shall issue correspondence to all parties to comply with Texas Code of Criminal Procedure Art. 43.141.

SIGNED AND ENTERED ON Sep 15, 2020.

Jennifer Pena (Sep 15, 2020 17:31 CDT)

JUDGE JENNIFER PEÑA
290TH JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

EXHIBIT 4

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

PETITION ALLEGING VIOLATIONS OF THE HUMAN RIGHTS OF MELISSA LUCIO BY THE UNITED STATES OF AMERICA

AND

REQUEST FOR PRECAUTIONARY MEASURES

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

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Submitted: December 20, 2021

INTRODUCTION

Melissa Lucio is a survivor of lifelong gender-based violence. She has now spent fourteen years on death row in Texas, where she faces execution for the accidental death of her daughter. At the time of her arrest, Melissa had no record of violence, and no one had ever accused her of harming her children. Yet in a late-night, aggressive interrogation, the police coerced her into making incriminating statements that the prosecution later characterized as a "confession."

Melissa's wrongful conviction and death sentence—a form of state-sanctioned violence—followed decades of interpersonal violence that she endured at the hands of relatives and partners. Her uncle and her stepfather repeatedly raped her over a period of years, starting when she was just six years old. By the age of sixteen, unable to legally consent herself, Melissa became a child bride. Her older husband, Guadalupe Lucio, a violent alcoholic and drug dealer, beat her and threatened her throughout their marriage. His sister introduced Melissa to cocaine when Melissa was sixteen, and the drug served as a surrogate for the medication and therapy that Melissa desperately needed. Her next partner, Robert Alvarez, continued the cycle of violence, beating and berating Melissa and the children. The family sunk deeper into poverty and was intermittently homeless. Between the ages of seventeen and thirty-five, struggling with abuse, mental illness, addiction and poverty, Melissa gave birth to twelve children and suffered multiple miscarriages. Meanwhile, Melissa's untreated post-traumatic stress disorder and clinical depression worsened.

On February 15, 2007, as the family was moving to a new apartment, Melissa's youngest daughter, Mariah, fell down the dangerously steep exterior stairs. Although her injuries did not appear life-threatening, two days later, Mariah went down for a nap and never woke up.

Freshly grieving the loss of her daughter and still numb with shock, Melissa was hauled into an interrogation room where armed, male police officers stood over her, yelling, berating, and

accusing her of causing her daughter's death. She repeatedly told them she did not hurt Mariah. After five hours of interrogation, Melissa grew increasingly emotionally and physically exhausted. Finally, in response to a Texas Ranger's repeated demands and exhortations that she admit responsibility for Mariah's injuries, Melissa acquiesced, stating, "I guess I did it." Exhibit A, Interrogation Tr. Vol. 2 at 15, 35.

Although the United States Constitution requires that counsel be appointed for persons facing criminal charges within a reasonable time, it was not until May 16, 2007, nearly three months after her arrest and detention, that the court appointed Melissa an attorney. During these three months, she was charged with an unrelated incident of driving while intoxicated (DWI), a charge on which she was arraigned and pled guilty, without benefit of counsel. The prosecution would later use this charge as evidence to support the imposition of a death sentence.

At trial, the prosecution failed to introduce any physical evidence or witness testimony directly establishing that Melissa had abused Mariah or any of her children, let alone killed Mariah. Instead, they characterized Melissa's coerced custodial statement as a confession— "proof" that she had killed her daughter. In the words of Judge Jennifer Walker Elrod of the Fifth Circuit Court of Appeals, Melissa's incriminating statements were "pivotal" to the prosecution's case.[1] Law enforcement officers testified as to their perceptions of Melissa's demeanor, painting her symptoms of trauma, shock, and numbness as proof of Melissa's guilt. Melissa's defense attorney sought to introduce the testimony of two expert witnesses to explain Melissa's acquiescence to her interrogators. Those experts would have testified that when faced with hostile, domineering men, Melissa became compliant, emotionally shutting down and saying whatever was needed to escape the dangerous situation. The trial judge excluded the testimony. As a result, the jury never learned

[1] *Lucio v. Lumpkin*, 987 F.3d 451, 511 (5th Cir. 2021) (Elrod and Higginson, JJ, dissenting).

about how Melissa's history of gender-based abuse and trauma shaped her reactions immediately after her daughter's death. Without the benefit of the complete story, the jury convicted Melissa of capital murder.

Melissa's trial attorneys were wholly unprepared for the penalty phase of trial. Lead counsel failed to seek the assistance of a mitigation specialist and experts in a timely fashion. As a result, Melissa's mitigation specialist could not complete her investigation before the trial began. The jury never learned about the extent of Melissa's history of gender-based violence. This omission was particularly damaging given the weakness of the prosecution's case for death. As Melissa had no prior record of violence and had never been accused of assaulting any of her children, the State's sole aggravating evidence was her prior DWI, obtained when Melissa was deprived of counsel.

The facts of this case give rise to several violations of Melissa's rights under the American Declaration of the Rights and Duties of Man (hereinafter ADRDM). This petition raises five of these claims.

First, the United States prevented Melissa Lucio from defending herself against capital murder charges by arbitrarily excluding expert testimony critical to her defense in violation of Articles XVIII and XXVI of the ADRDM.

Second, the United States provided Melissa Lucio with incompetent lawyers who failed to investigate and present substantial mitigating evidence and failed to challenge the prosecution's allegations at her trial in violation of Articles XVIII and XXVI.

Third, the United States has subjected Melissa Lucio to torture; cruel, infamous, and unusual punishment; and inhumane treatment in violation of Articles XXV and XXVI by subjecting her to fourteen years in solitary confinement on death row.

Fourth, the United States violated international law when the State of Texas sanctioned Melissa Lucio's marriage when she was sixteen years old and failed to protect her from gender-based violence.

Fifth, the State of Texas plans to execute Melissa Lucio by lethal injection, although its current protocol is shrouded in secrecy and presents an unacceptable risk of extreme pain and suffering.

I.
ADMISSIBILITY

A. COMPETENCE OF THE COMMISSION

Petitioner asserts that the United States has violated her rights under Article I (right to not be arbitrarily deprived of life), Article XVIII (right to a fair trial), Article XXV (right to humane treatment in custody), and Article XXVI (right to due process and right not to receive cruel, unusual, or infamous punishment) of the ADRDM. The Commission has competence over a claim where the alleged victim is a natural person "whose rights are protected under the American Declaration, the provisions of which the State is bound to respect in conformity with the OAS Charter, Article 20 of the Commission's Statute and Article 49 of the Commission's Rules of Procedure."[2]

Here, the petitioner, Melissa Lucio, is a natural person and United States citizen. The events raised in Ms. Lucio's claim occurred while she was within United States territory and jurisdiction and after the United States ratified the OAS Charter. Counsel for Ms. Lucio is authorized under Article 23 of the Commission's Rules of Procedure to represent her before the Commission. Therefore, the Commission is competent to hear this claim.

[2] *Abdur'Rahman v. United States*, Case 136.02, Inter-Am. Comm'n HR, Report No 39/03, ¶ 22 (2003).

B. EXHAUSTION OF DOMESTIC REMEDIES

Two of the legal claims Ms. Lucio raises in this petition have been exhausted in state and federal courts: (1) that the legal representation in her trial was inadequate and substandard; and (2) that the United States arbitrarily prevented her from presenting exculpatory evidence, violating her right to a fair trial and due process of law. Ms. Lucio's remaining claims have not been fully exhausted. For the reasons detailed below, her failure to exhaust those claims is justifiable and presents no bar to admissibility here.

1. Ms. Lucio's Ineffective Assistance Claim and Fair Trial Claims.

In both state and federal courts, Ms. Lucio presented numerous arguments that her trial lawyers provided ineffective assistance of counsel in violation of the Sixth Amendment to the United States Constitution. After the United States District Court for the Southern District of Texas denied her a certificate of appealability on these claims, she appealed to the Fifth Circuit Court of Appeals. The Fifth Circuit likewise denied her leave to appeal.[3]

Ms. Lucio also exhausted her claim that the state court violated her right to a fair trial when it excluded the defense experts' testimony. The Federal District Court for the Southern District of Texas rejected her claim. On appeal, a panel of the United States Court of Appeals for the Fifth Circuit unanimously granted her a certificate of appealability and granted her relief.[4] Nonetheless, Texas petitioned for rehearing *en banc*, and after granting the rehearing, the *en banc* Fifth Circuit vacated the panel opinion. *Lucio v. Lumpkin*, 987 F.3d at 487. While a majority of judges (ten) agreed with the result and agreed that the Anti-Terrorism and Effective Death Penalty Act (AEDPA), 28 U.S.C. § 2254(d), barred relief, no majority agreed on the *reasoning* for denying

[3] *Lucio v. Davis*, 751 Fed. App'x. 484, 494 (5th Cir. 2018).
[4] *Lucio v. Davis*, 783 Fed. App'x. 313, 325 (5th Cir. 2019).

relief. Indeed, seven judges vigorously dissented and found that the state court unreasonably applied the Supreme Court's precedent regarding the right to a complete defense. *Id.* at 490–518. Ms. Lucio petitioned the United States Supreme Court for a writ of certiorari based on these claims on July 9, 2021. The Court denied review on October 18, 2021.[5]

2. Lethal Injection Claim, Conditions of Confinement, and Child Marriage Claims.

Exhaustion is not required to consider the merits of Ms. Lucio's lethal injection, conditions of confinement, and child marriage claims. Article 31(2) of the Commission's Rules of Procedure expressly provides that exhaustion is not required where:

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

Specifically, the Commission has previously determined that where a petitioner's presentation of legal claims to domestic courts would have "no reasonable prospect of success," domestic remedies are not "effective" under international law.[6] As presented below, the unexhausted claims in this petition have no reasonable prospect of success and should be deemed admissible under Article 31 of the Commission's Regulations. *See Graham*, Case 11.193, ¶ 61; *Ramón Martinez Villareal*, Case 11.753, ¶ 70.

Ms. Lucio has been on death row for fourteen years. As the United States Supreme Court has denied her application for a writ of certiorari, Texas law permits the government to schedule her execution with only ninety-one days' notice.[7] Under these circumstances, if Ms. Lucio

[5] *Lucio v. Lumpkin*, 987 F.3d 451 (5th Cir. 2021), cert. denied, 142 S.Ct. 404 (Oct. 18, 2021) (No. 21-5095).
[6] *Gary T. Graham v. United States*, Case 11.193, Inter-Am. Comm'n H.R., Report No. 51/00, ¶¶ 60–61 (2000); *Ramón Martinez Villareal v. United States*, Case 11.753, Inter-Am. Comm'n H.R., Report No. 108/00, ¶ 70 (2000).
[7] TEX. CRIM. PROC. CODE. ANN. ART. 43.141(c).

attempted to exhaust her remedies arising from these claims, it would delay her filing before the Commission until it is potentially too late for the Commission to determine the merits of her claim. The Commission has previously noted that "the rule of prior exhaustion of domestic remedies should not lead to the result that access to international protection is detained or delayed to the point of being ineffective."[8]

Moreover, both the Texas Court of Criminal Appeals and the United States Supreme Court have refused to consider arguments relating to conditions of confinement on death row as a violation of a prisoner's right to be protected from cruel and unusual punishment.[9] For this reason, it would be futile for Ms. Lucio to seek to exhaust her conditions of confinement claim in domestic courts.

It would be equally futile for Ms. Lucio to seek to exhaust her lethal injection claim. Texas courts and the United States Supreme Court have rejected claims challenging the Texas lethal injection protocol. In *Ex parte Alba*, 256 S.W.3d 682 (Tex. Crim. App. 2008), the defendant filed a writ of habeas corpus in state court challenging the constitutionality of Texas's three-drug protocol. The court dismissed the claim because it was "not cognizable" in a habeas corpus application. In *Whitaker v. Collier*, 862 F.3d 490 (5th Cir. 2017), the defendant argued that Texas's lethal injection protocol violated his constitutional right to due process and to be free from cruel and unusual punishment. The defendant argued, *inter alia,* that Texas was using drugs of unreliable origin and quality. The Fifth Circuit Court of Appeals dismissed the claim. The United States Supreme Court denied certiorari. *Whitaker v. Collier*, 138 S. Ct. 1172 (2018). In *Garcia v. Collier*,

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[8] *Julius Omar Robinson v. United States*, Case 13.361, Inter-Am. Comm'n H.R., Report No.210/20, ¶¶ 16–18; *Víctor Saldaño v. United States*, Case 12.254, Inter-Am. Comm'n H.R., Report No. 24/17 ¶82.

[9] *See e.g., Knight v. Florida*, 528 U.S. 990 (1999) (refusing to review a claim that length of time spent on death row could constitute cruel and unusual punishment); *Bell v. State,* 938 S.W.2d 35 (Tex. Crim. App. 1996), *cert. denied,* 522 U.S. 827 (1997) (same).

744 F. App'x 39, 231 (5th Cir. 2018), the appellant sought a stay of execution, alleging that the Texas Department of Criminal Justice obtained the drugs that it uses for its executions from an unsafe pharmacy and that the lethal injection protocol violated his constitutional rights. The court denied relief, holding that appellant's claims were "unlikely to succeed on the merits." These holdings further demonstrate that any attempt by Ms. Lucio to exhaust her claims in domestic court would be futile.

Finally, even though child marriage raises serious human rights concerns, child marriage is permitted in Texas if a parent consents.[10] Only four U.S. states have set the minimum age for marriage at eighteen and eliminated all exceptions.[11] Twenty U.S. states do not have any minimum age requirements for marriage, provided parental or judicial consent to the marriage. Our research reveals that no court has ever found these laws to violate the United States Constitution or international human rights norms on the grounds that they violate the rights of girl-children. Indeed, states are given wide latitude to regulate marriage under state law.[12] For this reason, it would be futile to challenge the constitutionality of Texas' child marriage law in Ms. Lucio's case.

3. Even if Ms. Lucio Attempted to Present Her Lethal Injection, Conditions of Confinement, and Child Marriage Claims, These Claims Would Be Procedurally Defaulted.

Finally, Ms. Lucio is barred from presenting her conditions of confinement, lethal injection, and child marriage claims by state and federal legislation imposing draconian limitations on the presentation of "successive" post-conviction petitions. In state court, Ms. Lucio is barred from presenting all legal claims unless she can meet the stringent requirements of Article 11.071,

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[10] TEX. FAM. CODE § 2.103.

[11] EQUALITY NOW, *Child Marriage in the United States*, equalitynow.org/learn_more_child_marriage_us/ (last visited Nov. 16, 2021).

[12] *See* Raquel Wildes Genet, *Child Marriage in America: An Interim Solution Pending a Total Ban*, 40 CARDOZO L. R. 2999, 3019 (2019).

Subsection 5(a)(1) of the Texas Code of Criminal Procedure. That article provides, in pertinent part:

> (a) If a subsequent application for a writ of habeas corpus is filed after filing an initial application, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that: (1) the current claims and issues have not been and could not have been presented previously in a timely initial application or in a previously considered application filed under this article...because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application . . . .
>
> TEX. CRIM. PROC. CODE. ANN. ART. 11.071, ¶ 5(a)(1) (West 2015).

Subsection 5(d) provides:

> For purposes of Subsection (a)(1), a legal basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the legal basis was not recognized by or could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this State on or before that date.
>
> TEX. CRIM. PROC. CODE. ANN. ART. 11.071, ¶ 5(d) (West 2015).

Federal legislation establishes equally insurmountable hurdles for prisoners such as Ms. Lucio. Under AEDPA, Ms. Lucio is barred from litigating these claims unless she can demonstrate that her petition rests on (1) newly discovered evidence of her innocence; *or* (2) a new rule of constitutional law that was previously unavailable and made retroactive to cases on collateral review by the United States Supreme Court. 28 U.S.C § 2244 (b). The claims presented here do not rest on newly discovered evidence of innocence, and the United States Supreme Court has not issued an opinion affirming the rights she seeks to vindicate. The Commission has previously held that where a death row inmate was precluded from exhausting her domestic remedies by virtue of the draconian limits on post-conviction appeals imposed by state and federal legislation, her petition was admissible under Article 31 of the Commission's Regulations. *Graham*, Case 11.193, ¶ 59. This holding reflects the established principle that domestic remedies must be both adequate,

in the sense that they must be suitable to address an infringement of a legal right, and effective, in that they must be capable of producing the result for which they were designed.[13]

C. DUPLICATION

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

D. TIMELINESS OF THE PETITION

This petition also meets the terms of Article 32(2) of the Rules of Procedure: "In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. . . [considering] the date on which the alleged violation of rights occurred and the circumstances of each case." As noted above, Ms. Lucio's appeals have all been denied. The United States Supreme Court rejected her petition for a writ of certiorari on October 18, 2021. As for her child marriage claim, her claim is timely because the damage wrought by her child marriage—in particular, her exposure to domestic violence, drugs, and trauma—continues to this

[13] It is well established that when domestic remedies are unavailable as a matter of fact or law, the requirement that they be exhausted is excused. *See Exceptions to the Exhaustion of Domestic Remedies (Art. 46.1, 46.2.a and 46.2.b American Convention on Human Rights)*, Advisory Opinion OC-11/90, Inter-Am. Ct. H.R. (ser. A) No. 11, ¶ 17 (Aug. 10, 1990). *See also* Organization of American States, American Convention on Human Rights art. 46.2, 1144 UNTS 123 (exhaustion is not required where (1) the legislation of the State concerned fails to afford due process for the protection of the right allegedly violated; and (2) the party alleging the violation has been hindered in his or her access to domestic remedies). *See Velásquez Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 64–66 (July 29, 1988).

day. Indeed, in the human rights system, great relevance has been given to the examination of the nature of the violations: while some violations are "instantaneous" acts, other violations, such as the lifelong consequences of child marriage, may be continuous in nature and therefore ripe for analysis even years later.[14]

E. NEED FOR PRECAUTIONARY MEASURES

The need for precautionary measures, in this case, is paramount. As the Supreme Court of the United States has denied Ms. Lucio's writ of certiorari, she faces the risk of execution by the United States within months. This time frame is insufficient to allow for adequate consideration by the Commission of all issues raised in this petition. Under Article 25.1 of the Rules of Procedure, the Commission has the "power to intercede in circumstances of 'serious and irreparable harm to persons'" on the understanding that such action "shall not constitute a prejudgment on the merits of a case." There can be no dispute that Ms. Lucio faces irreparable harm when her very life is at stake.

II.

STATEMENT OF FACTS

> *This [was] a prosecution deeply flawed from its inception and leaving our hand as a failure at every level of government, shadowed by a threadbare narrative leaving backstage Melissa's story, including the role in her life of Texas's Department of Family and Protective Services, for good or naught.*[15]
>
> - Judge Patrick Higginbotham, United States Court of Appeals for the Fifth Circuit

[14] I/A Court H.R, *Case of Blake v. Guatemala*, Preliminary Objections of July 2, 1996. Series C No. 27, ¶¶ 24, 39–40. *See also* I/A Court H. R., *Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations and Costs of November 23, 2009, Series C No. 209, ¶¶15–25 (explaining the nature of continuous violations and why the court can hear these cases); *Lovelace v. Canada*, Comm. 24/1977, U.N. Doc. CCPR/C/OP/1, at ¶¶10–11 (HRC 1979) (arguing that even though the marriage of Ms. Lovelace was prior to the ratification of the ICCPR and the Optional Protocol of the Court, the effects of the violation where still ongoing).

[15] *Lucio v. Lumpkin*, 987 F.3d at 490 (Higginbotham, J., dissenting).

Melissa Lucio has now spent over a decade on death row under threat of execution for the accidental death of her daughter. Melissa's life has been marked by physical, emotional, and sexual abuse, economic precarity, drug abuse, and housing instability. Melissa is also a victim of severe, repeated gender-based violence who has struggled with untreated Post Traumatic Stress Disorder (PTSD) and persistent depression. Melissa's current incarceration exacerbates her trauma and mental health struggles.

Upon her daughter Mariah's tragic, accidental death on February 17, 2007, Melissa was immediately arrested and isolated in an interrogation room. Numb and dissociating from the intense pain of losing a child, Melissa spent over five hours in the presence of domineering male law enforcement officers. Melissa repeatedly told the police officers that she had not killed her child. In response, the officers pressured her to confess. They applied coercive maximization and minimization interrogation techniques,[16] which are notorious for their predilection to produce false confessions—particularly when applied to suggestible persons and trauma survivors. Exhibit B, Brief for the Innocence Project and Innocence Network as Amicus Curiae Supporting Petitioner at 11–12, 17–20, Lucio v. Lumpkin, 2021 U.S. LEXIS 5273 (2021) (No. 21-5095). Conditioned by her trauma into complying with male authority figures as a learned safety and escape mechanism, Melissa eventually acquiesced to their demands, stating, "I guess I did it." Exhibit A, Interrogation Tr. Vol. 2 at 35.

At trial, the prosecution painted Melissa's coerced custodial statement as a confession, portraying Melissa as a bad mother who killed her child. The domineering Texas Ranger who had interrogated Melissa took the stand, testifying that her flat affect, slumped posture, and deadpan expression were all indicative of her guilt. The trial court refused to allow Melissa's defense

[16] These techniques are discussed in more detail below at pp. 23–27.

counsel to present expert evidence refuting these characterizations and explaining how Melissa's gender-based trauma shaped her physical, emotional and verbal responses to Mariah's death and her interrogation. Ignorant of Melissa's extensive history of trauma, and deprived of critical context for her incriminating statement, the jury sentenced Melissa to death.

A. MELISSA SUFFERED AND WITNESSED HORRIFIC PHYSICAL, SEXUAL, PSYCHOLOGICAL, AND EMOTIONAL ABUSE THROUGHOUT HER CHILDHOOD.

From the day she was born, physical, emotional, and sexual abuse have shaped the course of Melissa Lucio's life.[17] Her mother, Esperanza Correa, was a battered woman. Melissa's biological father, Santos Gonzales, was married to another woman at Melissa's conception. Esperanza gave birth to Melissa as a single mother. Abandoned and with newborn Melissa to provide for, Esperanza quickly fell into an abusive relationship with Samuel Valencia.[18] Samuel was a violent and angry man who once repeatedly kicked Esperanza while wearing steel-toed shoes, breaking her wrist when she attempted to protect her head.

Trapped in this abusive relationship, Esperanza quickly had two children by Samuel: Sonya and Diane. Samuel died before Diane's birth. Again alone, but now with three children to support, Esperanza met Esquiel "Kelo" Carr. Esquiel was also violent and abusive to Esperanza; Melissa recalls Esquiel beating Esperanza in front of her while Esperanza was holding groceries, with milk spilling across the floor. Another image she recalls is Esquiel pulling her mother by the hair across the kitchen floor, a bleeding cut on Esperanza's temple.

[17] Much of the information in this section regarding Melissa's childhood, family, and relationships was obtained through gender-sensitive interviews with Melissa and her family conducted by her current defense team.
[18] Esperanza led Melissa to believe that Samuel was her father.

Esquiel was also a sexual predator who repeatedly raped Melissa over two years, beginning when she was just six years old. Financially struggling and "working 24/7," Esperanza often was incapable of caring for Melissa and her siblings. Exhibit C, Trial Tr. Vol. 37 at 196–97. Instead, she left them with Esquiel. *Id.* Melissa recalls how "he'd give my sisters money to go to the store so he could be alone with me." Eventually, Melissa summoned immense courage for a young child and confided in her mother about the sexual abuse. Instead of protecting her young daughter, Esperanza slapped Melissa in the face, brushing her claims off, calling her a liar, and denying that the abuse had occurred. Worse, Esperanza castigated Melissa for disclosing the abuse in the first place and told her never to speak of it again. Esperanza's failure to protect Melissa enabled Esquiel to continue raping Melissa until she was eight or nine years old, when Esquiel and Esperanza finally broke up.

Around this same time, Melissa was also raped repeatedly by her maternal uncle, Andres "Andrew" Gutierrez. While Esperanza, and Melissa's aunt, Maria, attended garage sales, Andres would force Melissa into his bedroom, close the door, and rape her. Conditioned by the simultaneous abuse by Esquiel to not say anything to adults, Melissa was too terrified to disclose what was happening to her. Andres' rapes continued for approximately a year, ending when Melissa was nine or ten years old.

Finally, during this same time, when Melissa was about nine years old, an unknown maintenance man raped her in a utility room in the family's apartment complex. After taking a few cigarettes from Esperanza's friend's purse, Melissa snuck into a utility closet to smoke before being caught by a passing maintenance man. Scared and thinking she was in trouble, Melissa began to cry. Melissa recalls the man saying to her, "if you do this, I won't tell your mom." He then forced his penis into her mouth. Conditioned by the sexual violence she had already been forced

to endure, as well as Esperanza's dismissive reaction, Melissa never reported this rape to Esperanza or any other adult.

A year or so later, Esperanza met and married Olegario Treviño Sr. Instability, frequent separations, domestic violence, and infidelity characterized their marriage. Working two jobs to provide for the family, Esperanza frequently fought over finances with Olegario, a musician lacking a stable income. The family frequently moved between Lubbock, Houston, and Harlingen during the course of their marriage. As a result, Melissa was constantly withdrawn and re-enrolled into different schools, adding to the instability in the household.

These early and pervasive experiences with gender-based physical, emotional, and sexual violence caused lasting psychological harm. As a protection mechanism, Melissa quickly learned to repress, deny, and dissociate from her emotions to "keep important elements and feelings away from conscious life." Exhibit D, Pinkerman Aff. at 2. This response was a survival tactic. To endure the horrific abuses of her childhood, Melissa learned to numb her feelings and "appear empty or passive." *Id.* Her flat affect, vacancy, apparent lack of emotions and compliance with male authority figures served as her armor against the gender-based trauma surrounding her.

B. MELISSA ENDURED CHILD MARRIAGE AND CONTINUED SEXUAL, EMOTIONAL, AND PHYSICAL TRAUMA THROUGH HER INTIMATE RELATIONSHIPS.

Despite Melissa's desperate need for intervention and support, nobody ever entered to "break [Melissa's] vicious spiral downward." *Id.* Melissa's early childhood trauma heightened her risk of re-victimization as an adolescent. At just fifteen, unable to legally consent, Melissa was statutorily raped by Israel Sauceda, a twenty-one-year-old married man.

At sixteen, Melissa became a child bride when she married twenty-year-old Guadalupe Lucio. Although this marriage was otherwise illegal, given that Melissa was a minor, the marriage was permitted in the State of Texas at that time because Esperanza consented.[19] Melissa recalls that she was desperate to marry as a means of leaving the Rio Grande Valley and escaping her childhood. Yet Melissa's life with Guadalupe continued the cycle of gender-based violence, abuse, and trauma. The couple moved to Houston, where Melissa was separated from her family and friends. Guadalupe, a violent alcoholic and drug dealer, was physically and emotionally abusive to Melissa. Exhibit C, Trial Tr. Vol. 37 at 199. As a coping mechanism, sixteen-year-old Melissa turned to cocaine after her sister-in-law Sylvia introduced her to the drug. *Id.* at 194. This introduction led to years of addiction, further fed by the drug use of her intimate partners. Like many trauma victims, Melissa's drug use served as both an escape and a means to cope with the trauma and abuse she suffered daily.[20]

After a miscarriage at age seventeen, Melissa bore five of Guadalupe's children by the time she was twenty-four. Guadalupe then abandoned the family, forcing Melissa and the children to fend for themselves. Guadalupe's sudden abandonment stunned Melissa, leading her to report him missing to the police.

