

UNITED STATES PERMANENT MISSION TO THE
ORGANIZATION OF AMERICAN STATES
DEPARTMENT OF STATE
WASHINGTON, D.C. 20520

No. 93-B

The Permanent Mission of the United States to the Organization of American States (OAS) presents its compliments to the Secretariat of the Inter-American Human Rights Commission (IACHR), and, in the context of the 137th Period of Sessions of the Inter-American Commission on Human Rights (IACHR) to be held October 28 to November 13, 2009, has the honor to transmit to it the enclosed Submission of the United States regarding the IACHR Case 12.254-Victor Saldano.

The Permanent Mission of the United States avails itself of this opportunity to renew to the Secretariat of the Inter-American Commission of Human Rights the assurances of its highest consideration.

Enclosure:

As stated.

A handwritten signature in black ink, consisting of several stylized, overlapping loops and lines, positioned to the right of the 'As stated.' text.

Secretariat of the Inter-American Commission of Human Rights,
Organization of American States,
Washington, D.C. November 3, 2009.

IACHR CASE # 12.254 - VICTOR SALDANO
Submission of the United States
November 2, 2009

The United States is pleased to submit this filing in the matter of Victor Saldaño, scheduled for a hearing on November 3, 2009. The Petitioner, convicted of murder, has been on death row, and in isolation, for many years. With due regard for the difficulty of his circumstances, as a matter of law, the American Declaration on the Rights and Duties of Man is respected, and the Petitioners' rights are respected, through the availability of strong constitutional protections in the United States, including the pending domestic federal habeas corpus proceedings, which provide a venue to address Petitioner's allegations and to redress any violations.

Petitioner alleges violations of Articles I, II, XVIII, XXV, and XXVI of the American Declaration. The right to life, right to equality under the law, right to a fair trial, right to humane treatment while in custody, and right to due process, including the right not to receive cruel, infamous or unusual punishment, as set forth in the American Declaration, are fully protected in the United States under the United States Constitution and other provisions of U.S. law, *and by affording to persons in custody access to the writ of habeas corpus*. The writ of habeas corpus, made available to a persons in custody pursuant to the judgment of a state court under 28 U.S.C. 2254, applies to cases in which a state prisoner, like Petitioner, is alleged to be held in custody in violation of the Constitution or federal law of the United States.

Petitioner first initiated federal habeas corpus proceedings to contest the 2004 death sentence on October 26, 2009. Petitioner therefore has an immediate and available avenue for vindication and remedying of any human rights and civil rights violation that he alleges has occurred. International review of his claim should first allow the federal court to review the case and afford any appropriate remedy.

Death Penalty Under International Law. While many States do not permit the death penalty and many individuals oppose capital punishment, the death penalty as administered in the United States does not violate international law or the American Declaration. The use of the death penalty in the United States is a decision left to democratically elected governments at the federal and individual state levels. The people of the United States, acting through their freely elected representatives, have chosen not to abolish the death penalty. The federal

government and most U.S. states permit capital punishment (14 states prohibit capital punishment).

The U.S. Supreme Court has repeatedly held that capital punishment itself does not violate the U.S. Constitution. However, capital punishment in the United States may only be carried out subject to the extensive protections of due process and against cruel and unusual punishment, and with extensive opportunities for post-conviction review, in both federal and state courts, including federal and state habeas corpus proceedings.

The United States position on the death penalty is consistent with international law. The International Covenant on Civil and Political Rights, to which the United States is a party, permits countries to impose the death penalty for the most serious crimes, carried out pursuant to a final judgment rendered by a competent court and in accordance with appropriate safeguards and observance of due process. Similarly the American Convention on Human Rights, to which the United States is not a party, provides that "In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime."

