

OEA/Ser.L/V/II
Doc. 467
31 December 2021
Original: English

REPORT No. 453/21

CASE 13.339

REPORT ON ADMISSIBILITY AND MERITS (PUBLICATION)

MANUEL VALLE
UNITED STATES OF AMERICA

Approved electronically by the Commission on December 31, 2021.

Cite as: IACHR, Report No. 453/21. Case 13.339. Admissibility and Merits (Publication). Manuel Valle. United States of America. December 31, 2021.

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I. INTRODUCTION

1. On August 10, 2011, the Inter-American Commission on Human Rights (the “Inter-American Commission”, “Commission” or “IACHR”) received a request for precautionary measures and a petition submitted by Suzanne Keffer (“the petitioners”)¹ on behalf of Manuel Valle (“Mr. Valle” or the “alleged victim”), a Cuban national, alleging the international responsibility of the United States of America (the “State” or “the United States”) for the violation of Mr. Valle’s rights under the American Declaration.² Mr. Valle, who at the time was incarcerated on death row, was executed on September 28, 2011, in the state of Florida.

2. On October 18, 2016, the Commission notified the parties of the application of Article 36 (3) of its Rules of Procedure, since the petition falls within the criteria established in its Resolution 1/16, and placed itself at the disposition of the parties to reach a friendly settlement. The parties enjoyed the time periods provided for in the IACHR’s Rules to present additional observations on the merits. All the information received by the Commission was duly transmitted to the parties.

II. POSITIONS OF THE PARTIES

A. Petitioners

3. The petitioners asserts that Mr. Valle, as a Cuban national, was not informed of his rights under Article 36 of the Vienna Convention on Consular Relations (Vienna Convention) with respect to consular notification and access, and claim that Mr. Valle was denied a chance at assistance from the Cuban Interests Section of the Swiss Embassy in Washington DC. Additionally, it is stated that the State has failed to remedy the violation by way of a full review and reconsideration of Mr. Valle’s death sentence, and in light of these circumstances, claim that the State has violated Mr. Valle’s rights under Article I, II, and XXVI of the American Declaration.

4. It is further claimed by the petitioners that there is no indication that any clemency investigation, as required by the Florida Constitution,³ was carried out subsequent to Mr. Valle’s appeal. Such lack of process is claimed as a breach of Mr. Valle’s right to seek clemency and a violation of his rights within Articles I and XXVI of the Declaration.

5. The petitioners claim that the prolonged confinement on death row, of approximately 33 years, is cruel, inhuman and degrading treatment, as well as tortuous. The petitioners claim that such a stint is in violation of Mr. Valle’s rights under articles I, XVII, XXIV and XXVI of the American Declaration.

6. It is explained that Florida planned to use pentobarbital in the lethal injection for Mr. Valle’s execution. The petitioners highlighted that the manufacturer of the drug stated that they could not “assure the associated safety and efficacy profiles in such instances,”⁴ the instances referred to being that of execution by lethal injection. It is claimed that as the drug was never tested on humans for the purpose of inducing an anesthetic coma, save for the execution of Roy Blankenship by the State of Georgia on June 23, 2011, the State of Florida would be experimenting on Mr. Valle, violating his rights under Articles I and XXVI of the Declaration.

B. State

7. The State communicated its intention to not file further submissions with respect to the petition given that by the date of its response to the matter, Mr. Valle was already executed. The State reiterated its position that the imposition of the death penalty, for the most serious crimes, and in accordance with the law, does not violate any international obligations of the United States.

¹ On August 10, 2011, Chaitanya Patel from Reprieve was added as co-petitioner.

² On August 19, 2011, the IACHR granted precautionary measures on behalf of Mr. Valle pursuant to Article 25(1) of its Rules of Procedure and requested the United States to take the measures necessary to preserve the life and physical integrity of the alleged victim so as not to hinder the processing of his case before the Inter-American system.

³ *Valle v Florida*, Initial Brief of Appellant, Supreme Court of Florida No. SC11-1387.

⁴ Request for precautionary measures by the petitioner filed August 10, 2011

III. ADMISSIBILITY

A. Competence, duplication of procedures and international *res judicata*

Competence <i>Ratione personae</i> :	Yes
Competence <i>Ratione loci</i> :	Yes
Competence <i>Ratione temporis</i> :	Yes
Competence <i>Ratione materiae</i> :	Yes, American Declaration of the Rights and Duties of Man (ratification of the OAS Charter on June 19, 1951)
Duplication of procedures and international <i>res judicata</i> :	No

8. As it will be addressed below, while the Commission has no jurisdiction to find a violation of the provisions of the Vienna Convention, it may consider them for the purpose of evaluating the State's compliance with a foreign national's due process rights under the American Declaration.

B. Exhaustion of domestic remedies and timeliness of the petition

9. According to the information by the petitioners,⁵ Mr. Valle was charged by indictment with first degree murder and possession of a firearm by a convicted felon in Dade County, Florida on April 13, 1978. The trial occurred 24 days after, and he was convicted and sentenced to death. This conviction and sentence was overturned by the Florida Supreme Court (FSC) as the 24 day period to prepare for trial was considered an abuse of the trial court's discretion.⁶ The second trial resulted in conviction and sentence of death, which was affirmed on appeal by the Florida Supreme Court.⁷ This sentence was vacated by the United States Supreme Court,⁸ however, he was resentenced by a jury to death. The FSC vacated Mr. Valle's death sentence and ordered a jury resentencing⁹ and Mr. Valle was again sentenced to death, and this was affirmed by the Florida Supreme Court.¹⁰

10. The trial court thereafter summarily denied the motion for post-conviction relief and the FSC affirmed in part and reversed in part this order, remanding the matter for evidentiary hearing.¹¹ Relief, however, was denied and the FSC affirmed the decision.¹² On February 21, 2003, Mr. Valle filed a petition for habeas corpus relief, which was denied by the District Court. Mr. Valle then appealed this decision and the Eleventh Circuit Court of Appeals affirmed the denial of habeas corpus relief.¹³ A motion for rehearing and rehearing en banc was also denied on August 11, 2007,¹⁴ and on October 1, 2007, the US Supreme Court denied certiorari review.¹⁵

11. After a death warrant was signed by the Governor of Florida in 2011, Mr. Valle filed an amended motion for post conviction relief, primarily regarding the efficacy of pentobarbital drug used within the lethal injection, to render an inmate unconscious¹⁶. The summary denial was appealed to the FSC, which granted stay of execution until September 1, 2011, to remand the matter to the Circuit court for an evidentiary hearing.