Vulnerable, abandoned, and struggling to support her five children, Melissa quickly fell into a new relationship with Robert Alvarez. Finding solace only in her identity as a mother, Melissa suffered two more miscarriages and gave birth to seven more children during her relationship with Robert, including a daughter named Mariah. Like Guadalupe and the countless

[19] TEX. FAM. CODE ANN. §2.102 (West 2009) (repealed 2017).
[20] *See* Scheidell, et al., Childhood Traumatic Experiences and the Association with Marijuana and Cocaine Use in Adolescence through Adulthood, 113 (1) ADDICTION 44–56 (Jan. 2018) (noting that "[n]umerous studies have documented associations between childhood traumatic experience and drug use in both adolescent and adulthood periods.").

father figures from Melissa's childhood, Robert was physically, emotionally, and verbally abusive to Melissa and her children. He put his hands around her throat, punched her, threatened to hurt or kill her, and sought to control her life. Yet, in a familiar refrain, nobody intervened.

During the relationship, Melissa's children called 911 and reported to the Texas Department of Family and Protective Services (DFPS), also known as Child Protective Services (CPS), that they were experiencing domestic violence in their household. Exhibit E, Def. Tr. Ex.14 at 6. At another point, the school principal reported Robert physically punching Melissa in the park. Exhibit C, Trial Tr. Vol. 37 at 205; Exhibit E, Def. Tr. Ex.14 at 2–3. A CPS report, filed in 2003, investigated allegations that Robert was sexually abusing Melissa's daughter, Melissa Lucio (affectionately nicknamed "Little Melissa").[21] Exhibit C, Trial Tr. Vol. 37 at 206. Despite these well-documented instances of physical, sexual, and verbal violence against Melissa and the children, the police and CPS nevertheless both failed to intervene to stop the abuse.[22]

In the face of continuing trauma inflicted by her intimate partners, Melissa struggled to care for her children. In addition to the emotional and physical conflict present in the household,[23] the family struggled financially, living in a constant state of economic precarity. At various points, Melissa and her children were homeless, lived in a park, and relied on food banks and the school for the children's meals and hygiene needs. Exhibit E, Def. Tr. Ex.14 at 2, 5–6; Exhibit C, Trial Tr. Vol. 37 at 181, 205; Exhibit G, Brief for Former Prosecutors et. al as Amicus Curiae Supporting Petitioner at 11, *Lucio v. Lumpkin*, 2021 U.S. LEXIS 5273 (2021) (No. 21-5095). During the entire span of Melissa's relationship with Robert from 1994 to 2007, the family moved twenty-six times,

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[21] Little Melissa later recanted this allegation. Exhibit C, Trial Tr. Vol. 37, at 206–07.

[22] In a scathing dissent from the Fifth Circuit's *en banc* decision denying relief, Judge Patrick Higginbotham observed that the "tragedy of Mariah's death unfolded against the depressingly familiar background of the State's struggle with CPS's systemic failures." *Lucio v. Lumpkin*, 987 F.3d at 492.

[23] Several CPS reports found frequent physical abuse among the siblings, with the children often leaving one another bruised. Exhibit F, Villanueva Aff. at 2.

primarily because they were unable to pay rent. This constant state of economic hardship and housing instability only compounded Melissa's trauma. Wholly dependent upon Robert, who worked only odd jobs, and her meager child support payments, Melissa was trapped and unable to escape or protect her children from her abusive relationship and the violence of a home that mirrored her childhood circumstances. Exhibit G, Brief for Former Prosecutors et. al at 11; Exhibit H, PowerPoint Presentation of Norma Villanueva, Licensed Clinical Social Worker and Mitigation Specialist, at the Trial of Melissa Lucio, Sentencing Phase at 8 (July 9, 2008).

C. MELISSA DEVELOPED POST-TRAUMATIC STRESS DISORDER AS A RESULT OF HER REPEATED TRAUMA.

Deeply traumatized by her childhood, adolescent, and adult experiences with gender-based violence, Melissa became increasingly mentally ill. Prior to Mariah's death, Melissa was evaluated by Dr. Xavier Jay Martinez, following an order from CPS. Dr. Martinez diagnosed Melissa with Cocaine Abuse and Dysthymic Disorder,[24] which he defined as a "chronic mood disorder" whose "primary symptoms include a generalized degree of hopelessness, loss of energy, decreased activity, and underlying feelings of inadequacy." Exhibit I, Dr. Xavier Martinez Psychological Evaluation at 4. Recognizing Melissa's deep-seated trauma and its effect on her ability to function, Dr. Martinez recommended individual counseling, alcohol/drug abuse counseling, continued CPS behavioral supervision, vocational counseling, guidance, and parenting education. *Id.* at 5.

Following Melissa's arrest, Dr. John Pinkerman met with her several times. He reviewed her records, eventually diagnosing her with PTSD and "battered woman syndrome" directly resulting from her early childhood trauma and ongoing physical, sexual, and emotional abuse. Exhibit J, Dr. John Pinkerman Assessment Report at 10; Exhibit D, Pinkerman Aff. at 2. Like

[24] A form of pervasive depression.

many individuals who have experienced prior trauma, including sexual abuse, Melissa responds to intensely painful or stressful situations by turning inwards and becoming passive, acting in a manner characterized by denial, repression, acquiescence, resignation, and most significantly, dissociation. Exhibit J, Pinkerman Assessment Report at 7–8; Exhibit D, Pinkerman Aff. at 2. Melissa has learned, over decades of aggravated abuse, to protect herself by withdrawing and numbing her emotions so that she does not feel the pain of her constant trauma, even if it subsequently limits her "thinking, seeing, hearing, or feeling." Exhibit G, Brief for Former Prosecutors et. al at 12–13. Her dissociation "serves to keep many important elements of daily life from her conscious awareness." Exhibit J, Pinkerman Assessment Report at 7. As a base psychological defense against painful experiences and memories, this dissociation is a core biological symptom of PTSD and is compounded by her depression. *Id.* at 7–9. Other experts in the field of gender-based violence have similarly concluded that Melissa's "deadpan face" and emotional numbness are deeply characteristic of formerly abused children, especially those who were not shielded by protector figures, as well as women who have endured abuse in relationships. Exhibit C, Trial Tr. Vol. 37 at 197; Exhibit G, Brief for Former Prosecutors et. al at 12. Aggressively socialized early on to self-sacrifice and acquiesce to dominant, emotionally and physically abusive male figures in her life, Melissa sought gratification through her role as a mother. Exhibit D, Pinkerman Aff. at 2; Exhibit C, Trial Tr. Vol. 37 at 197. In his assessment, Dr. Pinkerman found that "it is evident that her self-esteem and identity are closely tied to her role as a mother and wife." Exhibit J, Pinkerman Assessment Report at 6. Given the consistent failure by authority figures throughout her life to intervene and protect her and her children from abuse, Melissa learned that "her outcries were ineffective and [it] was better to cultivate a predictable and

secure abusive relationship than risk losing her family and identity as a mother." Exhibit D, Pinkerman Aff. at 2.

In 2004, after monitoring the family for years, CPS eventually removed the seven youngest children from Melissa and Robert's custody. Exhibit C, Trial Tr. Vol. 37 at 56–58. The vast majority of the CPS reports cite parental negligence deriving primarily from poverty, including a lack of supervision, an unclean home environment, inadequate food, lack of electricity or water, and homelessness. Exhibit E, Def. Tr. Ex.14 at 6; Exhibit C, Trial Tr. Vol. 37 at 178, 181. The only instance of "physical abuse" by Melissa stemmed from her drug addiction: two of her infants tested positive for cocaine at birth—a fact that CPS automatically classified as abuse. Exhibit E, Def. Tr. Ex.14 at 2, 4; Exhibit C, Trial Tr. Vol. 37 at 49, 53, 73, 207. Other CPS reports included allegations of sexual abuse of the children by both Robert Alvarez and John Lucio, one of Melissa's older children. Exhibit E, Def. Tr. Ex.14 at 4; Exhibit C, Trial Tr. Vol. 37 at 51–52, 190. After the reported sexual abuse, Harlingen Police Department filed charges against John Lucio. Yet despite these allegations, the continuing CPS reports, police intervention and the removal, neither CPS nor Harlingen Police acted to protect Melissa from her abusive relationship. CPS later returned the children to Melissa and Robert's custody and their second-story apartment at the top of a steep and poorly maintained exterior flight of stairs. Exhibit C, Trial Tr. Vol. 37 at 63.

One day, as the large and bustling family was moving out of their apartment, one of Melissa's children witnessed Mariah slip and fall down the stairs to the ground below. Exhibit K, Trial Tr. Vol. 32 at 21. Two days later, after experiencing mild symptoms, Mariah went to sleep and never woke up. *Id.* One of the paramedics who responded to the scene testified that Melissa was "somewhat distressed, but distant," and Robert was "non-distressed and distant." Exhibit L, Trial Tr. Vol. 33 at 91–92.

D. AFTER MARIAH'S DEATH, MULTIPLE MALE POLICE OFFICERS SUBJECTED HER TO A HIGHLY COERCIVE INTERROGATION.

The same night that Mariah died, an armed, male investigation team took Melissa to the police station, where they aggressively interrogated her, treating her as guilty from the very beginning. *Id.* at 112. Initially lulled into thinking that the law enforcement officers were simply attempting to figure out the circumstances of Mariah's death, Melissa soon found herself targeted as their prime suspect in Mariah's death. *Id.* Ranger Victor Escalon seized upon Melissa's perceived flat affect and emotional removal, a direct consequence of her history of gender-based trauma and a protective PTSD biological mechanism, as evidence of her guilt. At trial, he testified that "[he] knew she did something. And she was ashamed of what she did, and she had a hard time admitting to the officers what had occurred." Exhibit M, Trial Tr. Vol. 35 at 115. Yet the real explanation for Melissa's reactions was simple: they were a survival mechanism she had learned as a result of decades of abuse from adult men. Dr. Pinkerman explained that as a direct consequence of her trauma, Melissa takes on a passive role in times of stress or when confronted with perceived authority figures. Exhibit J, Pinkerman Assessment Report at 7–8; Exhibit D, Pinkerman Aff. at 2.

Although the interrogation took place late at night, the investigators refused Melissa any chance to sleep or eat. As she grew increasingly emotionally, mentally, and physically exhausted, Melissa repeatedly laid her head on the table. Exhibit N, Interrogation Tr. Vol. 1 at 49, 54; Exhibit K, Trial Tr. Vol. 32 at 56. Despite her exhaustion and grief, the male investigators leaned over her, barraging her with accusations, questions, images of her dead child, and false sympathy. Exhibit N, Interrogation Tr. Vol. 1 at 26–27, 31–32, 40–41; Exhibit L, Trial Tr. Vol. 33 at 119. In particular, investigators relied on coercive interrogation techniques including "maximization" and

"minimization." Exhibit B, Brief for the Innocence Project at 11. Experts have criticized these techniques as heightening the risk of false confessions from innocent parties, and particularly from suggestible persons such as Melissa. Exhibit B, Brief for the Innocence Project at 11–12. Melissa was additionally susceptible to coercive police interrogation due to her significant cognitive impairments. In Melissa's first psychological assessment, Dr. Martinez tested her under the Wechsler Abbreviated Scale of Intelligence (WASI) and concluded that she had borderline intellectual functioning with a full-scale IQ of 70. Exhibit I, Martinez Psychological Evaluation at 4. Dr. Pinkerman, using the Wechsler Adult Intelligence Scale-III (WAIS-III), later estimated Melissa's full-scale IQ at 85, within the low average range, but noted that Melissa's "performance across these [information processing and comprehension] domains is scattered and suggests considerable variability in her abilities." Exhibit J, Pinkerman Assessment Report at 5. In particular, Dr. Pinkerman noted that Melissa's verbal comprehension score "fell in the borderline range, which means that it's close to the mentally retarded range. . . It was a score of 78." Exhibit O, Trial Tr. Vol. 38 at 67. Melissa's "limited general intellectual functions . . . compromised much of her life history, including educational and work opportunities" and, along with her limited verbal comprehension ability, directly impaired Melissa's ability to understand and respond to the interrogators' coercive questioning. Exhibit J, Pinkerman Assessment Report at 7.

Melissa's interrogators heavily relied upon "maximization," a technique whereby the investigator forcefully asserts the interrogee's guilt and rejects their repeated claims of innocence, claiming that law enforcement "both already knows and has conclusive evidence of the individual's guilt—all of which is intended to amplify feelings of anxiety, helplessness, and isolation." Exhibit B, Brief for the Innocence Project at 11–12. In the first hours of her interrogation, Melissa repeatedly denied any involvement in Mariah's death and any abuse to her

children. Yet her interrogators continued to insist that Melissa was responsible for Mariah's death and the physical trauma to her body. Exhibit M, Trial Tr. Vol. 35 at 96. In one illustrative exchange between Ranger Escalon and Melissa, he nearly puts the words in her mouth:

> Q: Tell me. Melissa tell me. Let's do this together. ok? Let's get it over with. Say yeah. We can get it over with and move on. Ok Melissa? Let's just get it over with.
>
> A: I don't know what you want me to say. I'm responsible for it.

Exhibit A, Interrogation Tr. Vol. 2 at 15. They rejected Melissa's explanation that Mariah had fallen down the stairs, showed her graphic photos of her daughter only hours after her death, and compelled Melissa to hit a baby doll multiple times in the alleged manner in which she abused Mariah. Exhibit N, Interrogation Tr. Vol. 1 at 31–32, 40–41; Exhibit P, Interrogation Tr. Vol. 3 at 4–6, 8–9; Exhibit L, Trial Tr. Vol. 33 at 119–25. Each time Melissa showed them how she "did it," the interrogators were not satisfied, urging her to hit the doll with more force. Exhibit P, Interrogation Tr. Vol. 3 at 4–6, 8–9. On the stand, Ranger Escalon admitted that he "want[ed] her to tell [him] the truth, and [he] want[ed] her to admit what she did . . . [he] wanted her to take responsibility for what she did, and explain to [him] everything that she did, how she hit this little girl." Exhibit L, Trial Tr. Vol. 33 at 119.

Melissa's interrogators also relied upon "minimization" tactics, another high-risk technique known for eliciting false confessions from easily manipulated parties with histories of trauma such as Melissa. Exhibit B, Brief for the Innocence Project at 12. Minimization involves manipulating an accused person into feeling that confessing is in their best interest by showing sympathy, downplaying their presumed culpability, and generally implying that leniency will follow a confession. *Id.* In Melissa's case, Ranger Escalon feigned sympathy as a contrast to the maximization techniques also used on her. Sitting in close proximity, his face inches from hers, he told her that the interrogators were there to "help you get it out. Explain it to us. Because it happens.

. . God's gonna forgive you . . . You're making it right . . . That's why we're there. To hear your side of the story." Exhibit A, Interrogation Tr. Vol. 2 at 8–9. He further added that the interrogators are "not gonna hate you. We're not gonna think different of you. It just happened. One day you couldn't take it. You weren't in your right mental state. You got upset. That's it. It happens. We understand that." *Id.* at 12. Another one of Melissa's interrogators, Detective Banda, similarly applied minimization, telling Melissa, "Sometimes we let things get out of hand. Sometimes we've gone too far and we realize later that we've gone too far and we look back and we say I should never have done that. Is that—or this one of those times?" Exhibit N, Interrogation Tr. Vol. 1 at 30. Similar to the maximization tactics, these minimization strategies played on Melissa's gender-based trauma, PTSD, and need to comply with male authority figures, pushing her to agree to Ranger Escalon's suggestions as the path of least resistance. Exhibit B, Brief for the Innocence Project at 13, 17–20.

Exhausted and stressed after over nineteen hours awake and five hours of intense interrogation, in deep grief and mourning over Mariah's death, and numb and dissociating, Melissa eventually capitulated to her interrogator's assertions, saying, "I guess I did it." Exhibit A, Interrogation Tr. Vol. 2 at 35. Contrary to what the police and prosecutors later argued before the jury, Melissa's coerced admissions were simply another manifestation of her trauma rather than an indication of any actual culpability in Mariah's death.

E. THE TRIAL COURT REFUSED TO ADMIT TESTIMONY REVEALING HOW MELISSA'S HISTORY OF GENDER-BASED TRAUMA INFLUENCED HER DEMEANOR AND REACTION TO INTERROGATION.

Following Melissa's interrogation, the State of Texas charged Melissa with capital murder for Mariah's death.[25] Exhibit K, Trial Tr. Vol. 32 at 13. At trial, the prosecution focused its case on Melissa's false confession and the police perceptions of Melissa's reactions on the night of Mariah's death. With witness after witness, the prosecutor elicited and amplified descriptions and interpretations of Melissa's demeanor, including her lack of emotion and apparent "relief" at Mariah's death, as evidence of her guilt. Exhibit L, Trial Tr. Vol. 33 at 115–16, 146. On the stand, Ranger Escalon even testified that Melissa's trauma-influenced behavior during the merciless interrogation led him to believe that "she was beat . . . [that] she was giving up. She wants to tell because she's giving that slouched appearance—you know: I did it. I've given up." *Id.* at 115. In front of the jury, Ranger Escalon evaluated Melissa's behavior, contrasting her trauma-influenced flat affect and withdrawn demeanor to those who are actually innocent, testifying—without any basis for his assertion—that innocent people are "going to be upset with you. . . it's black and white. You'll see the difference. It'll stand out." *Id.* at 116.

Yet, despite the prosecution's heavy emphasis on Melissa's demeanor and behavior surrounding Mariah's death and during the interrogation, the court precluded the defense from countering that non-expert testimony by introducing expert testimony that would have provided a

[25] Despite being the last person to see Mariah alive, Mariah's other parent, Robert Alvarez, was only charged with intentionally causing serious bodily injury to a child by failing to seek medical care for a child in his custody. Exhibit F, Villanueva Aff. at 4–5; Exhibit Q, Alvarez Trial Tr. Vol. 1 at 5–6. At Robert's trial, the police and prosecutor disingenuously contrasted the emotional response between Melissa and Robert, characterizing Melissa's response as falsely emotional and claiming that "[a]s soon as a family member would come over to console with her, she would break down and cry. And then as soon as the family member would step away, she automatically switched off back to—it seemed like she would turn on a switch." Exhibit R, Alvarez Trial Tr. Vol. 2 at 12, 44–45. On the other hand, the police claimed that "[Robert] was weeping, he was crying a lot. And then he said the same thing you said about the mother [Melissa]; but that as far as Roberto, he said he was crying." Exhibit Q, Alvarez Trial Tr. Vol. 1 at 50; Exhibit R, Alvarez Trial Tr. Vol. 2 at 35–36. The police's non trauma-informed evaluation shaped their investigation and the charge; in contrast to Melissa, whose response they did not understand, the police characterized Robert during his interrogation as properly "emotional at the time. He was crying; but aside from that, he answered all the questions. He seemed to be genuinely concerned about the child." Exhibit R, Alvarez Trial Tr. Vol. 2 at 16–17. The jury found Robert guilty of reckless injury to a child by omission and sentenced him to just four years in prison. Exhibit S, Alvarez Trial Tr. Vol. 12 at 31–32.

trauma-informed view of Melissa's behavior and contextualized her demeanor for the jury. Exhibit M, Trial Tr. Vol. 35 at 186–87. Melissa's attorney first attempted to introduce testimony from Norma Villanueva, a licensed clinical social worker with a graduate degree and qualification consisting of "the highest national clinical license to allow [her] to do diagnosis and treatment of mental health disorders." *Id.* at 128–29. Ms. Villanueva's licensing included training in deciphering body language. *Id.* at 133–34. After a meticulous review of Melissa's records and history as well as several meetings with Melissa herself, Ms. Villanueva was prepared to testify as to Melissa's past abuse by her stepfather and intimate partners and how her gender-based trauma shaped "several patterns of behavior:" in particular, deference and acquiescence to male authority figures. *Id.* at 142–43. Although Ms. Villanueva never intended to testify regarding the truth or falsity of Melissa's confession, the trial court nevertheless excluded Ms. Villanueva from testifying in front of the jury, pronouncing that she was not qualified to offer an opinion as to whether Melissa's statement was true or false. *Id.* at 135–37.

Next, the defense attempted to introduce testimony from a licensed clinical psychologist, Dr. John Pinkerman, who had reviewed Melissa's records, researched the literature on "battered woman syndrome" and false confessions, and met personally with her. Exhibit C, Trial Tr. Vol. 37 at 187; Exhibit O, Trial Tr. Vol. 38 at 63–64. Dr. Pinkerman would have testified that Melissa's behavior, both directly after Mariah's death and during the interrogation, could be understood not as a marker of guilt, but rather as the product of decades of gender-based trauma, "battered woman syndrome," internalized guilt and blame, and PTSD-influenced survival mechanisms. Exhibit M, Trial Tr. Vol. 35 at 187–88. Furthermore, Dr. Pinkerman would have explained to the jury how Melissa's history of gender-based trauma, identity as a mother, and the need to protect her children, along with the aggressive conditions of her interrogation, would have cast significant doubt on the

trustworthiness of her "confession." Exhibit D, Pinkerman Aff. at 2; Exhibit G, Brief for Former Prosecutors et. al at 20. The trial court excluded his testimony, stating that Dr. Pinkerman's testimony did not actually go to "the issue of guilt or innocence," because Melissa did not directly admit to killing Mariah but rather admitted to actions that may have resulted in Mariah's death. Exhibit M, Trial Tr. Vol. 35 at 188.

Thus, while the court permitted the prosecution to introduce testimony opining upon the implications of Melissa's demeanor, including her flat affect and lack of emotion, and the trustworthiness of her false confession, the court foreclosed the defense from contextualizing such behavior. Deprived of any expert testimony to explain the backdrop of gender-based violence that affected Melissa's reactions in the wake of Mariah's death, the jury simply saw what the police and prosecution wanted them to see: a guilty woman. Lacking the whole story, the jury ultimately found Melissa guilty of capital murder.

F. MELISSA'S ATTORNEYS FAILED TO CHALLENGE HER INVOLUNTARY AND FALSE STATEMENT, FAILED TO CONDUCT A COMPREHENSIVE MITIGATION INVESTIGATION, AND FAILED TO OBTAIN CRITICAL EXPERT ASSISTANCE.

Melissa's trial attorney, Peter Gilman, failed to properly investigate her defense or move to suppress her false confession, the very basis of the prosecution's argument, as an involuntary statement. Despite the disturbing circumstances of Melissa's interrogation and the gender-based trauma dynamics underlying her false confession, Mr. Gilman failed to file a pre-trial motion to suppress her false confession on the grounds that it was involuntary. *See Lucio v. Lumpkin*, 987 F.3d at 462. Mr. Gilman also failed to make a timely request for, or adequately use, a mitigation specialist (Ms. Villanueva) and a psychologist (Dr. Pinkerman). *Id.* at 462.

Furthermore, Mr. Gilman's failure to adequately prepare for trial was notably deficient. Despite the trial judge's dismay during multiple status hearings, Mr. Gilman had still not requested assistance from any expert witnesses with fewer than ten weeks remaining before trial. Exhibit T, Trial Tr. Vol. 9 at 6. Mr. Gilman requested and obtained the court's approval to retain Ms. Villanueva, the mitigation specialist, and Dr. Pinkerman, the psychologist, only two months before the original trial date. Exhibit U, Trial Tr. Vol. 10 at 3. Mr. Gilman admitted he was unprepared and obtained a last-minute postponement of the trial. Even with the postponement, Ms. Villanueva did not have enough time to conduct a comprehensive mitigation investigation. Exhibit F, Villanueva Aff. at 4–5; Exhibit V, Trial Tr. Vol. 13 at 11–12. Furthermore, despite meeting with both Dr. Pinkerman and Ms. Villanueva, receiving the results of the psychological evaluation and the "wealth of information available [as mitigating factors in the case of Melissa's conviction]," Mr. Gilman failed to develop these avenues as evidence, follow their recommendations, or fully present their findings during the punishment phase of Melissa's trial. Exhibit D, Pinkerman Aff. at 2; Exhibit F, Villanueva Aff. at 3–4. As a result, Mr. Gilman presented only a sliver of Melissa's extensive history of gender-based violence and trauma at the trial's penalty phase.

In Dr. Pinkerman's professional opinion, "the limited number of meetings between me and other defense team members were insufficient to integrate our professional work and assist in a viable and available defense in either the guilt/innocence or in the punishment phase." Exhibit D, Pinkerman Aff. at 3. Concerned over the direction that Mr. Gilman was taking the defense's case, even at the point of developing mitigating factors in the punishment phase, Dr. Pinkerman added that "it was clear that mental health issues were not being fully developed or addressed. It was unusual, based on my past experience in capital cases, to not be used more effectively." *Id.* In his abbreviated closing argument at the penalty phase, his final opportunity to persuade the jury that

Melissa's life was worth saving, Mr. Gilman did not once mention that she was a victim of sexual and domestic violence. Exhibit O, Trial Tr. Vol. 38 at 151–57.

G. DURING THE PENALTY PHASE OF THE TRIAL, THE STATE DREW ON MISLEADING AND IRRELEVANT INFORMATION TO FALSELY PORTRAY MELISSA AS A REMORSELESS AND IRREDEEMABLE CRIMINAL WHO WOULD TAKE OPPORTUNITIES TO RE-OFFEND IN PRISON.

After Melissa's conviction, the jury had two choices: they could sentence Melissa to life imprisonment or to death. The District Attorney, Armando Villalobos, was in the midst of a re-election campaign. He chose to personally prosecute Melissa and ask the jury to sentence her to die. At the penalty phase of Ms. Lucio's capital murder trial, the prosecution characterized Melissa as a heartless monster who lacked remorse for her purported offense and who posed an unmanageable threat, even while incarcerated. Because Melissa had no record of violence, the prosecution relied on misleading "expert" testimony about her opportunity to re-offend in prison and used dehumanizing animal imagery to eliminate any shred of compassion for her. Finally, the prosecution insinuated that Melissa's account of sexual abuse was false.

