



THE PERMANENT REPRESENTATIVE  
OF THE  
UNITED STATES OF AMERICA  
TO THE  
ORGANIZATION OF AMERICAN STATES  
WASHINGTON, D.C.

August 25, 2016

Mr. Paulo Abrão  
Executive Secretary  
Inter-American Commission on Human Rights  
Organization of American States  
Washington, D.C. 20006

**Re: Mumia Abu-Jamal, Petition No. P-611-12**  
**Response to Petition**

Dear Mr. Abrão:

The United States Government has the honor of addressing the Inter-American Commission on Human Rights in regard to the above-referenced Petition filed on behalf of Mumia Abu-Jamal. Your office, having received the Petition on April 11, 2012, transmitted it to the United States on January 14, 2016, via a letter dated January 13, 2016. Please find enclosed the United States' response to the Petition. We trust this information is useful to the Commission and thank the Commission for its attention to this matter.

Please accept renewed assurances of my highest consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Sullivan", written over a horizontal line.

Kevin K. Sullivan  
Interim Permanent Representative

Annexes:

*Domestic Proceedings Relating to Petitioner Abu-Jamal*

1. Summary of State Proceedings of Mumia Abu-Jamal (Docket Sheet, Commonwealth v. Cook, No. CP-51-CR-0113571-1982)
2. Commonwealth v. Abu-Jamal (PA Supreme Court 1989)
3. Commonwealth v. Abu-Jamal (PA Court of Common Pleas 1995)
4. Commonwealth v. Abu-Jamal (PA Supreme Court 1998)
5. Abu-Jamal v. Horn (E.D. Pa. 2001)
6. Abu-Jamal v. Horn (Third Cir. 2008)
7. Beard v. Abu-Jamal (U.S. Supreme Court 2010)
8. Abu-Jamal v. Sec'y, Pa. Dept. of Corrs. (Third Cir. 2011)
9. Commonwealth v. Abu-Jamal (PA Superior Court 2013)

*Other Proceedings Before the Commission*

10. Saldaño v. United States, U.S. Response (2009)
11. Tamayo Arias v. United States, U.S. Response (2013)
12. Reid v. United States, U.S. Response (2016)
13. Bucklew v. United States, U.S. Response (2016)

## **PETITION NO. P-611-12, MUMIA ABU-JAMAL RESPONSE OF THE UNITED STATES OF AMERICA**

The United States Government appreciates the opportunity to submit these observations on the Petition forwarded by the Inter-American Commission on Human Rights (“Commission”) in Petition No. P-611-12, filed on behalf of Mumia Abu-Jamal (“Abu-Jamal” or “Petitioner”).<sup>1</sup> The Petition alleges various “violations”<sup>2</sup> of four provisions—Articles I, IV, X, and XXVI—of the American Declaration of the Rights and Duties of Man (“American Declaration”). The United States respectfully requests that the Commission declare this matter inadmissible for the reasons stated below. Should the Commission nevertheless declare the Petition admissible and examine its merits, the United States submits that the Petition lacks merit and should be dismissed.

### **A. FACTUAL AND PROCEDURAL BACKGROUND**

In December 1981, Philadelphia Police Officer Daniel Faulkner was shot and mortally wounded as he conducted a routine stop of a car driven by William Cook, Mr. Abu-Jamal’s brother. Pennsylvania state prosecutors charged Mr. Abu-Jamal with, *inter alia*, first-degree murder.<sup>3</sup> As later characterized by the Pennsylvania Supreme Court:

The evidence presented at trial established that at approximately 3:55 a.m. on December 9, 1981, Officer Faulkner made a routine car stop on Locust Street between Twelfth and Thirteenth Streets in Center City Philadelphia. The car was driven by ... William Cook. After making the stop, Officer Faulkner called for assistance on his police radio, requesting

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<sup>1</sup> The Commission received the Petition on April 11, 2012. The United States did not become aware of the Petition until January 14, 2016, when the Commission forwarded it to the United States and requested a response.

<sup>2</sup> As the United States has affirmed many times over the decades and as further elaborated at note 79 *infra* and accompanying text, the American Declaration is a nonbinding instrument and does not create legal rights or impose legal duties on member states of the Organization of American States. Therefore, the United States understands that a “violation” in this context means an allegation that a country has not lived up to its political commitment to uphold the American Declaration. As the Commission is well aware, the United States faithfully respects its political commitment to uphold the American Declaration.

<sup>3</sup> Mr. Abu-Jamal was charged with a total of five crimes: (1) possession of an instrument of crime with criminal intent; (2) possession of a firearm with criminal intent; (3) murder; (4) voluntary manslaughter; and (5) involuntary manslaughter. *See* Docket Sheet, Commonwealth v. Cook, No. CP-51-CR-0113571-1982, at 2. This document is appended to this response as Annex 1.

a police wagon to transport a prisoner. While Faulkner was trying to handcuff Cook, the appellant [Mumia Abu-Jamal] ran from across the street and shot the officer once in the back. Faulkner was able to fire one shot, which wounded the appellant, but after Faulkner had fallen to the ground the appellant shot him four more times at close range, once through the center of the face.<sup>4</sup>

A Philadelphia jury found Mr. Abu-Jamal guilty of first-degree murder.<sup>5</sup>

The conviction carried with it a mandatory minimum sentence of life imprisonment, with the option to apply the death penalty.<sup>6</sup> At the penalty phase of the trial, held in a separate proceeding before the same jury after the jury had handed down the “guilty” verdict, Mr. Abu-Jamal did not call any mitigating witnesses.<sup>7</sup> The jury, after hearing further evidence, unanimously found one aggravating factor in the crime.<sup>8</sup> As a consequence, Mr. Abu-Jamal was sentenced to death.<sup>9</sup>

Mr. Abu-Jamal subsequently benefited from an extensive judicial review process in both state and federal court and at all levels of appeal. Immediately after sentencing, Mr. Abu-Jamal appealed his conviction to the Pennsylvania Supreme Court. He alleged, *inter alia*, that the prosecution used peremptory challenges in a racially discriminatory manner, the court erred in denying his challenge for cause as to an alternate juror, the trial court abused its discretion by conducting *voir dire* for half a day, the court erred in permitting the state to cross-examine character witnesses, the prosecutor’s comments during closing arguments and the penalty phrase were improper, the prosecutor should not have been able to cross-examine him at the penalty hearing, and the death penalty is unconstitutional.<sup>10</sup> The Pennsylvania Supreme Court considered and rejected each of Mr. Abu-Jamal’s

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<sup>4</sup> Commonwealth v. Abu-Jamal, 555 A.2d 846, 848 (Pa. 1989), *reh’g denied*, 569 A.2d 915 (Pa. 1990). This document is appended to this response as Annex 2.