⁵ Request for precautionary measures by the petitioner filed August 10, 2011

⁶ Request for precautionary measures by the petitioner filed August 10, 2011, Quoting *Valle v. State*, 394 So. 2d 1004 (Fla. 1981)

⁷ Request for precautionary measures by the petitioner filed August 10, 2011, Quoting *Valle v. State*, 474 So. 2d 796 (Fla. 1985)

⁸ Request for precautionary measures by the petitioner filed August 10, 2011, Quoting *Valle v. Florida*, 476 U.S. 1102 (1986).

⁹ Request for precautionary measures by the petitioner filed August 10, 2011, Quoting *Valle v. State*, 502 So. 2d 1225 (Fla. 1987) (*Valle III*).

¹⁰ Request for precautionary measures by the petitioner filed August 10, 2011, Quoting *Valle v. State*, 581 So. 2d 40 (Fla.), *cert. denied*, 502 U.S. 986 (1991) (*Valle IV*).

¹¹ Request for precautionary measures by the petitioner filed August 10, 2011, Quoting *Valle v. State*, 705 So. 2d 1331 (Fla. 1997) (*Valle V*).

¹² Request for precautionary measures by the petitioner filed August 10, 2011, Quoting *Valle v. State*, 778 So. 2d 960 (Fla. 2001) (*Valle VI*).

¹³ Request for precautionary measures by the petitioner filed August 10, 2011, Quoting *Valle v. Sec'y. for Dep't. Of Corrections*, 459 F. 3d 1206 (11th Cir. 2006).

¹⁴ Request for precautionary measures by the petitioner filed August 10, 2011, Quoting *Valle v. Sec'y. for Dep't. Of Corrections*, 478 F. 3d 1326 (11th Cir. 2007).

¹⁵ Request for precautionary measures by the petitioner filed August 10, 2011, Quoting *Valle v. McDonough*, 552 U.S. 920 (2007).

¹⁶ Manuel Valle v State of Florida No SC11-1387, August 23, 2011

12. The Circuit Court conducted the evidentiary hearing on July 28 and August 2, 2011 and denied the claim. The matter was returned to the FSC to consider all issues raised on appeal.¹⁷ Having considered the claims and various assertions, the FSC affirmed the Circuit Court's denial.

13. Based on the above factors, the Inter-American Commission concludes that the alleged victim properly exhausted domestic remedies available within the domestic legal system and, therefore, that the claims before the Commission are not barred from consideration by the requirement of exhaustion of domestic remedies under Article 31(1) of its Rules of Procedure.

14. The petition before the IACHR was presented on August 10, 2011. The Circuit Court denied the final post-conviction relief in August 2011. The Commission therefore concludes that the requirement specified in Article 32(1) of its Rules of Procedure has been met.

C. Colorable claim

15. The Commission considers that, if proven, the facts alleged would tend to establish violations of the rights set forth in Articles I, XVII, XXIV, XXVI and XVIII of the American Declaration, to the detriment of Mr. Valle.

IV. FINDINGS OF FACT

A. Facts of the case

16. According to the procedural history as recorded by the Supreme Court of Florida (FSC),¹⁸ on April 2, 1978, Mr. Valle shot two police officers. One officer, Louis Pena stopped Mr. Valle for a traffic violation and when he initiated a vehicle registration check on the stolen car Mr. Valle was driving, Mr. Valle retrieved a gun and shot the officer. Officer Louis Pena died. Mr. Valle then shot the accompanying officer, Gary Spell.

17. Mr. Valle was later charged with the first-degree murder of one police officer, Louis Pena, and the attempted first-degree murder of another, Gary Spell. He was also charged with possession of a firearm by a convicted felon.

B. Trial and death sentence

18. Mr. Valle was convicted of first-degree murder and sentenced to death by a jury May 4, 1978. Mr. Valle then filed a direct appeal to the FSC on July 7, 1978, on the claim that his Sixth and Fourteenth Amendment rights were violated by the expedited nature of his trial. Specifically, his rights to adequate preparation time and to effective assistance by counsel were violated when his case went to trial within 24 days of arraignment. The FSC agreed, and further found that the trial court's decision to have the case proceed within the time frame was an abuse of discretion.

19. Mr. Valle was again convicted and sentenced to death on April 8, 1981 and he filed a direct appeal to the FSC on several grounds among which was that his confession should have been suppressed as it was in violation of his Miranda rights, the court erred in allowing underrepresented minorities within the jury selection and erred in omitting mitigating evidence that Mr. Valle would be a model prisoner if spared the death penalty. The conviction and sentence were affirmed by the FSC on November 7, 1985, and the United States Supreme Court granted Mr. Valle's petition for writ of certiorari on May 5, 1986.

20. The Supreme Court vacated the death sentence and remanded the matter to the FSC for reconsideration. The FSC found that the jury should have considered the testimony on Mr. Valle's potential future behavior as a model prisoner during the penalty phase of trial, and therefore the FSC remanded the matter to the trial court for resentencing before a new jury on May 1, 1987. Mr. Valle was resentenced to death on March 16, 1988. A

¹⁷ Manuel Valle v State of Florida No SC11-1387, August 23, 2011

¹⁸ Manuel Valle v State of Florida No SC11-1387, August 23, 2011

direct appeal was filed to the FSC, arguing improper cross-examination, improper application of aggravating factors and improper victim impact evidence. The FSC affirmed the sentence on May 2, 1991.

C. Post-conviction proceedings and other remedies

21. According to the procedural history as recorded by the Supreme Court of Florida (FSC),¹⁹ on December 1993, Mr. Valle filed a motion for post-conviction relief and the Circuit Court summarily denied the motion without holding an evidentiary hearing. This denial was appealed and the FSC affirmed in part but reversed the decision and remanded the matter to the Circuit Court for an evidentiary hearing with respect to the claims of ineffective assistance of counsel. However, after the hearing, the Circuit Court denied the claims and the FSC affirmed the decision.

22. In December of 2001, Mr. Valle petitioned the FSC for a writ of habeas corpus based on alleged ineffective assistance of counsel, and the FSC denied the petition. In February of 2003, Mr. Valle again filed a habeas corpus petition before the FSC, but this was summarily denied. A writ of certiorari to the United States Supreme Court was also denied in 2004. An amended federal habeas corpus petition was filed, and the Federal District Court denied the petition, which was affirmed by the United States Court of Appeals for the Eleventh Circuit. A review of the decision, through a petition for a writ of certiorari to the Supreme Court, was denied on October 1, 2007.