From the very beginning of the penalty phase, the prosecution painted Melissa as an inherently dangerous criminal who was destined to commit future crimes of violence. To this end, they began by calling as a witness A.P. Merillat, a criminal investigator, whose sole purpose was to testify regarding the opportunities for inmates to re-offend once incarcerated. Exhibit C, Trial Tr. Vol. 37 at 11. The prosecution presented him as an expert witness on opportunities for "future violence within the prison system"—even though, in another capital case, the Texas Court of Criminal Appeals reprimanded Merillat for testifying falsely about the same topic and reversed the

prisoner's death sentence.[26] The prosecution used Investigator Merillatt to frighten jurors into believing that the only way to ensure that Melissa would not commit additional violent crimes was to end her life. *Id.* at 24. Investigator Merillatt used scare-mongering tactics, telling the jury that within the Texas prison system, "there's never been a year in Texas where . . . at least one inmate has not been murdered. So we've never had a year with no murders inside the penitentiary since 1984 at least." *Id.* at 20. Although on cross examination Merillatt admitted that he knew little to nothing about women prisoners, he continued his misleading characterization of incarcerated persons, contending that "there's a lot of interpersonal violence between inmates because you have convicted felons who can't get along with society anyway. So, of course, there are going to be problems—severe problems." *Id.* at 28.

Next, the prosecution introduced time-logs from the jail documenting Melissa's sleeping and resting patterns after she was convicted of capital murder. Noting that she did not cry or scream, the prosecution would ultimately use this evidence as "proof" of her lack of remorse at her daughter's death. *Id.* at 124–26. In this way, the prosecution continued to mischaracterize the symptoms of Melissa's mental illness as evidence of her blameworthiness. Neither the prosecution nor the defense mentioned that as a person suffering from PTSD and depression, Melissa responded to trauma by dissociating, sleeping, and lying down. *Id.* at 124–27. By pointing out her lack of an overt emotional outburst, the prosecution once again played on gendered expectations of how mothers are "supposed" to respond to grief. The prosecution mischaracterized Melissa's

[26] *Velez v. State*, 2012 WL 2130890 *31-33 (Tex. Crim. App. 2012) (unpublished).

numbed response, a biological artifact of her life-long gender-based trauma and PTSD, as indicative that she lacked any regret for the crime of which she had been falsely convicted.

In many capital trials, the prosecution relies on aggravating evidence in the form of prior convictions for crimes of violence. Yet Melissa had no record of violence, nor had she been convicted of any felony charges. Thus, the prosecution introduced evidence of the only prior unlawful conduct it could find: a singular DWI conviction, obtained while depriving Melissa of the aid of counsel. Though a DWI is not a "crime of moral turpitude," nor is it related in any rational manner to Melissa's character or the crime for which she had been falsely convicted, the prosecution nonetheless used the conviction to persuade the jury that Melissa was an irredeemable criminal. *Id.* at 169.

The prosecution also attempted to undermine Melissa's credibility as a survivor of gender-based violence. In cross-examining Ms. Villanueva, the prosecution suggested that Melissa's account of her childhood sexual abuse was false because it hadn't been "verified." Exhibit O, Trial Tr. Vol. 38 at 32. The prosecution even suggested that Ms. Villanueva should have interviewed Melissa's abusers in order to verify her account. *Id.* at 32–33.

Finally, the prosecution compared Melissa to an animal, saying that she was "like a dog that bites a human person. Once that dog bites, they will always have—there will always be a probability that it will bite again. Same thing with this defendant. Her record speaks to you, and tells you: This isn't going to end here. This isn't going to end with Mariah. This is going to continue." *Id.* at 146. After characterizing Melissa as less than human, the prosecution concluded that "she's never going to change her stripes." *Id.* at 171.

Ultimately, through using misleading and irrelevant information and dehumanizing language, the prosecution portrayed Melissa as an irredeemable, remorseless, and morally bankrupt criminal who was predestined to re-offend. By the end of the penalty phase, the jury believed only the narrative that the prosecution presented: that sentencing Melissa to death was the only way to protect others and the general public. Without knowing the whole story and without knowing who Melissa truly was, the jury sentenced her to die.

III.

LEGAL ARGUMENT

A. THE UNITED STATES VIOLATED ARTICLES XVIII AND XXVI OF THE ADRDM BY ARBITRARILY EXCLUDING CRITICAL EVIDENCE FOR THE DEFENSE IN A CAPITAL CASE, MATERIALLY PREJUDICING MS. LUCIO.

> *"Facts matter. In this morality play of citizen decisions of life or death, the jury represents the people, but they did not hear [Melissa's] defense."*
>
> - Judge Patrick Higginbotham, United States Court of Appeals for the Fifth Circuit[27]

The right to a fair trial is one of the cornerstones of international human rights law. The Human Rights Committee has observed that the right to a fair trial is a "complex" right that encompasses the accused's right to a meaningful defense and to confront the evidence against her—including by the presentation of witness testimony.[28]

Here, the United States undermined Ms. Lucio's right to a fair trial by excluding critical testimony from two experts who would have presented evidence essential to Ms. Lucio's defense.

1. The Commission Has Repeatedly Held That a Heightened Level of Scrutiny Applies in Its Review of Capital Punishment Cases.

[27] *Lucio v. Lumpkin,* 987 F.3d at 493 (Higginbotham, J., dissenting).
[28] U.N. Human Rights Committee, General Comment No 32 (Article 14: Right to equality before courts and tribunals and to a fair trial) (2007), https://digitallibrary.un.org/record/606075/files/CCPR_C_GC_32-EN.pdf.

The IACHR applies a heightened level of scrutiny in deciding capital punishment cases. This approach requires particularly strict adherence to the rules and principles of due process and fair trial in the context of capital cases. The Commission has held that:

> The right to life is widely recognized as the supreme right of the human being, and the *condition sine qua non* to the enjoyment of all other rights . . .. The Commission therefore considers that it has an enhanced obligation to ensure that any deprivation of life which may occur through the application of the death penalty comply strictly with the requirements of the applicable inter-American human rights instruments, including the American Declaration.[29]

This "heightened scrutiny test" has been articulated and applied by the Commission in several capital cases[30] and is consistent with the approach taken by other international human rights authorities to examine death penalty cases.[31]

The Commission's rigorous approach to evaluating human rights violations in capital cases is justified by the irreversible nature of the death penalty. As the Inter-American Court of Human Rights has held, "because the execution of the death penalty is irreversible, the strictest and most rigorous enforcement of judicial guarantees is required of the State so that those guarantees are not violated and a human life is not arbitrarily taken as a result."[32] Thus, human rights bodies must

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[29] *Medellín, Ramírez Cardenas and Leal García v. United States*, Case 12.644, Inter-Am. Comm'n H.R., Report No. 90/09, ¶ 122 (2009).

[30] *See, e.g William Andrews v. United States,* Case 11.139, Inter-Am. Comm'n H.R., Report No. 57/96, ¶ 170-171 (1996); *Rudolph Baptiste v. Grenada*, Case 11.743, Inter-Am. Comm'n H.R., Report N° 38/00 (2000), ¶ 64-66; *Cases 12.023 (Desmond Mckenzie), 12.044 (Andrew Downer and Alphonso Tracey), 12.107 (Carl Baker), 12.126 (Dwight Fletcher), and 12.146 (Anthony Rose) v. Jamaica*, Inter-Am. Comm'n H.R., Report N° 41/00, ¶ 169–171 (2000).

[31] I/A Court HR, Advisory Opinion OC-16/99 (1 October 1999) "*The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*," ¶ 136–137; *Baboeram-Adhin v. Suriname*, Communication No. 146/1983 & 148-154/1983, U.N. Doc. A/40/40, at 187 (HRC 1985) ¶ 14.3 (finding that the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of the State); U.N. Special Rapporteur on Extra-judicial Executions, *Question of the Violation of Human Rights and Fundamental Freedoms in any part of the World, with particular reference to Colonial and Other Dependent Countries and Territories*, ¶ 378, UN Doc.E/CN.4/1995/61 (14 December 1994) (emphasizing that in capital cases, allegations of fair trial violations in capital cases should be subject to exhaustive and impartial investigations).

[32] *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99, Inter-Am. Ct. H.R. (ser. A.) ¶ 135–137(1 October 1999).

ensure that the death penalty is applied with a rigorous observance of judicial guarantees,[33] including those necessary to protect the right to life, due process, and fair trial.[34] Finally, the Commission has affirmed that it can apply the heightened scrutiny test even if domestic courts have already reviewed the case.[35]

2. The Right to Present a Complete Defense is Essential to Guarantee the Right to a Fair Trial.

Articles XVIII and XXVI of the ADRDM and Articles 8 and 9 of the American Convention provide that all individuals are entitled to a fair trial in proceedings that afford them due process of law. Indeed, the right to a fair trial is enshrined in every major international and regional human rights treaty.[36] As the European Court on Human Rights has observed, "the right to a fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting Article 6 of the Convention restrictively."[37] The right to a fair trial encompasses the entire proceedings, including the trial, all appeals, and the execution stage.[38] Relating to the right to a

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[33] I/A Court HR, Advisory Opinion OC-3/83 of September 8, 1983, *Restrictions to the Death Penalty (Articles 4(2) and 4(4) of the American Convention on Human Rights)*, (Ser. A) N° 3 (1983), ¶ 55.

[34] *See Chad Roger Goodman v. The Bahamas*, Case 12.265, Inter-Am. Comm'n H.R., Report No. 78/07, ¶ 34–35. (2007).

[35] *Donnason Knights v. Grenada*, Case No. 12.028, Inter-Am. Comm'n H.R., Report No. 47/01 (2001) ¶ 59. *See also*: *Jeffrey Timothy Landrigan v. United States*, Case 12.776, Inter-Am. Comm'n H.R., Report No. 81/11 ¶ 29 (2011); *Roberto Moreno Ramos v. United States*, Case 12. 430, Inter-Amm. Comm'n H.R., Report No. 1/05 (2005) ¶ 43–44; *Javier Suarez Medina v. United States*, Case 12.421, Inter-Amm. Comm'n H.R., Report No. 91/05 October 24, 2005, ¶ 72–73; *Gary Graham/Shaka Sankofa v. United States* Case ¶ 26–29; *Michael Domingues v. United States*, Case 12.285, Inter-Amm. Comm'n H.R., Report No 62/02, ¶ 38–39 (2002); *Ramón Martinez Villareal v. United States*, Case 11.753, Inter-Amm. Comm'n H.R., Report No. 52/02 ¶ 51–54 (2002); *Juan Raul Garza, United States*, Case 12.243, Inter-Amm. Comm'n H.R., Report No. 52/01, ¶ 70–72 (2001).
The heightened scrutiny test has also been increasingly referred to by the Commission inadmissibility reports, *see e.g.*: *Gregory Thompson v. United States*, Petition 194-04, Inter-Amm. Comm'n H.R., Report No. 132/11, ¶ 44–45 (2011); *Petitions P-11.575 and others, Admissibility, Clarence Allen Lackey v. United States,* Report No. 60/11 ¶ 158 (2011).

[36] *See* Arts. 14 and 15 of the International Covenant on Civil and Political Rights ("ICCPR"); Arts. 6 and 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"); Arts. 8 and 9 of the American Convention on Human Rights ("ACHR"); Arts. 7 and 26 of the African Charter on Human and Peoples' Rights ("Banjul Charter"); Arts. 15 and 16 Arab Charter on Human Rights and Art. 40 of the Convention on the Rights of the Child.

[37] *Moreira de Azevedo v. Portugal*, Eur. Ct. H.R., App. no. 11296/84, 23 October 1990, ¶ 66.

[38] Leanza Piero & Ondrej Pridal, THE RIGHT TO A FAIR TRIAL 9 (2014) (talking about the nature of the right and its characteristics); *see also* Amnesty International, *Fair Trial Manual*, ed. 2, p. xvi (recognizing that an individual's fair trial rights "apply to investigations, arrests and detention, as well as throughout the pre-trial proceedings, trial, appeal, sentencing and punishment"), https://www.amnesty.org/en/wp-content/uploads/2021/06/pol300022014en.pdf.

fair trial under the ICCPR, the Human Rights Committee has clarified that it "must be interpreted as requiring a number of conditions, such as equality of arms and respect for the principle of adversary proceedings."[39]

3. The U.S. Courts Arbitrarily Denied Melissa Lucio Her Right To Present a Meaningful Defense by Excluding the Testimony of Two Pivotal Witnesses.

As described above, the trial court excluded the testimony of two critical witnesses for the defense: psychologist Dr. John Pinkerman and social worker Norma Villanueva. Deprived of their testimony, Ms. Lucio's defense attorney struggled to contest the validity of Ms. Lucio's statements to the police.

The court mischaracterized Ms. Villanueva's testimony, claiming that it was related solely to body language and concluding that she had no expertise in that area.[40] As for Dr. Pinkerman's proffered testimony regarding Ms. Lucio's experience as a battered woman, the court held that it had no relevance to the question of Ms. Lucio's guilt or innocence. *Lucio v. State,* 351 S.W.3d at 878. The exclusion of Ms. Villanueva and Dr. Pinkerman's testimony had a devastating effect on Ms. Lucio's ability to contest the prosecution's evidence. By arbitrarily deeming the expert testimony of Dr. Pinkerman irrelevant and finding Ms. Villaneuva unqualified, the trial court denied Ms. Lucio her due process right to confront the witnesses against her and defend herself against the prosecutor's allegations.

Juries place significant weight on confessions, not understanding why somebody might confess to a crime they did not commit. Exhibit B, Brief for the Innocence Project at 21–22. Expert testimony plays a critical role in contextualizing such behavior for juries and explaining how interrogation techniques can intersect with trauma and abuse to produce false confessions. *Id.* at

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[39] *Wolf v. Pan.*, Communication No. 289/1988, U.N. Doc. A/47/40, at 277 (HRC 1992), ¶ 6.6.

[40] Ms. Villanueva did, in fact, have expertise in this area, as her licensing training included instruction on deciphering body language. Exhibit M, Trial Tr. Vol. 35 at 134.

22–23. Yet here, prevented by the court from hearing such expert testimony, the jury failed to comprehend Ms. Lucio's behavior after Mariah's tragic death. The jury knew nothing of her childhood, adolescence, and adulthood, all of which were steeped in gender-based violence. They failed to understand how Ms. Lucio's reactions were symptomatic of her mental illness and were unable to connect her response to the police interrogation to her lifelong learned behavior of acquiescence to powerful men.

Before the Fifth Circuit Court of Appeals, Ms. Lucio initially prevailed on her claim that she was denied her constitutional right to present "a meaningful defense." *Lucio v. Davis,* 783 F. App'x at 315. In a unanimous three-judge opinion, the court explained that Ms. Lucio's incriminating statements during interrogation were the most significant evidence in the case, as there was no physical evidence or witness testimony directly establishing that Ms. Lucio abused Mariah or any of her children, let alone killed Mariah. *Id.* at 322. Nonetheless, after Texas appealed the decision, the Fifth Circuit, sitting *en banc*, overturned the ruling. The court's reasoning was based on procedural limitations established under the Anti-Terrorism and Effective Death Penalty Act (AEDPA), 28 U.S.C § 2254. *Lucio v. Lumpkin*, 987 F.3d at 451. The *en banc* court, composed of seventeen judges, issued a sharply divided decision. While ten judges agreed that AEDPA barred relief, no majority agreed on the reasoning behind denying relief. Judge Southwick, concurring, found the exclusion of Ms. Lucio's experts was "the key evidentiary ruling at trial," and concluded that Ms. Lucio's case "is a clear example that justice to a defendant may necessitate a more comprehensive review of state court evidentiary rulings than is presently permissible under the law." *Lucio v. Lumpkin*, 987 F.3d at 451 (Southwick, J., concurring, at 58).

On the other hand, the seven dissenting judges underscored the significance of the excluded testimony in explaining Ms. Lucio's background. *Lucio v. Lumpkin*, 987 F.3d at 492–93

(Higginbotham, J., dissenting).[41] "The whole point of Pinkerman's testimony was to *contextualize* Lucio's statements as *potentially* influenced by Escalon's questioning," Judge Haynes observed. *Id.* at 504 (Haynes, Higginbotham, Stewart, Dennis, Elrod, Graves, and Higginson, JJ., dissenting) (emphasis added). Judge Higgenbotham added: "Facts matter. In this morality play of citizen decisions of life or death, the jury represents the people, but they did not hear her defense." *Id.* at 493 (Higginbotham, J., dissenting); *see also id.* at 497 (Elrod, J., dissenting) ("Pinkerman's testimony regarding the credibility of Lucio's supposed confession is central to her defense"). Perhaps the most cogent summary of the injustice in Ms. Lucio's case was offered by Judge Higginson:

> A battered woman was convicted of capital murder because, in a case lacking direct evidence, prosecutors told the jury that, five hours into interrogation, in the middle of the night after the discovery of her dead child, Ms. Lucio accepted a seasoned interrogator's suggestion that she was responsible, ultimately agreeing with him that she "did it." The jury's best proof of guilt was Ms. Lucio's eventual capitulation blaming herself. That may be appropriate inference and argument, but what violates our Constitution and disregards binding, bedrock Supreme Court law, is the government's simultaneous, successful effort excluding Ms. Lucio's one answer to why she might capitulate, namely that a lifetime of abuse had made her acquiescent, desirous to please and to accept responsibility, and to avoid confrontation.

Id. at 517–18 (Higginson, Stewart and Elrod, JJ, dissenting) (citations omitted).

4. The State's Exclusion of Critical Evidence in Ms. Lucio's Case Violated Articles XVIII and XXVI of the ADRDM.

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[41] Judge Higgenbotham noted:

> In its long superintendence of Melissa, DFPS [Texas Department of Family Protective Services, i.e., Texas' CPS] never recorded or expressed concern that she physically abused any of the children in her care. To its credit, despite the difficulties of managing this large enterprise, it recognized that Melissa's troubles centered on her inability to escape a succession of relationships with dominating and abusive men who to their own ends, encouraged her use of cocaine, a stimulant. That reality is strong footing for Melissa's claimed denial of the opportunity to present a complete defense: that she only tried to accept the blame for the acts of others, a phenomenon of personality produced by her own lifetime of abuse in a world of abject poverty.

987 F.3d at 492–93.

The right to a meaningful defense and the ability of the defendant to present witnesses constitute minimum guarantees protected under Articles XVIII and XXVI of the ADRDM. These rights are critical to preserve the fairness of a criminal trial. If a defendant is prevented from contesting the prosecution's evidence, the State is effectively allowed to circumvent its burden of proof. As noted above, this burden is particularly heavy in capital trials. The right to call witnesses in one's defense also protects the interests of victims and civil society, as a meaningful adversarial process can help establish the truth and ensure the integrity of the judicial process.[42]

Within the Inter-American system, both the Commission and the Court have found violations of the right to a defense based on arbitrary assessments of arguments and evidence presented by the defense. The IACHR has repeatedly indicated, similar to the jurisprudence of other international courts, that "the defendant has the right to examine witnesses who testify for and against him, in the same conditions [of the prosecution] in order to defend himself."[43] The Commission has further underscored that "[i]mposing restrictions on the alleged victim and the defense lawyer violates this right, established in the Convention, and also their right to call witnesses who might shed light on the facts." *Case of Lori Berenson-Mejía*, Case 11.876, ¶ 185. Similarly, in the case of *Graham v. United States,* the Commission found that the United States had violated Articles XVIII and XXVI by refusing to consider exculpatory evidence in a Texas death penalty case. *Graham*, Case 11.193, ¶¶ 42-49. In that case, the defendant was prohibited, for procedural reasons, from presenting evidence that the Commission deemed critical to his

[42] Amal Clooney & Philippa Webb, THE RIGHT TO A FAIR TRIAL IN INTERNATIONAL LAW 39 (2021).
[43] *Case of Lori Berenson-Mejía v. Peru*, Case 11.876, Inter-Am. Comm'n H.R., Judgment of November 25, 2004, Merits, Reparations and Costs, ¶ 184. *See also* IACHR, *Case of Castillo Petruzzi et al. v. Peru,* Judgment of May 30, 1999, (Merits, Reparations and Costs), ¶ 154.

defense.[44] The Commission concluded that the "strict standard of due process applicable in capital cases demand[s] that a trier of fact be permitted to re-evaluate [the defendant's] responsibility for the crime at issue based upon the entirety of pertinent evidence through a procedure that incorporates the fundamental fair trial protections under the Declaration, including the right to present and examine witnesses." *Id.* ¶ 47.

In the present case, as in *Graham,* the United States trial court arbitrarily excluded evidence crucial to the defense. Indeed, the testimony of Dr. Pinkerton and Ms. Villanueva was critical to rebut the prosecution's reliance on Ms. Lucio's "confession" and her demeanor on the night of her daughter's death as probative of guilt. Without their testimony, the jury had no reason to doubt the truthfulness of Ms. Lucio's incriminating statements, which became the centerpiece of the prosecution's case. The panel of Fifth Circuit judges who unanimously found that Ms. Lucio was entitled to a new trial recognized that the exclusion of Dr. Pinkerman's testimony "bears the hallmark sign of arbitrariness: complete irrationality." *Lucio v. Davis*, 783 F. App'x at 323.

International human rights tribunals have likewise held that the exclusion of relevant testimony can amount to a denial of justice. The Human Rights Committee has found that when a trial court's selective admission of evidence leads to an "evaluation of the evidence that [is] partial," due process is violated.[45] Similarly, the Committee has concluded that the evidentiary

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[44] In paragraphs ¶ 43–49 of the decision, the Commission stated that while it was "generally for the courts of member states to review the factual evidence in a given case," States are obliged to ensure that criminal proceedings comply with the minimum standards of due process encompassed by Articles XVIII and XXVI of the ADRDM. The Commission ultimately found that the United States courts should have re-evaluated the identification and ballistics evidence raised in Mr. Sankofa's case "through a trial procedure satisfying the requirements of Articles XVIII and XXVI of the American Declaration in order to determine whether the totality of pertinent evidence supported Mr. Sankofa's guilt for Mr. Lambert's murder."

[45] *Leon R. Rouse v. Philippines,* Communication No. 1089/2002, U.N. Doc. CCPR/C/84/D/1089/2022 (2005), ¶ 7.2.

rulings of national courts are not entitled to deference where they are "clearly arbitrary" or amount to "a manifest error or denial of justice."[46]

The European Court of Human Rights has embraced this reasoning, emphasizing that in cases where national courts' assessments "can be regarded as arbitrary or manifestly unreasonable," the Court will consider "whether the rights of the defense were respected" and, in particular, "whether the defendant was given the opportunity of challenging the authenticity of the evidence and of opposing its use."[47] In addition, the European Court considers the quality of the evidence and the question of whether the "circumstances in which it was obtained cast doubt on its reliability or accuracy."[48] The Court has, on this basis, found violations of fair trial rights when a conviction was based on evidence that the defendant alleged "was based on flawed or misrepresented evidence," and when "the evidence favourable to the [defendant] was systematically dismissed in an inadequately reasoned or manifestly unreasonable manner."[49]

The African Court has likewise recognized the importance of the defense right to present witnesses.[50] In *William v. Tanzania*, the court also emphasized that criminal convictions should be based on "strong and credible evidence," particularly when they entail a heavy prison sentence.[51] The African Court has also determined that international courts have the power to review facts and

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[46] U.N. Human Rights Committee, General Comment No 32 (Article 14: Right to equality before courts and tribunals and to a fair trial) (2007), https://digitallibrary.un.org/record/606075/files/CCPR_C_GC_32-EN.pdf. *See also*: *Riedl-Riedenstein et al. v. Germany*, Communication No. 1188/2003, U.N. Doc. CCPR/C/82/D/1188/2003 (2004) ¶ 7.3; *Natalia Schedko v. Belarus,* Communication No. 886/1999, U.N. Doc. CCPR/C/77/D/886/1999 (1999) ¶ 9.3; *GA v. Uzbekistan*, Communication No. 2335/2014, U.N. Doc. CCPR/C/124/D/2235/2014 (2019), ¶ 9.10; *Stolyar v. Russian Federation,* Communication No. 996/2001, U.N. Doc. A/62/40, Vol. II, at 421 (HRC 2006), ¶ 8.5.

[47] *Moreira Ferreira v. Portugal*, No. 2, Eur. Ct. H.R., App. no. 19867/12, 11 July 2017, ¶ 83–97.

[48] *Bykov v. Russia*, Eur. Ct. H.R., App. no. 4378/02, 10 March 2009, ¶ 90.

[49] *Mammadov v. Azerbaijan*, No. 2, Eur. Ct. H.R., App. no. 919/15, 16 November 2017, ¶ 237. In *Mammadov,* the national courts accepted certain witness statements made by civilians as proof of the accusations against Mr. Mammadov but refused to give any weight to the defense witness statements. The European Court on Human Rights held that this violated Article 6 of the European Convention on Human Rights.

[50] *Diocles William v. Tanzania*, Afr. Comm'n H.P.R., App. no. 016/2016, 21 September 2018, ¶ 68–78.

[51] *Id.* ¶72. *See also Abubakari v. Tanzania* (App. no. 007/2013), 3 June 2016, ¶ 174 (conviction by a Tanzanian court that was "based on the testimony of a single individual" that was "riddled with inconsistencies" rendered the trial unfair under Article 7 of the African Charter).

investigate how evidence was gathered and presented to determine "whether such process was carried out with adequate safeguards against arbitrariness."[52]

Measured against the consistent jurisprudence of the Commission and its sister tribunals, the trial court's exclusion of Dr. Pinkerman and Ms. Villanueva's testimony was unquestionably arbitrary and in violation of Ms. Lucio's fair trial and due process rights.

5. The Refusal of U.S. Courts to Review Ms. Lucio's Due Process Claim on the Merits Violates Her Right to Access the Courts and to an Effective Remedy.

The Commission has underscored the importance of the right to appeal to ensure the right to a fair trial:

> "The aim of the right to appeal is to protect the right of defense by creating a remedy to prevent a flawed ruling, containing errors prejudicial to a person's interests, from becoming final. Due process of law would lack efficacy without the right of defense at trial and the opportunity to defend oneself against a sentence through a proper review."[53]

The Commission has further noted that in a capital case, due process requires "a right of effective review or appeal from a determination that the death penalty is an appropriate sentence."[54] Moreover, a remedy must be accessible; in particular, "[t]he efficacy of a remedy is closely linked to the scope of the review. Judicial error is not confined to the application of the law, but may happen in other aspects of the process such as the determination of the facts or the weighing of evidence."[55]

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[52] *Onyachi v. Tanzania*, Afr. Comm'n H.P.R., 28 September 2017, ¶ 38. *See also* ACtHPR, *Abubakari v. Tanzania* (App. no. 007/2013), 3 June 2016, ¶ 25–26.

[53] *Bernardo Aban Tercero v. United States*, Case 12.994, Inter-Am. Comm'n H.R., Report No. 79/15 ¶ 133 (2015). *See also Juan Carlos Abella v. Argentina*, Case 11.137, Inter-Am. Comm'n H.R., Report No. 55/97, ¶ 252 (1997); I/A Court H. R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, ¶ 158; *Orlando Cordia Hall. v. United States of America*, Case 12.719, Inter-Am. Comm'n H.R., Report No. 28/20, ¶ 210 (2019); *Iván Teleguz v. United States*, Case 12.864, Report 53/13 ¶¶ 110–112 (2013).

[54] *Michael Edwards et al.* v. *The Bahamas*, Case No. 12.067, Inter-Am. Comm'n H.R., Report No. 48/01, ¶ 149 (2001).