<sup>5</sup> In addition, Mr. Abu-Jamal was convicted of possession of an instrument of crime with criminal intent. *See* Docket Sheet, *supra* note 3, at 3.

<sup>6</sup> Mr. Abu-Jamal’s post-trial motions were heard and denied.

<sup>7</sup> *See* Commonwealth v. Abu-Jamal, 1995 WL 1315980, at \*17 (C. P. Ct. Phila. Cnty. Sept. 15, 1995). This document is appended to this response as Annex 3.

<sup>8</sup> *Id.* at \*17–18.

<sup>9</sup> *Id.* at \*18. In addition, for his conviction for possession of an instrument of crime with criminal intent, Mr. Abu-Jamal received a sentence of two and one-half to five years’ imprisonment to run consecutively with his death sentence. *See* Annex 1, at 3.

<sup>10</sup> *See Abu-Jamal*, 555 A.2d at 848–60. This document is appended to this response as Annex 2.

arguments, affirming both his conviction and death sentence.<sup>11</sup> Mr. Abu-Jamal filed an application for writ of *certiorari* to the U.S. Supreme Court, but the application was denied.<sup>12</sup>

In June 1995, the Pennsylvania governor signed Mr. Abu-Jamal's writ of execution, with the sentence to be carried out in August 1995.<sup>13</sup> In response, Mr. Abu-Jamal filed a petition under Pennsylvania's Post Conviction Relief Act (PCRA)<sup>14</sup> to have his case reconsidered.<sup>15</sup> The PCRA permits review of a conviction or sentence in specific circumstances: the petitioner must "plead and prove by a preponderance of the evidence ... that the conviction or sentence resulted from" (1) a federal or state constitutional violation that "so undermined the truth-determining process that no reliable adjudication ... could have taken place"; (2) ineffective assistance of counsel that "so undermined the truth-determining process that no reliable adjudication ... could have taken place"; (3) an unlawfully induced guilty plea; (4) the government's improper obstruction of the right to appeal a meritorious claim; (5) the unavailability at trial of exculpatory evidence that has since come to light and "would have changed the outcome of the trial if it had been introduced"; (6) the "imposition of a sentence greater than the lawful maximum"; or (7) a "proceeding in a tribunal without jurisdiction."<sup>16</sup>

In his PCRA petition, Mr. Abu-Jamal alleged myriad due process and evidentiary violations.<sup>17</sup> The Pennsylvania trial court held an evidentiary hearing to

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<sup>11</sup> *Id.* at 860.

<sup>12</sup> *Abu-Jamal v. Pennsylvania*, 498 U.S. 881 (1990). Mr. Abu-Jamal petitioned the U.S. Supreme Court twice for rehearing and was denied each time. 498 U.S. 993 (1990); 501 U.S. 1214 (1991).

<sup>13</sup> *See Abu-Jamal*, 1995 WL 1315980, at \*19. This document is appended to this response as Annex 3.

<sup>14</sup> 42 Pa.C.S. § 9541 *et seq.*

<sup>15</sup> In addition, Mr. Abu-Jamal filed petitions at this time for a temporary stay of execution (granted), for further discovery (denied), and for recusal of the presiding judge (denied).

<sup>16</sup> 42 Pa.C.S. § 9543.

<sup>17</sup> In particular, Mr. Abu-Jamal alleged that: (1) the state knowingly used false evidence; (2) the police and investigators were racially biased; (3) the state withheld or destroyed a variety of witness statements and other exonerating evidence; (4) certain witnesses gave false testimony; (5) the prosecution intimidated witnesses; (6) the police physically beat him upon arrest; (7) he was barred from presenting certain witness testimony and confronting prosecution witnesses; (8) he was prevented from hiring a ballistics expert, pathologist, and investigator; (9) he was denied the right to be present during certain *in camera* judicial conferences; (10) he was improperly removed after disrupting proceedings; (11) his trial counsel was ineffective at the guilt and penalty stages; (12) newly discovered evidence established his innocence; (13) jury selection was improperly conducted, including being insufficiently random and racially biased; (14) three jurors improperly discussed the case prematurely; (15) the existence of a Pennsylvania state court system program in which certain judges only hear homicide cases was unconstitutional; (16) the verdict form used at trial was unconstitutional; (17) he was improperly cross-examined in the penalty phase of trial; (18) jury instructions at trial were improper; (19) appellate counsel was ineffective; (20) prison officials interfered with his confidential legal

consider these claims.<sup>18</sup> After a lengthy and comprehensive review of the evidence, the court denied the petition.<sup>19</sup> The Pennsylvania Supreme Court affirmed.<sup>20</sup> Mr. Abu-Jamal again filed an application for writ of *certiorari* to the U.S. Supreme Court, but the application was denied.<sup>21</sup> In October 1999, the Pennsylvania governor signed a second writ of execution for Mr. Abu-Jamal.<sup>22</sup>

His state appeals and post-conviction petitions exhausted, Mr. Abu-Jamal sought review of his conviction and sentence in federal court. He filed a petition for *habeas corpus* in October 1999 in the U.S. District Court for the Eastern District of Pennsylvania, seeking either a new trial or a new penalty hearing.<sup>23</sup> In December 2001, his *habeas* request was granted in part: the district court found his death sentence unconstitutional on grounds of improper instructions given to the jury by the Pennsylvania trial judge at the sentencing phase of his trial.<sup>24</sup> The district court concluded that the jury charge was “problematic” under the U.S. Constitution in that it likely confused jurors as to the distinct standards of proof associated with finding aggravating and mitigating circumstances.<sup>25</sup> Thus, the court ordered the State of Pennsylvania to either impose a sentence of life imprisonment or afford Mr. Abu-Jamal a new sentencing hearing.<sup>26</sup> Separately, the district court

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communications, denying him the ability to prepare his appellate claims; (21) the cumulative effective of each of the above claims merited relief; and (22) the presiding judge was biased against him. *See Abu-Jamal*, 1995 WL 1315980, at \*68–128. This document is appended to this response as Annex 3.