23. On June 8, 2011 the Florida Department of Corrections (DOC) had promulgated a revised lethal injection procedure, deciding to substitute five grams of pentobarbital with five grams of sodium thiopental as the first of three drugs used in the lethal injection protocol. In Florida, the first drug is used to anesthetize the condemned inmate prior to the administration of the final two drugs in the three-drug sequence, pancuronium bromide (a paralytic agent that can stop respiration) and potassium chloride (a substance that will cause the heart to stop).²⁰

24. On June 30, 2011, Governor Rick Scott signed a death warrant and Mr. Valle's execution was scheduled for August 2, 2011. The death warrant stated that "it has been determined that Executive Clemency, as authorized by Article IV, Section 8(a), Florida Constitution is not appropriate."²¹

25. Mr. Valle filed an amended motion for post-conviction relief, raising six claims, among which he argued that due to "serious concerns" regarding the efficacy of pentobarbital to render an inmate unconscious, the DOC's use of the drug in the protocol constitutes cruel and unusual punishment in contravention of the Eighth Amendment of the constitution.²² Specifically, it was argued that the DOC's plan to use the substituted drug constitutes cruel and unusual punishment, because Mr. Valle may remain conscious after being injected with the pentobarbital, thereby subjecting him to significant pain during the administration of the final two drugs. Further, he argued that the substitution coupled with inadequate procedural safeguards and a cavalier attitude toward lethal injection, put him at risk of serious harm. The Circuit Court held an initial hearing and summarily denied all the claims. The summary denial was appealed to the FSC, which determined the claims with respect to the drug warranted an evidentiary hearing. A stay of execution was granted until September 1, 2011, and the matter was remanded to the Circuit court.

26. The Circuit Court conducted the evidentiary hearing on July 28 and August 2, 2011, during which expert evidence was presented by Mr. Valle and the State. The Circuit Court denied the claim on the drug substitution being a violation of the Eighth Amendment, because the evidence failed to establish that the intravenous administration of pentobarbital creates a substantial risk of serious harm. The matter was returned to the FSC to consider all issues raised on appeal.²³

¹⁹ Manuel Valle v State of Florida No SC11-1387, August 23, 2011

²⁰ Manuel Valle v State of Florida No SC11-1387, August 23, 2011

²¹ Request for precautionary measures by the petitioner filed August 10, 2011

²² Manuel Valle v State of Florida No SC11-1387, August 23, 2011

²³ Manuel Valle v State of Florida No SC11-1387, August 23, 2011

27. Recognizing its duty to ensure the method of execution does not constitute cruel and unusual punishment, the FSC was guided by United States Supreme Court decisions to evaluate whether the lethal injection was unconstitutional. For such a claim to succeed, the inmate must demonstrate that the conditions presenting the risk must be sure or very likely to cause serious illness and needless suffering and give rise to sufficiently imminent dangers. The Court further expounded that there must be a substantial risk of serious harm, an objectively intolerable risk of harm that prevents prison officials from pleading that they were subjectively blameless for purposes of the Eighth Amendment. The court also states that the standard imposes a heavy burden upon the inmate to show that the lethal injection procedures violated the Eighth Amendment.

28. Various experts made assertions about the effect of the drug. The State's expert witness, Dr. Dershwitz, acknowledged that the FDA had not approved pentobarbital for use in lethal injections, however, he did explain that the dosage to be used is lethal standing alone, and when administered, would induce a total flat line on the electroencephalogram (EEG) in brain activity, meaning that the recipient would have no perception or sensation. An expert for Mr. Valle, Dr. Waisel, opined that he would be unable to determine the intended effects of the drug as there was insufficient data regarding the drug's use. The circuit court recognized that the assertion of lack of knowledge of whether the drug would render someone unconscious fell short of the standard for the burden of proof. Likewise, the FSC adopted a similar observation, recognizing for the other submissions of evidence that they failed to satisfy the standard that the replacement drug is sure or very likely to cause serious illness and needless suffering. Additionally, the court recognized previous case law which dealt with claims of problems within Florida's lethal injection process, which proved that various administrative measures were in place.

29. On Mr. Valle's additional claim that he was denied public records request, it was noted that the Circuit Court granted the request in part; giving access to information on the substituted drug, the lethal injection protocol, related information from the Attorney General on approvals, expert evidence and previous procedures. The FSC concluded that the additional documents did not relate to a colorable Eighth Amendment claim and that Mr. Valle failed to explain why and how the information would lead to evidence related to his claims.

30. With respect to another claim on a denial of clemency proceedings, the FSC affirmed the circuit court's ruling, deeming the claim speculative and insufficiently pled. It is noted that Mr. Valle acknowledged that a clemency hearing was requested by Governor Chiles on February 6, 1992, and that it appeared to the Court that attorney Mark Evans was appointed to represent Mr. Valle during the proceedings. Mr. Valle's argument was, however, that there is no indication that any clemency investigation or proceeding was actually conducted, based on the fact that he did not have any files showing that it was held. The FSC reasoned that Mr. Valle's inability to determine this reflected his failure to adequately investigate and present the factual basis of the claim. Mr. Valle complained that he was denied access to the records requested regarding the clemency investigations. However, he did not assert to the FSC that the Circuit court erred in sustaining agency objections or that he was improperly denied records to which he was entitled. With respect to the statement on the death warrant on determining that clemency is not appropriate; the Court accounted of a previous case where the inmate was given a full clemency hearing and the death warrant which was signed sometime thereafter contained the same statement.

31. It was claimed that the thirty-three years spent on death row constituted cruel and unusual punishment. The FSC referenced case law asserting that no federal or state court has accepted such an argument especially when both parties bear responsibility for the delay. The court noted Mr. Valle's submission that the State affected the delay in his trials for the first ten years on death row, thereby extending his incarceration. However, the court found that Mr. Valle contributed to the remaining twenty-three years through his continued exercise of constitutional challenges to his conviction and sentence.

32. Mr. Valle also claimed that he is entitled to relief as the State failed to advise him of the right to notify the consulate of his arrest, and to consult with the consulate or a diplomatic officer without delay, as established in the Vienna Convention. The Court reasoned that the Circuit Court did not err in denying this relief as Mr. Valle based his claim upon a federal bill that was proposed, but not yet signed into law, that would provide death row inmates with a process to assert such a violation; however, it was concluded that a state is not

prohibited from carrying out a lawful judgment in light of un-enacted legislation that might someday authorize a collateral attack on that judgment.

33. Having considered the claims and various assertions, the FSC affirmed the Circuit Court's denial and Mr. Valle was executed on September 28, 2011.

V. ANALYSIS OF LAW

A. Law

34. Florida Constitution provisions regarding clemency are found within Article IV, section 8, and provide as follows:

(a) Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

B. Preliminary considerations

35. Before embarking on its analysis of the merits in the case of Manuel Valle, the Inter-American Commission reiterates its previous rulings regarding the heightened scrutiny to be used in cases involving the death penalty. The right to life has received broad recognition as the supreme human right and as a *sine qua non* for the enjoyment of all other rights.