[55] "In this respect, the Commission has also determined that to guarantee the full right of defense, a remedy should include a "material review of the interpretation of procedural rules that may have influenced the decision in the case where the right to defense was rendered ineffective, and also concerning the interpretation of the rules on the weighing of evidence, whenever they have led to an erroneous application or non-application of those rules." *Bernardo Aban*

When considering death penalty cases from the United States, the Commission has repeatedly found that the strict and inflexible procedural limitations imposed by courts under AEDPA violate Article XVIII of the ADRDM. For example, in 2013, the Commission noted in the case of *Iván Teleguz* that it was incompatible with the right to a fair trial and the right to due process of law outlined in the ADRDM for the review by a federal court to be "exceedingly limited."[56] Specifically, the Commission determined that every convicted person has the right to review by a higher court to correct possible errors of interpretation, weighing of evidence, or analysis. *Id.* ¶¶ 110–12. And in 2015, the Commission found that the AEDPA provisions limiting federal post-conviction review based on prior state court legal interpretations and factual determinations "[did] not comply with inter-American standards, according to which the right to appeal is part of the body of procedural guarantees that ensures the due process of law."[57]

The conditions for reviewing a case subject to AEDPA are very stringent. In this way, the United States, instead of extending the interpretation of rights, (and facilitating their protection and evolution, especially for human rights), restricts them. In the case at hand, the consequence of the application of this act is unreasonable. After the Fifth Circuit recognized the violation of the right to a complete defense, the courts refused on procedural grounds to review the case. *Lucio v. Lumpkin*, 987 F.3d at 487. This is a vicious cycle of judicial arbitrariness that brings no relief to Ms. Lucio. The Commission has repeatedly stressed the problematic nature of this law as it prevents meaningful review of the facts and legal issues that affect the rights of the accused.

Tercero, Case 12.994, ¶ 134–38 (citing *Iván Teleguz*, Case 12.864, ¶ 102/103); *see also Juan Carlos Abella*, Case 11.137, ¶ 261.

[56] *Iván Teleguz*, Case 12.864, ¶ 112.

[57] *Bernardo Aban Tercero*, Case 12.994, ¶ 138.

Without a substantive review of her legal claims, Ms. Lucio has no access to a remedy for the violation of her human right to present a meaningful defense.

B. THE UNITED STATES VIOLATED ARTICLES XVIII AND XXVI OF THE ADRDM BY PROVIDING INCOMPETENT DEFENSE COUNSEL IN A CAPITAL CASE, MATERIALLY PREJUDICING MS. LUCIO.

Ms. Lucio's trial counsel failed to meet even the minimum threshold for international standards of due process. Her counsel neither presented key evidence to refute the capital charge against her nor investigated mitigating evidence crucial to the fair determination of her sentence.

The American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases set forth minimum standards for defense attorneys and courts to follow when assessing a lawyer's performance. Concerning mitigation, Guideline 10.7 provides that defense teams must conduct an exhaustive investigation into their client's personal and family history in preparation for the penalty phase of a capital case. Ms. Lucio's trial lawyers manifestly failed to comply with these standards.[58] Contrary to the ABA Guidelines, Mr. Gilman failed to request the assistance of a mitigation specialist until it was too late for her to interview essential family witnesses and complete her investigation of Ms. Lucio's life history. As a result, the jury sentenced Ms. Lucio to death with only a fragment of the relevant evidence that should have been available to them.

Ms. Lucio's lawyers also failed to challenge the voluntariness of Ms. Lucio's statements to the police. Ms. Lucio's interrogation was highly coercive, and after hours of aggressive interrogation from male authorities, Ms. Lucio made incriminating statements. Although the police tactics were clearly problematic, particularly in light of Ms. Lucio's history of trauma, counsel

[58] Guidelines for the Appointment and Performance of Def. Couns. in Death Penalty Cases, 10.7 (Am. Bar Ass'n, rev. ed. 2003).

failed to file a pre-trial motion to suppress Ms. Lucio's statements. Exhibit D, Pinkerman Aff. at 2. Furthermore, Mr. Gilman failed to obtain the assistance of other experts, such as a forensic pathologist who could have countered the flawed testimony of the coroner, Dr. Norma Farley, and cast doubt on the State's erroneous theory surrounding Mariah's injuries and death. The failures of Ms. Lucio's counsel mirror those the Commission has repeatedly found to be examples of incompetent assistance of counsel in capital cases, specifically in the State of Texas.[59]

1. The Commission Has Repeatedly Held that Defense Counsel's Failure to Present Mitigating Evidence in a Capital Trial Violates Articles XVIII And XXVI.

The United States must provide competent defense counsel to indigent prisoners facing capital murder trials. This obligation is inherent in the guarantee of a fair trial, as set forth in Article XXVI of the ADRDM. International law requires that courts apply a heightened standard when considering violations of fair trial guarantees in capital cases: "Because execution of the death penalty is irreversible, the strictest and most rigorous enforcement of judicial guarantees is required of the State so that those guarantees are not violated, and a human life not arbitrarily taken as a result."[60] In capital trials, any violation of fair trial rights, like the right to receive competent representation, will *ipso facto* constitute a violation of the right to life.[61] The State may also only impose the death penalty after a defendant, through his attorney, has had the opportunity to present mitigating evidence.[62]

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[59] *See, e.g., Moreno Ramos v. United States*, Case 12.430, Inter-Am. Comm'n H.R., Report No. 1/05 (2005); *Diaz v. United States*, Case 12.833, Inter-Am. Comm'n H.R., Report No. 11/15 (2015).

[60] *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99, Inter-Am. Ct. H.R. (ser. A) No. 16, ¶ 136 (Oct. 1, 1999).

[61] U.N. Human Rights Committee, General Comment No 36 (Art. 6 of the International Covenant on Civil and Political Rights, on the Right to Life) (2018), ¶ 49, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf.

[62] *See Medellín, Ramírez Cárdenas and Leal García v. United States*, Case 12.644, Inter-Am. Comm'n H.R., Report No. 90/09, ¶ 134 (2009); *Abu-Ali Abdur'Rahman v. United States*, Case 12.422, Inter-Am. Comm'n H.R., Report No. 13/14, ¶ 56 (2014). *Lezmond C. Mitchell v. United States*, Case 13.570, Inter-Am. Comm'n H.R., Report No. 211/20, ¶ 112 (2020).

The Commission has held that both the defense's prompt investigation and presentation of mitigating evidence are critical to a fair trial in capital cases. *See, e.g.*, *Felix Rocha Diaz v. United States*, Case 12.833, Inter-Am. Comm'n H.R., Report No. 11/15, ¶ 73 (2015); *Medellín*, Case 12.644, ¶ 134. When determining the adequacy of legal representation, the Commission has considered whether a reasonable investigation would have revealed potentially relevant mitigating evidence. Failure to investigate and present such evidence "[deprives the petitioner] of the benefit of the jury's consideration of potentially significant information in determining his punishment." *Moreno Ramos*, Case 12.430, ¶ 54. Thus, the Commission has routinely found that the failure to present such mitigating evidence amounts to a violation of Articles XVIII and XXVI of the ADRDM. *Rocha*, Case 12.833, ¶ 78 (stating that the "failure to develop and present potentially mitigating evidence in a capital case would constitute inadequate representation"); *Edgar Tamayo Arias v. United States*, Case 12.873, Inter-Am. Comm'n H.R., Report No. 44/14, ¶ 151 (2014) (finding defense counsel "failed to develop and present potentially mitigating evidence"); *Medellín*, Case 12.644, ¶ 142 (concluding that the ADRDM includes the "right to adequate means for the preparation of a defense, assisted by adequate legal counsel."). The Commission has found that defense counsel's failure to present testimony about the defendant's "upbringing and social history," such as childhood trauma, is especially prejudicial. *See, e.g., Rocha*, Case 12.833, ¶¶ 21–27, 71; *Tamayo*, Case 12.873, ¶¶ 97–102, 145. A defense lawyer's failure to produce available and relevant testimony about the defendant's character and history also constitutes a deprivation of the petitioner's right to present mitigating evidence. *Tamayo*, Case 12.873, ¶ 145. These failures were all present in Ms. Lucio's case and—given the powerful mitigating evidence that was readily available but never utilized—fatally undermined the fairness of Ms. Lucio's capital murder trial.

a. Ms. Lucio's Trial Lawyer Failed to Seek Timely Appointment of a Mitigation Specialist And Psychologist.

Before the trial even began, Ms. Lucio's trial counsel, Mr. Gilman, was unprepared to defend Ms. Lucio. The trial court appointed Mr. Gilman to represent Ms. Lucio on May 31, 2007. Exhibit W, Appointment of Peter Gilman. Mr. Gilman did not identify or request any defense experts for nearly six months following his appointment. Exhibit T, Trial Tr. Vol. 9 at 6. The case was initially supposed to go to trial on February 4, 2008. Exhibit U, Trial Tr. Vol. 10 at 3-4. The trial court scheduled several status hearings where the judge expressed concerns over Mr. Gilman's lack of trial preparation. Exhibit T, Trial Tr. Vol. 9 at 5. Seeming to grow increasingly alarmed, the court ordered Mr. Gilman to provide a report of required defense experts by November 30, 2007, only months before the scheduled trial. *Id.* at 6; Exhibit U, Trial Tr. Vol. 10 at 5. At that time, Mr. Gilman finally requested the appointment of a mitigation expert, Norma Villanueva, and a psychologist, Dr. John Pinkerman. The court granted his request on December 10, 2007. Exhibit U, Trial Tr. Vol. 10 at 3.

On January 30, 2008, only five days before trial, Mr. Gilman notified the court that he would not be prepared for the February trial date. When the State complained that he had failed to provide notice of his experts twenty days before trial or provide the substance of their testimony as prescribed by the rules of procedure, he also admitted that they had just met Ms. Lucio for the first time on January 21, 2008. Exhibit U, Trial Tr. Vol. 10 at 4–6.[63] Mr. Gilman informed the court that the defense experts would need until June to adequately prepare. *Id.* at 3. The court grudgingly rescheduled the trial for May 28, 2008, reminding Mr. Gilman that Ms. Lucio had

[63] Mr. Gilman stated, "The State has the right to talk to our experts after we've designated them. But we haven't even designated them yet. I don't even have a report. They just met [Ms. Lucio] for the first time last week on Monday, on a holiday, at the jail." Mr. Gilman was referring to President's Day, which in 2008 was celebrated on Monday, January 21.

already been in jail for almost a year and stating that it was, in his opinion, "obscene for a defendant to wait that much for trial." *Id.* at 5.

Although the court granted the defense approximately four more months to prepare, there was not enough time for Ms. Villanueva and Dr. Pinkerman to build rapport with Ms. Lucio and her family members and conduct a comprehensive investigation in accordance with the ABA Guidelines. In post-conviction proceedings, Ms. Villanueva stated that a quality investigation would take nine to twelve months. Exhibit F, Villanueva Aff. at 4. Moreover, once Ms. Villanueva was appointed, Mr. Gilman prevented her from conducting family interviews, even though the ABA Guidelines recognize that compiling a family history is a cornerstone of effective mitigation investigations.[64] Mr. Gilman instructed Ms. Villanueva that family interviews were not a priority, but rather CPS data was of top importance. Exhibit F, Villanueva Aff. at 1; Exhibit V, Trial Tr. Vol. 13 at 11. As of May 27, 2008—*one day* before the start of the trial—Ms. Villanueva had only met with Ms. Lucio one time. Exhibit V, Trial Tr. Vol. 13 at 10–11.

In post-conviction proceedings, Ms. Villanueva underscored how unprecedented it was for a defense attorney to prevent her from contacting the defendant's family: "I have never been denied access to the family by a defense attorney in any other case prior to this case." Exhibit F, Villanueva Aff. at 4. As a result of Mr. Gilman's lack of preparation and coordination, Ms. Villanueva had insufficient time to interview all family members and build rapport with those she managed to speak to—including Ms. Lucio. She only met with one or two members of Ms. Lucio's family. Exhibit M, Trial Tr. Vol. 35 at 128. Furthermore, she was unable to conduct "interviews with Mariah's siblings, more in-depth interviews with Ms. Lucio on the home life during her youth needed for three generation biopsychosocial history, and interviews with Ms. Lucio's siblings."

[64] Guidelines for the Appointment and Performance of Def. Couns. in Death Penalty Cases, 10.7 cmt. (Am. Bar Ass'n, rev. ed. 2003).

Exhibit F, Villanueva Aff. at 4. Such interviews could have supported Ms. Lucio's theory of defense by providing an alternative explanation for Mariah's injuries as well as corroborating her history of trauma. For example, Ms. Villanueva noted that CPS records demonstrated aggressiveness and physical violence among the children which resulted in bruising. *Id.* at 2; Exhibit E, Def. Tr. Ex. 14 at 5–6.

Ms. Villanueva's inability to conduct a comprehensive mitigation investigation also harmed her credibility when she testified at the penalty phase about Ms. Lucio's history of gender-based violence. At trial, the prosecution repeatedly challenged Ms. Villanueva's failure to interview critical witnesses, implying that she had conducted a piecemeal investigation. Exhibit C, Trial Tr. Vol. 37 at 228. The prosecution even attacked her for failing to interview Ms. Lucio's abusers to corroborate her history of abuse. *Id.* at 228–29. In this way, the prosecution suggested that Ms. Villanueva's characterization of Ms. Lucio as a battered woman and trauma survivor was unreliable.

Mr. Gilman's failure to prepare and seek necessary expert assistance also prevented the team from building rapport with Ms. Lucio and her family. Ms. Villanueva was appointed approximately six months before trial, but only contacted family members after the trial began, as instructed by Mr. Gilman. Exhibit V, Trial Tr. Vol. 10 at 3; Exhibit F, Villanueva Aff. at 2. Moreover, she had inadequate time to build rapport with Ms. Lucio, whom she only met three times. Exhibit C, Trial Tr. Vol. 37 at 220. In the time allotted to her, Ms. Villanueva had to uncover decades of intimate details concerning the sexual, physical, and emotional abuse that Ms. Lucio endured since the age of six. Many of these family members were invested in covering up or denying that the abuse occurred. Even the most skilled mitigation specialist would require multiple interviews to overcome the inherent shame, anger, and guilt that serve as barriers to disclosure.

Mr. Gilman's failure to seek the prompt appointment of a mitigation specialist and necessary experts fell below minimally adequate standards of representation. The ABA Guidelines make clear that investigation and planning for trial must begin immediately upon counsel's appointment, including promptly obtaining the assistance of a mitigation specialist and all relevant experts to the case.[65] ABA Guideline 10.11 reiterates counsel's duty to investigate issues bearing upon penalty and seek information that supports mitigation or rebut the prosecution's case in aggravation.[66] The Commission has embraced the reasoning behind the ABA guidelines in case after case, recognizing that counsel in death penalty cases has a heightened obligation to investigate and present all available mitigating evidence.[67]

b. Ms. Lucio's Trial Lawyer Failed to Present Critical Mitigating Evidence.

As a result of his failure to prepare for trial, Mr. Gilman neglected to present substantial mitigating evidence that would have garnered sympathy for Ms. Lucio before the jury. For example, he failed to present readily available evidence of the violent and abusive relationships that Ms. Lucio endured with her two intimate partners. He also failed to present evidence of the violence Ms. Lucio had endured in her childhood home. Although Ms. Villanueva testified that Ms. Lucio had been sexually abused by one of her mother's partners for the span of two years, she was not asked about an uncle, who at the same time, had also repeatedly raped Ms. Lucio when she was nine years old. Nor was she asked about the stranger who had raped Melissa in a utility closet when she was still a child.

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[65] Guidelines for the Appointment and Performance of Def. Couns. in Death Penalty Cases, 1.1 cmt. (Am. Bar Ass'n, rev. ed. 2003).

[66] Guidelines for the Appointment and Performance of Def. Couns. in Death Penalty Cases, 10.11.A. (Am. Bar Ass'n, rev. ed. 2003).

[67] *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99, Inter-Am. Ct. H.R. (ser. A) No. 16, ¶ 136 (Oct. 1, 1999); *Lezmond C. Mitchell v. United States*, Case 13.570, Inter-Am. Comm'n H.R., Report No. 211/20, ¶ 112 (2020).

These omissions—attributable to Mr. Gilman's failure to adequately prepare for trial and the limited time Ms. Villanueva had to conduct her mitigation investigation—cannot be dismissed as inconsequential. Central to Ms. Lucio's defense at the penalty phase was testimony about the effects of trauma on her life. Yet, the defense utterly failed to develop and present a complete history of the gender-based violence she endured. Without this evidence, the jury could not begin to comprehend the psychological impact of repeated trauma. Moreover, without knowing the full extent of the violence she endured in her intimate partnerships, the jury was given free rein to blame Melissa for the neglect of her children, absolving her male partners of responsibility.[68]

During a meeting with Ms. Lucio's defense counsel, Ms. Villanueva and Dr. Pinkerman discussed battered woman syndrome and its effects on Ms. Lucio and her children. Exhibit F, Villanueva Aff. at 2. The experts informed the defense team of the importance of family history to further develop her history of trauma. *Id.* They also discussed utilizing a witness, Yvonne Montemayor, a school principal, who witnessed Mr. Alvarez hit Ms. Lucio in a park. Exhibit C, Trial Tr. Vol. 37 at 195. Though Mr. Gilman discussed hiring a private detective to locate Ms. Montemayor and other witnesses mentioned in CPS files, he did not call them to testify during either phase of the trial. Exhibit F, Villanueva Aff. at 2. As Ms. Villanueva's investigation progressed, she immediately informed Mr. Gilman of essential issues such as domestic violence, Battered Women's Syndrome, and sibling-on-sibling violence. *Id.* at 3–4. Ms. Villanueva also urged defense counsel to develop mitigation themes for the sentencing phase. *Id.* at 2.

To the experts Mr. Gilman belatedly retained, it was plain that he did not understand the pivotal role that mental health played in his client's life and in her defense against the State's accusations. For example, Dr. Martinez found Ms. Lucio to have an IQ of 70, demonstrating

[68] *See, e.g., supra* pp. 28-29.

significant cognitive impairments. Exhibit I, Martinez Psychological Evaluation at 4; *Atkins v. Virginia*, 536 U.S. 304 (2002); *see also* Exhibit J, Pinkerman Assessment Report at 5 (estimating Ms. Lucio's IQ at 85). Dr. Pinkerman stated, "it was clear that mental health issues were not fully developed or addressed." Exhibit D, Pinkerman Aff. 2 at 3. Dr. Pinkerman stated:

> During our meetings, I discussed the use of the psychological findings in combination with Ms. Villanueva's use of social history as [sic] mitigating factors in the event Ms. Lucio was convicted of capital murder. Despite having been appraised of the wealth of information available for this purpose, trial counsel did not develop this as evidence or fully present it during the punishment phase of Ms. Lucio's trial. [A]lthough I was called during the punishment phase to testify on the issue of future dangerousness, my testimony was brief and not elaborated."

Id. at 2. Furthermore, Dr. Pinkerman "felt there were a number of avenues that should have been developed by defense counsel regarding the mitigating factors for Ms. Lucio." *Id.* at 3. In his closing argument at the punishment phase of trial, Mr. Gilman did not mention Ms. Lucio's history of sexual and domestic violence, instead asking the jury, "What do your morals tell us? Do we kill somebody else because they, themselves, have killed?" Exhibit O, Trial Tr. Vol. 38 at 156.

Mr. Gilman repeatedly failed to investigate and present crucial mitigation evidence in violation of the ADRDM. *See, e.g.*, *Felix Rocha Diaz v. United States*, Case 12.833, Inter-Am. Comm'n H.R., Report No. 11/15, ¶ 73 (2015); *Medellín*, Case 12.644, ¶ 134.

2. Ms. Lucio's Trial Lawyer Failed to Adequately Prepare for Trial and to Challenge the Prosecution's Unreliable Evidence that Melissa Lucio was Responsible for Her Daughter's Death.

According to the ABA Guidelines, counsel must zealously challenge the prosecution's evidence and experts through effective cross-examination. ABA Guidelines for the Appointment and Performance of Def. Couns. in Death Penalty Cases, 1.1 cmt. Defense counsel must also scrutinize the backgrounds of potential prosecution witnesses and search for other potential

witnesses to challenge the prosecution's version of events. *Id.* Moreover, counsel must subject all forensic evidence to rigorous independent scrutiny. *Id.* Likewise, defense counsel must thoroughly investigate all events surrounding the arrest, including the validity of evidence (such as incriminating statements) obtained pursuant to alleged waivers by the defendant. *Id.* Contrary to these well-established standards for effective capital case representation, Mr. Gilman failed to adequately prepare for trial by neglecting to seek the appointment of crucial experts and by failing to investigate all evidence necessary to Ms. Lucio's defense. As a result, Mr. Gilman was unable to subject the State's case against Ms. Lucio to meaningful adversarial testing.

a. Ms. Lucio's Trial Lawyer Failed to File a Pre-Trial Motion to Suppress Her Custodial Statement as Involuntary and Failed to Challenge the Statement at Trial.

The State based its capital murder charge on Ms. Lucio's custodial statement, yet Mr. Gilman failed to adequately support her defense by failing to file a pre-trial motion to suppress the statement as involuntary. The police obtained Ms. Lucio's statement through coercive and inappropriate tactics. When police arrived at the Lucio residence, Ms. Lucio was kneeling at Mariah's head. Exhibit L, Trial Tr. Vol. 33 at 68. The paramedic at the scene noted that she was "somewhat distressed, but distant." *Id.* at 91. Multiple officers testified that she would begin to cry whenever a family member would console her. *Id.* at 72, 146. Despite officers witnessing Ms. Lucio grieve the loss of her daughter, they ripped her away from her family to be interrogated without knowing the cause of Mariah's death. *Id.* at 43, 147.

Texas Ranger Victor Escalon testified that when he first saw her in the interrogation room, "she was not making eye contact" and that "she had her head down [s]o right there and then, [he] knew she did something." *Id.* at 115. Before he had even spoken to her, he concluded "she was ashamed of what she did, and she had a hard time admitting to the officers what had occurred." *Id.*

Ms. Lucio had been awake since 8 a.m., and the police interrogated her from 9:53 p.m. until 3:15 a.m., never offering her anything to eat nor allowing her to sleep. *Id.* at 37–38. Throughout the session, Ms. Lucio repeatedly laid her head on the table as she appeared to become increasingly exhausted mentally, emotionally, and physically. Exhibit N, Interrogation Tr. Vol. 1 at 49, 54; Exhibit K, Trial Tr. Vol. 32 at 56; Exhibit N, Interrogation Transcript Vol. 1 at 54. One officer testified that she was "beat" and that he knew she was "giving up." Exhibit L, Trial Tr. Vol. 33 at 115. The officers questioning Ms. Lucio stood over her, yelling, and waving photos directly in her face. *See, e.g.*, Exhibit N, Interrogation Transcript Vol. 1 at 26–27, 31–32, 37–38, 40–41. One male officer repeatedly commanded her to beat a doll harder and harder to demonstrate how she had hit her daughter. Exhibit P, Interrogation Tr. Vol. 3, 4–6, 8–9. Nonetheless, Ms. Lucio's counsel, after viewing this video during discovery, failed to file a pre-trial motion to suppress her involuntary statement.

Had Mr. Gilman filed a pre-trial motion to suppress Ms. Lucio's involuntary statement, he could have presented supporting expert testimony at a suppression hearing and potentially stopped the interrogation video from being introduced at trial at all. Mr. Gilman could have presented testimony from experts, namely Dr. Pinkerman and Ms. Villanueva, that both Ms. Lucio's confession and her waiver of *Miranda* rights were involuntary. Dr. Pinkerman expressed serious concerns over the nature of her interrogation and confession. Exhibit D, Pinkerman Aff. at 2. In fact, Dr. Pinkerman was willing to testify about research relating to false confessions and Ms. Lucio's specific psychological characteristics that made it likely that she would acquiesce under such demands by police and offer a false confession. *Id.* Dr. Pinkerman could have testified that Ms. Lucio's statement was the consequence of her "dependent and acquiescent personality" as opposed to guilt, as the State argued at trial. *Id.*

In addition to Dr. Pinkerman's testimony, Mr. Gilman could have presented testimony by Ms. Villanueva. Ms. Villanueva could have explained the "patterns of behavior as seen in the Child Protective Services records, the patterns in [Ms. Lucio's] family, [and] how [those patterns] influenced [how she engaged] with the different investigators, male and female, and also how she makes her life decisions." Exhibit M, Trial Tr. Vol. 35 at 142–43 (Bill of Particulars). Ms. Villanueva could have testified that these factors influenced Ms. Lucio's behavior and how she answered questions during the investigation process. *Id.* Furthermore, Ms. Villanueva's testimony could have shown how Ms. Lucio's history of gender-based violence predisposed her to acquiesce in the face of aggressive police interrogation. *Id.*

Counsel's failure to challenge Ms. Lucio's statement was devastating to her defense. Under United States law, if a defendant's conviction is founded, in whole or in part, upon an involuntary confession, then they are deprived of due process of law, regardless of whether the confession is true or not.[69] Ms. Lucio made statements under duress. Police physically intimidated her and psychologically manipulated her. Police also deprived Ms. Lucio of food and sleep. Notwithstanding these clear indicators of police coercion, Mr. Gilman did not attempt to challenge the State's most damaging evidence and the basis of its entire case against her.

Mr. Gilman also failed to challenge the voluntariness of her statements at trial. When the State sought to introduce Ms. Lucio's videotaped interrogation at trial, Mr. Gilman's sole objection was that all of the voices on the tape were not identified. Exhibit K, Trial Tr. Vol. 32 at 49–53. In response, the court observed that the "main concern is whether or not the recording in and of itself shows that it's involuntary." *Id.* at 50. After watching the video, the court stated that "unless [defense] ha[s] any evidence to show duress, or anything like that, [the court is] going to allow it

[69] *Rogers v. Richmond*, 365 U.S. 534, 81 S.Ct. 735, 5L.Ed.2d 760 (1961).

to be played to the jury." *Id.* at 50–53. In response, Mr. Gilman was silent on the matter. *Id.* The State relied heavily on Ms. Lucio's statement, playing the entire videotaped interrogation for the jury. *Id.* at 51–69. Though Mr. Gilman later attempted to call Ms. Villanueva and Dr. Pinkerman to testify about the invalidity of Ms. Lucio's statement, his previous failure to challenge the statement on voluntariness grounds allowed the jury to hear such prejudicial evidence and testimony in the first place.[70] Such ineffectiveness prejudiced Ms. Lucio's defense and undermined the fairness of Ms. Lucio's trial in violation of Articles XVIII and XXVI of the ADRDM.

b. Ms. Lucio's Trial Lawyer Failed to Challenge the Testimony of the Medical Examiner Regarding the Origin of Mariah's Injuries

The State supported its theory that Ms. Lucio had severely beaten her child by offering the testimony of Dr. Norma Farley, a medical examiner. Mr. Gilman failed to obtain the assistance of a competent forensic pathologist to review Dr. Farley's conclusions surrounding Mariah's injuries. Had he done so, he could have exposed the flaws in Dr. Farley's testimony and provided the jury with a medically sound assessment of Mariah's symptoms in the days leading up to her death and her injuries that were consistent with Ms. Lucio's claims to her innocence.