<sup>18</sup> *Id.* at \*19–22 (describing post-conviction procedural history).

<sup>19</sup> *Id.* at \*128.

<sup>20</sup> *See Commonwealth v. Abu-Jamal*, 720 A.2d 79, 120–21 (Pa. 1998). This document is appended to this response as Annex 4.

<sup>21</sup> *Abu-Jamal v. Pennsylvania*, 528 U.S. 810 (1999).

<sup>22</sup> *Abu-Jamal*, 2001 WL 1609690, at \*5. This document is appended to this response as Annex 5.

<sup>23</sup> Separately, Mr. Abu-Jamal also filed a new, untimely PCRA petition. It was dismissed by the Pennsylvania trial court in December 2001, and the Pennsylvania Supreme Court affirmed that denial in October 2003. *See Commonwealth v. Abu-Jamal*, 833 A.2d 719, 728 (Pa. 2003). In response, Mr. Abu-Jamal filed another untimely PCRA petition. The Pennsylvania trial court dismissed that petition in June 2005, and the Pennsylvania Supreme Court affirmed in February 2008. *See Commonwealth v. Abu-Jamal*, 941 A.2d 1263 (Pa. 2008). Mr. Abu-Jamal then filed yet another untimely PCRA petition in April 2009, which was denied by the Pennsylvania trial court in November 2009; the Pennsylvania Supreme Court affirmed in March 2012. *See Commonwealth v. Abu-Jamal*, 40 A.3d 1230 (Pa. 2012).

<sup>24</sup> *Abu-Jamal v. Horn*, 2001 WL 1609690, at \*2, \*115–26. This document is appended to this response as Annex 5.

<sup>25</sup> *Id.* at \*126 (“[T]he jury charge and verdict form in this case created a reasonable likelihood that the jury believed that it was precluded from considering a mitigating circumstance that had not been found unanimously to exist.”).

<sup>26</sup> *Id.* at \*131.

considered—again in extraordinary detail—and rejected Mr. Abu-Jamal’s other arguments as to the unconstitutionality of his trial, conviction, and sentence.<sup>27</sup>

Both parties appealed the district court’s decision to the U.S. Court of Appeals for the Third Circuit. That court affirmed the district court’s decision and order in March 2008.<sup>28</sup> Both parties then filed applications seeking writs of *certiorari* to the U.S. Supreme Court. Mr. Abu-Jamal’s petition was denied. The State of Pennsylvania’s petition was ultimately granted, and the Supreme Court in January 2010 vacated the judgment and remanded the case to the Third Circuit for further review in light of an intervening Supreme Court decision addressing jury instructions in a capital trial.<sup>29</sup> On remand, the Third Circuit reached the same result, again affirming the district court’s grant of *habeas* relief and leaving the State of Pennsylvania with the same two options: impose a sentence of life imprisonment or hold a resentencing hearing for Mr. Abu-Jamal.<sup>30</sup> Mr. Abu-Jamal again petitioned the U.S. Supreme Court for a writ of *certiorari*, which was denied.<sup>31</sup>

As the case was remanded to Pennsylvania’s trial court for consideration, the Philadelphia District Attorney’s Office announced that it would not seek another death sentence for Mr. Abu-Jamal.<sup>32</sup> In response, Mr. Abu-Jamal filed a request that he be sentenced to life imprisonment without the possibility of parole. In August 2012, the state trial court imposed on him a life sentence without the possibility of parole.<sup>33</sup>

Though the court honored Mr. Abu-Jamal’s explicit request in its sentencing order, Mr. Abu-Jamal moved to reconsider the sentence, arguing that the trial court’s action was taken without notice to Mr. Abu-Jamal or his counsel, and without affording him the opportunity to be present and heard at a sentencing

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<sup>27</sup> *Id.* at \*1, \*15–114, \*127–30.

<sup>28</sup> *Abu-Jamal v. Horn*, 520 F.3d 272, 303–04 (3d Cir. 2008). This document is appended to this response as Annex 6.

<sup>29</sup> *Beard v. Abu-Jamal*, 558 U.S. 1143 (2010) (remanding the case for further consideration in light of *Smith v. Spisak*, 558 U.S. 139 (2010)). This document is appended to this response as Annex 7.

<sup>30</sup> *Abu-Jamal v. Sec’y, Pa. Dept. of Corrs.*, 643 F.3d 370, 372, 383–84 (3d Cir. 2011).

<sup>31</sup> *Wetzel v. Abu-Jamal*, 132 S. Ct. 400 (2011).

<sup>32</sup> See Timothy Williams, *Execution Case Dropped Against Abu-Jamal*, N.Y. TIMES (Dec. 7, 2011), available at [http://www.nytimes.com/2011/12/08/us/execution-case-dropped-against-convicted-cop-killer.html?\\_r=0](http://www.nytimes.com/2011/12/08/us/execution-case-dropped-against-convicted-cop-killer.html?_r=0).

