



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

November 8, 2016

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

**Re: Clark Derrick Frazier, Petition No. P-422-12  
Response to Petition**

Dear Mr. Abrão:

The United States Government has the honor of addressing the Inter-American Commission on Human Rights ("Commission") in regard to the above-referenced Petition filed by Clark Derrick Frazier. Your office, having received the Petition on March 19, 2012, transmitted it to the United States on February 17, 2016, via a letter dated January 13, 2016, requesting a response. 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:

*Selected Domestic Proceedings Relating to Petitioner Clark Derrick Frazier*

1. Frazier v. Tennessee, No. M2008-01303-CCA-R3-PC, 2009 WL 1272278 (Tenn. Crim. App. May 5, 2009) (“*Frazier I*”)
2. Frazier v. Lindamood, No. 3:10-cv-00114, 2010 WL 3239064 (M.D. Tenn. July 21, 2010) (“*Lindamood I*”)
3. Frazier v. Lindamood, No. 3:10-0114, 2010 WL 3239061 (M.D. Tenn. Aug. 13, 2010) (“*Lindamood II*”)
4. Order Denying Motion for Certificate of Appealability, Frazier v. Lindamood, No. 10-6016 (6th Cir. Apr. 1, 2011)
5. Order Announcing Conclusion on Motion for Rehearing En Banc, Frazier v. Lindamood, No. 10-6016 (6th Cir. May 6, 2011)
6. Order Denying Motion for Rehearing En Banc, Frazier v. Lindamood, No. 10-6016 (May 24, 2011)
7. Frazier v. Tennessee, No. M2014-02374-CCA-R3-ECN, 2015 WL 4040383 (Tenn. Crim. App. July 1, 2015) (“*Frazier II*”)
8. Frazier v. Tennessee, 45 S.W.3d 246, No. M2014-02374-SC-R11-ECN, 2016 WL 3668035 (Tenn. Sup. Ct. July 7, 2016) (“*Frazier III*”)

**PETITION NO. P-422-12, CLARK DERRICK FRAZIER  
RESPONSE OF THE UNITED STATES OF AMERICA**

The Government of the United States appreciates the opportunity to submit these observations on the Petition of Clark Derrick Frazier (“Petitioner” or “Mr. Frazier”), dated March 19, 2012, and transmitted to the United States on February 17, 2016, via a letter dated January 13, 2016. For the reasons stated below, we urge the Commission to find this matter inadmissible because the Petitioner has failed to state facts that tend to establish a violation of the American Declaration of the Rights and Duties of Man (“American Declaration”), and to find that the Commission’s review of the Petition is barred in any event under the fourth instance formula.<sup>1</sup> Should the Commission nevertheless declare the Petition admissible and examine its merits, it should dismiss the Petition as meritless.

**A. FACTUAL AND PROCEDURAL BACKGROUND**

On July 13, 2004, Mr. Frazier repeatedly stabbed Rosario Salas Angel during a robbery, causing his death. He was indicted for first degree murder and for first degree felony murder in Robertson County, Tennessee. On March 9, 2007, pursuant to a plea agreement negotiated by his counsel and the prosecutor, he pled guilty to second degree murder and was sentenced to 25 years in prison. At the guilty plea submission hearing, Mr. Frazier affirmed that he understood the charges against him. The judge

explained the constitutional rights Petitioner was foregoing by entering his plea of guilty, and Petitioner stated that he understood. Petitioner indicated that he had reviewed and discussed the terms of his plea agreement with his trial counsel. Petitioner acknowledged that his plea of guilty was being made voluntarily, and no one had threatened or coerced him into entering his plea. Petitioner acknowledged that he was satisfied with his counsel’s representation

---

<sup>1</sup> Mr. Frazier alleges that the United States has “violated” certain specific rights recognized in the American Declaration during his criminal proceedings. As the American Declaration is a non-binding instrument and does not itself create legal rights or impose legal obligations on member States of the Organization of American States, *see infra* notes 49–50 and accompanying text, 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.

and that counsel had addressed all of his issues. Petitioner acknowledged at the hearing that he had inflicted the wounds that caused the victim's death. Petitioner stated that he understood that if he had been convicted after a trial, he would have been sentenced as a Range II, multiple offender. The trial court found that Petitioner was entering his plea of guilty to the offense of second degree murder voluntarily and knowingly and accepted Petitioner's plea.<sup>2</sup>

