

**United States Department of State**

***United States Permanent Mission to the  
Organization of American States***

***Washington, D.C. 20520***

***August 2, 2018***

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

**Re: Charles Flores  
MC-334-18  
United States**

Dear Dr. Abrão:

The United States Government acknowledges the letter from your office dated May 11, 2018, forwarding Resolution 32-2018, Precautionary Measure No. 334-18 of May 5, 2018, in the above-referenced matter, in which the Inter-American Commission on Human Rights (“Commission”) requested that the United States adopt such measures. The Commission notes that “this request is linked to petition P-759-18.” The United States hereby requests under Article 25(9) of the Commission’s Rules of Procedure that the Commission lift the precautionary measures as improperly issued.

Although your office forwarded Resolution 32-2018, it did not forward the request for precautionary measures (“Precautionary Measures Request”) filed by Charles Flores in the above-referenced matter as required by Article 30(2) of the Rules of Procedure (“the Rules”), or ask for U.S. views as required by Article 25(5). Nor did the Commission forward the underlying petition P-759-18, address whether the petition meets the requirements of Article 28 of the Rules, or seek U.S. views on its admissibility. Because the United States has not had an opportunity to review the request for precautionary measures or the underlying petition, the United States can only comment at this point in time on the Commission’s Resolution.

Based on the description of the petitioner's allegations included in the Precautionary Measures Request, the petition and request for precautionary measures in question are manifestly inadmissible for failure to exhaust domestic remedies. According to the Commission, domestic remedies were being pursued by the petitioner, and a stay of execution was in place, at the very time the Commission issued Resolution 32-2018. Article 31(1) of the Rules precludes the Commission from considering a petition until it has verified that the "remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law." In this case, the Commission states that the petitioner brought an appeal challenging certain scientific evidence before the 195th Judicial District Court of Dallas and the Court of Criminal Appeals of Texas, which ordered a stay of execution and submitted the case to the District Court for an evidentiary hearing. The Commission should not intervene at any stage of ongoing domestic court proceedings where success in those proceedings would provide the relief the petitioner seeks from the Commission. Although the Commission also notes its concern about prison conditions related to petitioner, the Commission nowhere indicates whether the petitioner has sought to take advantage of the avenues that exist to seek relief under state and federal law from the alleged inhumane conditions.

Likewise, the Commission should not request precautionary measures in instances where Petitioner has not exhausted available domestic remedies when those remedies hold the prospect of providing him or her with effective relief, including on an emergency basis. The Commission does not address how it has complied with the requirement of Article 25(6) of the Rules that it "shall take into account . . . whether the situation has been brought to the attention of the pertinent authorities or the reasons why it would not have been possible to do so." The petitioner apparently not only had the ability to bring his claims to the "attention of the pertinent authorities," he did so. Under Article 25(6) the Commission's issuance of precautionary measures in this matter was manifestly improper.

The Commission's issuance of precautionary measures was also inconsistent with the requirement of Article 25(5) of the Rules that it first seek "relevant information from the state concerned." Under the Rules, the Commission may only issue precautionary measures without first having sought that information where the "immediacy of the threatened harm admits of no delay." But the Commission bases its request for precautionary



measures merely on an assertion that the pending proceedings in Texas *could* deny relief to the petitioner, allegedly “creating a likely probability of obtaining a new execution date at any time.” The Commission’s position – that petitioner could lose his appeal – removes any meaning from the requirement in Rule 25(5) of the “immediacy of threatened harm,” because it would in principle apply in every case involving ongoing domestic proceedings. Moreover, even if the petitioner were to lose in Texas court, the Commission offers no factual basis for its opinion about the timing of a hypothetical new execution date or why petitioner could not then file a new petition. The Commission should adhere carefully to the terms of Rule 25(5) precisely to avoid a situation where the Commission issues precautionary measures while the petitioner is pursuing remedies in domestic courts that have not been shown to be inadequate.

Given these deficiencies, the United States requests under Article 25(9) of the Rules that the Commission withdraw Resolution 32/2018. Any such decision would, of course, be without prejudice to Mr. Flores’s ability to file a new petition, with updated facts and allegations, if he chooses to further pursue this matter. It bears noting that should he obtain effective relief in the domestic system, then any future petition would be inadmissible.<sup>1</sup> Given its severe backlog of petitions, limited resources, and many other priorities, the Commission should not hold this matter in abeyance on the prospect that Mr. Flores may wish to further pursue this matter and pending other future developments that may or may not occur.

Finally, we take this opportunity to reaffirm our longstanding position that the Commission lacks the authority to require that States adopt precautionary measures. We refer the Commission to past submissions, which state the reasons for the U.S. position on precautionary measures in detail.<sup>2</sup> Because the United States is not a State Party to the American Convention on Human Rights, the Commission has only the authority “to make recommendations ... to bring about more effective observance of fundamental human rights.”<sup>3</sup> As such, should the Commission decline to

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<sup>1</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 ¶ 4 (declaring case inadmissible with respect to petitioners who obtained access to an effective remedy in the domestic system).


<sup>2</sup> See, e.g., Kadamovas et. al. v. United States, Petition No. P-1285-11, Response of the United States, Sept. 2, 2015, § D, *available at* <https://www.state.gov/documents/organization/258153.pdf>.

<sup>3</sup> Commission Statute, art. 20(b).

withdraw the precautionary measures resolution in the above-captioned matter, the United States will take it under advisement and construe it as recommendatory.

Please accept renewed assurances of my highest consideration.

Sincerely,



Kevin K. Sullivan  
Deputy Permanent Representative