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REPORT No. 3/24
PETITION 776-20
REPORT ON ADMISSIBILITY

LAURA S. AND FAMILY
UNITES STATES OF AMERICA

Approved electronically by the Commission on March 10, 2024.

Cite as: IACHR, Report No. 3/24, Petition 776-20. Admissibility. Laura S. and family.
United States of America. March 10, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Texas Civil Rights Project (TCRP), Texas Rio Grande Legal Aid (TRLA), and Center for Justice and International Law (CEJIL)
Alleged victims:	Laura S. and her children E.H.F., S.H.F., and A.S.G.
Respondent State:	United States of America ¹
Rights invoked:	Articles I (right to life, liberty, and personal security), II (right to equality before the law), V (right to protection of private and family life), VI (right to family and protection thereof), VII (right to protection for mothers and children), XVIII (right to fair trial), XXV (right to protection from arbitrary arrest/ right to humane treatment), XXIV (Right of petition), XXVI (right to due process of law), and XXVII (right to seek and receive asylum) of the American Declaration on the Rights and Duties of Man ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	April 7, 2020
Additional information received at the stage of initial review:	September 6, 2022
Notification of the petition to the State:	August 18, 2022
State's first response:	September 15, 2023
Additional observations from the petitioner:	December 18, 2023

III. COMPETENCE

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 (ratification of the OAS Charter on June 19, 1951)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles I (right to life, liberty and security of the person), II (right to equality), V (Right to protection of honor, personal reputation, and private and family life), VI (Right to a family and to protection thereof), XVIII (right to fair trial), XXV (right to humane treatment while in custody), XXVI (right to due process of law), and XXVII (right to seek and receive asylum) of the American Declaration
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in terms of Section VI

¹ Hereafter "United States," "U.S." or "the State"

² Hereinafter "the Declaration" or "the American Declaration"

³ The observations submitted by each party were duly transmitted to the opposing party.

Timeliness of the petition:

Yes, in terms of Section VI

V. ALLEGED FACTS

The petitioners

1. Laura S. (an undocumented migrant) was allegedly removed from the United States to Mexico following which she was murdered by an abusive former partner. The petition is brought on behalf of Laura S. and her surviving children known as E.H.F, S.H.F. and A.S.G.⁴ (collectively referred to as the “alleged victims”). The petition claims that the State is responsible for violating multiple rights of the alleged victims, including the right to life, right to due process, the right to seek asylum, and the right to protection of family life.

Background

2. According to the petition, Laura S., a Mexican citizen, moved to Texas in 2005 as an undocumented immigrant. She was joined by her eldest son A.S.G., who was also a citizen of Mexico. She resided in Hidalgo County, Texas, where she worked as a waitress. The petition also indicates that in 2005 and 2007, Laura S. gave birth to her two other children E.H.F. and S.H.F., both of whom are U.S. citizens. The petition states that the father of these children was the domestic partner of Laura S, and that his name was Sergio. According to the petition, Sergio, a Mexican citizen, battered Laura S. over the course of several years. The petition also submits that at one point Sergio attempted to set fire to Laura S.’s home while she and the children were inside. The petition further states that in 2008, Sergio was arrested for domestic violence after assaulting Laura S. with a knife; following which Laura S. obtained a Magistrate’s Order of Emergency Protection against him on behalf of herself and her children. According to the petition, Sergio was jailed and subsequently deported to Reynosa, Mexico, where he reportedly began working for a drug cartel. Furious that Laura S. had taken legal action against him, he threatened to kill her if she ever returned to Mexico.

3. According to the petition, on June 9, 2009, Laura S. was driving a car in Pharr, Texas, a small city on the U.S.-Mexico border, with three passengers. A local police officer stopped them for an alleged minor driving infraction, and demanded they show proof of citizenship or immigration status. Laura S. and two passengers, Saray Cardiel and Arturo Morales, had no such documents as they were living in the United States without authorization at the time. The police officer called U.S. Customs and Border Protection (CBP), following which CBP agent Ramiro Garza arrived on the scene and began questioning Laura S., Saray, and Arturo.