Nearly one year after his appointment, Mr. Gilman met with Ed Stapleton, the lawyer defending Ms. Lucio's partner Robert Alvarez, who was charged with injury to a child by omission. Exhibit X, Stapleton Aff. at 1. In the meeting, Mr. Gilman told Mr. Stapleton that he would argue that Mariah had sustained injuries from a fall a few days before her death. *Id.* The two discussed the need for an expert to testify that the cause of death may have occurred a few days before the day of her actual death. *Id.* In May of 2008, only one week before the trial began, Mr. Gilman filed the first and only motion to obtain funds to hire a medical expert to support Ms.

[70] Mr. Gilman likewise failed to object to Texas Ranger Escalon's non-expert, highly damaging interpretation of Ms. Lucio's demeanor. *See supra* at pp. 25-26.

Lucio's defense. Exhibit Y, Disclosure of Dr. Jose Kuri. He ultimately hired Dr. Jose Kuri, who had not performed an autopsy in more than thirty-two years. Exhibit M, Trial Tr. Vol. 35 at 3, 5. Mr. Gilman did not request a written report from Dr. Kuri. *Id.* at 17–18.

At trial, Mr. Gilman utilized Dr. Kuri as an expert to testify exclusively about the impact of Mariah's injuries to the brain. Dr. Kuri, however, failed to explain the injuries to Mariah's body that the State argued were a result of the ongoing abuse by Ms. Lucio. *Id.* at 9–14, 17–18. His testimony was largely incoherent and non-responsive to the questions posed to him. Exhibit Z, Dr. Young Autopsy Report at 14 (quoting passages from Exhibit M, Trial Tr. Vol. 35 at 41, 82–83). According to Dr. Thomas Young, a board-certified forensic pathologist who provided an affidavit in post-conviction proceedings, Dr. Kuri's testimony was "egregiously inadequate to confront the arguments provided by the State for child abuse." Exhibit Z, Dr. Thomas Young Autopsy Report at 23.

A qualified expert such as Dr. Young could have explained Mariah's injuries as consistent with Ms. Lucio's account of the days leading up to Mariah's death. He could have further challenged the testimony of the State's expert by demonstrating that "the cause of death [was] [b]lunt head injury" and that the manner of death was an "accident." Exhibit Z, Young Autopsy Report at 10. A competent forensic pathologist could have further supported Ms. Lucio's description of Mariah's symptoms in the days leading up to her death as consistent with an accidental head injury due to a fall, supporting the defense case that Ms. Lucio was not responsible for her daughter's death. *Id.*

A competent forensic pathologist could have also provided alternate theories for the condition of Mariah's body and her injuries, such as the intracranial hemorrhages, hemorrhages in the lungs and kidneys, dehydration, eye pathology, and "bite" marks. *Id.* at 11-13. In addition, an

expert could have demonstrated how the State's medical examiner, Dr. Farley, overlooked evidence of pneumonia that Dr. Young found "consistent with deteriorating brain function over a couple of days as described by witnesses." *Id.* at 13. Furthermore, as Dr. Young pointed out, Dr. Farley's testimony continuously substituted "intuition" for "scientifically defensible interpretation," resulting in fourteen specific occasions of mere "speculative opinions" from the State's expert. *Id.* at 15.

In this way, a competent defense expert would have undermined the prosecution's theory that Ms. Lucio had deliberately injured her daughter. Expert testimony would also have effectively supported the defense's case that Mariah's death resulted from injuries sustained in her fall. By waiting until the eve of the trial to hire an expert with little experience in the relevant field of study, Mr. Gilman squandered an opportunity to counter the prosecution's case and convince the jury that Ms. Lucio was not guilty of causing her daughter's death.

c. Ms. Lucio's Trial Lawyer Failed to Present Alternative Theories of Culpability for Mariah's Previous Injuries.

Ms. Villanueva uncovered alternative theories not only for Mariah's previous injuries, but possibly for the cause of her death. Mr. Gilman failed to present these alternative theories of culpability for Mariah's previous injuries by failing to investigate and present witnesses and documentary evidence that Mariah's siblings or Robert Alvarez could have been the cause of Maria's previous injuries.

For example, Mr. Alvarez had the opportunity to injure Mariah, as he was present in the home and looked after Mariah. *See, e.g.,* Exhibit E, Def. Tr. Ex. 14 at 5. In addition, CPS investigated Mr. Alvarez on at least one prior occasion for child abuse. *Id.* at 1. Mr. Alvarez had a history of abuse towards not only Ms. Lucio but towards her children as well. Exhibit O, Trial Tr. Vol. 38 at 50; Exhibit C, Trial Tr. Vol. 37 at 207. Notably, there was one incident in which he was

witnessed "yanking" the arm of one of Ms. Lucio's children during a supervised foster care visit. Exhibit AA, CPS Visitation Records at 55. During Mariah's autopsy, Dr. Farley pointed out the existence of a healing left arm fracture, which she stated usually resulted from "tugging" or "twisting" the arm. Exhibit BB, Trial Tr. Vol. 34 at 29–31.

Likewise, as previously noted, Ms. Lucio's children were violent with each other, even to the point of bruising one another. Exhibit F, Villanueva Aff. at 2; Exhibit E, Def. Tr. Ex. 14 at 5–6. There is also evidence that the children inflicted bite marks on each other. Exhibit C, Trial Tr. Vol. 37, 108. Despite evidence of Ms. Lucio's children experiencing physical abuse at the hands of Robert Alvarez and other siblings, Mr. Gilman failed to investigate and present available alternative theories of culpability for Mariah's injuries, allowing the State to portray Ms. Lucio as the single possible cause of Mariah's injuries and death.

3. Ms. Lucio's Trial Lawyer's Multiple Failings Prejudiced Ms. Lucio.

In post-conviction proceedings, Ms. Lucio raised twenty-seven ineffective assistance of counsel claims. Though each claim independently resulted in prejudice to Ms. Lucio's case, the cumulative effect of Mr. Gilman's errors allowed the State to go essentially unchallenged in presenting its case against Ms. Lucio. By failing to investigate other avenues for Ms. Lucio's defense and by failing to investigate and present Ms. Lucio's extensive history of trauma, abuse, and violence, defense counsel permitted the prosecution to portray Ms. Lucio as a sadistic, unrepentant killer.

C. BY HOLDING MS. LUCIO IN PROLONGED SOLITARY CONFINEMENT ON DEATH ROW FOR FOURTEEN YEARS, THE UNITED STATES HAS SUBJECTED HER TO CRUEL, INFAMOUS, OR UNUSUAL PUNISHMENT AND INHUMANE TREATMENT IN VIOLATION OF ARTICLES XXV AND XXVI OF THE ADRDM.

The confinement of Melissa Lucio is an illustration of institutionalized cruelty. She has been held in solitary confinement for fourteen years. Relegating a person to fourteen years on death

row alone is an outright example of cruel, inhumane, and degrading treatment. The protracted punishment that Ms. Lucio has endured in solitary confinement is torture in violation of international law.

1. Melissa Lucio Has Spent the Last Fourteen Years in Solitary Confinement.

Melissa Lucio has spent fourteen years in solitary confinement awaiting execution. The Texas Department of Criminal Justice (TDCJ) has deliberately chosen to keep Ms. Lucio in permanent solitary confinement, depriving her of human contact and enforcing living conditions that no human being should endure. These conditions are particularly torturous for Ms. Lucio, who suffers from PTSD and depression from the years of abuse she has endured.

The TDCJ has adopted a policy mandating that death row inmates be housed in Maximum Security Administrative Segregation by the nature of their sentence, not their behavior.[71] This type of segregation is just another name for solitary confinement. For the last fourteen years, Ms. Lucio has spent at least twenty-three hours a day in a brick and concrete room the size of a parking space with negligible educational or environmental stimuli.[72] Her cell has a small window that is barred and covered in a glaze that makes it nearly impossible to see anything outside. Ms. Lucio's cell includes a narrow bed consisting of a metal frame and a thin mattress pad. A steel sink and toilet are an arm's length away from her bed. A small desk is bolted to the wall, along with a small stool bolted to the floor. She is not allowed to put pictures, letters, or even a calendar on the wall. Within her cell, Ms. Lucio has no access to television, educational opportunities, or consistent recreation. Inside her cell, Ms. Lucio spends almost all of her time idle, writing letters or reading a limited selection of books.

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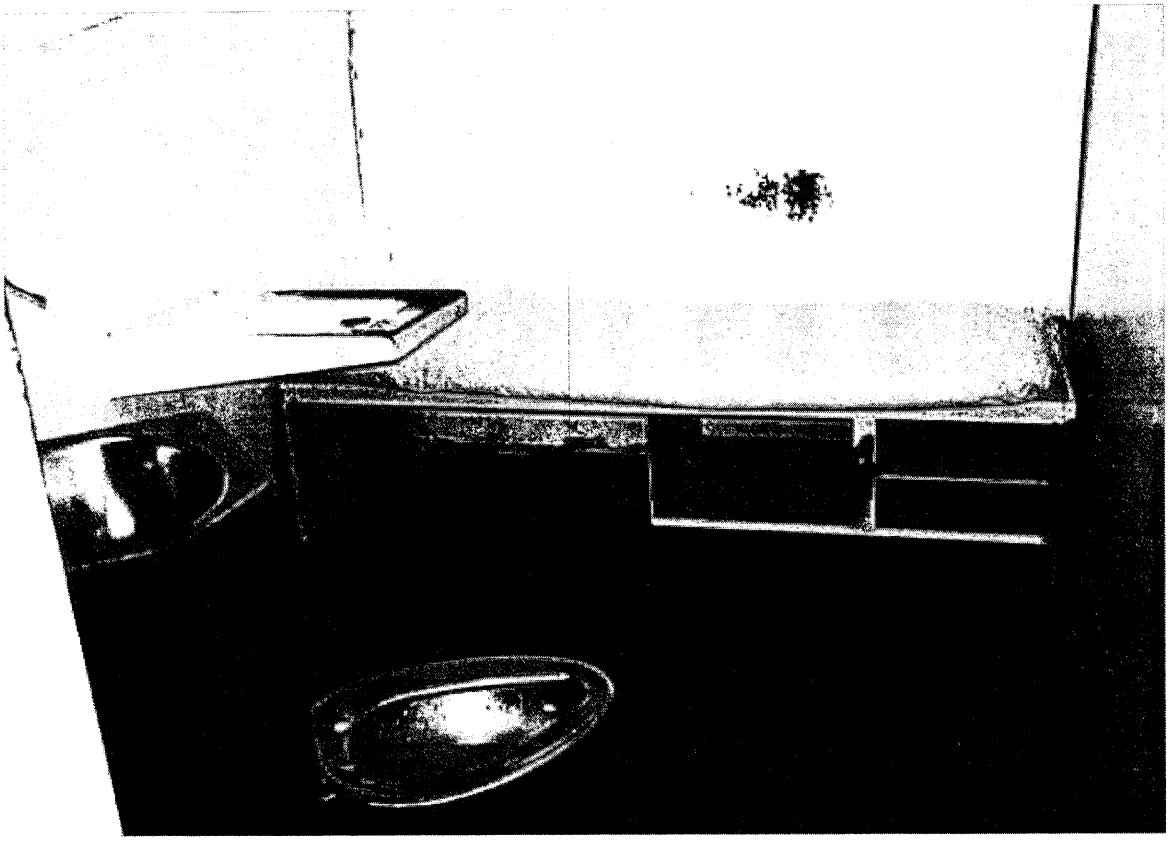
[71] TDCJ *Death Row Plan*, Procedures, General Provisions E(2) (Oct. 2004).

[72] Ms. Lucio has been in solitary confinement for all but seven months of the past fourteen years. During those seven months, Ms. Lucio has been part of the work-capable program at the prison.



Ms. Lucio has spent over a decade confined to a cell like this one.[73]

Ms. Lucio's prolonged solitary confinement has irreparably harmed her psychological and emotional well-being. She is not allowed the voluntary touch of another human being. During the pandemic, the TDCJ reduced death row inmates' visits to a single no-contact visit once per week for one hour.[74] Ms. Lucio rarely received any visits at all. In Texas, death row inmates are not allowed contact visits for any purpose, so Ms. Lucio has never touched or held any of her grandchildren. Several of her grandchildren were born while she was in prison. Typically, her

[73] This is a Texas death row cell that closely resembles the cell where Ms. Lucio is now confined.
[74] TDCJ Death Row Plan, Management of Death Row Segregation, Recreation (Oct. 2004). Prior to the pandemic, death row inmates were permitted one two-hour non-contact visit per week.

visitors must remain behind a plexiglass wall.[75] In fourteen years, Ms. Lucio has not been allowed a single consensual touch with the people she loves.

Ms. Lucio's prison building contains inmates on death row and inmates subjected to administrative or protective segregation. This includes women who suffer extreme mental illness or psychosis, women at risk of suicide, and women whom the prison has identified as unsafe to the general prison population. Only the showers and a crash gate separate death row from the ten "crisis cells" housing these women.[76] Thus, Ms. Lucio hears screaming, cursing, banging, and slamming doors throughout the prison. The guards contribute to this noise by kicking the gates and cell doors and by cursing at the inmates with vulgar language.

Ms. Lucio is frequently exposed to airborne chemical agents, which are used to subdue prisoners who are deemed to be acting out. The prison guards have sometimes employed chemical agents two to three times in a single day. These noises and smells often prevent Ms. Lucio from sleeping, concentrating, having conversations, thinking clearly, and functioning in general. She attempts to block the noise using fans and earplugs. The prisoners' piercing screams and cries often keep Ms. Lucio awake at night. Every single night for the past fourteen years, Ms. Lucio has woken up multiple times due to the excessive noise in the prison building; she can never fall into a deep sleep.

Despite the wealth of empirical studies on the effects of solitary confinement, it is still genuinely unknown what fourteen years in solitary confinement does to a human being. This kind of cruelty is not subject to scientific testing. Nonetheless, the evidence that exists is damning.

[75] In November of 2021, Ms. Lucio received a visit from her attorneys. Ms. Lucio was imprisoned in a mesh metal cage (about four feet by four feet) inside of a room, while her attorneys were free to move about the room.
[76] A crash gate is a double gate with additional security features.

Death-row suicides in Texas are common: there have been eight since 2004.[77] Many people on death row feel so helpless, isolated, and full of anxiety that they drop their appeals and "volunteer" for execution. More than ten percent of people on death row in Texas since 1976 have done this.[78]

Ms. Lucio suffers from depression and post-traumatic stress disorder due to years of sexual, verbal, and physical abuse and drug addiction. Ms. Lucio became depressed when she was a child, and she did not receive any treatment for her depression until 2014. Her prolonged solitary confinement has added to her mental torment. Because of her pre-existing trauma, abuse, and mental disability, Ms. Lucio was already vulnerable when the State subjected her to permanent solitary confinement after the death of her child. She is frequently exposed to people who have severe psychosis and are at high risk of suicide, all while navigating her own disabilities, and in permanent contemplation of her impending execution. She constantly grapples with the difficulty of not knowing what will happen to her and when.

Furthermore, Ms. Lucio underwent additional trauma while pregnant and giving birth to twins in prison. The prison nurse informed Ms. Lucio she was pregnant by saying, "Good news: you're pregnant. Bad news: your baby will be born in jail." When Ms. Lucio visited the hospital, she experienced extreme embarrassment: the guards shackled her, and everybody would stare at her. The prison guards drove Ms. Lucio to the clinic while shackled with leg irons and a belly belt. The guards shackled her arms to the belt until she was seven months pregnant, after which she was handcuffed, and her leg shackles were removed. During the hospital visits, Ms. Lucio was always shackled with at least handcuffs.

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[77] TEXAS MORATORIUM NETWORK: WORKING AGAINST THE TEXAS DEATH PENALTY, *Suicides on Texas Death Row*, (May 26, 2013), http://www.texasmoratorium.org/archives/2383.

[78] ACLU, A DEATH BEFORE DYING: SOLITARY CONFINEMENT ON DEATH ROW, 8 (July 2013), https://www.aclu.org/report/death-dying-solitary-confinement-death-row?redirect=death-dying-solitary-confinement-death-row-report [https://perma.cc/M9D8-XWZR].

Throughout her pregnancy, Ms. Lucio suffered intense mood swings: she felt a connection to her baby but was overcome with fear over her baby's future. Seven months into her pregnancy, she discovered she was having twins. Ms. Lucio was not allowed to notify her family when she went into labor, nor have any of them present during delivery—including her husband. Her only companion was a prison guard. After an emergency cesarean section without her family present, she was permitted to spend four days with her babies while she was recovering in the hospital. After that, she gave her children up for adoption and lost all contact with them.

2. Prolonged Solitary Confinement Constitutes Torture.

The Nelson Mandela Rules define solitary confinement and set forth stringent limitations on its use:

> [S]olitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.[79]

The Rules go on to note that solitary confinement should only ever be used "in exceptional cases as a last resort, for as short a time as possible . . . It shall not be imposed by virtue of a prisoner's sentence." *Id.* Rule 45 at 17/33. The rules further stipulate that "[t]the imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures." *Id.* The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted this view of solitary confinement in his interim report to the General Assembly in 2011. He also concluded that prolonged solitary confinement constitutes torture:

> Given its severe adverse health effects, the use of solitary confinement itself can amount to acts prohibited by article 7 of the International Covenant on Civil and Political Rights, torture as defined in article 1 of the Convention against Torture, or

[79] G.A. Res. 70/175 (Dec. 17, 2015) Rule 44 at 17/33.

> cruel, inhuman or degrading punishment as defined in article 16 of the Convention.[80]

There is no dispute that Ms. Lucio has been subjected to solitary confinement for nearly the entirety of her incarceration. As noted above, she has remained in her cell for twenty-two to twenty-four hours a day every day, for all but seven months of the last fourteen years. Her prolonged isolation results from TDCJ policy that requires her segregation solely *by virtue of* her sentence. Further, her prolonged solitary confinement has undoubtedly exacerbated Ms. Lucio's mental disabilities. Applying the reasoning of the Mandela Rules and the UN Special Rapporteur, and the precedent established by this Commission and other international human rights tribunals, there can be no doubt that the United States' treatment of Ms. Lucio violates Articles XXV and XXVI of the ADRDM.

a. International Human Rights Tribunals And Experts Agree That These Conditions Constitute Torture.

The right to humane treatment protects against gradations of impermissible State behavior, including torture and cruel, inhuman, or degrading treatment. International law also holds that solitary confinement should be prohibited for prisoners with mental disabilities when such confinement exacerbates these disorders. Rule 44 at 17/33. Here, the United States' treatment of Ms. Lucio, a mentally disabled trauma survivor, is nothing less than torture.

The Commission has already recognized that sixteen years of solitary confinement on death row constitutes "a form of torture." *Saldaño*, Case 12.254, ¶ 252. In its *Saldaño* decision, the

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[80] Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 70, U.N. Doc. A/66/268 (Aug. 5, 2011). This is consistent with the conclusions of the Human Rights Committee, which noted in General Comment No. 20 that prolonged solitary confinement of a detainee may amount to acts prohibited by article 7. General Comment No. 20 (1992) on Art. 7 of the International Covenant on Civil and Political Rights, on the Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. HRI/GEN/1/Rev.9, ¶ 6 (Human Rights Committee, Mar. 10, 1992).

Commission noted that the sixteen years Victor Saldaño spent in solitary, in confinement comparable to Ms. Lucio's, inflicted a "severe and irreparable detriment" upon both his "personal integrity," and "especially, his mental health." *Id.* Mr. Saldaño's confinement in Texas, like Ms. Lucio's, was characterized by severe restrictions. *Id.* ¶ 29. He spent twenty-three hours a day locked in his cell alone. *Id.* ¶ 18. The prison strictly regulated any visits to Mr. Saldaño. *Id.* As a result of these torturous conditions, Mr. Saldaño's mental health deteriorated as he spent more years on death row. *Id.* ¶ 13. At his trial, Mr. Saldaño had an intelligence quotient of 76, which was declared "below average" by a psychiatric expert. *Id.* ¶ 10. While on death row, he suffered from the severe mental anxiety characteristic of "death row phenomenon." *Id.* ¶ 27. The uncertainty of the outcome of his situation further exacerbated this anxiety. *Id.* ¶ 30. Mr. Saldaño's mental health disorders resulting from his imprisonment in solitary confinement prompted multiple hospitalizations. *Id.* ¶ 17. He was hospitalized in the Texas penitentiary system psychiatric hospital at least four times and had to undergo ongoing psychiatric treatment for his disorders. *Id.* Despite these hospitalizations, Mr. Saldaño remained in solitary confinement.

Ms. Lucio has spent fourteen years in solitary confinement, only three years less than Victor Saldaño. *See id.* ¶ 249. She is locked in her cell all hours of the day except when she is performing labor, taking a shower, or participating in her brief recreation time. For the great majority of her time on death row, she was locked in her cell for at least twenty-three hours a day. Visits are strictly regulated, and prison rules prohibit her from touching another human being. Similarly to Mr. Saldaño, Ms. Lucio suffers from mental disorders exacerbated by the death row phenomenon. Ms. Lucio's mental disorders stem from her lifetime of severe abuse. She endured childbirth while in custody, the removal of her children, and solitary confinement, traumatic experiences that exacerbated her pre-existing PTSD. Nevertheless, the prison failed to treat her

depression for over six years after she was placed in custody, only prescribing antidepressants in 2014. But antidepressants have failed to relieve her anguish about her uncertain future. *See Saldaño*, Case 12.254, ¶ 30. Ms. Lucio also suffers from cognitive deficits; before trial, a psychologist found that she has an IQ of 70, which is six points *lower* than Mr. Saldaño's. Exhibit I, Martinez Psychological Evaluation at 4. Dr. Pinkerman later assessed her IQ at 85, but concluded that her "limited intellectual functions" had affected her functioning throughout her life. Exhibit J, Pinkerman Assessment Report at 7. Dr. Pinkerman also found that Ms. Lucio's verbal comprehension IQ was 78. Exhibit O, Trial Tr. Vol. 38 at 67. Like Mr. Saldaño, Ms. Lucio's limited cognitive abilities and mental illness have made her even more vulnerable to the acute trauma inherent in solitary confinement under sentence of death. There can be little question that this treatment constitutes torture under international law. *See Saldaño*, Case 12.254, ¶ 252.

The jurisprudence of the European Court on Human Rights is consistent with this approach. In *Ilaşcu and Others v. Moldova and Russia*, four Moldovan political activists were convicted of murder; Mr. Ilaşcu was sentenced to death and held in solitary confinement for eight years.[81] The applicants claimed, among other things, that their treatment violated Article 3 of the European Convention. *Id.* ¶ 419.[82] In evaluating whether the "severity" of the applicants' treatment violated Article 3, the court conducted a case-specific analysis into the duration of the treatment, the physical and mental effects it had on the victims, and the specific traits of the victims themselves. *Id.* ¶ 427. Citing *Soering*, the court paid due regard to the particular psychological harm inherent in a prolonged period spent awaiting death. *Id.* ¶ 430 (citing *Soering v. The United Kingdom*, Eur. Ct. H.R., App. No. 14038/88, ¶ 104, (July 7, 1989). Further, the court reiterated its position that

[81] *See generally Ilaşcu and Others v. Moldova and Russia,* Eur. Ct. H.R., App. No. 48787/99 (July 8, 2004), https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-61886%22]}.

[82] Article 3 of the European Convention provides: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

"complete sensory isolation, coupled with total social isolation can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason." *Saldaño*, Case 12.254, ¶ 432.

The court ultimately found that Mr. Ilaşcu had been subjected to torture in contravention of Article 3 of the European Convention. *Id.* ¶ 440. In making this decision, it specifically noted the suffering Mr. Ilaşcu endured whilst awaiting death in extreme solitary confinement. *Id.* ¶¶ 435–36. The conditions of his confinement were particularly severe: he was unable to contact his lawyer or receive visits from his family, and he was only able to shower once a month. *Id.* ¶ 438. The court's decision underscored the psychological consequences of solitary under "the constant shadow of death," always "in fear of execution." *Id.* ¶¶ 435–36. Ultimately the Court found that the combination of his death sentence and the conditions of his confinement met the standard for torture as prohibited under the European Convention. *Id.* ¶ 440.

In evaluating whether prolonged solitary confinement constitutes torture,[83] the Special Rapporteur similarly recommends a case-specific analysis, attentive to the "purpose of the application of solitary confinement, the conditions, length, and effects of the treatment and, of course, the subjective conditions of each victim that make him or her more or less vulnerable to those effects." *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 71. In noting the length of solitary confinement that would amount to torture, the Special Rapporteur has concluded that "any imposition beyond 15 days

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[83] The definition of torture itself comes from Article 1 of the Convention Against Torture, a treaty the United States has ratified:

> For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed...

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art 1, Apr. 18, 1988, 1465 U.N.T.S. 85 (entered into force June 26, 1987).

constitutes torture or cruel, inhuman or degrading treatment or punishment, depending on the circumstances." *Id.* ¶ 76.

In comparing Ms. Lucio's confinement to the treatment at issue in *Saldaño* and *Ilaşcu* and determining whether her treatment constitutes torture, three facts are determinative: (1) Ms. Lucio has spent fourteen years in solitary confinement, a period of time that violates international standards[84] and is *per se* cruel, inhuman or degrading treatment; (2) Ms. Lucio is mentally disabled, which exacerbates the harmful effects of prolonged solitary confinement; and (3) Ms. Lucio has spent the entirety of her confinement awaiting death, an aggravating factor that carries its own psychological harm and exacerbates the severity of solitary confinement.

The duration of a person's solitary confinement is relevant when considering whether their treatment constitutes torture because of the profound harm innate to prolonged solitary confinement. Essentially, the longer an inmate remains in solitary, the greater her exposure to its harmful effects. This risk of permanent psychological damage is exacerbated when an inmate suffers from pre-existing mental illness. As Dr. Craig Haney has noted in his research on solitary confinement:

> Although in my experience, virtually everyone in these units suffers, prisoners with pre-existing mental illnesses are at a greater risk of having this suffering deepen into something more permanent and disabling. Those at greatest risk include, certainly, people who are emotionally unstable, who suffer from clinical depression or other mood disorders, who are developmentally disabled, and those whose contact with reality is already tenuous.[85]

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[84] As the Commission has noted, "[i]n no instance should the solitary confinement of an individual last longer than thirty days." INTER-AM. COMM'N H.R., REPORT ON THE HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY IN THE AMERICAS, OEA/Ser.L/V/II. Doc 64, ¶ 411 (Dec. 31, 2011), http://www.oas.org/en/iachr/pdl/docs/pdf/ppl2011eng.pdf.

[85] Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124, 142 (2003).