<sup>33</sup> See Annex 1, at 10. See also Letter from Hugh J. Burns, Jr., Philadelphia District Attorney’s Office, to Karen Reid Bramblett, Superior Court of Pennsylvania, March 20, 2013, at 6–7, available at <http://www.pacourts.us/assets/files/setting-1424/file-2526.pdf?cb=d798e6> (recounting this procedural history).

hearing—and therefore allegedly violated due process protections under federal, state, and international law.<sup>34</sup> The court denied his motion in October 2012,<sup>35</sup> and Mr. Abu-Jamal subsequently appealed.<sup>36</sup> The Superior Court of Pennsylvania—the state’s intermediate appellate court—rejected his appeal in July 2013, thereby affirming the imposition of a life sentence.<sup>37</sup> Mr. Abu-Jamal remains in custody and continues to litigate his conviction and revised sentence. In August 2016, he filed yet another petition for post-conviction relief.<sup>38</sup> He also is litigating separate disputes related to his incarceration.<sup>39</sup>

## **B. DISCUSSION**

Mr. Abu-Jamal alleges that the United States has violated four rights—Articles I, IV, X, and XXVI—recognized in the American Declaration.<sup>40</sup> He requests that the Commission “demand his immediate release from custody,”<sup>41</sup> and “sanction” the United States “for its inhumane treatment” of him.<sup>42</sup>

For a petition to be admissible before the Commission, it must satisfy several procedural requirements under the Commission’s Statute and Rules of Procedure (“Rules”). Mr. Abu-Jamal’s petition is inadmissible on numerous such grounds. It is also meritless. The reasons are discussed below.

### **1. The Petition Is Inadmissible for Failure to Exhaust Domestic Remedies**

Article 20(c) of the Statute and Article 31 of the Rules require that domestic remedies must be exhausted for a Petition before the Commission to be admissible. Mr. Abu-Jamal is still engaged in domestic U.S. litigation that has a direct bearing

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<sup>34</sup> Commonwealth v. Abu-Jamal, 2013 WL 11257188, at \*2 (Pa. Super. Ct. July 9, 2013). This opinion is appended to this response as Annex 9.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Abu-Jamal, 2013 WL 11257188, at \*3–4. This opinion is appended to this response as Annex 9.

<sup>38</sup> See Annex 1, at 10.

<sup>39</sup> See, e.g., Abu-Jamal v. Kerestes, No 3:15-CV00967 (M.D. Penn.). Mr. Abu-Jamal alleges that prison officials violated his First Amendment right of association by allegedly barring Mr. Abu-Jamal’s attorneys from visiting him while he was being treated for an infection. The litigation is ongoing; the court recently denied defendants’ pretrial motion to dismiss. Abu-Jamal v. Kerestes, 2016 WL 3456935 (M.D. Penn. June 22, 2016). These issues postdate, and are not raised by, the present Petition.

<sup>40</sup> Petition at 13–14.

<sup>41</sup> *Id.* at 10.

<sup>42</sup> *Id.*



on his claims before the Commission. As noted above, in August 2016 Mr. Abu-Jamal filed a renewed petition in Pennsylvania state court for post-conviction relief.<sup>43</sup> His Petition is thus plainly inadmissible under the exhaustion provisions of the Commission’s Statute and Rules, which themselves reflect important principles of customary international law.<sup>44</sup> This circumstance presents a quintessential illustration of the rationale underlying the exhaustion doctrine—international institutions such as the Commission must permit domestic proceedings to run their course, thereby affording the State the opportunity to fashion any appropriate remedy under its domestic law.<sup>45</sup> Domestic proceedings in Mr. Abu-Jamal’s case have, by Petitioner’s own actions in continuing to file lawsuits, not yet run their course. Thus, the exhaustion doctrine reflected in Article 20(c) of the Statute and Article 31 of the Rules compels the finding that Mr. Abu-Jamal’s Petition is not admissible.

Given its inadmissibility, the Commission should dismiss and close this Petition, as per the Commission’s longstanding practice.<sup>46</sup> Such a closure would, of course, be without prejudice to Petitioner’s ability to later file another Petition if and when he can satisfy the requirements of Article 31 and the other admissibility requirements discussed below. It bears emphasizing that, should Mr. Abu-Jamal obtain effective relief in the domestic system, any future Petition would be inadmissible.<sup>47</sup>

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<sup>43</sup> See text accompanying note 38 *supra*. The August 2016 petition appears to be similar in nature to past PCRA petitions he has filed. See *supra* note 23.

<sup>44</sup> See, e.g., *Interhandel Case* (Switzerland v. United States), [1959] I.C.J. 6, 26–27; *Panevezys-Saldutiskis Railway Case* (Estonia v. Lithuania), 1939 P.C.I.J., Ser. A/B, No. 77.

<sup>45</sup> See, e.g., *Vera v. Chile*, Petition No. 157-06, Report No. 11/13, Inadmissibility, Mar. 20, 2013, ¶¶ 20–26 (dismissing petition where petitioner had available domestic remedies).

<sup>46</sup> See, e.g., *Undocumented Migrant, Legal Resident, and U.S. Citizen Victims of Anti-Immigrant Vigilantes v. United States*, Petition No. 478-05, Report No. 78/08 & 78/09, Admissibility, Aug. 5, 2009, ¶ 60 & Decision ¶ 3 (declaring case inadmissible with respect to one petitioner “because the presumed victim is pursuing a civil domestic remedy”) (“*Vigilantes* Admissibility Decision”); *Cherokee Nation v. United States*, Case No. 11.071, Report No. 6/97, Inadmissibility, Mar. 12, 1997, ¶ 41 (finding petition inadmissible because “[t]here are still available, domestic remedies in the United States to be invoked and exhausted” and accordingly closing the case); *Move Organization v. United States*, Case No. 10.865, Report No. 19/92, Decision of the Commission as to the Admissibility of Case 10.865, Oct. 1, 1992, Analysis § b(2) & Conclusion ¶ I (finding petition inadmissible for failure to exhaust because petitioner “has invoked and is currently pursuing” domestic remedies). An examination of the Commission’s inadmissibility reports with respect to other OAS member states reveals a number of other matters in which the Commission dismissed the petition as inadmissible because the petitioner was still pursuing domestic remedies. See, e.g., *Guimarães v. Brazil*, Petition No. 1242-07, Report No. 60/13, Inadmissibility, July 16, 2013, ¶¶ 18–19.

<sup>47</sup> See, e.g., *Vigilantes* Admissibility Decision, *supra* note 46, ¶ 60 & Decision ¶ 4 (declaring case inadmissible with respect to petitioners who obtained access to an effective remedy in the domestic system).