4. The petition indicates that as Agent Garza questioned Laura S. about her legal status, she cried while explaining to him in Spanish that her violent former partner had threatened to kill her if she returned to Mexico. She explained that she had obtained a protective order against him after suffering years of domestic violence. One of the other passengers in the car repeated Laura S.’s statements to Agent Garza in English, to make sure he understood her fear of returning to Mexico. In response, the petition alleges that Agent Garza laughed. The petition further submits that Agent Garza ordered Laura, Saray, and Arturo into his vehicle and told them they had to go to Mexico. While being transported to the CBP processing center in Weslaco, Texas – about twenty minutes away– Laura continued crying and begged Agent Garza not to send her to Mexico because she was in danger. Again, Agent Garza allegedly responded to her pleas with laughter.

5. The petition states that at the CBP processing center, Laura S. and Saray were seated together in a room with Agent Garza and another CBP officer. Agent Garza carried a taser and baton; the other agent was armed with a handgun. The petition indicates that at this point, it was around 4:00 a.m., and any delays in processing would have required the agents to work an extended ten-hour shift. Further, the petition submits that Agent Garza said to the other CBP agent, in Spanish, that Laura and Saray had to sign documents because

⁴ The petitioners request that, (a) given the nature of the violations contained in the petition; (b) the minority status of the children (at the time of the alleged violations) that the children, be referred to only by their initials. The petitioners also request that given the nature of the alleged violations, that the surname of Laura S. be referenced only by its initial.

the agents were in a rush and needed to leave. The agents handed Laura and Saray “voluntary return” forms to sign. They did not explain the documents or inform the women of their rights.

6. According to the petition Laura S. repeatedly refused to sign documents consenting to a “voluntary return” to Mexico, and clearly expressed her profound fear at the prospect of being forcibly returned to the Mexican town where her violent former partner was living. The petition further submits that the CPB officials ignored Laura S.’s pleas; and instead, they coerced her into signing a “voluntary return” form in the wee hours of the night while she was distraught, anguished, and suffering from extreme mental duress. The petition asserts that prior to signing the form, Laura S. had no opportunity to speak with a lawyer or to appear before a judge; and that she was not provided an explanation of her rights.

7. Generally, the petition asserts that the conditions under which Laura S. signed the “voluntary return” form are sufficient to demonstrate coercion. In this regard, the petition indicates that Laura S. was unexpectedly taken into federal custody in the late hours of the night and was returned to Mexico in the early hours of the morning. During that limited amount of time no attorney or other legal service provider would have been available to provide orientation or assistance. By processing Laura in the middle of the night and forcing her to return to Mexico at dawn, the CBP agents prevented her from seeking legal advice as to her rights. Additionally, the petition submits that the limited time that passed between her apprehension and her removal to Mexico suggests hurried procedures on the part of the CBP agents, who opted to immediately and involuntarily remove Laura S. to Mexico rather than to permit her to seek asylum as required by law. She was not provided with adequate information regarding the possibility of seeking asylum, withholding of removal, or protection under the Convention against Torture. Further, the petition argues that the CBP agents made no individualized, case-specific determination as to the need for detention. Instead, the CBP agents took Laura into custody over her protestations and pursued “voluntary return,” disregarding her outcry about fear of returning to Mexico. Further, the petition contends that the CBP agents effectively coerced Laura into signing the “voluntary return” form by subjected her to demeaning detention conditions and minimizing her fears of return.

8. According to the petition, Sergio found Laura S. soon after she was returned to Mexico. He followed and barricaded a vehicle that she was driving, pulled her out of the car, beat her brutally, and bit her ear. She escaped but not long afterwards she disappeared. A few days later, the petition states that she was found dead, incinerated, in a burned-out car in a remote area in the outskirts of Reynosa. The petition further states that Sergio was convicted for her murder in Mexico.