These vulnerabilities must be considered alongside Ms. Lucio's confinement on death row, an experience that alone has been recognized as psychologically traumatic. Courts use the term "death row phenomenon" to describe the anxiety, dread, fear, and psychological anguish that often accompanies long-term incarceration on death row.[86] The term expresses the unique mental distress triggered when a person has been sentenced to death and awaits her execution.

The Commission itself has recognized the death row phenomenon and the profound harm that comes when people are forced to wait for years for their own execution.[87] Indeed, the Commission has noted that four years on death row is already too long and amounts to inhumane treatment.[88] At fourteen years and counting, Ms. Lucio's detention is another tragic example of the United States' impermissible and illegal treatment of one of its citizens. *See also Bucklew v. United States*, Case 12.958, Inter-Am. Comm'n H.R., Report No. 71/18, ¶ 91 (2018) (twenty years on death row amounts to cruel, infamous or unusual punishment); *Robinson*, Case 13.361, ¶ 118 (same); and *Saldaño*, Case 12.254, ¶ 252 (same).

The convergence of these factors establishes that Ms. Lucio's treatment by the United States constitutes torture. For the last fourteen years, after the death of her young child, Ms. Lucio has spent all but seven months in solitary confinement while awaiting a date with the executioner.

b. The United States' Treatment of Ms. Lucio Violates Its Obligations Under Numerous Treaties and *Jus Cogens* Norms Prohibiting Torture.

As the Inter-American Court has noted, "[t]he absolute prohibition of torture, in all its forms, is now part of international *jus cogens*."[89] The International Court of Justice has also

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[86] *See* Note, *Mental Suffering Under Sentence of Death: A Cruel and Unusual Punishment*, 57 IOWA L. REV. 814, 814 (1972).
[87] *See* INTER-AM. COMM'N H.R., THE DEATH PENALTY IN THE INTER-AMERICAN RIGHTS SYSTEM: FROM RESTRICTIONS TO ABOLITION, OEA/Ser. L/V/II, doc. 68 ¶ 136 (Dec. 31, 2011), https://www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf; *see also Robinson*, Case 13.361, ¶¶ 115–18.
[88] *Aitken v. Jamaica*, Case 12.275, Inter-Am Comm'n H.R., Report No. 58/02, ¶¶ 133–34 (2002).
[89] *Cantoral-Benavides v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 69, ¶ 92 (Aug. 18, 2000).

recognized that the prohibition against torture is a peremptory norm.[90] In addition to the *jus cogens* obligation, torture presumptively violates the right to humane treatment under Article XXV and the right to be free from cruel, infamous, or unusual punishment under Article XXVI of the ADRDM.[91]

c. At a Minimum, the United States Has Violated Ms. Lucio's Right to Humane Treatment.

If the Commission is unable to find that Ms. Lucio's prolonged solitary confinement constitutes torture, it should at least conclude that her treatment violates her right to humane treatment under Article XXV of the ADRDM and her right to be free of cruel, infamous or unusual punishment. As the Commission has explicitly recognized, twenty years on death row is "excessive and inhuman" and amounts to a *per se* violation of Articles XXV and XXVI of the ADRDM. *Robinson*, Case 13.361, ¶¶ 115–18.

Furthermore, the Inter-American Court has repeatedly recognized that prolonged solitary confinement is an example of cruel, inhuman and degrading treatment.

> [P]rolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for [her] inherent dignity as a human being.[92]

The Court reached this conclusion by noting the grave harm inherent in prolonged solitary confinement, noting that it "produces moral and psychological suffering in the detainee, placing [her] in a particularly vulnerable position." *Maritza Urrutia*, No. 103, ¶ 87. Nowhere is that

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[90] *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, 2012 I.C.J. 139, ¶ 99 (July 20).

[91] Moreover, the United States' treatment of Ms. Lucio violates its obligations under Article 1 of the Convention against Torture, and Article 7 of the International Covenant on Civil and Political Rights, both of which have been ratified by the United States.

[92] *See Bámaca Velásquez v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No, 70, ¶ 150 (Nov. 24, 2000); *Maritza Urrutia v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶ 87 (Nov. 27, 2003).

vulnerability clearer than in a mentally disabled, traumatized woman, who has endured a lifetime of abuse, and is now sentenced to prolonged solitary confinement on death row.

D. THE UNITED STATE'S FAILURE TO PROTECT MELISSA LUCIO FROM CHILD MARRIAGE VIOLATED ITS OBLIGATIONS UNDER ARTICLES II AND VII OF THE ADRDM.

In 1985, Ms. Lucio dropped out of high school at the age of sixteen. A month later, she married Guadalupe Lucio, who was twenty-one years old. At the time, Texas law was written to allow girls who had reached the age of sixteen to get married provided at least one parent consented. TEX. FAM. CODE § 2.103. Ms. Lucio was allowed to become a child bride because her mother consented to the marriage.[93] At age seventeen, Ms. Lucio had a miscarriage. Ms. Lucio's first daughter was born when she was eighteen years old. By the time Ms. Lucio was twenty-four, she had five children from her marriage with Guadalupe Lucio.

1. By Permitting Ms. Lucio to Enter into a Child Marriage, the United States Violated Ms. Lucio's Rights as a Girl-Child and Subjected Her to Gender-Based Violence.

In the United States, there is no federal law that prohibits child marriage. Many states in the United States still allow people to marry as minors. Only four states have banned child marriage without exception. EQUALITY NOW, *supra* note 11. In the four states that still authorize child marriage with parental consent, the age at which girls are permitted to marry ranges from twelve to seventeen years old.[94] In the State of Texas, a total of 40,260 children were married between 2000 and 2014.[95]

2. Child Marriage Violates International Law.

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[93] In 2017, Texas repealed the law allowing girls under eighteen to marry with parental consent, but girls under eighteen can still get married if they are emancipated and with a judge's consent. TEX. FAM. CODE § 2.101.
[94] WORLD POPULATION REVIEW, *States That Allow Child Marriage*, https://worldpopulationreview.com/state-rankings/states-that-allow-child-marriage. (last accessed Nov.16 2021).
[95] FRONTLINE, *Child Marriage in America,* http://apps.frontline.org/child-marriage-by-the-numbers/ (last accessed Nov. 16, 2021).

By permitting Ms. Lucio to marry when she was just sixteen years old, the United States violated Ms. Lucio's human rights as a girl-child. Under international law, child marriage is commonly defined as "any formal marriage or informal union between a child under the age of eighteen and an adult or another child."[96] Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) prohibits child marriage, stating that the marriage of a child "shall have no legal effect" and urging states to establish a minimum age requirement for marriage.[97] The Convention on the Rights of the Child (CRC)—ratified by every nation in the world with the exception of the United States—defines a child as "every human being below the age of eighteen years."[98] The Convention emphasizes the need for states to implement legislative measures to protect children from harm and instances that might lead to harm and abuse. *Id.* Since the United States signed the Convention, it is obligated to refrain from violating its object and purpose. Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331. Moreover, given widespread ratification of CEDAW and the CRC, the prohibition on child marriage has attained the status of customary international law. As the United States has not consistently objected to the prohibition on child marriage, it is bound by customary international law to prevent the practice.[99]

3. Child Marriage Is a Form of Gender-Based Violence.

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[96] UNICEF, *Child Marriage*, https://www.unicef.org/protection/child-marriage (last accessed Nov. 16, 2021).
[97] Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979.
[98] Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; 28, 1456.
[99] LEGAL INFORMATION INSTITUTE, *Customary International Law*, https://www.law.cornell.edu/wex/customary_international_law (last visited Dec. 1st, 2021). The Southern African Development Community Model (SADC) Model Law on Child Marriage further reiterates that the minimum age to marry should be eighteen years old. Article 21 (2) of The African Charter on the Rights and Welfare of the Child, states that "*child marriage and the betrothal of girls and boys shall be prohibited*" and that "*effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years.*" Moreover, Goal Five of The United Nations Sustainable Development Goals aims to eliminate child marriage before the year 2030.

Child marriage violates many fundamental human rights: the right to an education, the right to freedom from violence, and the right to consensual marriage.[100] It is recognized under international law as a form of gender-based violence. Furthermore, girls who are wed between the ages of sixteen and nineteen are at an increased risk of being subjected to intimate partner violence.[101] Child marriage can lead to unintended pregnancy, sexual diseases, and mental health issues. The International Center for Research on Women reported that girls who marry under the age of eighteen were afraid to speak to their spouses about the use of contraception.[102] Child brides are also more likely to drop out of school, further perpetuating their cycle of poverty. Furthermore, girls who marry young are more likely to suffer medical problems such as depression.[103]

4. Ms. Lucio's Child Marriage Had Severe, Enduring Consequences.

Ms. Lucio met Guadalupe when she was fifteen. Because he wanted to move to Houston, Ms. Lucio dropped out of school to marry him and moved to Houston a month later. Subsequently, Ms. Lucio was introduced to drugs by her sister-in-law which led her to spiral down the path of addiction. Ms. Lucio was deprived of her childhood by neglect and sexual abuse within her home. She saw marriage as an escape from her abuse, only to fall into another cycle of abuse. It is common for girls to see marriage as an escape from their abusive home.[104]After getting married, Ms. Lucio wanted to continue her education and enroll in school again, but was overwhelmed by the challenges of her marriage and responsibilities to her children. By the time Guadalupe abandoned Melissa, she was mired in poverty, addiction and housing instability, with no means of

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[100] G.A Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10. 1948).
[101] Rachel L. Schuman, *State Regulations Are Failing Our Children: An Analysis of Child Marriage Laws in the United States*, 60, WM. & MARY. L.REV. 2337, 2350–51 (2019).
[102] INT'L CENTER FOR RESEARCH ON WOMEN, *Child marriage and domestic violence,* https://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Domestic-Violence.pdf. (Last accessed Nov. 16, 2021).
[103] Nicholas L. Syrett, *American Child Bride: A History of Minors and Marriage in the United States* 268 (2016).
[104] *Id.* at 91.

escape. Her mental illnesses, caused in part by the violence in her marriage with Guadalupe, remain with her to this day.

E. THE METHOD OF EXECUTION UTILIZED BY THE STATE OF TEXAS WOULD SUBJECT MS. LUCIO TO CRUEL, INFAMOUS OR UNUSUAL PUNISHMENT, IN VIOLATION OF ARTICLE XXVI.

The State of Texas has sentenced Ms. Lucio to die by lethal injection. Under state law, however, Texas is not obliged to reveal the source of the drugs it intends to use to carry out her execution. The secrecy surrounding Texas' lethal injection protocol violates the United States' "enhanced obligation to ensure that the person sentenced to death has access to all relevant information regarding the manner in which he or she is going to die." *Edgar Tamayo Arias*, Case 12.873, ¶ 189. Moreover, the United States has placed the burden of establishing the unconstitutionality of the lethal injection protocol on condemned prisoners—a burden that violates their rights under international human rights law. Further, the lack of training required for those administering the drugs, the lack of regulatory oversight by the United States Food and Drug Administration, and an absence of meaningful State oversight make lethal injection a cruel, infamous, or unusual punishment, in violation of Article XXVI of the ADRDM.

1. Texas Does Not Disclose the Source of the Drugs It Uses for Executions.

Although Texas's current protocol requires that prisoners be executed with pentobarbital, it is not clear how Texas intends to procure the drugs to carry out Ms. Lucio's execution. Pharmaceutical companies in the United States no longer manufacture pentobarbital.[105] Texas may seek to obtain pentobarbital from a compounding pharmacy—an industry beleaguered by scandals, exposure of sub-par practices, and problematic results that have, at times, led to death and severe

[105] Lundbeck, the sole manufacturer of pentobarbital approved for use in the United States, stopped selling the drug to American prisons in 2011. THE ATLANTIC, *Can Europe End the Death Penalty in America?* http://www.theatlantic.com/international/archive/2014/02/can-europe-end-the-death-penalty-in-america/283790/. (last visited Sept. 13, 2021)

illness.[106] In the past, Texas has obtained compounded pentobarbital[107] and provided Virginia with three doses of pentobarbital that it purchased from a compounding pharmacy.[108] As discussed below, however, compounded drugs are not subject to federal oversight and pose considerable risks when used for executions.

After many pharmaceutical companies stopped supplying prisons with the drugs used in lethal injections to distance themselves from capital punishment, Texas passed a law shielding the identity of "any person or entity that manufactures, transports, tests, procures, compounds, prescribes, dispenses, or provides a substance or supplies used in an execution." TEX. CRIM. PROC. CODE. ANN. ART. 43.14. This law runs afoul of the Commission's determination that a condemned prisoner "must have access to information related to the precise procedures to be followed, the drugs and doses to be used in case of executions by lethal injection" so that he has an adequate opportunity to "challenge every aspect of the execution procedure." *Edgar Tamayo Arias*, Case 12.873, ¶¶ 189–90. The secrecy surrounding the provenance of the lethal injection drugs used in Texas also prevents Ms. Lucio from mounting a full and complete challenge to the manner of her planned execution, in violation of her rights to petition and to due process under Articles XXIV and XXVI of the ADRMD.

2. The United States Bears the Burden of Showing that Its Method of Lethal Injection Will Not Cause Excessive and Avoidable Pain and Suffering.

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[106] FDA, *Compounding and the FDA: Questions and Answers*, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm#what (last visited Oct. 31, 2021).

[107] WASH. POST, *Texas finds more lethal injection drugs after all*, http://www.washingtonpost.com/news/post-nation/wp/2015/03/25/texas-finds-more-lethal-injection-drugs-after-all/ (last visited Sept. 13, 2021).

[108] WASH. TIMES, *Texas provides Virginia lethal injection drugs ahead of pending executions*, http://www.washingtontimes.com/news/2015/sep/25/texas-provides-virginia-lethal-injection-drugs-ahe?page=all (last visited Sept. 13, 2021).

The United States Supreme Court has held that prisoners bear the burden of demonstrating the unconstitutionality of a particular method of execution. In *Glossip v. Gross*, the Court held that the prisoner must establish "that any risk of harm [from the challenged execution protocol] was *substantial* when compared to a known and available alternative method of execution" (emphasis added).[109] Thus, a prisoner must establish the risk of substantial harm caused by a particular execution method and that a less harmful method of execution exists.

The United States' approach is at odds with international human rights standards relating to the application of the death penalty[110] and unfairly burdens the prisoner. The right to life is the cornerstone of all major human rights instruments, and the death penalty deprives an individual of this most precious of all human rights. For this reason, when the State decides to impose the death penalty, it should bear the burden of showing that its chosen method of execution does not cause a prisoner excessive and avoidable pain and suffering. This logically flows from the State's duty to protect the right to life. Accordingly, the South African Constitutional Court has held that where the State cannot show that the death penalty is "reasonable and necessary," it cannot pass constitutional muster.[111] It is likewise unreasonable to expect a prisoner to identify the means of his own demise, as is required under *Glossip*.

As a practical matter, the State is better situated than the prisoner to prove that a particular method of execution causes minimal suffering because the State has all of the relevant information at its disposal. An informational asymmetry exists between Texas and Ms. Lucio here. Assuming

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[109] *Glossip v. Gross*, 576 U.S. 863, 878 (2015).

[110] It is well settled that in capital prosecutions, the burden remains with the prosecution throughout the culpability and sentencing phase. It is never up to the defense to prove that death is not the appropriate sentence. Rather, the prosecution must prove beyond reasonable doubt the existence of any aggravating factors in the case and must negate beyond reasonable doubt any mitigating factors relied on by the prisoner. *See, e.g., S v. Makwanyane and Another* 1995 (3) SA 391 (CC) at 46 (S. Afr.); *Moise v The Queen* (unreported), Crim. App. No. 8 of 2003, Eastern Caribbean Court of Appeal, at 17; *Pipersburgh v R*, [2008] UKPC 11, at 32.

[111] *S v. Makwanyane and Another*, 1995 (3) SA 391 (CC) at 120 (S. Afr.). Judge Didcott also said in his concurrence that "The protagonists of capital punishment bear the burden of satisfying [the court] that it is permissible."

Texas uses a compounding pharmacy to obtain the drugs necessary to carry out Ms. Lucio's execution, Texas law prevents Ms. Lucio from gaining access to the name of the pharmacy, the procedure the pharmacy used to create the drug, or the results from any testing that might have been carried out on the compounded drug.[112] As a matter of international law and common sense, the State should therefore bear the burden of proving that whatever method it ultimately chooses to execute Ms. Lucio will not cause her cruel, infamous, or unusual punishment under Article XXVI of the ADRDM. Absent such a showing, Ms. Lucio is entitled to the presumption that whatever method Texas ultimately chooses will violate her right to be free from cruel, infamous, or unusual punishment.

3. An Unnecessary Risk of Pain Is Inherent in Texas's Lethal Injection Protocol.

Ms. Lucio has no way of knowing where Texas will obtain the drugs to carry out her execution. The uncertain provenance of these drugs and the likelihood that they will be produced by a compounding pharmacy or obtained from an entirely unvetted and unknown supplier creates an unacceptable risk that the State of Texas will subject Ms. Lucio to cruel and infamous punishment in violation of the ADRDM. In 2015, Arizona, Nebraska, and Texas attempted to illegally purchase illegal lethal injection drugs from Chris Harris, a man in India who has been marketing the drug to American states for use in executions.[113]

Pentobarbital is a barbiturate that shuts down brain function.[114] Pentobarbital has few authorized uses in humans; it is used in states that allow physician-assisted suicide, and as

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[112] Tex. Crim. Proc. Code Ann. art. 43.14 (b).

[113] BUZZFEED NEWS, *Three States Bought Illegal Execution Drugs from Supplier in India,* https://www.buzzfeednews.com/article/tasneemnashrulla/three-states-bought-illegal-execution-drugs-from-supplier-in (last visited Oct. 13, 2021). Buzzfeed published an exposé on Harris, who claims to manufacture sodium thiopental in India. When reporters went to the addresses he had given as manufacturing sites, they found a dilapidated residential apartment building that Harris had vacated years before, and an office cubicle that he rarely visited. Neither location contained facilities for manufacturing pharmaceutical products.

[114] N.Y TIMES,, *What's in a Lethal Injection 'Cocktail'?,* http://www.nytimes.com/2011/04/10/weekinreview/10injection.html (last visited Oct. 13, 2021).

anesthesia or euthanasia for animals.[115] The FDA does not verify the safety, effectiveness, or quality of compounded drugs.[116] The unregulated nature of the market in compounded drugs vastly increases the risks associated with their use.[117] Compounded drugs are often contaminated with tiny particles, which cause the drug to react in unexpected ways.[118] For example, one expert has noted that lethal injection with a contaminated, compounded form of pentobarbital may cause the prisoner to "feel as though [his veins are] being scraped with sandpaper as he dies."[119] Pentobarbital is especially risky in its compounded form because of the secrecy of the process of compounding the pentobarbital. [120]

Based on the above, the Commission should find that the United States has violated Ms. Lucio's right to be free from cruel and infamous punishment. The opaque and uncertain nature of the drugs Texas intends to use in its lethal injection procedure violates Article XXVI of the ADRDM. Furthermore, the United States, and not Ms. Lucio, should bear the burden of demonstrating that whatever method of execution it intends to employ causes the least possible physical and mental suffering. Absent such a showing, the Commission should presume that Texas's method of execution causes cruel and infamous punishment in violation of Article XXVI of the ADRDM.

CONCLUSION

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[115] *Id.*
[116] FDA, *Compounding and the FDA: Questions and Answers* https://www.fda.gov/drugs/human-drug-compounding/compounding-and-fda-questions-and-answers (last visited Dec. 15, 2021).
[117] ALJAZEERA,, *New lethal-injection drugs raise new health, oversight questions,* http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/10/14/new-lethal-injectiondrugsraisenewhealthoversightquestions.html (last visited Sep. 15, 2021).
[118] MOTHER JONES, *New Lethal Injections Could Cause Extreme Pain, Make Deaths "Drag On" for Hours,* http://www.motherjones.com/politics/2013/11/ohio-lethal-injection-cocktail-execution-drugs. (last visited Sept. 15, 2021).
[119] *Id.*
[120] DEATH PENALTY INFO, *Behind the Curtain: Secrecy and the Death Penalty in the United States* https://deathpenaltyinfo.org/facts-and-research/dpic-reports/in-depth/behind-the-curtain-secrecy-and-the-death-penalty-in-the-united-states (last visited Dec. 19, 2021).

Ms. Lucio respectfully requests that the Commission find that the United States has violated its human rights obligations in Ms. Lucio's case, and order effective and comprehensive remedies including a new trial and sentencing hearing in accordance with the equality, due process and fair trial protections under the ADRDM.

Respectfully submitted,

Sandra Babcock
Adrienne Larimer
Arisa Herman
Candida Mistrorigo
Lindsey Foster
Thomas Silva
Sarah Alhazzaa

EXHIBIT 5

CAUSE NO. 07-CR-0885

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
vs.	§	138TH JUDICIAL DISTRICT
MELISSA E. LUCIO	§	CAMERON COUNTY, TEXAS

DECLARATION OF SANDRA BABCOCK

STATE OF NEW YORK)
)
COUNTY OF TOMPKINS)

I, Sandra L. Babcock, state as follows:

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

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

3. I have been asked to draft this affidavit to recount my experience with proceedings in U.S. capital cases before 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 out of deference to proceedings before the Inter-American Commission?

4. I have been involved in two cases in which domestic courts have refused to schedule execution dates under these circumstances. 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 at which the U.S. Government participated along with counsel for Mr. Moreno Ramos. 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 proceedings were still underway, 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. Appendix 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 21st day of January, 2022.

Sandra L. Babcock
Clinical Professor of Law, Cornell Law School
Director, International Human Rights Clinic
Faculty Director, Cornell Center on the Death Penalty Worldwide

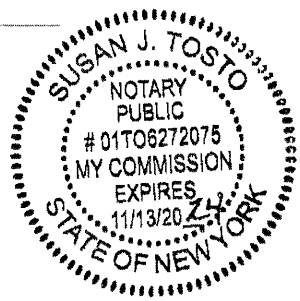
NOTARIZATION OF SIGNATURE

State of New York:
County of Tompkins:

The undersigned Notary Public certifies that Sandra L. Babcock, personally known to me to be the same person whose name is subscribed to the foregoing document, virtually appeared before me and acknowledged the signature and delivery of this instrument as her free and voluntary act, for the uses and purposes therein set forth.

Date: January 21, 2022

My Commission Expires:



Notary Public:

APPENDIX A

SANDRA L. BABCOCK

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

March 2021

TEACHING

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

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

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

Visiting Professor, Università degli Studi di Milano Mar. 2018

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

University of Addis Ababa, Ethiopia Dec. 2008

EDUCATION

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

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

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

PUBLICATIONS

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

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

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

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

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

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

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

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

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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).

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

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

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

GRANTS RECEIVED:

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

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

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

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

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

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

HONORS AND AWARDS

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

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

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

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

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

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

2004: Volunteer Award, Minnesota Advocates for Human Rights

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

2003: Access to Justice Award, Minnesota Hispanic Bar Association

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

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

EXPERIENCE

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

Mexican Capital Legal Assistance Program 2000-2006
Director

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

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

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

LANGUAGES Proficient in French, Spanish and Italian; conversational German

EXPERT WITNESS TESTIMONY:

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

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

RECENT LECTURES AND PRESENTATIONS (not a complete list):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Speaker, "International Human Rights as an Advocacy Tool," People's School, Cornell University, Jan. 27, 2017.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B

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

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

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

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

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

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

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

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

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

Sincerely yours,

Santiago A. Canton
Executive Secretary

APPENDIX C

SANDRA L. BABCOCK
Attorney at Law

June 1, 2004

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

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

Dear Judge Delgado:

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

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

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

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

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

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

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

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

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

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

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

Thank you in advance for your consideration of this matter.

Respectfully submitted,

Sandra L. Babcock
Counsel for the Government of Mexico

cc: Ted Hake
David Sergi
Consul Luis Manuel Lopez Moreno

APPENDIX D

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 27/2015

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

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. DECISION

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

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

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

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

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

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

Elizabeth Abi-Mershed
Assistant Executive Secretary

APPENDIX E

IN THE SUPREME COURT OF OHIO

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

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

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COUNSEL FOR APPELLANT LOZA

IN THE SUPREME COURT OF OHIO

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Respectfully submitted,

By: Laurence E Komp by James S

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COUNSEL FOR APPELLANT LOZA

CERTIFICATE OF SERVICE

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

JAMES A. WILSON (#0030704)
Vorys, Sater, Seymour & Pease LLC

APPENDIX F

The Supreme Court of Ohio

State of Ohio

v.

Jose Trinidad Loza

Case No. 1993-1245

ENTRY

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

(Butler County Court of Appeals; No. CA91110198)

Maureen O'Connor
Chief Justice

EXHIBIT 6

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Correctional Institutions Division

EXECUTION PROCEDURE

April 2019

ADOPTION OF EXECUTION PROCEDURE

In my duties as Division Director of the Correctional Institutions Division, I hereby adopt the attached Execution Procedure for use in the operation of the Texas Department of Criminal Justice Death Row housing units and perimeter functions. This Procedure is in compliance with Texas Board of Criminal Justice Rule §152.51; §§492.013(a), 493.004, Texas Government Code, and Article 43.14 – 43.20, Code of Criminal Procedure.

Lorie Davis
Director, Correctional Institutions Division

4·2·19
Date

EXECUTION PROCEDURES

PROCEDURES

I. Procedures Upon Notification of Execution Date

A. The clerk of the trial court pursuant to Tex Code of Criminal Procedure art. 43.15 shall officially notify the Correctional Institutions Division (CID) Director, who shall then notify the Death Row Unit Warden, and the Huntsville Unit Warden of an offender's execution date. Once an execution date is received, the Death Row Unit Warden's office shall notify the Unit Classification Chief, and the Death Row Supervisor.

B. The Death Row Supervisor shall schedule an interview with the condemned offender and provide him with the Notification of Execution Date (Form 1). This form provides the offender with a list of the information that shall be requested from him (2) two weeks prior to the scheduled execution.

C. The condemned offender may be moved to a designated cell. Any keep-on-person (KOP) medication shall be confiscated and administered to the offender as needed by Unit Health Services staff.

II. Stays of Execution

A. Official notification of a stay of execution shall be delivered to the CID Director, the Death Row Unit Warden, and the Huntsville Unit Warden through the Huntsville Unit Warden's Office. **Staff must not accept a stay of execution from the offender's attorney.** After the official stay is received, the Death Row Unit Warden's office shall notify the Unit Classification Chief and Death Row Supervisor.

B. Designated staff on the Death Row Unit shall notify the offender that a stay of execution has been received.

III. Preparation of the Execution Summary and Packet

A. Two Weeks (14 days) Prior to the Execution

1. The Death Row Unit shall begin preparation of the Execution Summary. The Execution Summary (Form 2) and the Religious Orientation Statement (Form 3) shall be forwarded to the Death Row Supervisor or Warden's designee for completion. A copy of the offender's current visitation list and recent commissary activity shall also be provided.

2. The Death Row Supervisor shall arrange an interview with the condemned offender to gather the information necessary to complete the Execution Summary and Religious Orientation Statement.