36. That gives rise to the particular importance of the IACHR's obligation to ensure that any denial of life that may arise from the enforcement of the death penalty strictly abides by the requirements set forth in the applicable instruments of the Inter-American human rights system, including the American Declaration. That heightened scrutiny is consistent with the restrictive approach adopted by other international human rights bodies in cases involving the imposition of the death penalty,²⁴ and it has been set out and applied by the Inter-American Commission in previous capital cases brought before it.²⁵ As the Inter-American Commission has explained, this standard of review is the necessary consequence of the specific penalty at issue and the right to a fair trial and all attendant due process guarantees, among others.²⁶ In the words of the Commission:

due in part to its irrevocable and irreversible nature, the death penalty is a form of punishment that differs in substance as well as in degree in comparison with other means of punishment, and therefore, warrants a particularly stringent need for reliability in determining whether a person is responsible for a crime that carries a penalty of death.²⁷

37. The Inter-American Commission will therefore review the petitioners' allegations in the present case with a heightened level of scrutiny, to ensure in particular that the rights to life, not to receive cruel, infamous or unusual punishment, to due process, and to a fair trial as prescribed under the American Declaration, have been respected by the State. With regard to the legal status of the American Declaration, the IACHR reiterates that:²⁸

²⁴ See, for example: I/A Court H. R., Advisory Opinion OC-16/99 (October 1, 1999), The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, para. 136; United Nations Human Rights Committee, *Baboheram-Adhin et al. v. Suriname*, Communications Nos. 148-154/1983, adopted on April 4, 1985, para. 14.3; Report of the United Nations Special Rapporteur on Extrajudicial Executions, Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1994/82, Question of the Violation of Human Rights and Fundamental Freedoms in any part of the World, with particular reference to Colonial and Other Dependent Countries and Territories, UN Doc.E/CN.4/1995/61 (December 14, 1994), para. 378.

²⁵ IACHR, Report No. 57/96, *Andrews, United States*, IACHR Annual Report 1997, para. 170-171; Report No. 38/00 *Baptiste, Grenada*, IACHR Annual Report 1999, paras. 64-66; Report No. 41/00, *McKenzie et al., Jamaica*, IACHR Annual Report 1999, paras. 169-171.

²⁶ IACHR, *The death penalty in the Inter-American System of Human Rights: From restrictions to abolition*, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, para. 41.

²⁷ IACHR, Report No. 78/07, Case 12.265, *Merits (Publication)*, Chad Roger Goodman, The Bahamas, October 15, 2007, para. 34.

²⁸ IACHR, Report No. 44/14, Case 12,873, *Report on Merits (Publication)*, Edgar Tamayo Arias, United States, July 17, 2014, para. 214.

[t]he American Declaration is, for the Member States not parties to the American Convention, the source of international obligations related to the OAS Charter. The Charter of the Organization gave the IACHR the principal function of promoting the observance and protection of human rights in the Member States. Article 106 of the OAS Charter does not, however, list or define those rights. The General Assembly of the OAS at its Ninth Regular Period of Sessions, held in La Paz, Bolivia, in October 1979, agreed that those rights are those enunciated and defined in the American Declaration. Therefore, the American Declaration crystallizes the fundamental principles recognized by the American States. The OAS General Assembly has also repeatedly recognized that the American Declaration is a source of international obligations for the member states of the OAS.

38. Finally, the Commission recalls that its review does not consist of determining that the death penalty in and of itself violates the American Declaration. What this section addresses is the standard of review of the alleged human rights violations in the context of criminal proceedings in a case involving the application of the death penalty.

C. Right to a fair trial,²⁹ right of petition,³⁰ and right to due process of law³¹

1. Right to information on consular assistance

39. The Commission has determined in previous cases that it is necessary and appropriate to consider the extent to which a state party has given effect to the requirements of Article 36 of the Vienna Convention for the purpose of evaluating that state's compliance with a foreign national's due process rights under Articles XVIII and XXVI of the American Declaration. Therefore, it does consider compliance with Article 36 of the Vienna Convention when interpreting and applying the provisions of the American Declaration to a foreign national who has been arrested, committed to trial or to custody pending trial, or is detained in any other manner by that state.³²

40. In its Advisory Opinion OC-16/99, the Inter-American Court established that sub-paragraphs (b) and (c) of Article 36(1) of the Vienna Convention "recognize, *inter alia*, a detained foreign national's right to be advised, without delay, that he has:

- a) the right to request and obtain from the competent authorities of the host State that they inform the appropriate consular post that he has been arrested, committed to prison, placed in preventive custody or otherwise detained, and
- b) the right to address a communication to the appropriate consular post, which is to be forwarded "without delay."³³

41. The significance of the right to information on consular assistance is also reflected in practice guidelines such as those adopted by the American Bar Association, a national organization for the legal profession in the United States, concerning the due process rights of foreign nationals in capital proceedings. The ABA has indicated in its Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases that:³⁴

²⁹ Article XVIII of the American Declaration establishes: Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

³⁰ Article XXIV of the American Declaration establishes: Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

³¹ Article XXVI of the American Declaration establishes: 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.

³² IACHR, Report No. 90/09, Case 12.644, Admissibility and Merits (Publication), Medellín, Ramírez Cardenas and Leal García, United States, August 7, 2009, paras 124-132. See also, IACHR, Report No. 91/05 (Javier Suarez Medina), United States, Annual Report of the IACHR 2005; Report No. 1/05 (Roberto Moreno Ramos), United States, Annual Report of the IACHR 2005; and Report 52/02, Case 11.753 (Ramón Martínez Villarreal), United States, Annual Report of the IACHR 2002.

³³ I/A Court H.R., The Right to Information on Consular Assistance in the Framework of the Guarantees of the due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No.16, para. 81.

³⁴ American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised Edition) (February 2003), Guideline 10.6B "Additional Obligations of Counsel Representing a Foreign National."

[u]nless predecessor counsel has already done so, counsel representing a foreign national should: 1. immediately advise the client of his or her right to communicate with the relevant consular office; and 2. obtain the consent of the client to contact the consular office. After obtaining consent, counsel should immediately contact the client's consular office and inform it of the client's detention or arrest [...]

42. In the present case, the Commission notes that the petitioners assert that Mr. Valle is a national of Cuba; assertions that have not been contested to date by the State. It is claimed by the petitioners that Mr. Valle was not informed of his right to information on consular assistance upon arrest and never contacted or received any assistance from the Cuban government. It is claimed that if Mr. Valle knew of his rights under Article 36 of the Vienna Convention, he would have availed himself to his rights and that it is likely that contact with the consul would have resulted in assistance.

43. The State has not disputed the petitioners' contentions in this regard. Accordingly, based upon the information and arguments presented, the Commission concludes that the alleged victim was not notified of his right to consular notification at or subsequent to the time of his respective arrests.