9. The petition emphasizes that Laura S. was both an undocumented immigrant and a woman, and more specifically, a single mother who had survived domestic violence. Accordingly, she was thus in even greater need of protection because of intersecting vulnerabilities which combined with language barriers, impeded her access to information regarding her rights under U.S. law. The petition asserts that the CBP agents’ decision to return Laura S. to Mexico violated the United States’ obligations to prevent violence against women, as far as the agents ignored the specific risks to Laura’s life and liberty that were highly likely to materialize in Mexico as well as her right to equality under the law. The petition notes that Laura repeatedly conveyed to the CBP agents the threats that Sergio had made against her and her fear that she would be murdered upon return to Mexico. Based on these representations, the petition asserts that she should have been immediately referred, in accordance with U.S. law, for a preliminary interview with an Asylum Officer to assess whether she would be permitted to appear before an Immigration Judge to seek asylum.

10. The petition asserts that following Laura S.’s murder, the task of raising her three children – who were two, three, and eight years old at the time– fell to Laura’s mother, Maria. The petition further indicates that Maria did all she could to provide for the children’s needs, but that her parenting was complicated by the fact that she was not legally recognized as the children’s guardian for some time. Accordingly, even simple tasks were difficult, such as signing off on school activities and therapy appointments, and doctors would not allow Maria to make decisions regarding the children’s medical care until she legally became the children’s guardian. The petition asserts that all the children struggled to process their mother’s death. All three children have undergone therapy for post-traumatic stress caused by their mother’s murder.

11. The petition also indicates that more than a decade after Laura S.'s murder, her children still require Maria's constant attention. In this regard, the petition states that E.H.F. and S.H.F. must go through middle school and high school without their mother's support and guidance; and though A.S.F. is now nineteen years old, he is on the autism spectrum and accordingly requires Maria's ongoing attention and support as well.

Legal context regarding Voluntary Returns

12. According to the petition, Laura S.'s tragic death was not an isolated event; and that numerous civil society organizations have documented how the U.S. government uses coercive practices to induce immigrants in Laura's position to sign "voluntary return" forms. The petition submits that the inevitable result is that countless individuals like Laura are denied due process and removed or deported to countries in which they face a clear probability of persecution or torture.

13. Having regard for the foregoing, the petition provides information on the legal framework that governs the voluntary return procedure, including observations on the use of coercion in the application of this procedure.

14. The petition indicates that U.S. immigration law consists of a complex web of statutes and regulations that establish, *inter alia*, the grounds and procedures by which noncitizens, referred to as "aliens" in U.S. law, may be denied admission to or removed or deported from the United States. Beyond those controls that immigration officers at airports and ports of entry along the land borders exercise over noncitizens who seek to enter the territory of the United States, the immigration laws also authorize the removal of certain noncitizens who are already in the country.

15. The petition submits that, any noncitizen present in the interior of the United States may be subject to removal proceedings in which the U.S. Department of Homeland Security (DHS) presents charges before an Immigration Judge within the U.S. Department of Justice's Executive Office for Immigration Review (EOIR). The Immigration Judge is responsible for determining whether the noncitizen is removable from the country and whether she is eligible for any relief from removal available under U.S. immigration law, including asylum. In these removal proceedings, often referred to as "full" or "regular" removal proceedings, the U.S. government, through DHS, has the burden of proving to the Immigration Judge that the immigrant is removable by "clear and convincing evidence." If found to be removable, and unless granted some form of relief from removal such as asylum, the noncitizen is issued a removal order that serves as the basis for deportation from the United States.

16. According to the petition, U.S. law also provides for alternatives to these "full" or "regular" removal proceedings. Among these alternatives, U.S. law authorizes two forms of voluntary departure, both of which are contingent on the immigrant agreeing to depart the United States.

17. According to the petition, the first alternative, referred to as "voluntary departure," typically occurs during or at the end of full removal proceedings and is supervised by an Immigration Judge. As set out in U.S. law, the Immigration Judge may permit an alien voluntarily to depart the United States at the alien's own expense prior to the completion of such proceedings.

18. The second alternative (the relevant procedure for the purpose of this petition) is typically referred to as "administrative voluntary departure" or "voluntary return." This summary immigration enforcement procedure is administered not by an Immigration Judge but instead by U.S. Customs and Border Protection (CBP), the component agency of DHS charged with immigration enforcement at and near the border. In this context, the petition submits that an immigrant who agrees to a "voluntary return" is not afforded full removal proceedings. "Voluntary return" procedures allow an immigrant to accelerate their departure from the United States by bypassing the immigration court completely and accepting removal from the United States without a formal removal order. By law, "voluntary return" is only available when requested by the immigrant and only authorized when the immigrant "agrees to its terms and conditions."