## 2. The Petition Is Inadmissible for Failure to Establish a Violation of the American Declaration; and Is Meritless

Article 34(a) of the Rules provides that “[t]he Commission shall declare any petition or case inadmissible when [*inter alia*] ... it does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure.” Article 27, in turn, directs the Commission to “consider petitions regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments.” For the United States, the American Declaration is the only “applicable instrument.”<sup>48</sup>

In the instant Petition, Mr. Abu-Jamal alleges violations of four provisions of the American Declaration—Articles I, IV, X, and XXVI.<sup>49</sup> The Commission should find the Petitioner’s claims inadmissible under Article 34(a) of its Rules because the facts stated in the Petition do not tend to establish a violation of these rights—or any others recognized in the American Declaration. The reasons the Petition is inadmissible under Article 34(a), and the reasons it is meritless in any event, are discussed in tandem throughout this section.

### *a. Article I*

Article I of the American Declaration provides that “every human being has the right to life, liberty and the security of his person.” In his Petition, Mr. Abu-Jamal alleges that Philadelphia’s police department and district attorney’s office, along with the Pennsylvania state courts and U.S. federal courts, together “conspired to deprive [him] of his right to life and liberty. ... [Mr.] Abu-Jamal’s unconstitutional conviction and 30-year sentence to death, prior to its recent overturning, violate” Article I.<sup>50</sup>

This conclusory allegation fails to state facts that tend to establish a violation of Article I. Mr. Abu-Jamal’s proceedings were conducted in conformity with U.S. law and the rights set forth in the American Declaration. Mr. Abu-Jamal had an

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<sup>48</sup> Article 20 of the Commission’s Statute and Article 23 of the Rules identify the American Declaration as an “applicable instrument” with respect to nonparties to the American Convention. Although Article 23 of the Rules lists several additional instruments, the United States is not a party to any of those other instruments.

<sup>49</sup> See Petition at 13–14.

<sup>50</sup> Petition at 14.

opportunity to present his case, to rebut the government's case, to challenge the evidence presented against him, and to marshal legal arguments, both during the guilt and sentencing phases of trial and thereafter. A jury concluded that Mr. Abu-Jamal was, beyond a reasonable doubt, guilty of first-degree murder. In a comprehensive appellate and collateral review process over three decades, both federal and state courts, including the U.S. Supreme Court and the Pennsylvania Supreme Court, carefully reviewed each of Mr. Abu-Jamal's myriad allegations that his arrest, trial, conviction, and sentence were unconstitutional or otherwise defective. These decisions are cited throughout this response, and many of them are appended as annexes, so that the Commission may see for itself the rigor and thoroughness that characterized the domestic courts' consideration of Mr. Abu-Jamal's many claims.

With regard to Mr. Abu-Jamal's claims regarding his arrest, trial, and conviction, domestic courts have closely considered and squarely rejected each allegation. Mr. Abu-Jamal does not now specifically address any of the above-mentioned findings of the domestic courts. Instead, he merely reiterates a blanket claim, without any supporting evidence, that his conviction and death sentence were the products of a "conspiracy" by the U.S. criminal justice system.

In fact, with respect to Mr. Abu-Jamal's now-overturned death sentence, his argument contradicts itself: he argues that the judiciary conspired to impose upon him a death sentence, but at the same time he concedes that a federal court, in conducting a *habeas* review of his case, actually invalidated the sentence. This is evidence not of conspiracy, but of the effective, impartial, and independent functioning of the judicial system in the United States.

Regardless of the coherency of Mr. Abu-Jamal's argument, as the United States has pointed out in previous cases before the Commission, the American Declaration *does not prohibit* capital punishment. Indeed, the American Declaration is silent on the issue.<sup>51</sup> At the time the American Declaration was adopted, most countries, including the United States, had recourse to capital punishment for certain crimes; the United States has never signed or ratified any

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<sup>51</sup> See, e.g., *Bucklew v. United States*, Case No. 12.958, Response of the United States (Corrected), Feb. 1, 2016, at 13–14. We have appended the *Bucklew* response to this response as Annex 13. We have no objection to the Commission sharing it with the Petitioner. The response contains no privacy-protected information or other information about Mr. Bucklew that, in our view, would preclude sharing it with the Petitioner in this matter.

international convention obligating the elimination of capital punishment. Therefore, the initial imposition of Mr. Abu-Jamal's death sentence was not inconsistent with any right, including Article I, recognized in the American Declaration. In any event, Mr. Abu-Jamal no longer faces a death sentence, and so the conditions of its permissibility under the American Declaration are not relevant in the present proceedings.

*b. Article IV*

Article IV of the American Declaration provides that "every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever." Mr. Abu-Jamal argues that the FBI's alleged "surveillance, harassment, and repression" of him prior to his arrest violated Article IV.<sup>52</sup> He argues that he was "target[ed] ... for his political associations" with the Black Panther Party and that the anti-black "political motivation[s]" of the Philadelphia Police Department and mayor's office led them to "fram[e]" Mr. Abu-Jamal.<sup>53</sup>

This conclusory allegation entirely fails to state facts that tend to establish a violation of Article IV. Mr. Abu-Jamal has brought no specific evidence to support his claim. Instead, he improperly presents a generalized description of the FBI's COINTELPRO program in an attempt to imply that there was racial bias in his arrest and conviction.<sup>54</sup> Yet Mr. Abu-Jamal was not tried for his affiliation with the Black Panther Party or other political associations; he was tried and convicted for shooting and murdering a police officer. (Indeed, it is also worth noting that Mr. Abu-Jamal's arrest and trial took place years after the conclusion of the COINTELPRO program.)

