



THE PERMANENT REPRESENTATIVE  
OF THE  
UNITED STATES OF AMERICA  
TO THE  
ORGANIZATION OF AMERICAN STATES

WASHINGTON, D.C.

July 22, 2016

Mr. Emilio Alvarez Icaza  
Executive Secretary  
Inter-American Commission on Human Rights  
Organization of American States  
Washington, D.C. 20006

**Re: John Elliott, Case No. 12.466**  
**Walter Mickens, Petition No. P-405-02**  
**Melissa L. et al., Petition No. P-1515-06**  
**Edgar Tamayo Arias, Case No. 12.873<sup>1</sup>**

**Further Request to Archive or Close Certain Matters and Cases**

Dear Mr. Icaza:

The United States Government refers to its letter of one year ago, July 22, 2015, in *Melissa L.*, Petition No. 1515-06, and 15 other matters and cases (collectively, “cases”). In that letter, we requested that the Inter-American Commission on Human Rights (IACHR or “Commission”) archive or close these 16 cases. As of that time, the Commission still considered the 16 cases to be active, despite the fact that the petitioner had died or there had otherwise been no procedural activity over many years. We note that while your office has acknowledged receipt of that letter in some of the referenced cases,<sup>2</sup> it does not appear that the Commission has taken the requested action in the individual cases.

We also refer to similar responses we have filed in the interim noting the death of a petitioner: German Sinnistera (P-1285-11), who died of natural causes

<sup>1</sup> We have also filed this letter and its enclosures in the following matters and cases: P-455-14, P-815-14, P-744-06, P-1058-11, P-1285-11, 10.573, 11.829, 12.168, 12.446, 12.495, 12.505, 12.512, 12.729, 12.832, 12.927, and 12.958.

<sup>2</sup> See, e.g., Letter from Débora Benchoam to Secretary of State John F. Kerry, Joseph Stanley Faulder, Case No. 12.168, Nov. 2, 2015.

on March 7, 2013;<sup>3</sup> Alfredo Rolando Prieto (P-1503-15), who was executed by Virginia state authorities on October 1, 2015;<sup>4</sup> and Ramiro Hernández Llanas (P-455-14), who was executed by Texas state authorities on April 9, 2014 (and who was also mentioned in the July 22, 2015 letter).<sup>5</sup>

We recently activated our account in the IACHR Individual Petition System Portal (“IACHR Portal”), and reviewed the status of the cases listed there against our own records. The IACHR Portal lists as active all the cases discussed in the July 22, 2015 letter,<sup>6</sup> along with *Sinnistera*, *Prieto*, and *Hernández*. Additionally, the IACHR Portal shows as active the following cases, not referenced in the above-mentioned pieces of correspondence with the Commission:

- Walter Mickens, Petition No. P-405-02, at the admissibility stage, executed by Virginia state authorities on June 12, 2002; and
- John Elliott, Case No. 12.466, at the merits stage, executed by Texas state authorities on February 4, 2003.

Additionally, as the Commission noted in Report No. 44/14,<sup>7</sup> Texas state authorities executed Edgar Tamayo Arias (12.873) on January 22, 2014. Yet the IACHR Portal still lists the Commission’s precautionary measures request with respect to him as “in force.”

We would urge the Commission to archive or close *Mickens* and *Elliott* in their entirety. The Commission should also lift the precautionary measures request in *Tamayo* in light of his death more than two years ago.<sup>8</sup> We also reiterate our requests over the past year that the Commission archive or close *Prieto*,

<sup>3</sup> Kadamovas et al. v. United States, Petition No. P-1285-11, Response of the United States, Sept. 1, 2015.

<sup>4</sup> Prieto v. United States, Petition No. P-1503-15, Response of the United States, Oct. 16, 2015.

<sup>5</sup> Hernández Llanas v. United States, Petition No. P-455-14, Request to Archive or Close Matter, Jan. 21, 2016.

<sup>6</sup> This includes the case of Marlin Gray (12.505), which your office clarified on November 2, 2015 is still in the merits stage despite the archival of the precautionary measures proceeding due to Mr. Gray’s 2005 execution by Missouri state authorities. Letter from Débora Benchoam to Secretary of State John F. Kerry, Marlin Gray, Case No. 12.505, Nov. 2, 2015. The November 2, 2015 letter referred to the Letter from Mario López-Garelli to Secretary of State John F. Kerry, Update on Precautionary Measures Granted, Marlin Gray, PM-844-04, and 11 Other Matters, July 17, 2013 (“*Gray et al.* Archival Decision”). We assume similarly that the admissibility proceeding in the matter of Manuel Valle (P-1058-11), also addressed in the July 22, 2015 letter, remains open despite the fact that the *Gray et al.* Archival Decision archived the precautionary measures proceeding in that matter.

<sup>7</sup> Tamayo Arias v. United States, Case No. 12.873, Report No. 44/14, Report on Merits (Publication), July 17, 2014, ¶ 197.

<sup>8</sup> Compare, e.g., *Gray et al.* Archival Decision, *supra* note 6, at 2 (“given the execution of the beneficiaries ... the Commission has decided to lift the above precautionary measures and archive this matter”).



*Hernández*, and *Sinnistera*, along with the cases discussed in the July 22, 2015 letter. At minimum, the Commission should send a letter to the petitioners' representatives or next-of-kin in each of these cases asking if they are still interested in continuing with the IACHR proceeding. If the representative or next-of-kin responds in the negative, the Commission should archive the case forthwith under Article 41 of the Rules of Procedure ("Rules"). If the representative or next-of-kin fails to respond within a time period specified by the Commission, the Commission should archive the case under Article 42 of the Rules. We refer you to our January 21, 2016 letter in *Hernández* for a full exposition of our concerns and recommendations about long-dormant cases and cases in which the petitioner has died.