3. An offender may request to have his body donated to the Texas State Anatomical Board for medical education and research. The appropriate paperwork shall be supplied to the offender upon request.

4. The Execution Summary must be completed and returned by the Death Row Supervisor or Warden's designee in sufficient time to be forwarded to the CID Director's Office by noon of the 14th day. After approval by the CID Director, the summary shall be forwarded to the Death Row Unit Chaplain, the Huntsville Unit Warden's Office, and the Communications Department.

5. If the offender wishes to change the names of his witnesses, and it is less than fourteen (14) days prior to the scheduled execution, the offender shall submit a request in writing to the CID Director through the Death Row Unit Warden, who shall approve or disapprove the changes.

6. The Death Row Unit is responsible for completion of the Execution Packet which shall include:
   a. Execution Summary;
   b. Religious Orientation Statement;
   c. Copy of the Offender Travel Card;
   d. Current Visitation List;
   e. Execution Watch Notification;
   f. Execution Watch Logs;
   g. I-25 Offender's Request for Trust Fund Withdrawal;
   h. Offender Property Documentation (PROP-05 and PROP-08); and
   i. Other documents as necessary.

7. The Death Row Supervisor or the Warden's designee shall notify staff (Form 4) to begin the Execution Watch Log (Form 5).

8. The Execution Watch Log shall begin at 6:00 a.m. seven (7) days prior to the scheduled execution. The seven (7) day timeframe shall not include the day of the execution. The offender shall be observed, logging his activities every 30 minutes for the first six (6) days and every 15 minutes for the remaining 36 hours. The Communications Department may request information from the Execution Watch Log on the day of execution.

9. The original Execution Packet and the offender's medical file shall be sent with the condemned offender in the transport vehicle to the Huntsville Unit or the Goree Unit for a female offender. The Death Row Unit Warden shall maintain a copy of the Execution Packet on the Death Row Unit.

10. If there are any changes necessary to the Execution Packet, staff shall notify the CID Director's Office and the Huntsville Unit Warden's Office.

B. The Day of Execution

1. On the morning of the day of the execution prior to final visitation, all of the offender's personal property shall be packed and inventoried. The property officer shall complete an "Offender Property Inventory" (PROP-05) detailing each item of the offender's property. The property officer shall also complete a "Disposition of Confiscated Offender Property" (PROP-08) indicating the offender's choice of disposition of personal property.

    a. If disposition is to be made from the Huntsville Unit a copy of the property forms should be maintained by the Death Row Unit Property Officer and the originals forwarded to the Huntsville Unit with the property.

    b. If disposition is to be made from the Death Row Unit a copy of the property forms will be placed in the Execution Packet and the original forms maintained on the Death Row Unit through the completion of the disposition process.

    c. The Mountain View Unit Warden shall ensure that a female offender brings personal hygiene and gender-specific items to the Huntsville Unit as appropriate.

2. Designated staff shall obtain the offender's current Trust Fund balance and prepare the Offender's Request for Trust Fund Withdrawal (I-25) for completion by the offender.

    a. The following statement should be written or typed on the reverse side of the I-25, "In the event of my execution, please distribute the balance of my Inmate Trust Fund account as directed by this Request for Withdrawal." The offender's name, number, signature, thumbprint, date, and time should be below this statement. Two (2) employees' names and signatures should be below the offender's signature as witnesses that the offender authorized the form.

    b. This Request for Withdrawal form shall be delivered to the Inmate Trust Fund for processing by 10:00 a.m. CST the next business day following the execution.

3. A female offender may be transported to the Goree unit prior to the day of the execution. The Execution Transport Log for Female Offenders (Form 7) shall be initiated at the Mountain View Unit. The Goree Unit staff will initiate the Execution Watch Log upon arrival on the Goree Unit, permit visitation as appropriate and transport the offender to the Huntsville Unit.

The Transport Log shall resume when the offender departs the Goree Unit.

4. The condemned offender shall be permitted visits with family and friends on the morning of the day of the scheduled execution. No media visits shall be allowed at the Goree Unit.

   NOTE: Special visits (minister, relatives not on the visitation list, attorney, and other similar circumstances) shall be approved by the Death Row or Goree Unit Warden or designee. Exceptions may be made to schedule as many family members to visit prior to the offender's scheduled day of execution. These are considered to be special visits. No changes shall be made to the offender's visitation list.

5. The Execution Watch Log shall be discontinued when the Execution Transport Log for Male Offenders (Form 6) is initiated.

6. When appropriate the offender shall be escorted to 12 building at the Polunsky or the designated area at the Mountain View or Goree Unit and placed in a holding cell. The appropriate Execution Transport Log shall be initiated and the offender shall be prepared for transport to the Huntsville Unit. The offender shall be removed from the transport vehicle at the Huntsville Unit and escorted by Huntsville Unit security staff into the execution holding area.

7. Any transportation arrangements for the condemned offender between units shall be known only to the Wardens involved, the CID Director, as well as those persons they designate as having a need to know. No public announcement shall be made concerning the exact time, method, or route of transfer. The CID Director's Office and the Communications Department shall be notified immediately after the offender arrives at the Huntsville Unit

8. When the offender enters the execution holding area the Execution Watch Log shall immediately resume. The restraints shall be removed and the offender strip-searched.

9. The offender shall be fingerprinted, placed in a holding cell, and issued a clean set of TDCJ clothing.

10. The Warden shall be notified after the offender has been secured in the holding cell. The Warden or designee shall interview the offender and review the information in the Execution Packet.

11. Staff from the Communications Department shall also visit with the offender to determine if he wishes to make a media statement and to obtain authorization, if necessary, to release the statement.

12. The offender may have visits with a TDCJ Chaplain(s), a Minister/Spiritual Advisor who has the appropriate credentials and his attorney(s) on the day of execution at the Huntsville Unit; however, the Huntsville Unit Warden must approve all visits.

13. There shall be no family or media visits allowed at the Huntsville Unit.

IV. Drug Team Qualifications and Training

A. The drug team shall have at least one medically trained individual. Each medically trained individual shall at least be certified or licensed as a certified medical assistant, phlebotomist, emergency medical technician, paramedic, or military corpsman. Each medically trained individual shall have one year of professional experience before participating as part of a drug team, shall retain current licensure, and shall fulfill continuing education requirements commensurate with licensure. Neither medically trained individuals nor any other members of the drug team shall be identified.

B. Each new member of the drug team shall receive training before participating in an execution without direct supervision. The training shall consist of following the drug team through at least two executions, receiving step-by-step instruction from existing team members. The new team member will then participate in at least two executions under the direct supervision of existing team members. Thereafter, the new team member may participate in executions without the direct supervision of existing team members.

C. The Huntsville Unit Warden shall review annually the training and current licensure, as appropriate, of each team member to ensure compliance with the required qualifications and training.

V. Pre-execution Procedures

A. The Huntsville Unit Warden's Office shall serve as the communication command post and entry to this area shall be restricted.

B. Inventory and Equipment Check

1. Designated staff on the Huntsville Unit are responsible for ensuring the purchase, storage, and control of all chemicals used in lethal injection executions for the State of Texas.

2. The drug team shall obtain all of the equipment and supplies necessary to perform the lethal injection from the designated storage area.

3. An inventory and equipment check shall be conducted.

4. Expiration dates of all applicable items are to be checked on each individual item. Outdated items shall be replaced immediately.

C. Minister/Spiritual Advisor and attorney visits shall occur between 3:00 and 4:00 p.m. CST unless exceptional circumstances exist. Exceptions may be granted under unusual circumstances as approved by the Huntsville Unit Warden.

D. The offender shall be served his last meal at approximately 4:00 p.m. CST.

E. The offender shall be afforded an opportunity to shower and shall be provided with clean clothes at some time prior to 6:00 p.m. CST.

F. Only TDCJ security personnel shall be permitted in the execution chamber. The CID Director or designee and the Huntsville Unit Warden or designee shall accompany the offender while in the Execution Chamber. TDCJ Chaplains and Ministers/Spiritual Advisors designated by the offender may observe the execution only from the witness rooms.

VI. Set up Preparations for the Lethal Injection

A. One (1) syringe of normal saline shall be prepared by members of the drug team.

B. The lethal injection drug shall be mixed and syringes shall be prepared by members of the drug team as follows:

Pentobarbital - 100 milliliters of solution containing 5 grams of Pentobarbital.

C. The drug team shall have available a back-up set of the normal saline syringe and the lethal injection drug in case unforeseen events make their use necessary.

VII. Execution Procedures

A. After 6:00 p.m. CST and after confirming with the Office of the Attorney General and the Governor's Office that no further stays, if any, will be imposed and that imposition of the court's order should proceed, the CID Director or designee shall give the order to escort the offender into the execution chamber.

B. The offender shall be escorted from the holding cell into the Execution Chamber and secured to the gurney.

C. A medically trained individual shall insert intravenous (IV) catheters into a suitable vein of the condemned person. If a suitable vein cannot be discovered in an arm, the medically trained individual shall substitute a suitable vein in another part of the body, but shall not use a "cut-down" procedure to access a suitable vein. The medically trained individual shall take as much time as is needed to properly insert the IV lines. The medically trained individual shall connect an IV administration set, and start a normal saline solution to flow at a slow rate through

one of the lines. The second line is started as a precaution and is used only if a potential problem is identified with the primary line. The CID Director or designee, the Huntsville Unit Warden or designee, and the medically trained individual shall observe the IV to ensure that the rate of flow is uninterrupted.

D. Witnesses to the execution shall be brought into the appropriate viewing area ONLY AFTER the Saline IV has been started and is running properly, as instructed by the Huntsville Unit Warden or designee.

E. The CID Director or designee shall give the order to commence with the execution.

F. The Huntsville Unit Warden or designee shall allow the condemned person to make a brief, last statement.

G. The Huntsville Unit Warden or designee shall instruct the drug team to induce, by syringe, substances necessary to cause death.

H. The flow of normal saline through the IV shall be discontinued.

I. The lethal dose of Pentobarbital shall be commenced. When the entire contents of the syringe have been injected, the line shall be flushed with an injection of normal saline.

J. The CID Director or designee and the Huntsville Unit Warden or designee shall observe the appearance of the condemned individual during application of the Pentobarbital. If, after a sufficient time for death to have occurred, the condemned individual exhibits visible signs of life, the CID Director or designee shall instruct the drug team to administer an additional 5 grams of Pentobarbital followed with a saline flush.

K. At the completion of the process and after a sufficient time for death to have occurred, the Warden shall direct the physician to enter the Execution Chamber to examine the offender, pronounce the offender's death, and designate the official time of death.

L. The body shall be immediately removed from the Execution Chamber and transported by a coordinating funeral home. Arrangements for the body should be concluded prior to execution.

VIII. Employee participants in the Execution Process shall not be identified or their names released to the public. They shall receive an orientation with the Huntsville, Goree, Polansky, or Mountain View Unit Wardens, who shall inform the employees of the TDCJ ED-06.63, "Crisis Response Intervention Support Program" (CRISP). The employees shall be encouraged to contact the Regional CRISP Team Leader following the initial participation in the execution process.

EXHIBIT 7

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Correctional Institutions Division

EXECUTION PROCEDURE

April 2021

ADOPTION OF EXECUTION PROCEDURE

In my duties as Division Director of the Correctional Institutions Division, I hereby adopt the attached Execution Procedure for use in the operation of the Texas Department of Criminal Justice Death Row housing units and perimeter functions. This Procedure complies with Texas Board of Criminal Justice Rule §152.51; §§492.013(a), 493.004, Texas Government Code; and Articles 43.14 – 43.20, Texas Code of Criminal Procedure.

Bobby Lumpkin
Director, Correctional Institutions Division

4.21.2021
Date

EXECUTION PROCEDURES

I. Notification of a Scheduled Execution Date

A. Pursuant to Article 43.15, Texas Code of Criminal Procedure, the clerk of the trial court shall officially notify the Correctional Institutions Division (CID) Director, who shall then notify the Death Row Unit Warden and the Huntsville Unit Warden, of an inmate's scheduled execution date. Once a scheduled execution date is received, the Death Row Unit Warden's office shall notify the unit's Chief of Classification and the Death Row Supervisor.

B. The Death Row Supervisor shall schedule an interview with the inmate and provide the inmate with the Notification of Execution Date (Form 1). This form provides the inmate with a list of the information that shall be requested from the inmate two (2) weeks before the scheduled execution.

C. The inmate may be moved to a designated cell. Any keep-on-person (KOP) medication shall be confiscated and administered to the inmate as needed by medical staff on the unit.

D. Upon the inmate's receipt of the Notification of Execution Date (Form 1), the inmate shall have thirty (30) days to submit a request in writing to the Death Row Unit Warden to have a TDCJ Chaplain or the inmate's spiritual advisor present inside the execution chamber during the inmate's scheduled execution.

E. The inmate's requested spiritual advisor must be included on the inmate's visitation list and have previously established an ongoing spiritual relationship with the inmate demonstrated by regular communications or in-person visits with the inmate before the inmate's scheduled execution date.

F. If an inmate requests to have a spiritual advisor present inside the execution chamber during the inmate's scheduled execution, the inmate will provide the Death Row Unit Warden with contact information for the spiritual advisor. Upon receipt of the spiritual advisor's contact information, the Death Row Unit Warden shall contact the spiritual advisor.

1. The spiritual advisor shall have fourteen (14) days from the date of contact with the Death Row Unit Warden to provide credentials to the Death Row Unit Warden verifying the individual's official status as a spiritual advisor. As required in TDCJ Chaplaincy Manual Policy 11.09, "Inmate Ministerial and Spiritual Advisor Visits," the credentials shall be at least one of the following:

    a. Minister Identification Card supplied by the authorizing denomination or religious group;

b. License or ordination certificate;

c. Official letter from an organized religious body or congregation indicating the status of the letter holder as an official representative of the religious body or congregation for all religious functions or for specific prison-related religious functions; or

d. A current listing as a clergy person in an official listing of ministers and clergy from an organized religious body.

2. The TDCJ will perform a background check, including but not limited to a criminal background check, on the spiritual advisor.

3. If the spiritual advisor is approved to be present inside the execution chamber during the inmate's scheduled execution, the spiritual advisor must satisfactorily complete a two (2) hour, in-person orientation with a staff member of the Rehabilitation Programs Division a minimum of ten (10) days before the inmate's scheduled execution date.

4. If the spiritual advisor is determined to be a security risk, the Huntsville Unit Warden or designee may deny the inmate's request for the spiritual advisor to be present inside the execution chamber during the inmate's scheduled execution.

5. The inmate or spiritual advisor may appeal the denial of the inmate's request to have the spiritual advisor present inside the execution chamber during the inmate's scheduled execution by submitting a request in writing to the CID Director. The decision of the CID Director is final.

II. Preparation of the Execution Summary and Packet

A. Two Weeks (14 days) Before the Scheduled Execution

1. The Death Row Unit is responsible for completion of the Execution Packet which shall include:

   a. Execution Summary;
   b. Religious Orientation Statement;
   c. Current Visitation List;
   d. Execution Watch Notification;
   e. Execution Watch Log;
   f. Inmate Request for Withdrawal (I-25);
   g. Inmate Property Documentation (PROP-05 and PROP-08); and
   h. Other documents as necessary.

2. The Execution Summary (Form 2) and the Religious Orientation Statement (Form 3) shall be forwarded to the Death Row Supervisor or the Death Row Unit Warden's designee for completion. A copy of the inmate's current visitation list and recent commissary activity shall also be provided.

3. The Death Row Supervisor shall arrange an interview with the inmate to gather the information necessary to complete the Execution Summary and Religious Orientation Statement.

4. The Execution Summary must be completed and returned by the Death Row Supervisor or the Death Row Unit Warden's designee in sufficient time to be forwarded to the CID Director's Office by noon of the fourteenth (14th) day. After approval by the CID Director, the Execution Summary shall be forwarded to the Death Row Unit Chaplain, the Huntsville Unit Warden's Office, and the Communications Department.

5. If the inmate wishes to change the names of the inmate's witnesses, and it is less than fourteen (14) days before the scheduled execution date, the inmate shall submit a request in writing to the CID Director, through the Death Row Unit Warden, who shall approve or disapprove the changes.

6. While completing the Religious Orientation Statement, staff shall confirm if the inmate still requests the presence of a TDCJ Chaplain or the inmate's approved spiritual advisor in the execution chamber during the inmate's scheduled execution.

7. An inmate may request to have the inmate's body donated to the Texas State Anatomical Board for medical education and research. The appropriate paperwork shall be supplied to the inmate upon request.

B. One Week (7 days) Before the Scheduled Execution

1. The Death Row Supervisor or the Death Row Unit Warden's designee shall notify staff (Form 4) to begin the Execution Watch Log (Form 5).

2. The Execution Watch Log shall begin at 6:00 a.m. Central Time seven (7) days before the inmate's scheduled execution. The seven (7) day timeframe shall not include the day of the inmate's scheduled execution. The inmate shall be observed, logging the inmate's activities every 30 minutes for the first six (6) days and every 15 minutes for the remaining 36 hours.

3. The Communications Department may request information from the Execution Watch Log on the day of the inmate's scheduled execution.

4. The original Execution Packet and the inmate's medical file shall be sent with the inmate in the transport vehicle to the Huntsville Unit or the Goree Unit for a female inmate.

   a. The Death Row Unit Warden shall maintain a copy of the Execution Packet on the Death Row Unit.

   b. If there are any changes necessary to the Execution Packet, staff shall notify the CID Director's Office and the Huntsville Unit Warden's Office.

C. The Day of the Scheduled Execution

1. On the morning of the day of the scheduled execution, before final visitation, all the inmate's personal property shall be packed and inventoried. The property officer shall complete an "Inmate Property Inventory" (PROP-05) detailing each item of the inmate's property. The property officer shall also complete a "Disposition of Confiscated Inmate Property" (PROP-08) indicating the inmate's choice of disposition of personal property.

   a. If disposition is to be made from the Huntsville Unit, a copy of the property forms shall be maintained by the Death Row Unit Property Officer, and the original property forms shall be forwarded to the Huntsville Unit with the inmate's property.

   b. If disposition is to be made from the Death Row Unit, a copy of the property forms shall be placed in the Execution Packet, and the original forms shall be maintained on the Death Row Unit through the completion of the disposition process.

   c. The Mountain View Unit Warden shall ensure that a female inmate brings personal hygiene and gender-specific items to the Huntsville Unit as appropriate.

2. Designated staff shall obtain the inmate's current trust fund balance and prepare the Inmate Request for Withdrawal (I-25) for completion by the inmate.

   a. The following statement shall be written or typed on the reverse side of the I-25 form, "In the event of my execution, please distribute the balance of my Inmate Trust Fund account as directed by this Request for Withdrawal." The inmate's name, number, signature, thumbprint, and the date and time of the inmate's signature shall be included below this statement. Two (2) employees' names and signatures shall be printed and signed below the inmate's signature

as witnesses that the inmate authorized the form.

b. The I-25 form shall be delivered to the Commissary and Trust Fund Department for processing by 10:00 a.m. Central Time the next business day following the completed execution.

3. The inmate shall be permitted visitation with individuals designated on the inmate's approved visitation list on the morning of the day of the scheduled execution.

a. Exceptions may be made to schedule as many visits as possible before the inmate is transported to the Huntsville Unit. These visits are considered "Special Visits."

b. Special visits (spiritual advisor, attorney(s), and individuals not on the inmate's approved visitation list) shall be approved by the Death Row or Goree Unit Warden or designee. No changes shall be made to the inmate's approved visitation list.

c. No media visits shall be allowed at the Goree Unit.

4. When appropriate, a male inmate shall be escorted to a holding cell at the Polunsky Unit. The Execution Transport Log for Male Inmates (Form 6) shall be initiated, and the inmate shall be prepared for transport to the Huntsville Unit. The Execution Watch Log shall be discontinued when the Execution Transport Log for Male Inmates is initiated.

5. A female inmate may be transported to the Goree Unit before the day of the inmate's scheduled execution. The Execution Transport Log for Female Inmates (Form 7) shall be initiated at the Mountain View Unit. The Goree Unit staff will initiate the Execution Watch Log upon arrival at the Goree Unit, permit visitation as appropriate, and transport the female inmate to the Huntsville Unit. The Execution Watch Log shall be discontinued, and the Execution Transport Log for Female Inmates shall resume when the female inmate departs the Goree Unit.

6. Any transportation arrangements for the inmate between units shall be known only to the Wardens involved, the CID Director, as well as those persons they designate as having a need to know. No public announcement shall be made concerning the exact time, method, or route of transfer.

7. Upon arrival at the Huntsville Unit, the inmate shall be removed from the transport vehicle and escorted by Huntsville Unit security staff into the execution holding area. The CID Director's Office and the Communications Department shall be notified immediately after the inmate arrives at the Huntsville Unit.

8. The Execution Watch Log shall immediately resume when the inmate enters the pre-execution holding area.

9. The inmate's restraints shall be removed, and the inmate shall be fingerprinted and strip-searched.

10. The inmate shall be placed in a holding cell and issued a clean set of TDCJ clothing.

11. The Huntsville Unit Warden shall be notified after the inmate has been secured in the holding cell. The Huntsville Unit Warden or designee shall interview the inmate and review the information in the Execution Packet.

12. The inmate shall be permitted visitation with a TDCJ Chaplain(s), the inmate's approved spiritual advisor, and the inmate's attorney(s) on the day of the scheduled execution at the Huntsville Unit. The Huntsville Unit Warden must approve all visits.

13. There shall be no family or media visits allowed at the Huntsville Unit.

III. Drug Team Qualifications and Training

A. The drug team shall have at least one medically trained individual. Each medically trained individual shall at least be certified or licensed as a certified medical assistant, phlebotomist, emergency medical technician, paramedic, or military corpsman. Each medically trained individual shall have one year of professional experience before participating as part of the drug team, shall retain current licensure, and shall fulfill continuing education requirements commensurate with licensure. Neither medically trained individuals nor any other members of the drug team shall be identified.

B. Each new member of the drug team shall receive training before participating in an execution without direct supervision. The training shall consist of following the drug team through at least two (2) executions, receiving step-by-step instruction from existing team members. The new team member will then participate in at least two (2) executions under the direct supervision of existing team members. Thereafter, the new team member may participate in executions without the direct supervision of existing team members.

C. The Huntsville Unit Warden shall review annually the training and current licensure, as appropriate, of each drug team member to ensure compliance with the required qualifications and training.

IV. Pre-execution Procedures

A. The Huntsville Unit Warden's Office shall serve as the communication command post, and entry to the office area shall be restricted.

B. Inventory and Equipment Check

1. Designated Huntsville Unit staff are responsible for ensuring the purchase, storage, and control of all chemicals used in lethal injection executions for the State of Texas.

2. The drug team shall obtain all equipment and supplies necessary to perform the lethal injection from the designated storage area.

3. An inventory and equipment check shall be conducted.

4. Expiration or beyond use dates of all applicable items are to be checked on each individual item. Outdated items shall be replaced immediately.

C. Attorney visits shall occur between 3:00 and 4:00 p.m. Central Time, and spiritual advisor visits shall occur between 3:00 and 5:00 p.m. Central Time. The attorney and spiritual advisor may not meet with the inmate at the same time. Exceptions may be granted under unusual circumstances and must be approved by the Huntsville Unit Warden.

1. The inmate's attorney or the inmate's approved spiritual advisor must arrive at the Huntsville Unit no later than 2:30 p.m. Central Time on the day of the scheduled execution to participate in an attorney or spiritual advisor visit with the inmate.

2. The inmate's approved spiritual advisor must arrive at the Huntsville Unit no later than 5:00 p.m. Central Time on the day of the scheduled execution to accompany the inmate in the execution chamber.

3. The failure of an inmate's approved spiritual advisor to arrive at the Huntsville Unit before 5:00 p.m. Central Time on the day of the scheduled execution will not prevent the execution from proceeding.

D. The inmate shall be served a last meal at approximately 5:00 p.m. Central Time.

E. The inmate shall be afforded an opportunity to shower and shall be issued a clean set of TDCJ clothing at some time before 6:00 p.m. Central Time.

V. Preparations for the Lethal Injection

A. One (1) syringe of normal saline shall be prepared by members of the drug team.

B. The lethal injection drug shall be mixed and syringes shall be prepared by members of the drug team as follows:

Pentobarbital - 100 milliliters of solution containing 5 grams of Pentobarbital.

C. The drug team shall have available a back-up set of the normal saline syringe and the lethal injection drug in case unforeseen events make their use necessary.

VI. Execution Procedures

A. After 6:00 p.m. Central Time and after confirming with the Office of the Attorney General and the Governor's Office that no further stays of execution, if any, will be imposed and that imposition of the court's order should proceed, the CID Director or designee shall give the order to escort the inmate into the execution chamber.

B. The inmate shall be escorted from the holding cell into the execution chamber and secured to the gurney.

C. A medically trained individual shall insert intravenous (IV) catheters into a suitable vein of the inmate. If a suitable vein cannot be discovered in an arm, the medically trained individual shall substitute a suitable vein in another part of the body but shall not use a "cut-down" procedure to access a suitable vein. The medically trained individual shall take as much time as is needed to properly insert the IV lines. The medically trained individual shall connect an IV administration set and start a normal saline solution to flow at a slow rate through one of the lines. The second line is started as a precaution and is used only if a potential problem is identified with the primary line. The CID Director or designee, the Huntsville Unit Warden or designee, and the medically trained individual shall observe the IV lines to ensure that the rate of flow is uninterrupted.

D. After the normal saline solution IV has been started and is running properly, the following shall occur as instructed by the Huntsville Unit Warden or designee:

1. If requested by the inmate and previously approved by the TDCJ, a TDCJ Chaplain or the inmate's approved spiritual advisor will be escorted into the execution chamber by an agency representative to observe the inmate's execution.

2. Witnesses to the execution shall be escorted into the appropriate witness rooms.

NOTE: Any behavior by the spiritual advisor or witnesses deemed by the CID Director or designee to be disruptive to the execution procedure shall be cause for immediate removal from the Huntsville Unit.

E. The CID Director or designee shall give the order to commence with the execution.

F. The Huntsville Unit Warden or designee shall allow the inmate to make a brief, last statement.

G. The Huntsville Unit Warden or designee shall instruct the drug team to induce, by syringe, substances necessary to cause death.

H. The flow of normal saline solution through the IV shall be discontinued, and the lethal dose of Pentobarbital shall be commenced.

I. When the entire contents of the syringe have been injected, the line shall be flushed with an injection of normal saline solution.

J. The CID Director or designee and the Huntsville Unit Warden or designee shall observe the appearance of the inmate during application of the Pentobarbital. If, after a sufficient time for death to have occurred, the inmate exhibits visible signs of life, the CID Director or designee shall instruct the drug team to administer an additional 5 grams of Pentobarbital followed with a normal saline solution flush.