*c. Article X*

Article X of the American Declaration provides that "every person has the right to the inviolability and transmission of his correspondence." Mr. Abu-Jamal argues that the alleged "surveillance of [his] correspondence, especially legal

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<sup>52</sup> Petition at 14.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 5–7.

correspondence, while incarcerated” violates Article X.<sup>55</sup> Specifically, he alleges that in 1995, as he prepared to pursue PCRA review of his case,<sup>56</sup> prison authorities delivered confidential communications between Mr. Abu-Jamal and his attorney to the office of the Governor of Pennsylvania.<sup>57</sup> He further alleges that the governor used this information to “preempt that appeal [by] setting an execution date,” which “derailed the defense’s plan to wage a careful and strong appeal.”<sup>58</sup> As a result, Mr. Abu-Jamal claims, he was “forced to rush [his] proceedings because of the imminent threat of execution.”<sup>59</sup>

These allegations are entirely unsubstantiated and thus fail to state facts that tend to establish a violation of Article X. As a preliminary matter, these claims have already been reviewed thoroughly in the U.S. state and federal courts, in proceedings that respected all the guarantees of due process under international law and the American Declaration. For the Commission to consider it here would, as discussed in further detail below, therefore be contrary to its own fourth instance formula.<sup>60</sup>

More importantly, U.S. courts have squarely rejected this entirely unsupported claim: simply put, there is no evidence whatsoever to suggest that state officials had read any of his confidential communications. In its 1995 decision on Mr. Abu-Jamal’s appeal, for example, the Pennsylvania state trial court concluded that this claim was “fatuous” and that Mr. Abu-Jamal had

failed to prove that [Pennsylvania] in any way interfered with his communications with counsel, or “surveilled,” “intercepted,” or “copied” his legal mail. The sole offer of proof ... was the hearsay affidavit of one of [Mr. Abu-Jamal’s] attorneys. Since [Mr. Abu-Jamal] never offered to call a witness with personal knowledge of these alleged events, or any otherwise admissible evidence, this claim is factually unsupported.<sup>61</sup>

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<sup>55</sup> Petition at 14.

<sup>56</sup> See *supra* text accompanying notes 13–17.

<sup>57</sup> Petition at 9.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> See *infra* section B(3).

<sup>61</sup> *Abu-Jamal*, 1995 WL 1315980, at \*125–26. This document is appended to this response as Annex 3.

Thus, the court reasoned, Mr. Abu-Jamal’s “protestations of unreadiness were mere posturing to delay a meritorious review of his ... claims.”<sup>62</sup>

In sum, given that this claim has already been reviewed by U.S. courts and is, in any case, baseless, the Commission should reject it.

*d. Article XXVI*

Article XXVI of the American Declaration provides that “every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.” Mr. Abu-Jamal makes two distinct allegations under Article XXVI.

First, Mr. Abu-Jamal alleges that his “30 years spent in solitary confinement on death row, including the setting of multiple execution dates,” violates this article’s prohibition of cruel, infamous or unusual punishment.<sup>63</sup> This conclusory allegation fails to state facts that tend to establish a violation of Article XXVI. As a preliminary matter, the record does not support the assertion that Mr. Abu-Jamal has spent all, or even a substantial portion, of his period of incarceration in solitary confinement. Further, U.S. constitutional, federal, and state law establish standards of conditions in incarceration that are consistent with the rights recognized in the American Declaration.<sup>64</sup> Conditions of confinement in death row, including those encountered by Mr. Abu-Jamal, may be austere, but are reasonable under the circumstances, are consistent with U.S. constitutional protections, and do not constitute cruel and unusual punishment.<sup>65</sup>

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<sup>62</sup> *Id.* at 126. It is worth noting that following this ruling, Mr. Abu-Jamal declined to raise this allegation as his case continued on appeal. *See* Reply Brief for Appellant, 1996 WL 33418253; Brief for Appellant After Remand, 1996 WL 33418248; Sur-Reply Brief for Appellant, 1997 WL 33544668.

<sup>63</sup> Petition at 14.

<sup>64</sup> The United States has made this argument in past matters and stands by it now. *See, e.g.,* Tamayo Arias v. United States, Case No. 12.873, Response of the United States, Dec. 23, 2013, at 25 (“*Tamayo* U.S. Response”). We have appended the *Tamayo* response to this response as Annex 11. We have no objection to the Commission sharing it with the Petitioner. The response contains no privacy-protected information or other information about Mr. Tamayo that, in our view, would preclude sharing it with the Petitioner in this matter.

<sup>65</sup> As noted previously, including in the *Saldaño* case, “the right to appropriate conditions of confinement ... is covered by the Due Process Clause [of the U.S. Constitution], 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 [of the U.S. Constitution], which prohibits ‘cruel and unusual punishments.’” *Saldaño v. United States*, Petition No.

Moreover, the setting of “multiple” (that is, a total of two) execution dates, far from constituting a violation of due process, is strong evidence of the *proper functioning* of judicial process. Indeed, the fact that a second execution date needed to be set was the result of Mr. Abu-Jamal taking full advantage—as is his right—of the abundant procedural safeguards available to him under U.S. federal and state law. Following the conclusion of Mr. Abu-Jamal’s direct appeal process, an initial execution date was set in June 1995. In response, Mr. Abu-Jamal filed a petition in Pennsylvania state court for post-conviction relief; that court stayed his execution as it considered his petition. After his petition was ultimately denied by the Pennsylvania Supreme Court, a second execution date was set in October 1999. In response, Mr. Abu-Jamal filed a petition for federal *habeas* relief; that court too stayed his execution as it considered his petition. The ultimate result of these *habeas* proceedings was the invalidation of his death sentence, such that he has not had to experience the setting of a third execution date, and will not in the future.

Second, Mr. Abu-Jamal alleges that his “conviction and death sentence were not imposed [or reviewed on appeal] in accordance with existing United States statutory, constitutional, and common law.”<sup>66</sup> This conclusory allegation fails to state facts that tend to establish a violation of Article XXVI; moreover, as discussed below, the Commission lacks competence to make determinations as to whether particular provisions of U.S. domestic law were violated.<sup>67</sup> Mr. Abu-Jamal’s case has been thoroughly litigated and reviewed by both federal and state courts at all levels, including the U.S. Supreme Court and the Pennsylvania Supreme Court. Each court, trial and appellate, has carefully considered his various allegations of unconstitutionality and upheld his conviction. As noted above, we have cited these decisions throughout this response and have appended many of them as annexes, so that the Commission may see for itself the rigor and thoroughness that characterized the domestic courts’ consideration of Mr. Abu-Jamal’s many claims.