44. Based upon the foregoing, the Commission concludes that the State's obligation under Article 36 of the Vienna Convention to inform Mr. Valle (at the time of his arrest) of his right to information on consular assistance constituted a fundamental component of the due process standards to which he is entitled under Article XVIII and XXVI of the Declaration, and that the State's failure to respect and ensure this obligation deprived the alleged victim of a criminal process that satisfied the minimum standards of due process and a fair trial required under Articles XVIII and XXVI of the Declaration.

2. Right to clemency proceedings

45. As stated within *Medellín et al.*,³⁵ the Commission has previously held that right to apply for amnesty, pardon or commutation of sentence under inter-American human rights instruments, while not necessarily subject to full due process protections, is subject to certain minimal fairness guarantees for condemned prisoners in order for the right to be effectively respected and enjoyed.³⁶ These procedural protections have been held to include the right on the part of condemned prisoners to submit a request for amnesty, pardon or commutation of sentence, to be informed of when the competent authority will consider the offender's case, to make representations, in person or by counsel to the competent authority, and to receive a decision from that authority within a reasonable period of time prior to his or her execution.³⁷

46. As indicated *supra*, the Commission has an enhanced obligation to ensure that any deprivation of life which may occur through the application of the death penalty comply strictly with the requirements of the applicable inter-American human rights instruments, including the American Declaration. Therefore, the allegations in the present case require a heightened level of scrutiny to ensure that the rights to life, due process, and fair trial as prescribed under the American Declaration have been properly respected by the State. In the case of clemency proceedings pending the execution of a death sentence, the minimal fairness guarantees afforded to the applicant should include the opportunity to receive an impartial hearing.

47. The allegations of the petitioners indicate that the practice followed by the state of Florida does not allow for determining whether clemency proceedings were conducted and that there is no reporting on the reasons for its recommendation to reject a clemency petition. The State has not denied the assertion that there is no set of rules or criteria to be taken into account when making clemency determinations regarding death penalty cases.

48. The law within Florida provides for a process by which the Governor may exercise the authority to grant full or conditional pardons, restore civil rights, and commute punishment. The Commission is not, however,

³⁵ IACHR, Report No. 90/09. Case 12.644. Admissibility and Merits. *Medellín, Ramírez Cardenas And Leal García*. United States of America. August 7, 2009.

³⁶ IACHR, Case No 12.023 (*Desmond McKenzie et al.*), Jamaica, Annual Report of the IACHR 1999, para. 228; Case No 12.067 (*Michael Edwards et al.*), The Bahamas, Annual Report of the IACHR 2000, para. 170.

³⁷ IACHR, Case No 12.023 (*Desmond McKenzie et al.*), Jamaica, Annual Report of the IACHR 1999, para. 228; Case No 12.067 (*Michael Edwards et al.*), The Bahamas, Annual Report of the IACHR 2000, para. 170.

aware of any prescribed criteria that are applied in the exercise of the functions or discretion of the Governor. Nor is the Commission aware of any right on the part of an offender to apply to the Governor, to be informed of the time when the clemency investigation or hearing of the offender's case occurs, to make oral or written submissions to the Governor or to present, receive or challenge evidence considered save for what may be submitted on his behalf by an appointed attorney.

49. Moreover, based upon the information before it, the Commission finds that the procedure for granting clemency does not guarantee condemned prisoners with an effective or adequate opportunity to participate in the process, and therefore does not properly ensure Mr. Valle's rights under Article XXIV of the Declaration to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

50. In the Commission's view, the right to petition under Article XXIV of the Declaration, when read together with the State's obligations under the Declaration, must be read to encompass certain minimum procedural protections for condemned prisoners if the right is to be effectively respected and enjoyed. These protections include the right on the part of condemned prisoners to apply for amnesty, pardon or commutation of sentence, to be informed of when the competent authority will consider the offender's case, to make representations in person or by counsel to the competent authority and, to receive a decision from that authority within a reasonable period of time prior to his or her execution. It also entails the right not to have capital punishment imposed while such a petition is pending decision by the competent authority.

51. In order to provide condemned persons with an effective opportunity to exercise this right, a procedure should be prescribed and made available by the State through which prisoners may file an application for amnesty, pardon or commutation of sentence, and submit representations in support of his or her application. In the absence of minimal protections and procedures of this nature, Article XXIV of the American Declaration is rendered meaningless, a right without a remedy. Such an interpretation cannot be sustained in light of the object and purpose of the American Declaration.³⁸

52. In this regard, the IACHR recalls, for instance, that the Inter-American Court of Human Rights has established that "the right to grace forms part of the international *corpus juris*, specifically of the American Convention and the International Covenant on Civil and Political Rights."³⁹ This Court has established that as part of this right, the State has "the obligation to guarantee that this right can be exercised by the person sentenced to death in an effective manner. Thus, the State has the obligation to implement a procedure of this nature that is characterized by impartiality and transparency, in which the person sentenced to death can assert with certainty all the antecedents that he or she believes are relevant in order to benefit from the act of clemency."⁴⁰ Similarly, the United Nations Human Rights Committee has stated that:

[...] The State party should guarantee any person sentenced to death the right to seek pardon or commutation of sentence by bringing the legislation into line with the obligations of the Covenant and adopting provisions to ensure that the right to seek pardon may be exercised.⁴¹

53. Therefore, the Commission finds that the procedure in place falls short of establishing minimal safeguards to prevent arbitrary decisions within clemency proceedings pending the execution of a death sentence. The Commission also concludes that the State has violated Mr. Valle's rights pursuant to Article XXIV of the American Convention by failing to guarantee him an effective right to petition and to apply for amnesty, pardon or commutation of sentence, to make representations, in person or by counsel, to the Governor and, to receive a prompt decision from the Governor within a reasonable time prior to his execution.

³⁸ IACHR, Report No. 12.231, Case 12.231. Merits (Publication). Peter Cash. Commonwealth of the Bahamas. April 2, 2014.

³⁹ I/A Court H.R., Case of Fermín Ramírez v. Guatemala. Merits, Reparations and Costs. Judgment of June 20, 2005. Series C No. 126, para. 109.

⁴⁰ I/A Court H.R., Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94, para. 188.

⁴¹ UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Guatemala*, 27 August 2001, CCPR/CO/72/GTM, para. 18.

54. Based upon the foregoing, the Commission concludes that the clemency procedures in Florida fail to guarantee the right to an impartial hearing pursuant to Article XXVI of the American Declaration and that the State's failure to ensure this obligation may result in an additional violation of the rights to a fair trial under the Declaration.