The plea became final on April 8, 2007.<sup>3</sup> On May 10, 2007, after the plea became final, Mr. Frazier filed a motion to withdraw his guilty plea. On September 14, 2007, he voluntarily withdrew that motion before it was reviewed by a court.<sup>4</sup>

On January 18, 2008,<sup>5</sup> Mr. Frazier filed a petition for state-level post-conviction relief, claiming that his trial counsel coerced him into pleading guilty and failed to explain all of the consequences of a guilty plea to him,<sup>6</sup> allegedly constituting ineffective assistance of counsel. His arguments were heard on the merits and denied.<sup>7</sup> The post-conviction court found that Mr. Frazier's "claims that his lawyers did not adequately communicate with him about the case ... and that his lawyers ... coerced him into taking the plea are completely without merits."<sup>8</sup> Mr. Frazier appealed the post-conviction court's decision to the Tennessee Court of Criminal Appeals, which heard and denied the appeal on May 5, 2009, finding that "the evidence [did] not preponderate against the post-conviction court's

---

<sup>2</sup> Frazier v. Tennessee, No. M2008-01303-CCA-R3-PC, 2009 WL 1272278, at \*1 (Tenn. Crim. App. May 5, 2009) ("*Frazier I*") (appended as Annex 1).

<sup>3</sup> Order Denying Motion for Certificate of Appealability, Frazier v. Lindamood, No. 10-6016, at \*1 (6th Cir. Apr. 1, 2011).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> "Petitioner testified that his trial counsel explained some of the consequences of entering a plea of guilty, but not all. Petitioner stated that he did not understand that if he had been convicted after a trial, he would have been able to collaterally attack his conviction. Petitioner stated that he did not understand his right to appeal a jury conviction until after he was confined and had access to the penitentiary's library. Petitioner acknowledged that trial counsel 'did her job' on the motion to suppress his confession. However, Petitioner submits that if he had not entered a plea of guilty, he would have been able to challenge the trial court's denial of his suppression motion on appeal." *Frazier I*, *supra* note 2, at \*1.

<sup>7</sup> *Id.* at \*1-4 (discussing Mr. Frazier's post-conviction hearing).

<sup>8</sup> *Id.* at \*5.

finding.”<sup>9</sup> Mr. Frazier then appealed to the Tennessee Supreme Court, which denied leave to appeal on August 31, 2009.<sup>10</sup>

Next, on January 26, 2010, Mr. Frazier filed a petition for a writ of *habeas corpus* in the U.S. District Court for the Middle District of Tennessee, claiming once again that his guilty plea was unlawful because his trial attorneys coerced him into making it and failed to explain the seriousness of the charges he was facing; because his conviction was based on the use of a coerced statement and on the use of evidence obtained as a result of an unconstitutional search and seizure; because he was denied effective assistance of counsel when his counsel failed to adequately investigate and produce a witness corroborating his defense; and because the State of Tennessee failed to preserve exculpatory evidence.<sup>11</sup> The U.S. District Court referred the petition to a U.S. magistrate judge, who reviewed the petition and supporting and opposing filings.<sup>12</sup> The magistrate judge recommended that the petition be denied on the grounds that it was not timely filed: Mr. Frazier had filed his petition for a writ of *habeas corpus* more than two months after the one-year statute of limitations on this type of petition had passed.<sup>13</sup>

Mr. Frazier timely filed an objection to the magistrate judge’s report and recommendation, claiming that the magistrate judge erred in failing to toll the limitation period while his original petition for withdrawal of his guilty plea was pending in state courts (May to September 2007).<sup>14</sup> On August 13, 2010, after reviewing the magistrate judge’s report and recommendation, Mr. Frazier’s objection to that report and recommendation, and all supporting and opposing filings, the U.S. District Court found that the magistrate judge “acted correctly when he did not toll the limitation period during the time that the petition for the

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at \*1.