Furthermore, while we appreciate that the recently issued final merits report in *Undocumented Workers* (12.834) acknowledged and described portions of the March 18, 2016 U.S. response to the preliminary merits report,<sup>9</sup> it did not address our request, made in the July 22, 2015 letter and reiterated in the March 18, 2016 letter, that the Commission formally archive or close *Melissa L.* As your office informed us by letter dated December 15, 2011, the Commission divided that matter from *Undocumented Workers* almost five years ago. Your office assigned the matter its own petition number (P-1515-06), and stated that "[t]he Commission has decided that it requires additional information about [the petitioners'] individual circumstances to be able to process the[ir] claims ... ."<sup>10</sup> There has been no further procedural activity in *Melissa L.* since that time. While your office's November 17, 2014 case log, which your staff shared with us, lists *Melissa L.* as active and pending a response from the United States, we have never received a separate petition in that matter and the IACHR Portal does not have an entry for *Melissa L.*, which raises the question of whether the Commission regards the matter as still open. Thus, we request that the Commission inform us regarding its current status.

Finally, we have noticed from files posted in the IACHR Portal that your office forwarded our July 22, 2015 letter to at least some of the petitioners

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<sup>9</sup> *Undocumented Workers v. United States*, Case No. 12.834, Report No. 29/16, Report on Merits (Final), June 10, 2016, ¶¶ 126–28 (referring to *Undocumented Workers v. United States*, Case No. 12.834, Response to Report on Merits, March 18, 2016).

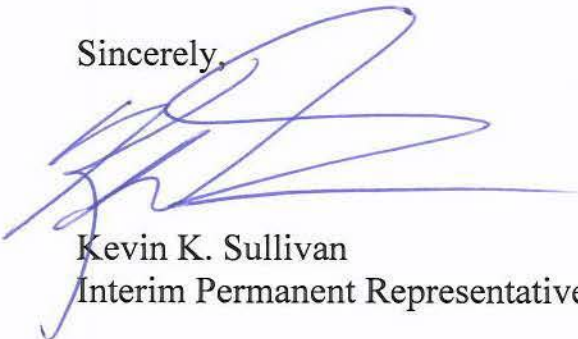
<sup>10</sup> Letter from Elizabeth Abi-Mershed to Secretary of State Hillary Rodham Clinton, *Undocumented Workers*, Petition No. P-1190-06, Dec. 15, 2011.

addressed in the letter, or to their representatives, with significant redactions, including redactions of publicly available information regarding the death of petitioners as well as benign information about the procedural posture of those petitioners' cases. While limited redactions of genuinely confidential or private information may be appropriate and advisable, the version of the letter forwarded by your office obscured key passages containing the legal and policy rationale for the request to close or archive the cases.<sup>11</sup> The scale of the redactions likely made it more difficult for the petitioner to discern the full picture of the U.S. argument so that the petitioner could, if he or she wished, respond in an effective and helpful manner.

For reasons explained more fully in our recent letter regarding the confidentiality of IACHR proceedings (enclosed), we support and strongly encourage the broad dissemination of parties' filings as a means of enhancing the publicity and transparency of IACHR proceedings.<sup>12</sup> In the same vein, we have no objection to the Commission sharing with any of the petitioners in the above-referenced matters, or their representatives, this letter, its enclosures, or the decisions cited in the footnotes, in full. We do not perceive a reason—related to privacy or otherwise—why any of these communications cannot be shared in their entirety.

Please accept renewed assurances of my highest consideration.

Sincerely,



Kevin K. Sullivan  
Interim Permanent Representative

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<sup>11</sup> See, e.g., Letter from Elizabeth Abi-Mershed to Sandra L. Babcock et al., Warren W. Summerlin et al., Case No. 12.729, Feb. 23, 2016 (forwarding to *Summerlin et al.* petitioners' representatives a redacted version of the July 22, 2015 letter with information concerning co-petitioner Richard Michael Rossi).

<sup>12</sup> See generally *Al-Hawsawi v. United States*, Petition No. P-1385-14, U.S. Views on Publicity and Confidentiality in Commission Proceedings, July 8, 2016.



- Enc. 1. Letter from Michael J. Fitzpatrick, Interim Permanent Representative, to Emilio Alvarez Icaza, Executive Secretary, in Melissa L., Jesús L., and Yolanda L. R. v. United States, Petition No. P-1515-06, and 15 Other Matters, July 22, 2015
2. Kadamovas et al. v. United States, Petition No. P-1285-11, Response of the United States, Sept. 1, 2015
3. Prieto v. United States, Petition No. P-1503-15, Response of the United States, Oct. 16, 2015
4. Hernández Llanas v. United States, Petition No. P-455-14, Request to Archive or Close Matter, Jan. 21, 2016
5. Undocumented Workers v. United States, Case No. 12.834, Response to Report on Merits, March 18, 2016
6. Letter from Mario López-Garelli to Secretary of State John F. Kerry, Update on Precautionary Measures Granted, Marlin Gray, PM-844-04, and 11 Other Matters, July 17, 2013
7. Al-Hawsawi v. United States, Petition No. P-1385-14, U.S. Views on Publicity and Confidentiality in Commission Proceedings, July 8, 2016