Legal Protections Available in United States Federal Court. The U.S. Constitution provides legal protection against all of the human rights violations alleged by the Petitioner. The right to appropriate conditions of confinement in institutions, whether prisons, jails, or public mental health facilities, is covered by the Due Process Clause, which prohibits the deprivation of life, liberty or property, without due process of law, see Bell v. Wolfish, 441 U.S. 520 (1979), and the Eighth Amendment, which prohibits "cruel and unusual punishments." The right of access to competent legal representation in criminal proceedings is guaranteed by the Due Process Clause, as well as the Sixth Amendment's right to counsel guarantee. Strickland v. Washington, 466 U.S. 668 (1984).

Additionally, and to be more specific, among the most important U.S. constitutional protections for defendants in criminal proceedings are the following.

A. The Fifth and Fourteenth Amendments guarantee that persons shall not be subject to discrimination by federal and state authorities based on their race, gender, ethnicity or national origin. Craig v. Boren, 429 U.S. 190 (1976); Loving v. Virginia, 388 U.S. 1 (1967); Bolling v. Sharpe, 347 U.S. 497 (1954); Yick Wo v. Hopkins, 118 U.S. 356 (1886). As the Commission is aware, the

original death penalty imposed on the Petitioner was vacated by the United States Supreme Court in 2000 because its imposition was tainted by racial discrimination.

B. Criminal defendants are guaranteed the right to be tried before a fair and impartial tribunal under the Fifth and Fourteenth Amendments to the U.S. Constitution. Delaware v. Van Arsdall, 475 U.S. 673 (1986).

C. Under the Fifth Amendment, authorities must inform detained persons of the privilege against self-incrimination (the "right to remain silent"). This privilege prevents authorities from incriminating a defendant with his own statements unless the individual has "knowingly and intelligently" waived this constitutional privilege. Waiver of this privilege would not be considered "knowing" if the defendant did not comprehend his rights, whether because of language difficulties, or for other reasons. Tague v. Louisiana, 444 U.S. 469 (1980); North Carolina v. Butler, 441 U.S., 369 (1979); Miranda v. Arizona, 384 U.S. 436 (1966); U.S. v. Villegas, 928 F.2d 512, 518 (2d Cir. 1991); U.S. v. Short, 790 F.2d 464 (6th Cir. 1986); LaFave & Israel, Criminal Procedure, sections 6.5 -6.9. (1984 and 1991 Supplement).

D. Under the Sixth Amendment, adult defendants charged with serious crimes are entitled to (1) be informed promptly, and in detail, of all charges made against them; (2) a public trial by jury in all criminal prosecutions; (3) effective legal representation -- supplied at public expense if they cannot afford an attorney; and (4) adequate time and opportunity to prepare a defense and consult with counsel. County of Riverside v. McLaughlin, 500 U.S. 44 (1991); Jones v. Barnes, 463 U.S. 745 (1983); Duncan v. Louisiana, 391 U.S. 145 (1968); Gideon V. Wainright, 372 U.S. 335 (1963); Glasser v. United States, 315 U.S. 60 (1942); Adams v. Carlson, 488 F.2d 619 (7th Cir. 1973); United States ex rel. Darcy v. Handy, 203 F.2d 407 (3d Cir. 1953).

The State of Texas has recognized the right to counsel in Upton v. State, 853 S.W.2d 548, 553 (Tex. 1993). Additionally, the Petitioner's death sentence qualifies him for appointed counsel for habeas proceedings under 18 U.S.C. § 3599.

E. Of particular importance to some foreign nationals is the fact that U.S. courts have interpreted the Fifth and Sixth Amendments to embrace the right to be assisted by an interpreter if a defendant does not understand English language proceedings. U.S. v. Lim, 794 F.2d 469 (9th Cir. 1986); U.S. v. Martinez, 616

F.2d 185 (5th Cir. 1980); United States ex rel. Negron v. State of New York, 434 F.2d 386, 389 (2d Cir. 1970).