<sup>11</sup> Frazier v. Lindamood, No. 3:10-cv-00114, 2010 WL 3239064, at \*1 (M.D. Tenn. July 21, 2010) (“*Lindamood I*”) (appended as Annex 2).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at \*3. Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), there is a one-year statute of limitations on all applications seeking a writ of *habeas corpus* under 28 U.S.C. §2254. That “statute of limitations begins to run from the latest of: (1) the date on which the judgment became final; (2) the date on which any impediment to filing the application was removed by the state; (3) the date on which a newly constitutional right was created and made retroactive to cases on collateral review; or (4) the date on which the predicate of the claim or claims presented could have been discovered through the exercise of due diligence.” *Lindamood I*, *supra* note 11, at \*2 (citing 28 U.S.C. §2244(d)(1)(A)–(D)).

<sup>14</sup> Frazier v. Lindamood, No. 3:10-0114, 2010 WL 3239061, at \*1 (M.D. Tenn. Aug. 13, 2010) (“*Lindamood II*”) (appended as Annex 3).

withdrawal of guilty plea was pending in the state courts” under state law.<sup>15</sup> The U.S. District Court concluded that Mr. Frazier’s *habeas corpus* petition had not been timely filed and accordingly dismissed it.<sup>16</sup>

Mr. Frazier appealed the denial of his *habeas corpus* petition to the U.S. Court of Appeals for the Sixth Circuit. Under U.S. law, in order to obtain a certificate of appealability to appeal denial of a *habeas corpus* petition, the petitioner must make a “substantial showing of the denial of a constitutional right.”<sup>17</sup> The Sixth Circuit reviewed the matter on the merits and found that Mr. Frazier had not made such a showing, and denied his motion for a certificate of appealability.<sup>18</sup> Mr. Frazier made a motion to have that decision re-reviewed by the Sixth Circuit *en banc*—that is, by a panel made up of all the members of the Sixth Circuit—but on May 6, 2011, the Sixth Circuit panel of three judges concluded that “the original deciding judge did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, decline[d] to rehear the matter.”<sup>19</sup> The petition for rehearing was officially denied by the Sixth Circuit on May 24, 2011, for those reasons.<sup>20</sup>

Finally, Mr. Frazier then proceeded to file a petition for a writ of error *coram nobis*<sup>21</sup> back in the state Circuit Court for Robertson County, Tennessee, on

---

<sup>15</sup> *Id.* at \*2.

<sup>16</sup> *Id.*

<sup>17</sup> 28 U.S.C. §2253(c).

<sup>18</sup> Order Denying Motion for Certificate of Appealability, *Frazier v. Lindamood*, No. 10-6016, at \*3 (6th Cir. Apr. 1, 2011) (appended as Annex 4).

<sup>19</sup> Order Announcing Conclusion on Motion for Rehearing En Banc, *Frazier v. Lindamood*, No. 10-6016, at \*1 (6th Cir. May 6, 2011) (appended as Annex 5).

<sup>20</sup> Order Denying Motion for Rehearing En Banc, *Frazier v. Lindamood*, No. 10-6016, at \*1 (6th Cir. May 24, 2011) (appended as Annex 6).

<sup>21</sup> A writ of error *coram nobis* allows a court to reopen and correct its judgment if it is found that there is a substantial error not appearing in the records of the original judgment’s proceedings which, if known at the time of judgment, would have prevented the judgment from being pronounced. Tennessee Code §40-26-105 states: “(a) There is made available to convicted defendants in criminal cases a proceeding in the nature of a writ of error *coram nobis*, to be governed by the same rules and procedure applicable to the writ of error *coram nobis* in civil cases, except insofar as inconsistent herewith. Notice of the suing out of the writ shall be served on the district attorney general. No judge shall have authority to order the writ to operate as a *supersedeas*. The court shall have authority to order the person having custody of the petitioner to produce the petitioner in court for the hearing of the proceeding. (b) The relief obtainable by this proceeding shall be confined to errors *dehors* the record and to matters that were not or could not have been litigated on the trial of the case, on a motion for a new trial, on appeal in the nature of a writ of error, on writ of error, or in a *habeas corpus* proceeding. Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error *coram nobis* will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial. (c) The issue shall be tried by the court without the