With regard to Mr. Abu-Jamal’s death sentence, the United States has strong constitutional safeguards for the implementation of capital punishment: once an

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12.254, Response of the United States, Nov. 2, 2009, at 2–3. We have appended the *Saldaño* response to this response as Annex 10. We have no objection to the Commission sharing it with the Petitioner. The response contains no privacy-protected information or other information about Mr. Saldaño that, in our view, would preclude sharing it with the Petitioner in this matter.

<sup>66</sup> Petition at 14.

<sup>67</sup> See *infra* section B(3).

individual has received a sentence in state court providing for capital punishment, the individual has the opportunity for extensive appellate review and also has recourse to state post-conviction and federal *habeas* proceedings. Those procedural safeguards are manifestly evident in this case. After Mr. Abu-Jamal had litigated the issue in state court for years, a federal court, conducting *habeas* review, invalidated Mr. Abu-Jamal's death sentence and subsequently ordered Pennsylvania to either impose a sentence of life imprisonment or afford Mr. Abu-Jamal a new sentencing hearing. The state court later sentenced him to life imprisonment. Mr. Abu-Jamal has, in sum, successfully challenged his death penalty thanks to the United States' robust due process protections.

### **3. The Petition Should Be Dismissed in Light of the Commission's "Fourth Instance Formula"**

The Petition is also inadmissible because the Commission is not a "court of fourth instance." The Commission has repeatedly stated that it may not "serve as an appellate court to examine the alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction"—a doctrine the Commission calls the "fourth instance formula."<sup>68</sup> The fourth instance formula recognizes the proper role of the Commission as a subsidiary to States' domestic judiciaries,<sup>69</sup> and indeed, nothing in the American Declaration, the Organization of American States ("OAS") Charter, the Commission's Statute, or its Rules gives the Commission the authority to act as an appellate body. As we recently said to the Commission in another matter, "it is not the Commission's place to sit in judgment as another layer of appeal, second-guessing the considered decisions of a state's domestic courts in weighing evidence and applying domestic law, nor does the Commission have the resources or requisite expertise to perform such a task."<sup>70</sup>

In this Petition, Mr. Abu-Jamal improperly seeks to re-litigate his domestic conviction and sentencing in an international forum, in the hopes of obtaining an

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<sup>68</sup> Marzioni v. Argentina, Case No. 11.673, Report No. 39/96, Inadmissibility, Oct. 15, 1996, ¶ 51.

<sup>69</sup> See Castro Tortino v. Argentina, Case No. 11.597, Report No. 7/98, Admissibility, Mar. 2, 1998, ¶ 17.

<sup>70</sup> Reid v. United States, Petition No. P-1163-10, Response of the United States, July 1, 2016, at 5. We have appended the *Reid* response to this response as Annex 12. We have no objection to the Commission sharing it with the Petitioner. The response contains no privacy-protected information or other information about Mr. Reid that, in our view, would preclude sharing it with the Petitioner in this matter.



outcome more favorable to him than was provided by the jury and the domestic courts in the proper exercise of their jurisdiction. Indeed, he freely admits this fact: the Petition itself states, in detail, alleged violations of the U.S. Constitution.<sup>71</sup> While any constitutional violations that may have occurred in Mr. Abu-Jamal's domestic proceedings were remedied on appellate and collateral review and resentencing, it is axiomatic that the Commission lacks competence to provide an opinion about whether the U.S. Constitution was violated. Under Article 27 of the Commission's Rules, which establishes conditions for consideration of a petition, the Commission may only "consider petitions regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments, with respect to the Member States of the OAS." The U.S. Constitution is not an "applicable instrument" here, as it is not an instrument referred to in Article 27. Thus, the Commission could not consider allegations about violations of the U.S. Constitution even if such violations were present in the instant matter, which they are not.

Further, as detailed above, Petitioner pursued, over an extended period of time, a number of remedies in both state and federal courts (and indeed continues to do so). In some of these efforts, particularly those involving his now-overturned death penalty, Petitioner has been *successful* in pursuing domestic remedies. In others, such as in his efforts to overturn his conviction, Petitioner has been unsuccessful. Yet Petitioner's broad allegation that U.S. domestic trial and appellate courts have failed to remedy his allegedly unconstitutional conviction<sup>72</sup> does not create admissibility; the Commission has long recognized that "if [a Petition] contains nothing but the allegation that the decision [by a domestic court] was wrong or unjust in itself, the petition must be dismissed under [the fourth instance] formula."<sup>73</sup> The Commission has further noted that "it cannot serve as an appellate court to examine alleged errors of internal law or fact that may have been

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<sup>71</sup> Petition at 11–13. Broadly, Mr. Abu-Jamal alleges violations of the First, Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution; namely, that he has been unjustly imprisoned for some 30 years; and that his arrest, conviction, initial sentencing, and resentencing were characterized by federal constitutional violations. *Id.*

<sup>72</sup> See Petition at 14.

<sup>73</sup> *Marzioni*, *supra* note 68, ¶ 51; *accord* Maldonado Manzanilla v. Mexico, Petition No. 733-04, Report No. 87/07, Inadmissibility, Oct. 17, 2007, ¶ 58 (reiterating that "the fact that the outcome was unfavorable ... does not constitute a [rights] violation") (quoting and citing Rodríguez v. Argentina, Case No. 10.382, Report No. 6/98, Inadmissibility, Feb. 21, 1998, ¶ 17).

committed by the domestic courts acting within their jurisdiction.”<sup>74</sup>

Mr. Abu-Jamal’s Petition is inadmissible. The United States’ domestic criminal process, including through the availability of appellate and collateral review of trial and sentencing proceedings, affords those convicted of capital offenses the highest level of internationally recognized protection.<sup>75</sup> Mr. Abu-Jamal has—in numerous courts, over an extended period of time, and in myriad ways—challenged the legality of his arrest, trial, conviction, and sentence. Indeed, Mr. Abu-Jamal acknowledges as much.<sup>76</sup> There were multiple layers of careful judicial review, both state and federal, that provided Mr. Abu-Jamal an extended opportunity to challenge judicial error. Indeed, that is precisely what happened here, to Mr. Abu-Jamal’s benefit: after exhaustive proceedings in both state and federal court, Mr. Abu-Jamal’s death sentence was ultimately abrogated and commuted to life imprisonment.<sup>77</sup>

In other words, in this Petition, Mr. Abu-Jamal has improperly re-characterized “alleged errors of internal law [and] fact” as “violations” of the American Declaration, when in fact he has been *successful* in using the robust forms of due process provided under the U.S. judicial system. The Commission should decline this invitation to sit as a court of fourth instance; acting to the contrary would amount to the Commission second-guessing the legal and factual determinations of both state and federal U.S. courts at all levels, conducted in complete conformity with U.S. due process protections, commitments under the

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<sup>74</sup> *Marzioni*, *supra* note 68, ¶ 51.