F. Of particular relevance to this Petitioner, both Federal and State law provide significant protection against the trial, conviction and punishment of individuals with significant mental infirmities or disabilities. U.S. law prohibits the execution of persons who are incompetent or mentally retarded. The U.S. Supreme Court has held that execution of the mentally retarded is "cruel and unusual punishment" in violation of the Eighth Amendment. Atkins v. Virginia, 536 U.S. 304 (2002). Similarly, an individual cannot be executed unless he or she is both aware of the punishment and of the reason why it is to be imposed. In many states, a defendant cannot be held responsible if he or she reacted to an "irresistible impulse" or is incapable of acting responsibly by reason of mental or emotional disability.

Moreover, no one who is not mentally competent (defined as "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding [and if] he has a rational as well as factual understanding of the proceedings against him," Dusky v. United States, 362 U.S. 402, 402 (1960)) can be forced to stand trial in the United States. The legal standard for competence, together with the bar on the prosecution and the other defenses mentioned above, limit significantly the prosecution of persons with mental disabilities. **Petitioner may avail himself of this constitutional protection through his habeas corpus proceeding initiated in federal court on October 26, 2009.**

In sum, the United States submits that the fairness of criminal detention and criminal proceedings in the United States must be judged by the U.S. Constitution and law and by the standards which the United States has embraced in the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, and international human rights conventions to which the United States is a party and which are reflected in municipal law. Criminal proceedings and imprisonment in the United States fully meet the provisions of the American Declaration and the international obligations of the United States. Where wrongful conduct has occurred, as is alleged here, timely and adequate remedies are provided.

Availability of domestic federal court remedies. The Petitioner first sought or availed himself of habeas proceedings under 28 U.S.C. 2254 to challenge the 2004 death sentence by filing a habeas corpus petition on October

26, 2009. *Saldaño v. Thaler*, Case 4:08-cv-00193-RAS (E.D. Texas). The petition is 127 pages and is accompanied by several Affidavits in support of the petition. The Petitioner makes fifteen claims of constitutional violations, as follows (quoted from Petitioner's habeas petition):

"CLAIMS FOR RELIEF

CLAIM 1

The trial court's failure to guarantee that a *Lagrone* examination by the State on Mr. Saldaño's mental decline would not be used by the State to prove future dangerousness, led the court to incorrectly bar defendant's expert testimony to support his motion to dismiss, and created an unconstitutional violation of Mr. Saldaño's 5th, 6th and 14th Amendment rights.

CLAIM 2 (Restated)

The trial court violated Mr. Saldaño's Fifth, Sixth and Fourteenth Amendment rights by failing to guarantee that a *Lagrone* examination by the State on Mr. Saldaño's mental decline would not be used by the State to prove future dangerousness – leading the court to unconstitutionally permit the State to introduce evidence of misconduct by the psychologically decompensated Mr. Saldaño while on Death Row.

CLAIM 3 (Restated)

The state courts' application of *Lagrone*, which prevented the presentation of significant mitigating evidence, violated the *Lockett* doctrine and Mr. Saldaño's Fifth and Eighth Amendment rights.

CLAIM 4

Mr. Saldaño was denied effective assistance of counsel in violation of the 6th and 14th Amendments to the United States Constitution by trial counsels' failure to present critical mitigating evidence to the jury.

CLAIM 5

Mr. Saldaño was denied effective assistance of counsel in violation of the 6th and 14th Amendments to the United States Constitution by trial counsels' failure to preserve appellate issues relating to the application of the *Lagrone* decision.

CLAIM 6

Mr. Saldaño was denied effective assistance of counsel in violation of the 6th and 14th Amendments to the United States Constitution by trial counsels' failure to request a competency hearing.

CLAIM 7

Mr. Saldaño's punishment retrial, conducted while he was incompetent, denied him of due process of law pursuant to the 14th Amendment to the United States Constitution.