19. However, the petition asserts that these procedures are not reviewable by Immigration Judges, and U.S. law prohibits all judicial review of certain claims that may arise out of the “voluntary return” context. The petition further states that immigrants who consent to “voluntary return” relinquish important procedural and substantive rights that would otherwise be available to them in “full” or “regular” removal proceedings. In this regard, the petition indicates that they forego various rights such as their right to be represented by a lawyer; the right to hear the government’s evidence, cross examine witnesses, and present their own evidence against removal. The petition also submits that because “voluntary return” occurs out of view of Immigration Judges, individuals may be unaware of crucial information about their rights and how to seek relief from removal, including asylum, withholding of removal, and protections under the U.N. Convention Against Torture.

20. The petition submits that there is systemic coercion and other due process violations regarding the voluntary return process; and that this has have been documented in numerous class action lawsuits. For example, the petition refers to a 1982 class action lawsuit⁵ that alleged that U.S. immigration agents used coercive tactics to cause thousands of Salvadoran nationals fleeing political persecution and torture in their home country to accept “voluntary return.” According to the petition, the litigants in this case showed that U.S. immigration agents used techniques ranging from “subtle persuasion to outright threats and misrepresentations” to obtain class members’ agreement to “voluntarily” return to El Salvador.

21. The petition indicates that a district federal court issued an injunction in 1988, “mandating that the Immigration and Naturalization Service (INS) provide Salvadorans placed in immigration custody with a written notice about their rights, ensure Salvadorans access to telephones, counsel, and legal materials in detention, and refrain from coercing Salvadorans into signing voluntary departure agreements. Following attempts by the government to dissolve the injunction, the court determined in 2007⁶ that the injunction was still needed, noting that despite information on the “voluntary return” form advising immigrants of their rights, there was no evidence that they “are actually given an opportunity to understand what they are signing.” In 2009, the Court of Appeals for the Ninth Circuit⁷ affirmed that decision, leaving the injunction intact to protect Salvadoran nationals against coercion in the context of “voluntary return” procedures.

22. According to the petition, in reaching their 2007 and 2009 decisions, the courts also considered whether Form I-826 (the same form signed by Laura S.) was adequate to advise immigrants of their right to seek asylum. Both the trial and appellate courts determined that it was not. Specifically, the trial court signaled that the form “is potentially confusing in that it does not directly state that an alien who fears return to his or her country is entitled to a hearing before a judge who will determine whether the alien can remain in the United States.” For its part, the appellate court pointed out that the form does not even use the word “asylum,” and underscored that although forms and policies may have advanced, the government’s practices were still deficient.

Mexico country conditions

23. The petitioners submit that the claims in the petition should be analyzed in the context of country conditions in Mexico at the time of the relevant facts. In this regard, the petitioners mention a report by the IACHR issued in 2018⁸ which (inter alia) “identified serious situations of violence, which increased following the start of the so-called ‘war on drugs’ in 2006 and escalated to alarming levels resulting in the deaths of more than 100,000 people since 2006, more than 27,000 disappearances acknowledged by the State, over 2,000 investigations into cases of torture, and conditions that have prompted the displacement of thousands of people in the country”.

⁵ *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 354 (C.D. Cal. 1982).

⁶ *Orantes-Hernandez v. Gonzales*, 504 F. Supp. 2d 825, 860 (C.D. Cal. 2007).

⁷ *Orantes-Hernandez v. Holder*, 321 Fed. Appx. 625 (9th Cir. 2009).

⁸ IACHR, *Annual Report 2018*, Chapter V: Follow-up of Recommendations Issued by the IACHR in its Country of Thematic Reports: Third Report on Follow-up of Recommendations Issued by the IACHR in its Report on the Human Rights Situation in Mexico, para. 3.