June 15, 2011.<sup>22</sup> The petition alleged that Mr. Frazier “was entitled to a new trial because he was not aware, prior to his plea, that items collected from the crime scene had been tested for DNA and that the Petitioner’s DNA was not found on some of the items.”<sup>23</sup> Counsel was appointed for Mr. Frazier and a hearing was held before a trial court judge, wherein it was revealed that the defense team did, in fact, know about this DNA evidence and had shared it with Mr. Frazier before he decided to enter his guilty plea, but that Mr. Frazier “did not pay attention to it.”<sup>24</sup> The Tennessee Court of Criminal Appeals found, as a result, that Mr. Frazier was not entitled to a new trial based on this ground, and denied the writ.<sup>25</sup> Mr. Frazier appealed this denial to the Supreme Court of Tennessee, and on July 7, 2016,<sup>26</sup> that court denied his appeal on the ground that the remedy he was seeking was unavailable to criminal defendants wishing to challenge a guilty plea.<sup>27</sup>

## B. DISCUSSION

The Petition alleges that the United States has violated Mr. Frazier’s rights to personal liberty, fair trial, “compensation for having been sentenced by a final judgment through a miscarriage of justice,” equal protection of law, and “judicial protection against violations of fundamental rights.”<sup>28</sup> The United States proceeds on the basis that the Petition therefore asserts violations of four articles—Articles I, II, XVIII, and XXVI—of the American Declaration.<sup>29</sup> In an attempt to demonstrate

---

intervention of a jury, and if the decision be in favor of the petitioner, the judgment complained of shall be set aside and the defendant shall be granted a new trial in that cause. In the event a new trial is granted, the court may, in its discretion, admit the petitioner to bail; provided, that the offense is bailable. If not admitted to bail, the petitioner shall be confined in the county jail to await trial.”

<sup>22</sup> Frazier v. Tennessee, No. M2014-02374-CCA-R3-ECN, 2015 WL 4040383, at \*2 (Tenn. Crim. App. July 1, 2015) (“*Frazier II*”) (appended as Annex 7).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at \*2.

<sup>25</sup> *Id.* at \*3.

<sup>26</sup> This delay was due in part to a request from Petitioner to hold his appeal pending the resolution of a related case concerning the ability of an individual to use a writ of error *coram nobis* to challenge a guilty plea (Wlodarz v. State, 361 S.W.3d 490 (Tenn. 2012)).

<sup>27</sup> Frazier v. Tennessee, No. M2014-02374-SC-R11-ECN, 2016 WL 3668035, at \*2 (Tenn. Sup. Ct. July 7, 2016) (“*Frazier III*”) (appended as Annex 8).

<sup>28</sup> Petition at § V.

<sup>29</sup> The United States reads the Petitioner’s allegation that the United States breached his “right to compensation for having been sentenced by a final judgment through a miscarriage of justice” and his “right to judicial protection against violations of fundamental human rights” as claims under Articles XXVIII and XXVI, respectively, of the American Declaration.

a violation of these provisions, Mr. Frazier reasserts before the Commission a number of the claims that he litigated unsuccessfully before domestic courts, namely that he was rendered ineffective assistance by counsel, that his guilty plea and inculpatory statements were coerced, and that exculpatory evidence was not turned over by the prosecution. Based on the facts established above, this Petition must be dismissed both because the Petitioner has failed to state facts that tend to establish a violation of the American Declaration under Article 34(a) of the Commission Rules of Procedure (“Rules”), and because the Petitioner’s claims are precluded by the Commission’s “fourth instance formula,” as they amount to a mere disagreement with determinations of domestic courts rendered fully consistently with the American Declaration.

Should the Commission nevertheless declare the case admissible and choose to examine the claims presented by the Petitioner on their merits, it should deny the requested relief because the Petition does not demonstrate a failure by the United States to uphold its commitments under the American Declaration. The reasons the Petition is inadmissible, and the reasons it is meritless in any event, are discussed in tandem throughout this brief, and in particular in the following section.

## **1. The Petition Is Inadmissible Under Article 34(a) of the Rules for Failure to State Facts That Tend to Establish a Violation of the American Declaration**

For a petition to be admissible before the Commission, it must satisfy several procedural requirements under the Rules. Article 34(a) of the Rules provides that “[t]he Commission shall declare any petition or case inadmissible when ... 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>30</sup>

---

<sup>30</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.



