



United States Department of State

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

Washington, D.C. 20520

April 3, 2019

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

**Re: José Trinidad Loza Ventura, Petition No. P-1010-15
Further Observations of the United States**

Dear Dr. Abrão:

The United States Government has the honor of submitting to the Inter-American Commission on Human Rights ("Commission") further observations on the communications forwarded to the United States in the above-referenced matter, including the submission on behalf of Mr. Loza Ventura dated May 29, 2018, which was transmitted to the United States via a letter on November 6, 2018. Please find enclosed the United States' observations. 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 dark ink, appearing to read 'Ch. Trujillo', written over a horizontal line.

Carlos Trujillo
Ambassador

Enclosures: as stated

JOSÉ TRINIDAD LOZA VENTURA, P-1010-15
FURTHER OBSERVATIONS OF THE UNITED STATES

There United States hereby provides further observations on the communications forwarded to the United States in the above-referenced matter, including the submission on behalf of Mr. Loza Ventura dated May 29, 2018, which was transmitted to the United States via a letter on November 6, 2018 (“Supplemental Observations”).

The United States recalls its submission of September 2, 2016, in this matter (“2016 Submission”). In that submission, the United States explained that the Petition is inadmissible and does not demonstrate a breach of any commitment of the United States under the American Declaration. The United States demonstrated that Petitioner’s claims regarding defective consular notification, the alleged uncertainty of his sentence, and violations of due process—concerning ethnic bias, procedural misconduct, and ineffective assistance of counsel—are all inadmissible under Article 34(a) of the Rules because they “[do] not state facts that tend to establish a violation of the rights” in the American Declaration.¹ The United States requested that the Commission rule the Petition inadmissible because the Petition does not state facts that tend to establish a “violation”² of the American Declaration.

¹ 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.” 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.

² As 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, *see infra* note 2, 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. The United States respects its political commitment to uphold the American Declaration.

In his Supplemental Observations, Petitioner restates these claims. However, it remains the case that Petitioner’s consular notification claim is not cognizable under the American Declaration. Similarly, Petitioner’s allegations of ethnic bias and ineffective assistance of counsel still fail to set forth facts that tend to establish a violation of Articles II, XVIII, or XXVI of the Declaration, and are meritless. Finally, Petitioner’s challenges to Ohio’s execution protocol remain without a basis in fact and fail to set forth facts that tend to establish a violation of Article XXVI of the American Declaration. The United States will not reproduce the arguments made in its 2016 Submission, however Petitioner’s supplemental arguments are addressed below.

I. DISCUSSION

A. Petitioner’s consular notification claim is not cognizable under the American Declaration

In his Supplemental Observations, Petitioner presents an extensive discussion about his background and experience in Los Angeles under the guise that such information would have been known to trial counsel if Petitioner “had not been denied his right to consular assistance.”³ However, as the United States has emphasized in numerous previous submissions—including its 2016 Submission—consular notification is not a human right.⁴ Moreover, the Commission does not, in fact, have competence to review claims arising under the Vienna Convention. This lack of competence is not avoided by characterizing a claim as one arising under the American Declaration. Claims concerning consular notification do not give rise to a violation of a human right enshrined in any international instrument to which the United States is a party or has endorsed. Thus, Article 20 of the Commission’s Statute and Articles 23 and 27 of the Rules preclude their consideration here.⁵

³ Supplemental Observations at 3-17.

⁴ Response of the United States (Sept. 2, 2016), at 9-12

⁵ 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.” 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

And, in any event, the claim lacks merit and remains inadmissible under Article 34(a) of the Rules for failure to state facts that tend to establish a violation of the rights in the American Declaration.

B. Petitioner's allegation of ethnic bias fails to set forth facts that tend to establish a violation of Article II of the Declaration, and is meritless

In his Supplemental Observations, Petitioner continues to rely on a single, out-of-court utterance of an ethnic slur, by Middletown police detective Roger Knabel to claim that the United States violated his right to equality before the law. As the United States previously observed in response to this claim,⁶ Petitioner effectively offers a new, expansive interpretation of Article II, untethering it from its well-established context of judicial proceedings by which judges and jurors occupy a singular role in judicial proceedings, and are thus held to a distinct standard of impartiality, as the primary and final decision-makers over a defendant's guilt and sentencing. To attempt to overcome this defect, Petitioner now claims that Detective Knabel had "usurped the role of the prosecutor" in Petitioner's proceedings, making the determination to seek the death penalty, to which the prosecutor "simply deferred."⁷ This new argument by Petitioner is entirely baseless: Detective Knabel did not—and could not—exercise prosecutorial decision-making authority in Mr. Loza's case and Petitioner's allegation to the contrary is nonsensical. It remains the case that Petitioner's proceedings over 25 years have been conducted impartially and thoroughly, and he fails to identify any specific evidence of ethnic bias by decision-makers—prosecutors, judges, or jurors—in his proceedings. Moreover, as demonstrated in the 2016 Submission, Petitioner has had ample opportunity to present his allegations before U.S. state and federal courts, and each time he has failed to provide sufficient evidence that racial discrimination tainted his investigation or prosecution. Petitioner's claim that the United States violated Article II of the Declaration is plainly without merit.

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.

⁶ Response of the United States (Sept. 2, 2016), at 20-21.

⁷ Supplemental Observations at 20.