<sup>75</sup> The United States has made this argument in past matters and stands by it now. *See, e.g., Tamayo* U.S. Response, *supra* note 64, at 24 (appended as Annex 11).

<sup>76</sup> *See* Petition at 11 (noting that several courts, including the Pennsylvania trial courts, the Pennsylvania Superior Court, the Pennsylvania Supreme Court, the U.S. District Court for the Eastern District of Pennsylvania, the Third Circuit Court of Appeals, and the U.S. Supreme Court are all allegedly “responsible” for alleged “violations” of Petitioner’s rights in their treatment of his case).

<sup>77</sup> The Commission has promulgated at least two distinct fourth instance formula tests that remain in tension. The United States has raised this discrepancy in its response in *Reid*, *supra* note 70, in *Tercero v. United States*, and elsewhere, but the Commission has not addressed it, including in the subsequent Merits Report in *Tercero*. *See Tercero v. United States*, Case No. 12.994, Report No. 51/15, Merits (Publication), Oct. 28, 2015, ¶¶ 45, 102, 150. Under its “unequivocal evidence” standard, “[the] Commission cannot take upon itself the functions of an appeals court ... unless there is *unequivocal evidence* that guarantees of due process ... have been violated.” *Caballero v. Honduras*, Petition No. 1180-03, Report No. 66/14, Report on Inadmissibility, July 25, 2014, ¶ 36 (quoting *Bedoya de Vivanco v. Peru*, Petition No. 369-01, Report No. 45/04, Inadmissibility, Oct. 13, 2004, ¶ 41) (emphasis added). The different “possible violation” standard would allow the Commission to “review the judgments issued by the domestic courts acting within their competence and with due judicial guarantees” when a petitioner alleges “a possible violation of any rights set forth in the American Declaration.” *Rocha Díaz v. United States*, Case No. 12.833, Report No. 11/15, Merits (Publication), Mar. 23, 2015, ¶ 56 (emphasis added); *see also Marzioni*, *supra* note 68, ¶ 50.

American Declaration, and otherwise in accordance with U.S. commitments and obligations under international human rights instruments.

#### **4. The Commission May Not Issue Binding Orders with Respect to the United States**

Mr. Abu-Jamal requests in his Petition that the Commission both demand his “immediate release from custody” and “sanction” the United States for its allegedly “inhumane treatment” of him.<sup>78</sup> To the extent Mr. Abu-Jamal seeks remedies from the Commission that would be binding upon the United States, we reiterate our longstanding position that the American Declaration is a nonbinding instrument that does not itself create legal rights or impose legal obligations on member States of the OAS,<sup>79</sup> and that the Commission may issue recommendations but not binding orders.<sup>80</sup> Nevertheless, the United States has undertaken a political commitment to uphold the American Declaration. Indeed, the United States takes its American Declaration commitments and the Commission’s recommendations very seriously.

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<sup>78</sup> Petition at 10. *See also* text accompanying notes 41–42 *supra*.

<sup>79</sup> The United States has consistently maintained that the American Declaration is a nonbinding instrument and does not create legal rights or impose legal duties on member states of the OAS. U.S. federal Courts of Appeals have independently held that the American Declaration is nonbinding and that the Commission’s decisions do not bind the United States. *See, e.g.,* Garza v. Lappin, 253 F.3d 918, 925 (7th Cir. 2001) (“The American Declaration ... is an aspirational document which ... did not on its own create any enforceable obligations on the part of any of the OAS member nations. ... Nothing in the OAS Charter suggests an intention that member states will be bound by the Commission’s decisions before the American Convention goes into effect. To the contrary, the OAS Charter’s reference to the Convention shows that the signatories to the Charter intended to leave for another day any agreement to create an international human rights organization with the power to bind members. ... The Commission’s power is only to make ‘recommendations,’ which, according to the plain language of the term, are not binding.”); *accord, e.g.,* Flores-Nova v. Attorney General of the United States, 652 F.3d 488, 493–94 (3rd Cir. 2011); *In re Hicks*, 375 F.3d 1237, 1241 n.2 (11th Cir. 2004).

For a further discussion of the U.S. position regarding the nonbinding nature of the American Declaration, see Request for an Advisory Opinion Submitted by the Government of Colombia to the Inter-American Court of Human Rights Concerning the Normative Status of the American Declaration of the Rights and Duties of Man, Observations of the United States of America, 1988, available at <http://www1.umn.edu/humanrts/iachr/B/10-esp-3.html>.

<sup>80</sup> Article 20 of the Statute of the Commission sets forth the Commission’s powers that relate specifically to OAS member States that, like the United States, are not parties to the legally binding American Convention, including to pay particular attention to observance of certain enumerated human rights set forth in the American Declaration, to examine communications and make recommendations to the State, and to verify whether in such cases domestic legal procedures and remedies have been applied and exhausted.

### **C. CONCLUSION**

In sum, because Petitioner has failed to exhaust domestic remedies as required by Article 20(c) of the Commission's Statute and Article 31 of the Rules; because his claims fail under Article 34(a) of the Rules to state facts that tend to establish a violation of the American Declaration; and because review of the Petition would require the Commission to disregard the fourth instance formula, the Commission should declare the Petition inadmissible and, in line with its own practice, close this matter. Should the Commission nevertheless declare the Petition admissible and proceed to examine its merits, it should find it meritless for the reasons discussed above, and dismiss it. The United States reserves the right to submit further observations should this Petition reach the merits stage.