Domestic courts have already closely considered and rejected Mr. Frazier's claims.<sup>31</sup> For example, before the Court of Criminal Appeals of the State of Tennessee, Mr. Frazier asserted nearly identical claims to the ones he asserts before the Commission: that he was unaware of "newly discovered" evidence concerning DNA at the crime scene at the time of his guilty plea, and that his counsel provided ineffective assistance by failing to make him aware of that evidence and coercing him into signing the guilty plea. In these proceedings before the Tennessee Court of Criminal Appeals, it was revealed that his trial counsel "had sent the Petitioner every piece of evidence they received during discovery[, including the DNA evidence at issue ... , and] the Petitioner admitted that, if he received the report of the DNA results ... , he did not pay any attention to it."<sup>32</sup> Because Mr. Frazier in fact knew about the DNA evidence and simply chose to disregard it or pay little attention to it, the court found that the evidence could not constitute "newly discovered evidence."<sup>33</sup> And, even if it could, the court reasoned that Mr. Frazier "confessed to police that he was robbing the victim of his wallet when the victim was stabbed[... , and] evidence established that the Petitioner was holding the knife that caused the victim's fatal wounds, and two eye-witnesses to the murder were expected to testify for the State."<sup>34</sup> Based on all this evidence, the court concluded that even if Petitioner had chosen to pay attention to the DNA evidence, and had presented that evidence alongside other evidence at trial rather than pleading guilty to avoid trial, it would be impossible to conclude that such evidence would have "affected the outcome of the Petitioner's case," given the weight of the other available evidence.<sup>35</sup>

Mr. Frazier does not claim that there were any deficiencies in the Tennessee Court of Criminal Appeals' proceedings in which his complaints were heard. He likewise does not claim that he was unable to present his claims there. Instead, he merely contends that the court made the wrong decision when it considered his claims.

---

<sup>31</sup> See *supra* Section A.

<sup>32</sup> *Frazier II*, *supra* note 22, at \*3.

<sup>33</sup> *Id.* at \*4.

<sup>34</sup> *Id.* at \*5.

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

Furthermore, as noted above, in post-conviction proceedings the post-conviction court found that Mr. Frazier's claims regarding his lawyers' inadequate communication and coercion into a guilty plea were

completely without merits. The testimony of [trial counsel] indicates that [trial counsel] adequately kept [Petitioner] up to date on his case and adequately explained all the issues to him. Further, prior to accepting the plea, the court asked [Petitioner] many questions about his plea and the rights he was giving up by accepting the plea. ... Nothing in the evidence indicates that [Petitioner] was coerced into accepting the agreement.<sup>36</sup>

As previously noted, this decision was affirmed by the Tennessee Court of Criminal Appeals upon review.<sup>37</sup>

In Mr. Frazier's case, the criminal justice system of the United States worked as it was intended to and the proceedings were conducted in compliance with U.S. law and consistent with the rights set forth in the American Declaration: Mr. Frazier was transparently and openly charged with a crime for which there was probable cause to believe he was the perpetrator, he was represented by counsel during the proceedings against him, the evidence was explained to him and with the assistance of counsel, and he determined along with his counsel that he would plead guilty to one of the charged offenses to avoid going to trial.<sup>38</sup> Mr. Frazier attempted to change his mind about this decision after the fact, but ultimately voluntarily rescinded his motion to withdraw the guilty plea before any court had the chance to hear it. Instead, he later pursued three different judicial avenues to challenge the basis for his guilty plea: a post-conviction challenge based on the insufficiency of his legal counsel, a *habeas corpus* challenge based on that and other grounds, and ultimately a petition for a writ of error *coram nobis*.<sup>39</sup> Two of these challenges were heard and found to be meritless by U.S. domestic courts.

The third of these challenges, Mr. Frazier's petition for a writ of *habeas corpus*, was found to have been untimely filed by the Petitioner, as previously noted. The Commission has held that "in order to give the State the opportunity to

---

<sup>36</sup> *Frazier I*, *supra* note 2, at \*5.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at \*1, 5.

<sup>39</sup> *See supra* Section A.

correct alleged violation of rights ... before an international proceeding is brought, judicial remedies pursued by alleged victims must meet reasonable procedural requirements established under domestic law.”<sup>40</sup> These reasonable requirements may include timeframes for filing certain types of claims. Mr. Frazier does not argue that the one-year timeframe for this type of challenge is unreasonable: instead, he argues that the judge in his case incorrectly applied the time limit to his case. This, however, is a mere disagreement with the result of the proceeding, including the factual and legal determinations of an impartial judge, and not an allegation that the proceeding or the statute in question violates Petitioner’s rights.