D. The deprivation of liberty on death row and the right of protection against cruel, infamous or unusual punishment

4. Death row phenomenon⁴²

55. The long term deprivation of liberty on death row is referred to within both international human rights and comparative law as the "death row phenomenon", and infringes on a person's freedom from cruel, inhuman or degrading punishment. Such treatment violates the prohibition of cruel, inhuman or degrading punishment in Constitutions and in multiple international treaties, including the American Declaration (Articles XXV and XXVI).⁴³

56. The Commission takes note of the concept of the death row phenomenon of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment that:

(...) it consists of a combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death.⁴⁴ Those circumstances include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held. Death row conditions are often worse than those for the rest of the prison population, and prisoners on death row are denied many basic human necessities.⁴⁵

57. In the case of *Soering vs. The United Kingdom*, the European Court of Human Rights, in its interpretation of the norm banning cruel, inhuman, and unusual punishment and in reference to the death penalty, pointed out that:

The manner in which it is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3.⁴⁶

58. The European Court found that the "death row phenomenon" is a cruel, inhuman and degrading treatment, and is characterized by a prolonged period of detention while awaiting execution, during which prisoners sentenced to death suffer severe mental anxiety, extreme psychological tension and trauma.⁴⁷

59. The European Court was referring to an average of six to eight years on death row from imposition of the penalty to execution and it mentioned how proceedings and appeals subsequent to the imposition of the death penalty themselves have a bearing on the aforementioned wait time on death row. The court referenced the lapse of time between sentence and execution is inevitable however, the consequence is that the condemned

⁴²Article XI of the American Declaration provides: "The right to the preservation of health and well-being – every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources."

⁴³IACHR, Report No. 71/18, Case 12.958. Merits. Russell Bucklew. United States, May 10, 2018, paras. 86-90. In this report the Commission has cited a number of developments in the inter-American and other protections systems, including the regional and United Nations systems.

⁴⁴United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment. 9 August 2012. A/67/279, para 42. Citing: Patrick Hudson, "Does the death row phenomenon violate a prisoner's rights under international law?", *European Journal of International Law*, vol. 11, No. 4 (2000), pp. 834-837.

⁴⁵United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment. 9 August 2012. A/67/279. para 42.

⁴⁶ECtHR. Case of *Soering v. The United Kingdom*. Report No. 14038/88. Judgment, July 7, 1989. para. 104.

⁴⁷European Court of Human Rights, *Soering v. United Kingdom*. Judgment of July 7, 1989. Series A, Vol. 161. Likewise, the Supreme Court of the United States of America recognised in *Furman v. Georgia* that the time spent awaiting the execution of a death sentence destroys the human spirit and constitutes psychological torture that often leads to insanity. Cf. *Furman v. Georgia*, 408 U.S. 238, 287-288 (1977).

prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death.⁴⁸

60. The court further recognized that some element of delay between imposition and execution of the sentence and the experience of severe stress in conditions necessary for strict incarceration are inevitable and considered elements like, the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, which brought the delay into the realm of exposed real risk of treatment going beyond the threshold set by Article 3.⁴⁹

61. Furthermore, in a comparative law context, the Commission notes that in the *Pratt and Morgan v. Jamaica* case cited above the Privy Council considered the issue of the death row phenomenon, and held that:

In their Lordships' view a State that wishes to retain capital punishment must accept the responsibility of ensuring that execution follows as swiftly as practicable after sentence, allowing a reasonable time for appeal and consideration of reprieve. It is part of the human condition that a condemned man will take every opportunity to save his life through use of the appellate procedure. If the appellate procedure enables the prisoner to prolong the appellate hearings over a period of years, the fault is to be attributed to the appellate system that permits such delay and not to the prisoner who takes advantage of it. Appellate procedures that echo down the years are not compatible with capital punishment. The death row phenomenon must not become established as a part of our jurisprudence.

(...)

These considerations lead their Lordships to the conclusion that in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute "inhuman or degrading punishment or other treatment."⁵⁰

62. In the same vein, the Supreme Court of Uganda considered in 2009 that "to execute a person after a delay of three years in conditions that were not acceptable by Ugandan standards would amount to cruel, inhuman punishment."⁵¹ For its part, the Supreme Court of Zimbabwe has pointed out since 1993 that "having regard to judicial and academic consensus concerning the death row phenomenon, the prolonged delays and the harsh conditions of incarceration, a sufficient degree of seriousness had been attained to entitle the applicant to invoke the protection concerning the prohibition of torture and inhuman or degrading punishment." That Supreme Court maintained that "52 and 72 months, respectively, on death row constituted a violation of the prohibition of torture and would render an actual execution unconstitutional."⁵²

63. The Commission notes that Mr. Valle was on death row from 1978 to September 2011. Therefore, Mr. Valle was deprived of his liberty on death row for 33 years. The Commission notes that the very fact of spending 33 years on death row was, by any account, excessive and inhuman, and was aggravated by the prolonged expectation that the death sentence could be executed. Consequently, the United States is responsible for having violated, to the detriment of the alleged victim, the right to humane treatment, and not to receive cruel, infamous or unusual punishment established in Articles XXV and XXVI of the American Declaration.

5. Method of Execution

64. The Commission notes that even though the American Declaration does not prohibit the death penalty, various organs have considered that an execution method is incompatible with the right to humane treatment and the prohibition of torture when it is not designed to inflict the least possible suffering.⁵³

⁴⁸ ECtHR. Case of Soering v. The United Kingdom. Report No. 14038/88. Judgment, July 7, 1989. para. 106.

⁴⁹ ECtHR. Case of Soering v. The United Kingdom. Report No. 14038/88. Judgment, July 7, 1989. para. 111.

⁵⁰ *Pratt and Morgan v. The Attorney General for Jamaica and another (Jamaica)* [1993] UKPC 1 (2nd November, 1993), paras. 73-75 and 84.

⁵¹ Supreme Court of Uganda in *Attorney General v. Susan Kigula and 417 others* (Constitutional Appeal No. 3 of 2006), 2009.

⁵² Judgment of the Supreme Court of Zimbabwe of 24 June 1993 in *Catholic Commissioner for Justice and Peace in Zimbabwe v. Attorney General* (4) SA 239 (ZS).

⁵³ In that respect, guideline xiv) of the "EU Guidelines on Death Penalty" establishes that "Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering. It may not be carried out in public or in any other degrading manner EU Guidelines on the Death Penalty: revised and updated version.