C. Petitioner's allegations of ineffective assistance of counsel fail to set forth facts that tend to establish a violation of XVIII or XXVI of the Declaration, and are meritless

Petitioner, in his Supplemental Observations, restates his complaint that his state-appointed trial counsel was incompetent and that, as a result, the United States violated the rights set forth in Articles XVIII and XXVI of the American Declaration. However, as the United States stated in its 2016 submission, Petitioner raised this claim in U.S. state and federal courts, where it received multiple layers of judicial review. Domestic courts have carefully considered his claims on at least five occasions, and all found that Petitioner's due process rights had not been violated. The claim remains meritless. And, as noted before, the fourth instance formula prevents the Commission from substituting its views for the considered evidentiary and legal judgments of the domestic courts.⁸

D. Petitioner's challenges to Ohio's execution protocol are without a basis in fact and fail to set forth facts that tend to establish a violation of Article XXVI of the American Declaration, and are meritless

Finally, in his Supplemental Observations, Petitioner repeats his allegation that Ohio's legal injection protocol violates Article XXVI of the American Declaration. This claim, too, is without merit.

As the United States explained in its 2016 Submission, the Commission should provide the State with a margin of appreciation, deferring to the discretion of local actors who are required to make difficult decisions based on their own factual assessments.⁹ Such a margin of appreciation is particularly useful when

⁸ See *infra* section B(3). See also, e.g., *Granados v. Honduras*, Report No. 66114, Petition No. 1180-03, Inadmissibility, July 25, 2014, ¶ 136 ("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.").

⁹ See, e.g., *Hertzberg v. Finland*, Commc'n No. R. 14/61, U.N. Doc. A/37/40 (1982), ¶ 10.3 ("[P]ublic morals differ widely. There is no universally applicable common standard. Consequently, in this respect, a certain margin of discretion must be accorded to the responsible national authorities."); *Sunday Times v. U.K.*, (1979) Eur. Ct. H.R. 1 (holding that the United Kingdom's injunction against the publication of an article violated the European Convention of Human Rights, but recognizing that domestic courts should be granted a margin of appreciation because of their proximity to the events in question).

implementation of a legitimate state goal requires fact-intensive judgment calls. The complicated medical and scientific circumstances in this matter counsel strongly in favor of deferring to the discretion of those responsible for decision-making. In these types of difficult cases, international bodies such as the Commission and the Inter-American Court of Human Rights use this “margin of appreciation” standard to respect state sovereignty and conserve their limited resources while still ensuring that human rights are protected.¹⁰

In this regard, the United States also explained in its 2016 Submission that U.S. courts have carefully reviewed and rejected other claims alleging that U.S. states’ lethal injection protocols constitute cruel and unusual punishment, and that Ohio has complied with constitutional requirements by seeking to make lethal injections as humane as possible.¹¹ Most recently, in 2017, the U.S. Court of Appeals for the Sixth Circuit found that Ohio’s lethal injection procedure is the same as that which the U.S. Supreme Court had already upheld.¹² Petitioner attempts to dismiss the findings of U.S. courts in this regard by asserting that “the Commission utilizes a different framework.”¹³ This assertion is not, however, consistent with the role of the American Declaration and the function of the Commission. Whether or not Petitioner’s right to be free from cruel and unusual treatment or punishment—a right affirmed at the regional level in the American Declaration—has been respected is a question of whether such protection has been afforded under domestic law.¹⁴ The 2016 submission of the United States correctly framed the issues as such, and conclusively demonstrated that domestic law did in

¹⁰ See, e.g., *Vejarano v. Peru*, Case No. 11.166, Report No. 48/00, Merits, Apr. 13, 2000, ¶ 55; Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, Advisory Opinion OC-4/84, Jan. 19, 1984, ¶ 58, available at http://www.corteidh.or.cr/docs/opiniones/seriea_04_ing.pdf.

¹¹ Response of the United States (Sept. 2, 2016), at 13-20.

¹² *In re Ohio Execution Protocol*, 860 F.3d 881, 884 (6th Cir.), cert. denied sub nom. *Otte v. Morgan*, 137 S. Ct. 2238, 198 L. Ed. 2d 761 (2017).

¹³ Supplemental Observations at 23.

¹⁴ See, e.g., American Declaration, para. 4 (“The *affirmation* of essential human rights by the American States together with the *guarantees given by the internal regimes of the states* establish the initial system of protection considered by the American States as being suited to the present social and juridical conditions” (emphasis added)). Accordingly, the Commission is complimentary to domestic systems and operates with the aspiration that States will, over time, draw upon the guidance and example provided by it in developing their domestic protections and processes. See, e.g., Statute of the Inter-American Commission on Human Rights, Art. 20(b).

fact afford the protection affirmed in the Declaration. The subsequent decision by the U.S. Court of Appeals in 2017 only reaffirms this conclusion. As a result, Petitioner's claim should be dismissed because it lacks merit and because the Commission lacks competence to sit as a court of fourth instance.

II. Conclusion

The Commission should declare the Petition to be inadmissible because Petitioner has not stated facts that tend to establish a violation of any rights in the American Declaration. Further, the Commission should decline the invitation to operate as a court of fourth instance to review Petitioner's claims which have been carefully adjudicated by the courts of the United States. 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 Mr. Loza Ventura's request for relief.