Mr. Frazier does not allege that any of these proceedings were insufficient, but rather disagrees with the decisions of these domestic courts. He fails in his Petition to address any of the above-mentioned findings of these domestic courts, including the findings that his various claims were without merit. The Commission has previously found that when the complaints presented by a Petitioner to the Commission have previously been heard and decided by a domestic court, and there is no indication that the decision of the domestic courts involved a violation, the claims are inadmissible.<sup>41</sup> As a result, Mr. Frazier has failed to state facts that tend to establish a violation of the American Declaration and the Petition is inadmissible under Article 34(a) of the Rules. Alternatively, for these same reasons, the Petition is without merit.

## **2. The Petition Must Be Dismissed Under the Commission’s Fourth Instance Formula**

The Commission must also dismiss the Petition because the Commission lacks competence to sit as a court of fourth instance. The Commission has repeatedly stated that it may not “serve as an appellate court to examine 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>42</sup>

---

<sup>40</sup> *Magi v. Argentina*, Petition No. 951-01, Report No. 106/13, Inadmissibility, Nov. 5, 2013, ¶ 33.

<sup>41</sup> *Romero Vázquez & Gil Rendón v. Mexico*, Petition No. 1352-06 & 580-07, Report No. 67/14, Inadmissibility, July 25, 2014, ¶ 58.

<sup>42</sup> *Marzioni v. Argentina*, Case No. 11.673, Report No. 39/96, Inadmissibility, Oct. 15, 1996 (“*Marzioni* Inadmissibility Report”), ¶¶ 50–51.

The fourth instance formula recognizes that the Commission cannot substitute for the States' domestic judiciaries,<sup>43</sup> and nothing in the American Declaration, the Charter of the Organization of American States (OAS), the Commission's Statute, or the Rules gives the Commission the authority to act as an appellate body. The Commission has elaborated on the limitations that underpin the fourth instance formula in the following terms:

The Commission ... lacks jurisdiction to substitute its judgment for that of the national courts on matters that involve the interpretation and explanation of domestic law or the evaluation of the facts. The judicial protection afforded by the [American] Convention includes the right to fair, impartial, and prompt proceedings which give rise to the possibility, *but never the guarantee*, of a favorable outcome. Thus, the interpretation of the law, the relevant proceeding, and the weighing of the evidence is, among others, a function to be exercised by the domestic jurisdiction, which cannot be replaced by the IACHR.<sup>44</sup>

As the United States has consistently maintained, 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 the requisite expertise to perform such a task.

The United States' domestic criminal process, including through the availability of appellate and collateral review of trial and sentencing proceedings and other challenges, affords those who are convicted of serious crimes (including those who plead guilty) with the highest level of protection, consistent with international obligations and commitments. As explained above, the claims asserted by Mr. Frazier in his Petition have all been heard and adjudicated on the merits by U.S. domestic courts, and the findings of those courts have been

---

<sup>43</sup> See *Castro Tortorino v. Argentina*, Case No. 11.597, Report No. 7/98, Admissibility, Mar. 2, 1998, ¶ 17.

<sup>44</sup> *Macedo García de Uribe v. Mexico*, Petition No. 859-03, Report No. 24/12, Inadmissibility, Mar. 20, 2012 ("*Macedo* Inadmissibility Report"), ¶ 40 (emphasis added). The Commission has interpreted and applied the fourth instance formula in the same way for OAS Member States that are parties to the American Convention and for those, including the United States, for which review is instead undertaken pursuant to the American Declaration. We therefore read this language as equally applicable to practice under the American Declaration despite the explicit reference to the American Convention.

challenged through multiple layers of careful judicial review. Mr. Frazier fully availed himself of the opportunities to challenge the aspects of his criminal proceedings with which he had concerns, and he continued to do so for years after the filing of his petition with the Commission.<sup>45</sup>

