



United States Department of State

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

Washington, D.C. 20520

February 4, 2019

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

**Re: Ramiro Ibarra Rubí
MC-82-18
P-162-18**

Dear Dr. Abrão:

The United States government has the honor of addressing the Inter-American Commission on Human Rights (“Commission”) in regards to the above referenced petition related to Mr. Ramiro Ibarra Rubí (“Petitioner”).

On November 15, 2018, the Commission forwarded Mr. Ibarra’s petition dated February 2, 2018, to the United States and requested a response to the petition within three months of the date of the petition. Based on the information provided by the Commission, the petitioner has not yet exhausted his domestic remedies. The Petitioner concedes as much throughout his submission to the Commission. The Petition therefore plainly fails to meet the requirements for consideration under the Rules of Procedure of the Commission. Petitioner is actively litigating his case in the courts of the United States.

On October 1, 2018, weeks before the Commission requested the views of the United States on the underlying petition, the Commission adopted Resolution 77/2018 recommending precautionary measures, which it forwarded on November 27, 2018. At the time the Commission adopted this Resolution, the Commission had not forwarded the request for precautionary measures (“Precautionary Measures Request”) filed by Mr. Ibarra in the above-referenced

matter as required by Article 30(2) of the Rules of Procedure (“the Rules”), or sought U.S. views as required by Article 25(5). Nor had the Commission forwarded the underlying petition (P-162-18), addressed whether the petition meets the requirements of Article 28 of the Rules, or sought U.S. views on its admissibility.

Again, based on the information in the Petition subsequently forwarded by the Commission, 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 actively pursued by Petitioner, and a stay of execution was in place, at the very time the Commission issued Resolution 77/2018. 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, Petitioner continues to seek judicial relief on the very claims included in his Petition to the Commission. 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.

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.” 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.” Curiously, although the Commission apparently had sufficient time to request additional information from Petitioner—which it received on July 10,

2018—the Commission afforded the United States no similar opportunity to respond to the Petition during this period.

Moreover, 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 – renders meaningless 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. Further, even if 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 a petitioner is pursuing remedies in domestic courts that have not been shown to be inadequate.

Given these deficiencies, United States requests under Article 25(9) of the Rules that the Commission withdraw Resolution 77/2018. Any such decision would, of course, be without prejudice to Mr. Ibarra Rubí’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.¹ 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 Petitioner 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.² Because the United States is not a State Party to the American Convention on Human Rights, the Commission has only the authority “to make

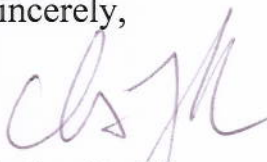
¹ See, e.g., Undocumented Migrant, Legal Resident, and U.S. Citizen Victims of Anti-Immigrant Vigilantes v. United States, Petition No. 478-05, Report No. 78/08 & 78/09, Admissibility, Aug. 5, 2009, ¶ 60 & Decision ¶ 4 (declaring case inadmissible with respect to petitioners who obtained access to an effective remedy in the domestic system).

² 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>.

recommendations ... to bring about more effective observance of fundamental human rights.”³ As such, should the Commission decline to 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 Mr. Secretary the assurances of our highest consideration.

Sincerely,

A handwritten signature in purple ink, appearing to read 'C. Trujillo', is written over the typed name.

Carlos Trujillo
Ambassador

³ Commission Statute, art. 20(b).