65. United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty establish that “when the death penalty may be carried out it must be done in a way to keep to a minimum the suffering of prisoners.”⁵⁴ The Special Rapporteur on Torture, referring to the Safeguards, has indicated that there is no categorical evidence to show that any of the execution methods currently used to implement the death penalty comply with the prohibition of torture and cruel, inhumane and degrading treatment and added even if the safeguards were observed, all currently used methods of execution can inflict pain and excessive suffering.⁵⁵

66. The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has indicated with respect to the methods for the execution of the death penalty that “the extraordinary power conferred on the State to end a person’s life through a firing squad, hanging, lethal injection or other means to kill, poses a dangerous risk of abuse. This power can be kept under control only through the public supervision of the public punishment. It is a commonplace that due process serves to protect the accused. However, due process is also a mechanism through which society ensures that the punishments inflicted on their behalf are fair.”⁵⁶

67. States have a reinforced special duty to ensure that the method of execution does not constitute cruel, infamous or unusual punishment. In this regard, the drugs and doses to be used in case of executions by lethal injection, as well as the composition of the execution team and the training of its members should be subjected to the highest quality control standards. In particular, the drugs used should be subject to government approval and regulation, the execution team should have appropriate medical training and lethal injection protocols should be available to the public to guarantee public scrutiny.⁵⁷

68. The Inter-American Commission notes in this regard that the due process requirement is not limited to the conviction and post-conviction proceedings.⁵⁸ Therefore, the State has the duty to inform the person sentenced to death, in a timely manner, about the drug and method of execution that will be used, so he or she is not precluded from litigating the right to be executed in a manner devoid of cruel and unusual suffering.

69. The IACHR also notes that the United Nations Committee Against Torture received substantiated information indicating that executions in the United States can be accompanied by severe pain and suffering and requested the State to “carefully review its execution methods, in particular lethal injection, in order to prevent severe pain and suffering.”⁵⁹

70. The petitioners originally argued that the drug substitution within the lethal injection protocol in Florida at the time of the filing of the petition failed to comport with the requirement that a method of execution cause “the least possible physical and mental suffering.” According to the petitioners, the lethal injection as prescribed is cruel, infamous and unusual punishment. They also alleged that the manufacturer of the drug stated that they could not “assure the associated safety and efficacy profiles in such instances,” and that the drug was never tested on humans.

71. Mr. Valle’s amended motion for post-conviction relief argued, among other claims, that the DOC’s plan to use the substituted drug constitutes cruel and unusual punishment, because Mr. Valle may remain conscious after being injected with the pentobarbital, thereby subjecting him to significant pain during the administration of the final two drugs. The Circuit Court finally denied the claim and the matter was returned to the Florida Supreme Court. The FSC stated that the inmate must demonstrate that the conditions presenting the risk must

⁵⁴ Economic and Social Council, Safeguards guaranteeing protection of the rights of those facing the death penalty.

⁵⁵ A/HRC/30/18, Human Rights Council, Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Yearly supplement of the Secretary-General to his quinquennial report on capital punishment, para.32; also see: Office of the High Commissioner for Human Rights “Despite progress in abolishing the death penalty, thousands remain on death row. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DeathPenalty.aspx>

⁵⁶ A/HRC/30/18, Human Rights Council, Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Yearly supplement of the Secretary-General to his quinquennial report on capital punishment, para. 50.

⁵⁷ IACHR, Report No. 11/15, Case 12.833, Merits (Publication), Felix Rocha Diaz, United States, March 23, 2015, para. 84

⁵⁸ IACHR, Report No. 53/13, Case 12.864, Merits (Publication), Ivan Teleguz, United States, July 15, 2013, para. 123.

⁵⁹ Committee Against Torture, Considerations of Reports submitted by State Parties under Article 19 of the Convention, United States, CAT/C/USA/CO/2, July 25, 2006, para 31

be sure or very likely to cause serious illness and needless suffering and give rise to sufficiently imminent dangers.

72. The Commission notes that the court stated that the standard imposes a heavy burden upon the inmate to show that the lethal injection procedures violated the Eighth Amendment. It also notes that the State's expert witness acknowledged non-approval of pentobarbital by the FDA for use in lethal injections, and that another expert opined that he would be unable to determine the intended effects of the drug as there was insufficient data regarding the drug's use. Despite these assertions, according to the information available, the courts did not directly address the lack of FDA approval of pentobarbital for use in lethal injections.

73. Given the State's reinforced special duty to ensure that the method of execution does not constitute cruel, infamous or unusual punishment, and in particular, to subject the drugs used to government approval and regulation, the IACHR finds that in Mr. Valle's case it violated Article XXVI of the American Declaration.

E. Right to petition⁶⁰

74. The Commission recalls that in its decision in the case of *Juan Raul Garza v. United States*, the Commission held that in capital cases, the failure of an OAS member State to preserve a condemned prisoner's life pending review by the Commission of his or her complaint undermines the efficacy of the Commission's process, deprives condemned persons of their right to petition in the inter-American human rights system, and results in serious and irreparable harm to those individuals, and accordingly is inconsistent with the State's human rights obligations.⁶¹

75. The Commission premised these obligations on a finding that OAS member States, by creating the Commission and mandating it through the OAS Charter and the Commission's Statute to promote the observance and protection of human rights of the American peoples, have implicitly undertaken to implement measures of this nature where they are essential to preserving the Commission's mandate.⁶² The Commission found support for this determination in its own jurisprudence as well as the findings of other regional and international adjudicative bodies, including the UN Human Rights Committee, the European Court of Human Rights and the International Court of Justice.⁶³ In the Commission's view, this jurisprudence articulates a principle common to the functioning of international adjudicative systems according to which member States must implement interim or precautionary measures where doing so is necessary to preserve the very purposes for which the systems were created and to prevent irreparable harm to the parties whose interests are determined through those processes.

76. The State's denial of a stay of execution in the face of a precautionary measure by the Commission in order to evaluate any human rights breaches and its failure to preserve a condemned prisoner's life pending the completion of the proceedings, including implementation of the Commission's final recommendations, undermines the efficacy of the Commission's process, deprives condemned persons of their right to petition, and results in serious and irreparable harm to those individuals. An execution under those circumstances obstructs the Commission's or Court's ability to effectively investigate and issue determinations on capital cases.

⁶⁰ Article XXIV of the American Declaration provides: "Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon."

⁶¹ Case 12.243, Report 52/01, *Juan Raul Garza v. United States*, Annual Report of the IACHR 2000, para. 117. See similarly: IACHR, Fifth Report on the Situation of Human Rights in Guatemala, Doc. OEA/Ser.L/V/II.111 doc.21 rev. (6 April 2001), paras. 71, 72.

⁶² Case 12.243, Report 52/01, *Juan Raul Garza v. United States*, Annual Report of the IACHR 2000, para. 117. See similarly; IACHR, Fifth Report on the Situation of Human Rights in Guatemala, Doc. OEA/Ser.L/V/II.111 doc.21 rev. (6 April 2001), paras. 71, 72.

⁶³ Case 12.243, Report 52/01, *Juan Raul Garza v. United States*, Annual Report of the IACHR 2000, para. 117. See similarly; IACHR, Fifth Report on the Situation of Human Rights in Guatemala, Doc. OEA/Ser.L/V/II.111 doc.21 rev. (6 April 2001), paras. 71, 72., citing International Court of Justice, *Case Concerning the Vienna Convention on Consular Relations (Germany v. United States of America)*, Request for the Indication of Provisional Measures, Order of 3 March 1999, I.C.J. General List, N° 104, paras. 22-28; United Nations Human Rights Committee, *Dante Piandiong and others v. The Philippines*, Communication N° 869/1999, U.N. Doc. CCPR/C/70/D/869.1999 (19 October 1999), paras. 5.1-5.4; Eur. Court H.R., *Affaire Mamatkulov et Abdurasulovic c. Turkey*, Reqs. Nos. 46827/99, 46951/99 (6 February 2003), paras. 104-107.