Dissatisfied with the outcome of his domestic proceedings, Mr. Frazier now asks the Commission to reexamine claims that the Tennessee Court of Criminal Appeals, the Tennessee Supreme Court, the U.S. District Court for the Middle District of Tennessee, and the Sixth Circuit U.S. Court of Appeals, each acting fully consistently with the due process protections reflected in the American Declaration, determined to be substantively baseless or untimely filed under the laws of the United States and the State of Tennessee. These decisions are discussed in greater detail in Section A above, and many of them are appended as annexes, so the Commission may see for itself the rigor and thoroughness that characterized the domestic courts' consideration of Mr. Frazier's claims. 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>46</sup> The Commission has also reiterated that "the fact that the outcome [of a domestic proceeding] was unfavorable ... does not constitute a violation."<sup>47</sup>

The Commission must consequently decline this invitation to sit as a court of fourth instance. Acting to the contrary would have the Commission second-guessing the legal and factual determinations of both state and federal courts at multiple levels, conducted in conformity with due process protections under U.S. law and fully consistently with U.S. commitments under the American Declaration.

---

<sup>45</sup> It is worth noting that Mr. Frazier filed his petition with the Commission before exhausting domestic remedies. As of the date of his submission (March 19, 2012), the Petitioner had two domestic legal proceedings still pending, one of which was still pending as of the date the Commission forwarded the Petition to the United States (February 17, 2016). These were his petition for a writ of error *coram nobis* (which was not finally denied until July 7, 2016) and a motion for leave to file a second or successive application for a writ of *habeas corpus* under 28 U.S.C. §2254, which was denied on February 11, 2013. The United States does not currently contest the admissibility of the Petition on non-exhaustion grounds, but reserves the right to do so should Mr. Frazier pursue further domestic proceedings.

<sup>46</sup> *Marzioni* Inadmissibility Report, *supra* note 42, ¶ 51.

<sup>47</sup> *Maldonado Manzanilla v. Mexico*, Petition No. 733-04, Report No. 87/07, Inadmissibility, Oct. 17, 2007, ¶ 58 (quoting and citing *Rodríguez v. Argentina*, Case No. 10.382, Report No. 6/98, Inadmissibility, Feb. 21, 1998, ¶ 71).

It could also require the Commission to reweigh evidence, something the Commission, by its own admission, cannot do.<sup>48</sup>

Mr. Frazier was guaranteed, and received, due process protections in his domestic proceedings. He was not guaranteed, and did not receive, a favorable result, because the evidence did not support his claims that his trial counsel rendered him ineffective assistance, that his guilty plea was uninformed or coerced, or that evidence was withheld from him. The domestic system functioned precisely as it should have in this matter, and the Commission's fourth instance formula dictates that the Petition should be dismissed for lack of competence.

### **3. The Commission May Not Issue Binding Orders with Respect to the United States, Under the American Declaration or Otherwise**

Finally, the United States reaffirms its 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>49</sup> and the Commission may issue recommendations but not binding orders.<sup>50</sup>

Nevertheless, the United States has undertaken a political commitment to uphold the American Declaration. As the Commission well knows, the United States takes its American Declaration commitments and the Commission's

---

<sup>48</sup> *Macedo* Inadmissibility Report, *supra* note 44, ¶ 40.

<sup>49</sup> 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."); *accord, e.g.,* *Flores-Nova v. Attorney General of the United States*, 652 F.3d 488, 493–94 (3d 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>50</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 matters domestic legal procedures and remedies have been applied and exhausted. *Accord* *Garza*, 253 F.3d at 925 ("The Commission's power is only to make 'recommendations,' which, according to the plain language of the term, are not binding.").

recommendations very seriously. The protections afforded individuals in the U.S. criminal justice system are among the strongest and most expansive in the world, and the U.S. Constitution—which governs both federal and state criminal proceedings—establishes a wide range of rights and legal protections for individuals charged with criminal offenses, as do other federal and state laws and regulations.

### **C. CONCLUSION**

The criminal justice system in the United States embodies the protections enumerated in the American Declaration and Petitioner benefited from such safeguards in this case through multiple layers of judicial review. The Commission should dismiss the Petition because Petitioner has not stated facts that tend to establish a violation of any rights in the American Declaration, and because review of the arguments presented in the Petition is precluded by the Commission's fourth instance formula, as they amount to a mere disagreement with determinations of domestic courts, rendered consistently with the rights set forth in the American Declaration. Should the Commission nevertheless declare the Petition admissible and examine its merits, the United States urges it to find the Petition without merit and deny Petitioner's request for relief. The United States reserves the right to submit additional observations on the merits should this matter reach the merits stage.