24. The petitioners also indicate that in 2009, the Inter American Court issued its decision in the Cotton Field case against Mexico⁹, a case addressing not only the pervasive and structural violence against women in the country –more than 36,000 women were murdered in Mexico between 1985 and 2010– but also the Mexican government’s failures, institutional prejudices, and pervasive impunity. Further the petitioners submit that in February 2009, the U.S. Department of State published its 2008 Country Report on Human Rights Practices in Mexico, naming as one of the primary human rights concerns “domestic violence against women, often perpetrated with impunity; violence, including killings, against women.”¹⁰ The report addressed the widespread nature of femicides in Mexico and documented the authorities’ ineffective and hostile responses to victims of gender-based violence, as well as the lack of capacity or will to prosecute such cases resulting in impunity.

Exhaustion of domestic remedies

25. In mid-2013, the petition indicates that Laura’s mother, Maria, sought legal help on behalf of Laura’s children. On June 5, 2013, Laura’s surviving children, with Maria as their representative, brought a federal lawsuit against CBP agents in the United States District Court for the Southern District of Texas. (“District Court”).

26. The federal lawsuit claimed that CBP agents had violated Laura’s due process rights, including: her right to a full and fair hearing before a qualified Immigration Judge; the assistance of a lawyer (at her own expense) to safeguard the basic fairness of such hearing; the fair consideration by an Immigration Judge of Laura’s right to mandatory relief from removal under the U.N. Convention Against Torture and “withholding of removal” under U.S. immigration statutes; and the fair consideration by an Immigration Judge of other discretionary relief. The lawsuit further asserted that the CBP agents’ conduct in coercing her to sign a “voluntary return” form and immediately forcibly returning her to Reynosa, Mexico, was intentional, knowing, and affirmative misconduct that shocks the conscience, and that a judicial remedy should be available in this case under the *Bivens* doctrine.¹¹

27. According to the petition, the CBP agents named in the lawsuit denied responsibility and contested the claims made by against them. Specifically, they argued that a *Bivens* remedy did not extend to Laura S.’s constitutional due process claims and that they were entitled to qualified immunity. The defendants filed a motion for summary judgment, arguing that the CBP agents were entitled to qualified immunity¹² because their actions were not clearly contrary to law.

28. The petition indicates that the District Court granted the motion for summary judgment, reasoning that Laura S.’s surviving family members “failed to create a fact issue as to whether [the CBP agents] coerced Laura” into signing the voluntary removal form. The petition further submits that in arriving at that decision, the District Court disregarded ample eyewitness testimony from Saray and Arturo about Laura S.’s pleas to remain in the United States.

29. The petition indicates that Laura S.’s surviving family members then appealed the summary judgment of the District Court to the Fifth Circuit Court of Appeals (“Fifth Circuit”). According to the petition, on July 21, 2017, the Fifth Circuit affirmed the District Court’s dismissal of the complaint. The appellate court

⁹ I/A Court H.R., Case of González *et al.* (“Cotton Field”) v. Mexico. Judgment of November 16, 2009, Series C, No. 205.

¹⁰ The petitioner cite: Department of State, *2008 Country Reports on Human Rights Practices: Mexico* (February 25, 2009).

¹¹ The petitioners explain that a *Bivens* claim is a constitutional doctrine that allows any individual, including a noncitizen, to attempt to access a judicial remedy for the conduct of federal agents that violates the U.S. Constitution.]] The petitioners further indicate that the *Bivens* doctrine is a judge-made remedy [based on the case of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) that was created through jurisprudence, not statute, and its scope and applicability have been disputed and modified over time through judicial determinations, per the United States’ common-law system. Pursuant to the *Bivens* doctrine, victims of constitutional violations may sue federal officers who commit a constitutional or statutory tort while acting under color of federal authority.

¹² The petitioners explain that under U.S. law, federal officials may claim qualified immunity as a shield from being sued. To determine whether a defendant is entitled to qualified immunity, U.S. courts engage in a two-part analysis: first, whether the plaintiff has alleged a violation of a clearly established constitutional or statutory right, and second, whether the defendant’s conduct was objectively reasonable. The petitioners further indicate that when relief is sought under the *Bivens* doctrine and qualified immunity is invoked, then the burden is on the plaintiff to present sufficient evidence to prove that the official is not entitled to the protections of qualified immunity.