77. Both the Commission and the Inter-American Court have indicated that the execution of a person under precautionary or provisional measures respectively, constitutes an aggravated violation of the right to life. As noted in this report, the right to life is widely recognized as the supreme right of the human being. The Inter-American Court has similarly confirmed that “[b]ecause execution of the death penalty is irreversible, the strictest and most rigorous enforcement of judicial guarantees is required of the State so that those guarantees are not violated and a human life not arbitrarily taken as a result.”⁶⁴

78. The Commission has consistently and emphatically condemned the practice by certain States of executing persons sentenced to death in violation of precautionary measures issued by it, including in instances where the Commission had before it a pending petition presenting allegations of due process or other violations in the prosecution that produced the sentence.

79. The execution of the death sentence against Mr. Valle represents a failure on the part of the State to implement the precautionary measure. By permitting Mr. Valle’s execution to proceed in these circumstances, the Commission considers that the United States violated Articles I and XXIV of the American Declaration and failed to act in accordance with its fundamental human rights obligations as a member of the Organization of American States.

F. Right to life⁶⁵ and to protection against cruel, infamous or unusual punishment with respect to the execution of Manuel Valle

80. As indicated above, the Inter-American Commission considers that it is incumbent upon the national courts, not the Commission, to interpret and apply national law. Nevertheless, the IACHR must ensure that any deprivation of life resulting from imposition of the death penalty complies with the requirements of the American Declaration.⁶⁶

81. Under these circumstances, the IACHR has maintained that executing a person, after proceedings that were conducted in violation of his rights, would be extremely grave and constitute a deliberate violation of the right to life established in Article I of the American Declaration.⁶⁷ Further, based on the conclusions regarding the deprivation of liberty on death row, as well as the violations of the rights to a fair trial, right of petition, and right to due process of law, and taking into account the determinations made throughout this report, the IACHR concludes that the execution of Mr. Valle constituted a serious violation of his right to life established in Article I of the American Declaration.

VI. REPORT No. 305/20 AND INFORMATION ABOUT COMPLIANCE

82. On October 29, 2020, the Commission approved Report No. 305/20 on the admissibility and merits of the instant case, which encompasses paragraphs 1 to 81 supra, and issued the following recommendations to the State:

1. Provide reparations to the family of Manuel Valle as a consequence of the violations established in this report.
2. Ensure compliance with the precautionary measures granted by the IACHR for persons facing the death penalty.

⁶⁴ I/A Court H.R., *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 136.

⁶⁵ Article I of the American Declaration establishes: Every human being has the right to life, liberty and the security of his person.

⁶⁶ IACHR, Report No. 53/13, Case 12.864, Merits (Publication), Ivan Teleguz, United States, July 15, 2013, para. 129.

⁶⁷ IACHR, Report No. 11/15, Case 12.833, Merits (Publication), Félix Rocha Díaz, United States, March 23, 2015, para. 106.

3. Review its laws, procedures, and practices at the state and federal level to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration,⁶⁸ including Articles I, XVIII, XXIV, XXV and XXVI thereof, and, in particular:
 - a. Ensure that every foreign national deprived of his or her liberty is informed, without delay and prior to his or her first instance of questioning by State authorities, of the right to request that consular authorities be immediately notified of his or her arrest or detention; and
 - b. Ensure effective and adequate opportunity for prisoners to participate in clemency proceedings in accordance with the rights to petition, due process and fair trial.
4. Given the violations of the American Declaration the IACHR has established in the present case and in others involving application of the death penalty, the Inter-American Commission also recommends to the United States that it abolishes the death penalty in the state of Florida and at the federal level.

83. On December 3, 2020 the IACHR transmitted the report to the State with a time period of two months to inform the Commission on the measures taken to comply with its recommendations. To date, the Commission has not received any response from the United States regarding report No. 305/20.

VII. ACTIONS SUBSEQUENT TO REPORT No. 331/21

84. On November 19, 2021, the Commission approved Final Merits Report No. 331/21, which encompasses paragraphs 1 to 83 *supra*, and issued its final conclusions and recommendations to the State. On December 2, 2021, the Commission transmitted the report to the State and the petitioners with a time period of three weeks to inform the Inter-American Commission on the measures taken to comply with its recommendations. To date, the IACHR has not received any response from the United States or the petitioners regarding Report No. 331/21.

VIII. FINAL CONCLUSIONS AND RECOMMENDATIONS

85. On the basis of determinations of fact and law, the Inter-American Commission concludes that the State is responsible for the violation of Articles I (life, liberty, and security), XVIII (fair trial), XXIV (petition), XXV (protection from arbitrary detention), and XXVI (due process) of the American Declaration.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THAT THE UNITED STATES OF AMERICA,

1. Provide reparations to the family of Manuel Valle as a consequence of the violations established in this report.
2. Ensure compliance with the precautionary measures granted by the IACHR for persons facing the death penalty.
3. Review its laws, procedures, and practices at the state and federal level to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration,⁶⁹ including Articles I, XVIII, XXIV, XXV and XXVI thereof, and, in particular:
 - a. Ensure that every foreign national deprived of his or her liberty is informed, without delay and prior to his or her first instance of questioning by State authorities, of the right to request that consular authorities be immediately notified of his or her arrest or detention; and

⁶⁸ See in this regard, IACHR, The death penalty in the Inter-American Human Rights System: From restrictions to abolition, OEA/Ser.L/V/II.Doc 68, December 31, 2011.

⁶⁹ See in this regard, IACHR, The death penalty in the Inter-American Human Rights System: From restrictions to abolition, OEA/Ser.L/V/II.Doc 68, December 31, 2011.

- b. Ensure effective and adequate opportunity for prisoners to participate in clemency proceedings in accordance with the rights to petition, due process and fair trial.
- 4 Given the violations of the American Declaration the IACHR has established in the present case and in others involving application of the death penalty, the Inter-American Commission also recommends to the United States that it abolishes the death penalty in the state of Florida and at the federal level.

IX. PUBLICATION

86. In light of the above and in accordance with Article 47.3 of its Rules of Procedure, the IACHR decides to make this report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the United States with respect to the above recommendations until it determines there has been full compliance.

Approved by the Inter-American Commission on Human Rights on the 31st day of December 2021. (Signed):
Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández García and Edgar Stuardo Ralón Orellana, Commissioners.