CLAIM 8

As applied to Mr. Saldaño, the legislative failure to address the time at which a defendant is to be examined for future dangerousness and the circumstances under which his potential for danger must be viewed, makes the future dangerousness requirement unconstitutionally vague.

CLAIM 9

Under evolving standards of decency, Mr. Saldaño's death penalty trial and future execution would violate the 8th and 14th Amendments to the United States Constitution because of his mental illness.

CLAIM 10

The trial court violated Mr. Saldaño's due process rights by allowing the State to use evidence which the defense did not have a meaningful opportunity to rebut.

CLAIM 11

The trial court's failure to allow evidence of the co-defendant's life sentence as mitigating evidence violated Mr. Saldaño's rights under the Eighth and Fourteenth Amendments.

CLAIM 12

The Texas death penalty statute violates the Eighth and Fourteenth Amendment because it allows a jury unbridled discretion to determine who should live or die.

CLAIM 13

The Texas death penalty statute, which instructs the jury that ten of them must agree in order to answer special issue no. 1 with a "no" answer, fails to inform jurors that the effect of the jury's failure to reach a

unanimous verdict on any issue at the punishment phase of the trial would result in a life sentence violated, Mr. Saldaño's rights against cruel and unusual punishment and to due process of law under the 6th, 8th and 14th Amendments to the United States Constitution.

CLAIM 14

The State's failure to provide meaningful appellate review of the insufficient evidence to support the jury's verdict with regard to mitigating evidence violates Mr. Saldaño's Fourteenth due process rights and the Eighth Amendment's prohibition against cruel and unusual punishment.

CLAIM 15

The cumulative effect of the above-enumerated constitutional violations denied Mr. Saldaño due process of law in violation of the Fifth and Fourteenth Amendments of the United States Constitution, even if no separate infraction by itself rose to that magnitude."

The Petitioner raised in his federal habeas petition claims made before this Commission in this proceeding. See, e.g., Petition for Writ of Habeas Corpus, Table of Contents section VII and pages 50-54, 88-92. Indeed, the federal courts of the United States have the authority, competence, and expertise to assess Petitioner's claims of due process violations and cruel and unusual punishment. The federal courts have yet to review Petitioner's fifteen claims and determine if his rights have been violated, and if so, to fashion a remedy.

Further, even if the federal district court denies Mr. Saldaño's habeas petition, he still has a right, albeit limited, to appeal to the United States Court of Appeals for the Fifth Circuit and the U.S. Supreme Court. He even has a right to seek the Great Writ under the original jurisdiction of the Supreme Court. **Given that the Petitioner's claims surrounding the 2004 hearing and death sentence have not been reviewed and determined by a federal court, there are available and effective domestic remedies that must be afforded the opportunity to proceed, before his case is subject to review or adjudication by an international forum.**

It is a principle of international law, reflected in Inter-American Commission rules and procedures, that the State where a violation has allegedly occurred should have the opportunity to redress the allegation by its own means within the framework of its own domestic legal system. A state conducting

judicial proceedings should have its national system be given the first opportunity to determine the merits of a claim and decide the appropriate remedy.

Petitioner may claim that his thirteen year stay on death row illustrates that remedies in the United States are unnecessarily prolonged. However this time period illustrates the multiplicity and robustness of judicial remedies within the United States. Here, through the judicial process, the United States Supreme Court examined and vacated in 2000 the original death sentence imposed on Petitioner in 1996. When the death sentence was re-imposed in 2004, the Petitioner sought judicial redress through state proceedings (both a direct appeal and state habeas corpus), and initiated a federal review process on October 26, 2009.

Where, as here, the Petitioner is in the course of pursuing avenues of domestic relief and has the potential to be afforded a remedy for a violation, a decision by the Commission would be premature. The United States respectfully requests that the Commission defer a decision on Admissibility or a Recommendation and allow the independent and robust federal judicial branch of the United States to conduct a review of Petitioner's claims, determine whether a violation of his rights has occurred, and fashion an appropriate remedy.