affirmed the District Court's grant of qualified immunity, concluding that the CBP agents' conduct was "not objectively unreasonable." The petition further submits that the Fifth Circuit dismissed Laura S.'s clear fear of being returned to Mexico, saying that "was an extraneous fact not within the control of" the CBP agents. Further, the petition asserts that the Fifth Circuit ignored detailed testimony from multiple eyewitnesses, in determining that the involuntariness of Laura S.'s signature on the "voluntary return" form was "necessarily speculation without her testimony." According to the petition, the Fifth Circuit also concluded that, as a matter of law, no judicial remedy was available for victims seeking accountability for "an alien's death in another country [...] caused by the deprivation of procedural due process by CBP agents in the United States."

30. According to the petition, Laura S.'s surviving family members then petitioned the U.S. Supreme Court for a writ of certiorari, to review the judgment of the Fifth Circuit. On October 7, 2019, the U.S. Supreme Court denied this request for review, which rendered the Fifth Circuit's decision final. The petition states that there no other vehicle to seek relief in the U.S. judicial system. The petition also indicates that, Laura S.'s surviving family members never received a hearing on the merits of their lawsuit against the CBP agents directly responsible for the violations committed against Laura S.

31. The petition submits that more recently, the U.S. Supreme Court has limited the reach of Bivens remedies, determining that Bivens cannot be used to address cross-border cases, even when the complained of violations occurred on U.S. territory. In this regard, the petition refers to a decision issued in February 2020 in the case of *Hernandez v. Mesa*, where the U.S. Supreme Court found that no Bivens remedy was available for the surviving family members of a 15-year-old child who was fatally shot by a CBP agent. In this case, a U.S. Border Patrol Agent Jesus Mesa, Jr., shot and killed 15-year-old Sergio Adrián Hernández Güereca, a 15-year-old Mexican national, in a cross-border incident. Mesa was standing on U.S. soil when he fired the bullets that struck and killed Hernández, who was on Mexican soil, after having just run back across the border following entry onto U.S. territory.

32. Having regard for the foregoing, the petitioners submit, that the petition is admissible pursuant to Article 31 because no remedy is available in the domestic legal system to address the alleged violations. Alternatively, the petitioners argue that even if the Commission were to find that the U.S. judicial system offers a potential remedy, the only available remedy under domestic law has been pursued and exhausted in this case.

Timeliness

33. The petitioners submit that the petition is timely, having been filed (on April 7, 2020) within six months of the U.S. Supreme Court's denial of the writ of certiorari. The petitioners therefore conclude that the petition complies with Article 32 (1) of the Commission's Rules of Procedure.

34. The State submits that the petition is inadmissible because (a) it violates the Commission's Fourth Instance doctrine; and (b) it does not state facts that tend to establish a violation of the American Declaration, as required for admissibility under Article 34(a) of the Commission's Rules of Procedure.

State's observations

35. As a preliminary observation, the State submits that international law recognizes the sovereign right of states to regulate the entry, residence, and expulsion of "aliens" (noncitizens) into and out of their territory, subject to their international obligations. Further the State indicates that consistent with international law, the courts of the United States have long recognized the federal government's sovereign powers to regulate the exclusion and admission of noncitizens.

36. Having regard for the foregoing, the State indicates that the Immigration and Nationality Act (INA) provides mechanisms to permit a noncitizen to voluntarily leave the United States without a removal order, including the ability to withdraw an application for admission or to accept an order of voluntary departure. The State mentions that when this process is implemented by the CPB (as it was in this case) the ability to leave the United States voluntarily is referred to as "voluntary return". It further indicates that

individuals who are being considered for voluntary return must annotate their decision on Form I-826 (Notice of Rights and Request for Disposition). The State also indicates that voluntary return is often considered preferable by noncitizens compared to a removal order because it allows them to return to their home countries without being detained for a potentially lengthy period during removal proceedings.