K. At the completion of the process and after a sufficient time for death to have occurred, the Huntsville Unit Warden or designee shall direct the physician to enter the execution chamber to examine the inmate, pronounce the inmate death, and designate the official time of death. After the inmate is pronounced deceased, the spiritual advisor will be escorted from the execution chamber, and the witnesses shall be escorted from the witness rooms.

L. The inmate's body shall be immediately removed from the execution chamber and transported by a coordinating funeral home. Arrangements for the inmate's body shall be concluded before the execution.

VII. Stays of Execution

A. Official notification of a stay of execution shall be delivered to the CID Director, the Death Row Unit Warden, and the Huntsville Unit Warden. **Staff must not accept a stay of execution from the inmate's attorney**. After the official stay of execution is received, the Death Row Unit Warden's office shall notify the unit's Chief of Classification and Death Row Supervisor.

B. Designated staff on the Death Row Unit shall notify the inmate that a stay of execution has been received.

EXHIBIT 11

DECLARATION OF DEBORAH S. MIORA, Ph.D.

I, Deborah S. Miora, PhD, declare the following:

1. I am trained in mental health and neurocognitive diagnosis, treatment planning and delivery of mental health services, have Masters' and PhD degrees in clinical psychology, and have worked as a psychologist licensed in the state of California since 1990. I have been asked to provide this declaration regarding whether a neuropsychological evaluation of Melissa Lucio could yield evidence that she is intellectually disabled, highly suggestible, and/or cognitively and emotionally impaired. The summary answer to those questions is "yes."

2. My qualifications to offer these opinions are as follows. I pursued and obtained a post-doctoral certificate in neuropsychology given my ongoing interest and work in understanding the brain and behavior in the forensic arena. I have been called to evaluate over 400-600 persons in criminal, civil, and workers compensation proceedings. My specialized psycho-legal emphasis over the past 20-25 years has been in consulting to attorneys, evaluating neurodevelopmentally challenged youth and federal and state capital case defendants and petitioners at proceedings from pre-trial to post-conviction, and evaluation in civil rights matters.

3. I have taught in and run a graduate program in clinical-forensic psychology and steered or sat on committees of student dissertations in the areas of juvenile and adult competency, effort testing and neurodevelopmental conditions affecting brain functioning as relates to susceptibility to involvement in the juvenile justice system due to naivete and misinterpretation of social cues. I am on Los Angeles Superior Court panels as an expert in juvenile justice and neuropsychology. I have often been called to work in and consult on complex cases that require skills bridging clinical and neuropsychology as related to psycho-legal questions such as legal competencies, intellectual disability, and the role of trauma and cognitive dysfunction in capital proceedings.

4. I have consulted to attorneys in capital proceedings at all phases, reviewing neurocognitive data and determining missing elements or thoroughness of assessments, making recommendations to state and federal level authorities about best practices, and served as an oral examiner for the state of California licensing board for several years. I have taught psychodiagnostic assessment and its relevance to legal proceedings, legal competencies in youth and adults, and continued my training in capital case consultation. I have presented on

neuropsychological assessment in youth and capital proceedings to attorneys and mental health professionals.

5. I have trained extensively in and taught the theory and practice of psychoanalytic psychotherapy, psychopathology, development and juvenile justice, legal competencies, and trauma work in crisis and long-term intensive modalities with individuals, couples, and families. My added post-doctoral training and ongoing education in neuropsychology led me to develop a specialty in intensive evaluation, presentation in litigation, and education of Courts and triers of fact about the cognitive and psychiatric factors that affect development and brain function.[1]

6. I was asked to evaluate the psychodiagnostic assessment[2] report by Dr. Pinkerman, a psychologist, that represented his work based on six hours of meeting with Melissa Lucio during her trial proceedings. In specific, I was asked whether Dr. Pinkerman's reported findings can be relied upon to rule out Intellectual Disability, high suggestibility, and problems with language processing and expression. The answer is "no."

7. Dr. Pinkerton's work suffers from a basic flaw in that he computed a full-scale IQ score based on less than a full battery of tests needed to generate the bulk of information relevant to IQ score interpretation. That is, the instrument that he administered was uninterpretable in the manner that has become customary, as the field has advanced to appreciate four key components that contribute to generating an IQ score proper. If the index scores show variability, then the full-scale IQ score is suspect, as it may be driven up or down by variable index scores. The lack of attention to the variability in the index scores can obscure significant areas of weakness.

8. In the case of Ms. Lucio, petitioner shows an index score in the area of verbal comprehension suspect of being in the very low range of intellectual functioning (with 95% of the normative population scoring better), another index score that was not computed related to being able to register, hold in mind, and manipulate or do something with the information (working memory), and variable verbal versus performance scores on tests tapping verbal expression of responses versus use of visual and visual-motor skills in activities such as solving puzzles and completing designs with blocks.

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[1] A copy of my CV has been appended for your consideration

[2] This is not a neurocognitive assessment that I would have expected might have been recommended by the evaluator who produced a basic assessment report covering IQ and personality functioning with no conceptual attention to the status of this woman's brain functioning in the context of a death sentence. He recognized a significant difference between her verbal and performance IQ scores but did not explain the relevancy of this finding to possible learning disabilities such as in language comprehension and expression.

9. One of the important functions of a neuropsychologist in the forensic context of a capital case, is to be able to score and analyze the tests and results of the evaluations of other professionals to determine whether the scoring, analysis, and interpretations are sound in the context of that evaluation of that individual in that individual's context. In order for a neuropsychologist, or any scientist to be reliable, the data underlying any opinions must be available for review by other similarly qualified professionals. The standard of care for neuropsychologists in capital cases is that we retain our raw data as long as legal challenges are or may be available. Counsel for Ms. Lucio have informed me that Dr. Pinkerman did not retain his raw data. Therefore, the data are not available for review, and, in view of the flaws outlined above, the integrity and reliability of his findings are suspect.

10. In 2019, I advised Ms. Lucio's counsel that it would be prudent to determine whether this petitioner is indeed intellectually disabled, suffers relevant and significant brain-based deficits, or is psychologically disabled. I opined that a neurocognitive assessment would have been a reasonable course of action to be recommended to counsel, if the evaluator had had the where withal to identify the need for further assessment. It is unclear whether academic function was explored, although that is a common element in any basic psychodiagnostic assessment, even if not an assessment of brain functions and brain-behavior relationships as conducted by neuropsychologists.

11. Ms. Lucio showed triggers for a neurocognitive assessment. Those included a history of chronic childhood sexual abuse, neglect, physical and emotional abuse in adult relationships, low self-esteem and self-concept, passivity rather than aggressivity as a child, and possible brain-based deficits related to trauma and possible neurodevelopmental conditions. Although not complete evaluated or diagnosed by Dr. Pinkerman, these areas of relevance to Ms. Lucio's response to interrogation and intellectual functioning are hinted at in the glimpse into the petitioner's intellectual functioning provided in a computer printout, a portion of which was reproduced in Dr. Pinkerman's report.

12. Counsel engaged me to perform that evaluation and I obtained temporary privileges to practice in Texas under a sponsor's Texas license. In January 2020, I was preparing to evaluate Ms. Lucio when I was informed that the prison in which she is housed would require that she remain in a steel mesh cage during the evaluation. I informed Ms. Lucio's counsel that I could not conduct the evaluation under those conditions without compromising the ability to

provide opinions that would stand up to forensic scrutiny. Ms. Lucio's counsel informed me that he would attempt to find a remedy. Then the pandemic struck, rendering it impossible for me to evaluate Ms. Lucio.

13. During the pandemic and a year from when it was issued, my temporary license to work in Texas expired. Based on my last effort, it would take at least 30 days to get a new temporary license.

14. I have evaluated many men who were death eligible or sentenced to death. No other prison has insisted that a death-sentenced person remain in a steel mesh cage during the evaluation. The evaluation cannot proceed in full under those conditions which exceed unusual and do not conform to any known standardized procedure for conducting a neurocognitive assessment.

I declare under penalty of perjury that the foregoing four-page declaration is true and correct to the best of my knowledge. Subscribed to by me in Chapel Hill, North Carolina.

Deborah S. Cunningham

Signed

February 8, 2022

Dated

Deborah S. Miora, Ph.D.

Clinical, Forensic and Neuropsychology
CA License # PSY11599

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CURRICULUM VITAE

EDUCATION

Analytic candidate at PCC

Certificate One-Year Program in Psychoanalytic Psychotherapy (2013)
Certificate Second-Year Program in Psychoanalytic Psychotherapy (2015)
Psychoanalytic Center of California
Los Angeles, CA

Ph.D., Clinical Psychology (1987)
M.A., Clinical Psychology (1981)
California School of Professional Psychology
Los Angeles, CA

Postdoctoral Certificate in Neuropsychology (2006)
Fielding Graduate Institute
Santa Barbara, CA

B.A., with honors
Psychology and Sociology (1979)
Ithaca College
Ithaca, New York

PROFESSIONAL AFFILIATIONS & EXPERIENCE

American Psychological Association, Past Member
-Division 39 (Division of Psychoanalysis)
-Division 40 (Division of Neuropsychology)
-Division 41(American Psychology-Law Society)

National Register of Health Service Providers in Psychology, Provider

National Academy of Neuropsychology, Member

International Neuropsychological Society, Member

Los Angeles Superior Court Panel, Expert in Neuropsychology

Los Angeles Superior Court Panel, Expert in Juvenile Justice

Psychotherapy: Pediatric and adult in individual and family modalities.

Neuropsychological Assessment: Pediatric and adult, clinical and forensic

Forensic Evaluation: Capital and other criminal psychosocial, sentencing, competency, fitness and neuropsychological evaluations, civil evaluations, medico-legal evaluations, deposition and testimony

Academic Work: Associate Professor teaching graduate coursework, chair and committee member for dissertations, quality assurance assessment at practicum and internship training sites, student advisement

Indirect Services: Consultation to teachers and staff in educational setting, mental health and health professionals, attorneys regarding mental health issues, invited speaker and lecturer, presentations at internship training sites and professional organizations

Specialties: Psychoanalytic and cognitively-oriented psychotherapy with children and adults, evaluation and intervention in cases of attachment and trauma, forensic neuropsychological and psychosocial evaluations with emphasis on competency and capital cases, pediatric clinical and juvenile justice neuropsychological evaluation of complex neurocognitive and neuropsychiatric cases of developmentally, intellectually, and psychiatrically challenged persons[1]

PROFESSIONAL HISTORY

2012-2015 ***Associate Professor,* California School of Forensic Studies, Alliant International University at Los Angeles, CA**
Taught core clinical and forensic coursework in developmental bases of behavior, psychopathology, assessment, multicultural perspectives, juvenile and adult assessment of competencies, doctoral dissertation development and execution of research in areas of juvenile justice, multicultural issues and neuropsychology; mentorship of students matriculating through program.

2010-2012 ***Assistant Professor,* California School of Forensic Studies, Alliant International University at Los Angeles, CA**
Taught core forensically oriented coursework in developmental bases of behavior, psychopathology, multicultural perspectives, juvenile and adult assessment of legal competencies, doctoral dissertation development; chair dissertations and membership on committees in juvenile justice, multicultural issues and neuropsychology; participate in review of applicants and mentorship of students in program.

2008-2009 ***Assistant Professor & Program Director,* California School of Forensic Studies, Alliant International University at Los Angeles, CA**
Graduate level course work, dissertation committee work, and administrative direction of faculty, students and staff, admissions interviews, assessment of compliance for accreditation, program development

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[1] I was trained in pediatric work for two years in my PhD Program; and in forensics at one-year internship treating MDSO's and NGRI's, a number of whom were developmentally and psychiatrically disabled. I undertook an additional two-year post-graduate training in neuropsychology and was supervised by a pediatric neuropsychologist on cases of developmental and intellectual abilities.

I developed a neuropsychological component to a satellite clinic of a large mental health clinic in a disadvantaged area of Los Angeles. There I evaluated MR/ID, low birth weight, in utero substance exposed, learning disabled, and other developmentally challenged youth. I am on a Los Angeles Juvenile Justice panel as an expert in evaluating difficult to place youth who present with complex clinical pictures. I evaluate MR in adult and youth defendants using neurocognitive, adaptive functioning, and other assessment tools. My application and work sample were accepted to sit for boards in pediatric neuropsychology (ABPdN).

2006-2008 ***Adjunct Faculty,* Center for Forensic Studies, Alliant International University at Los Angeles, CA**
Graduate level coursework in mental health assessment of legal competencies and dissertation development consultation

1990-present ***Private Practice,* Beverly Hills, CA**
Individual, couples, and family treatment, clinical and forensic psychosocial and neuropsychological evaluation, supervision and consultation, neuropsychological consultation to attorneys, educators, physicians and mental health professionals

1990-1997 ***Adjunct Clinical Professor,* California School of Professional Psychology, Alhambra, CA**
Graduate level coursework and dissertation and Psy.D project committee member

1993-1995 ***Director of Counseling,* Hollywood Sunset Community Clinic, Los Angeles, CA**
Administered provision of mental health services by 15-17 interns, training provided by volunteer staff of seven supervisors, and daily operation of department

1993-1994 ***Independent Contractor,* Beverly Hills Psychological Services, Beverly Hills, CA**
Comprehensive evaluation in criminal, civil and worker's compensation cases

1992-1993 ***Supervisor,* Leeway School for Educational Therapy, Alhambra, CA**
Supervision of six therapists who provided mental health services to children with significant neurocognitive, neuropsychiatric and environmental challenges

1990-1992 ***Evaluator,* Barrington Psychiatric Center, Los Angeles, CA**
Full evaluation and written report in Workers' Compensation cases

1988-1990 ***Staff Psychologist,* California School of Professional Psychology, Clinical Field Training Office, Los Angeles, CA**
Graduate level teaching and clinical field training site development and liaison

1984-1990 ***Psychological Assistant,* Beverly Hills and Los Angeles, CA**
Psychodiagnostic assessment in Workers' Compensation cases and individual and couples psychotherapy

1986 ***Case Worker,* Didi Hirsch Community Mental Health Center, Culver City, CA**
Comprehensive intake interviews, intensive group, family, and individual therapy in adult day treatment program serving severely mentally ill population

1980-1986 ***Emergency Services Crisis Consultant,* Didi Hirsch Community Mental Health Center, Culver City, CA**
Consultant to individuals, families, social service agencies, and professionals; community outreach; 5150 evaluations coordinated with other agencies; liaison to medical and legal system in trauma cases; six-week crisis intervention

SPECIALIZED FORENSIC WORK

2000-present ***Testimony and Deposition***
Provide expert opinion, testimony and deposition in criminal and civil matters most often based on direct examination of individuals undergoing capital and competency cases, juvenile competency and fitness, and other matters in which court seeks education. I consult on previously done work as to its validity and reliability.

2004-present ***Consultant,* California Appellate Project, San Francisco, CA**
Review neuropsychological and other relevant data; consult about validity and reliability of test data and analysis rendered, provide recommendations if additional evaluation is warranted in capital case appeals at state and federal levels

2003-present ***Competency and Neuropsychological Evaluation,* State and Federal Levels**
Competency evaluation and neuropsychological assessment in pretrial, sentencing and post-conviction habeas phases of capital and other criminal cases

1994-present ***Psychosocial and Neuropsychological Evaluation,* State and Federal Levels**
Development of neurocognitive and psychological profiles in the context of criminal and civil matters through evaluation, sometimes leading to deposition and testimony

1990-present ***Evaluation of Medico-Legal Cases***
Evaluation, deposition, and testimony in variety of civil matters

SPECIALIZED PEDIATRIC WORK

2003-present ***Juvenile Forensic Neuropsychological Evaluation,* Beverly Hills, CA**
Assessment of competency, fitness and related psycholegal questions

2005 ***Director of Neuropsychology,* Bright Minds Institute, Los Angeles, CA**
Neuropsychological consultation to pediatric neurologist, parents and educators

2004-2006 ***Neuropsychological Consultation,* Didi Hirsch Community Mental Health Center, Inglewood, CA**
Development and provision of neuropsychological evaluation service to ethnically and clinically diverse pediatric cases; consultation to therapists, social service agencies, educators and psychiatrists

2003-present ***Neuropsychological Consultation,* Maple Center, Beverly Hills, CA**
Provision of consultation to clinicians, in-service training to staff on working with families and parents and neuropsychological assessment

INTERNSHIP AND PRACTICUM EXPERIENCES

1982-1983 ***Pomona Valley Mental Health Authority, Pomona, CA***
Psychological Intern: Individual and family therapist to children and adults, PET evaluation for 5150, exposure to adult HRNB

1981-1982 ***Center for Legal Psychiatry (formerly UCLA Section on Legal Psychiatry),*** **Santa Monica, CA**
Psychological Intern: Individual and group therapist to MDSO and NGI patients released from inpatient psychiatric programs, prepared and submitted quarterly progress reports to courts with emphasis on risk assessment of current biopsychosocial stressors and status of offenders

1980-1981 ***Intercommunity Child Guidance Clinic, Whittier, CA***
Practicum Student: Intake interviews; individual, group and family systems therapist to community population of self-referred, school and court ordered children, adults and families

1980 ***Mid-Valley Diagnostic Center,*** **West Covina, CA**
Practicum Student: Data collection for NIMH-funded grant assessing relationship between juvenile delinquency and learning disorders, administered neuropsychological assessment instruments including the LNNB for Children, portions of the children's version of the HRNB and adjunctive measures, scored and analyzed protocols, wrote reports, provided parent feedback

1979-1980 ***Portals House, Inc, Los Angeles, CA***
Practicum Student: Intake interview, case management and therapy with seriously and chronically mentally disordered adults in transition from hospital to community assisted living

SELECTED LECTURES AND IN-SERVICES

1991 *Body as Waste Receptacle for Unwanted Contents.* Original paper presented at SPEAR conference, Los Angeles, CA

2003-2004 *Invited Lectures in Assessment Issues.* California Graduate Institute, Los Angeles, CA

2004 *Pediatric Neuropsychological Evaluation.* Invited Presentation to Interns and Staff at Maple Counseling Center, Beverly Hills, CA

2005 *How to Talk to Parents.* Invited Presentation to Interns and Staff at Maple Counseling Center, Beverly Hills, CA

2005 *Pediatric Neuropsychological Evaluation.* Presentation to team of interns and staff, Didi Hirsch Community Mental Health Center, Inglewood, CA

2005 *Pediatric Neuropsychological Evaluation.* Invited Presentation to Interns and Staff at Maple Counseling Center, Beverly Hills, CA

2005 *Neuropsychological Evaluation in IME Cases.* Presentation at annual meeting of the American College of Forensic Psychiatry, San Francisco, CA

2006	*Neuropsychological Evaluation of Capital Defendants.* Presentation at annual meeting of International Society of Traumatic Stress Studies, Hollywood, CA
2007	*How to Talk to Parents.* Invited Presentation to Interns and Staff at Maple Counseling Center, Beverly Hills, CA
2007	*Value of Neuropsychological Assessment in Post-Conviction Cases.* Invited Lecturer to the California Appellate Project (CAP), San Francisco, CA
2007	*Neuropsychological Assessment: Instruments and What They Measure.* Invited Lecturer to the California Appellate Project (CAP), San Francisco, CA
2008	*Value of Neuropsychological Evaluation in Capital Cases.* Presentation at Annual Meetings of American College of Forensic Psychiatry, San Francisco, CA
2009	*Frontal Lobes and Executive Function.* Presentation at Annual Capital Case Defense Conference, Monterey, CA
2009	*Juvenile Brain and Neuropsychological Functioning*, Invited Speaker. Los Angeles County Public Defender, Los Angeles, CA
2009	*Neuropsychological Assessment with Juveniles – Utility and Reliability.* Invited Speaker, Los Angeles County Public Defender, Los Angeles, CA
2010	*Competency and Fitness in Juveniles: Relationship between Neurocognitive Evaluation of Fixed and Dynamic Factors and Dispositional Decisions.* Paper delivered at International Association of Forensic Mental Health, Vancouver, British Columbia.
2013	*Invited Speaker, Airtalk, KPCC*, discussant on issue of knowing right from wrong in California youth case of 10-year old who murdered his father.

Accepted Posters and Papers at Peer-Reviewed Conferences

Bendimez, L., Miora, D. S., Holt, S., & Slavin, T. J (2011). *Does sexual orientation of couple influence psychologists' perceptions of intimate partner violence?* Paper accepted for presentation at the 2012 International Congress of Psychology Conference, Cape Town, South Africa.

Caffero-Tolemy, A., Fass, T., Miora, D.S., & Wolff, M. Intelligence as a mediator in the relationship between Asperger's traits and juvenile offending. Poster presented at 2012 Annual American Psychology-Law Society Conference, San Juan, Puerto Rico.

Inomaa-Bustillos, E., Miora, D. S., LaCarra, Robert, & Murphy, L. (2011). *Probation officers' conceptualizations of externalizing behavior in juvenile offenders.* Poster accepted for presentation at the 2012 International Congress of Psychology Conference, Cape Town, South Africa.

Lance, D., Ermshar, A., Boone, K., & Miora, D. S. (2011). *Evaluating executive functioning in individuals with bipolar spectrum disorder using selected subtests from the D-KEFS.* Paper accepted for presentation at the 2012 California Psychological Association Conference, Monterey, CA.

Sobel, N. K., Boone, K., Ermshar, A., Miora, D., & Cottingham, M. (2013, March). *Bridging the gap between test versions: WAIS-III/IV Matrix Reasoning as an embedded performance validity indicator.* Paper presented at the 2013 Annual Conference of the American Psychology-Law Society.

Tross, R., Ermshar, A., Dixon, D., & Miora, D. S. (2011). *Assessing community and mental health perspectives on the use and effectiveness of sexual offender policies with juvenile sexual offenders.* Paper presented at the 2012 AP-LS Conference in San Juan, Puerto Rico.

Baumgart, M., Skidmore, S., Leark, R., & Miora, D. S. (2011). *Assessing response style in criminal forensic evaluations: A survey of current practices among professionals.* Paper presented at the 2011 American Psychology-Law Society Conference, Miami, FL.

Baumgart, M., Skidmore, S., Leark, R., & Miora, D. S. (2011). *Common practices in competency and criminal responsibility evaluations among psychologists with varying professional credentials.* Poster presented at the 2011 American Psychology-Law Society Conference, Miami, FL.

Geshti, S. N., Miora, D. S., Fass, T., & Dixon, D. (2011). *Juvenile sexual offending.* Paper presented at the 2011 American Psychology-Law Society Conference. Miami, FL.

RESEARCH INTERESTS AND ACTIVTIES

2010 – 2015 CSFS representative to IRB committee on Los Angeles campus. Duties include review of Masters level, doctoral research, and faculty grant proposals; make recommendations for clarification, revision, decisions for acceptance; counsel students about revisions; provide guidance to CSFS on policy and procedures relating to research with human participants

2008 – 2017 CSFS chair and committee person for doctoral dissertations in forensic psychology; areas of juvenile justice, competency, Miranda rights, neuropsychology of intellectually and developmentally challenged youth, effort testing in executive function measures and IQ testing

2009 – 2011 CSFS involvement in I-MERIT academic implementation of diversity and international perspectives, evaluation of faculty candidates for Mexico immersion scholarship; participation in preparation of FIPSIE grant for diversity training of faculty and students

Neuropsychological underpinnings of functional abilities relevant to competency to stand trial, waive Miranda Rights and juvenile fitness issues

Juvenile competency and neuropsychological underpinnings; immature brain development as related to juvenile and capital matters

Executive functions as measures of reasoning, judgment and impulse control in capital cases

RESEARCH PUBLICATIONS

Participant in Proceedings: Romero, Heather R., Lageman, Sarah K., Kamath (Vidyulata), Vidya, Irani, Farzin, Sim, Anita, Suarez, Paola, Manly, Jennifer J., Attix, Deborah K. and the Summit

participants (2009). Challenges in the Neuropsychological Assessment of Ethnic Minorities: Summit Proceedings. *The Clinical Neuropsychologist*, 23:5, 761 – 779.

Salseda, L. M., Fass, T. M., Miora, D. S., & Leark, R. (2010). An evaluation of *Miranda* rights and interrogation in autism spectrum disorders. *Research in Autism Spectrum Disorders* (2010), doi: 10.1016/j.rasd.2010.06.014

Solomon, R. E., Boone, K. B., Miora, D., Skidmore, S., Cottingham, M., Victor, T., Ziegler, E., & Zeller, M. (2010). Use of the WAIS-III Picture Completion subtest as an embedded measure of response bias. *The Clinical Neuropsychologist, 24*(7), 1243-1256.

Bell-Sprinkel, T. L., Boone, K. B., Miora, D., Cottingham, M. E., Victor, T., Ziegler, E., Zeller, M., & Wright, M. (2013). Cross-validation of the Rey Word Recognition Symptom Validity Test. *The Clinical Neuropsychologist.*

Roberson, C., Boone, K. B., Goldberg, H., Miora, D., Cottingham, M. E., Victor, T., Ziegler, E., Zeller, M., & Wright, M. (2013). Cross validation of the b Test in a large known groups sample. *The Clinical Neuropsychologist.*

Cornett, K. A.; Miora, D. S.; Fass, T.; & Dixon, D. (2013). Memory functioning for personally experienced and witnessed events in children with autism and the implications for educators, mental health professionals, and the law. Journal of Applied Research on Children: Informing Policy for Children at Risk, 4(2).

Smith, K., Boone, K., Victor, T., Miora, D., Cottingham, M., Ziegler, E., Zeller, M., & Wright, M. (2014). Comparison of credible patients of low intelligence and non-credible patients on neurocognitive performance validity indicators. *The Clinical Neuropsychologist.* DOI: 10.1080/13854046.2014.931465

Fass, T. L., Miora, D. S., & Vaccarella, S. (2014). Adult consequences for juvenile behavior: Does sentencing policy aimed at serious adult behavior cast too wide a net? In M.K. Miller, J.A. Blumenthal, & J. Chamberlain (Eds.). *Handbook of Community Sentiment.* Springer.

Poynter, K., Boone, K., Cottingham, M. E., Ermshar, A., Miora, D., Victor, T., Ziegler, E., & Zeller, M. "A Re-examination of the Rey 15-item plus Recognition Test: There's a baby in that bath water!" Poster accepted for presentation at the American Academy of Clinical Neuropsychology annual conference, NYC, June 25-28, 2014.

Balasanyan, Mariam; Boone, Kyle; Ermshar, Annette; Miora, Deborah; Cottingham, Maria; Victor, Tara; Zeigler, Elizabeth; Zeller, Michelle; Wright, Matthew. 'Examination of the Modified Somatic Perception Questionnaire (MSPQ) in a Large Sample of Credible and Noncredible Patients Referred for Neuropsychological Testing.' *The Clinical Neuropsychologist.* DOI:

Poynter, K., Boone, K. B., Ermshar, E., Miora, D., Cottingham, M., Victor, T. L., Ziegler, E., Zeller, M., & Wright, M. (2018). Wait, there's a baby in this bath water! Update on quantitative and qualitative cut-offs for Rey 15-item Recall and Recognition. *Archives of Clinical Neuropsychology.*

References furnished upon request