37. The State acknowledges that Laura S. was detained by the CPB in June 2009 and subsequently removed to Mexico. The State notes the petition's allegation that while in the custody of CPB officials, she told them that that Sergio, her ex-boyfriend and the father of two of her children, would hurt her if she returned to Mexico, and [that she] had obtained a protective order against him" through U.S. judicial processes. However, the State submits that Laura S. was presented with Form I-826, which included a "Notice of Rights" in Spanish, informing of: the right to a hearing before the Immigration Court (and concomitant possibility of detention pending a hearing); the right to use a telephone to contact an attorney, legal representative, or consular or diplomatic officer from their home country; and the option of being provided a list of legal organizations to contact upon request. The State further indicates that the form included a section titled "Request for Disposition," which presented three options: (a) "I request a hearing before the Immigration Court to determine whether or not I may remain in the United States.;" (b) "I believe I face harm if I return to my country. My case will be referred to the Immigration Court for a hearing.;" and (c) "I admit that I am in the United States illegally, and I believe I do not face harm if I return to my country. I give up my right to a hearing before the Immigration Court. I wish to return to my country as soon as arrangements can be made. I understand that I may be held in detention until my departure."

38. According to the State, the third option is the option for "voluntary return." The State further indicates that next to each option was a checkbox with an adjacent line for the signer's initials. The State submits that Laura S. wrote an "X" in the checkbox for the third option and signed her initials, affirming her selection of voluntary return.

Fourth instance

39. The State submits that the petition is precluded from consideration by virtue of the Commission's fourth instance doctrine. In this regard, the State notes that Laura S. mother filed suit on behalf of Laura's children in U.S. federal court seeking to recover damages from the immigration officers who processed Laura before she returned to Mexico. The State indicates that the federal court granted a motion to dismiss the case, in which it held that no factual question existed as to whether Laura S. was coerced into selecting the voluntary return option (on Form I-826). The State notes that a subsequent appeal to the U.S. Court of Appeals for the Fifth Circuit was dismissed. The State also informs that the mother of Laura S. then petitioned for a writ of certiorari before the U.S. Supreme Court which was denied.

40. The U.S. submits that, given the foregoing, the petition plainly constitutes an effort to use the Commission as a "Fourth Instance" body to review claims already heard and rejected by U.S. courts. It argues that to the extent that the petition raises claims that have been the subject of exhaustive judicial domestic remedies, those claims are foreclosed by the Commission's fourth instance doctrine.

Failure to State Facts that Tend to Establish a Violation of the American Declaration

41. According to the State, the petition is inadmissible for failure to state facts that establish a violation of the American Declaration (pursuant to Article 34 of the Commission's Rules of Procedure).

42. The State submits that it has undertaken a political commitment to uphold the American Declaration, a nonbinding instrument that does not itself create legal rights or impose legal obligations on member States of the Organization of American States. Additionally, the State argues that the Commission lacks competence *ratione materiae* to address the petition's claims made under Articles V, VI, VII, and XXVII of the American Declaration. In this regard, the State submits that Article 20 of the Statute of the Commission sets forth the Commission's powers that relate specifically to OAS member States that, like the United States, are not parties to the legally binding American Convention on Human Rights and identifies the provisions of the Declaration over which the Commission is empowered "to pay particular attention" vis-à-vis States not party

to the American Convention. The State further submits that Article 20(a) enumerates these provisions as “the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration.” According to the State, an interpretation of Article 20(a) that would not so limit the competence of the Commission with respect to States not parties to the American Convention would render such language nugatory. The State therefore concludes that the petition’s claims under Articles V, VI, VII, XXIV, and XXVII of the American Declaration thus fall beyond the *ratione materiae* competence of the Commission and must be dismissed pursuant to Article 20 of the Commission’s Statute.

43. The State elaborates on the issue of failure to establish colorable claims as set out in the following paragraphs.

Right to seek asylum/right to non-refoulement. (Article XXVII)

44. The State submits that to the extent that the Commission considers the claim made under Article XXVII of the Declaration (right to asylum), that this claim fails to establish a colorable violation of the Declaration. In this regard, the State notes that where an individual chooses to voluntarily return, that results in the individual foregoing the right to seek asylum. The State emphasizes that the CBP complied with the procedures for facilitating the voluntary return of Laura S. The State also submits that (a) the removal of Laura S. from the United States did not violate her right of non-refoulement; and (b) in any event, the American Declaration does not provide for protection from refoulement.

Right to due process of law (of Article XXVI)

45. According to the State, Article XXVI of the American Declaration applies only to criminal proceedings. The State submits that removal proceedings are not criminal proceedings. Accordingly, the State concludes that Article XXVI is not applicable to the petition’s claims regarding Laura S.’s removal proceedings. The State submits that even if Article XXVI were applicable to Laura’s removal the petition has failed to set forth facts that tend to establish a violation of the Declaration. In this regard, the State notes that the district court ruled, and the Fifth Circuit affirmed, that no violation of due process occurred.

Right to life, liberty, and personal security (Article I)

46. The State submits that to the extent that the petition alleges that Laura S.’s removal to Mexico in the face of possible non-State interpersonal or domestic violence amounts to a violation of Article I, that it has failed to state facts that tend to establish a violation of the Declaration. In this regard, the State argues that to make an admissible claim based on Article I, the petitioners would need to demonstrate that the United States took direct actions against Laura that violated her right to life. According to the State Laura S. chose to return to Mexico –instead of requesting an immigration hearing or a credible fear screening– despite her stated concern that a private individual in a third country may do her harm. The State rejects any assertion that Article I of the Declaration, or any other articles thereof, contain an additional implied non-refoulement obligation.

Right to equality before the law (Article II)

47. The State rejects the petition’s claim that Laura S. removal was executed without any adequate consideration of her vulnerability as a woman who had been the victim of domestic violence; and who was allegedly at risk of further domestic violence if she returned to Mexico. According to the State had Laura S. selected either of the other two options available to her on Form I-826, she would have received a credible fear screening and/or she would have been able to articulate her precise fears to an immigration judge. The State asserts that she chose not to do so. Furthermore, the State argues that removing Laura S.’s agency to choose voluntary return and forcing her to enter removal proceedings because of her sex would have itself smacked of inequality and would have been at odds with Laura S.’s freedom of movement. Accordingly, the State concludes that his claim fails to state facts that tend to establish a violation of the American Declaration, as required for admissibility under Article 34(a) of the Commission’s Rules of Procedure.

Right to a fair trial (Article XVIII)/Right to petition (Article XXIV)

48. The State argues that if the Commission does consider the alleged violations of Articles XVIII and XXIV, that these claims fail to establish any violations of the American Declaration. In this regard, the State contends that the options that Laura S. knowingly and voluntarily decided between on Form I-826 provided her the opportunity to seek justice and petition her case. The State further asserts that it was within her power to forego voluntary return and commence removal procedures, (before an immigration judge, but that she chose otherwise. Accordingly, the State concludes that his claim fails to state facts that tend to establish a violation of the American Declaration, pursuant to Article 34(a) of the Commission's Rules of Procedure.

Right of protection from arbitrary arrest/humane treatment while in custody (Article XXV)

49. The State rejects the petition's claim that Laura S. was subjected to coercion or demeaning detention conditions. In this regard, the State asserts that after Laura S was taken into custody, she was not restrained, coerced, abused, or harmed in any way. The State further submits this was confirmed by the findings of a U.S. court. Accordingly, the State concludes that the claim fails to state facts that tend to establish a violation of the American Declaration, pursuant to Article 34(a) of the Commission's Rules of Procedure.

Right to protection of honor, personal reputation, and private and family life (Article V), Right to a family and to protection thereof (Article VI), and Right to protection for mothers and children (Article VII)

50. The State rejects the petition's claim that the forcible removal of Laura S. to Mexico violated the right to family unity. The State asserts that, Laura S. knowingly and voluntarily chose to leave the U.S. The State further submits that Laura S. was unlawfully present in the U.S. and was given the opportunity to choose whether to assert a fear before an immigration judge, or to return to Mexico, and she chose the latter. The State also indicates that, Laura S. was able to call her children's grandmother from the processing center to make "suitable arrangements for [their] care and well-being," showing that, while contemplating her situation and subsequent decision, she was simultaneously considering her children and their interests. The State concludes that this claim fails to state facts that tend to establish a violation of the American Declaration, as required for admissibility under Article 34(a) of the Rules.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

51. In accordance with Article 31(1) of the Commission's Rules of Procedure, for a petition to be admissible, domestic remedies must have been pursued and exhausted pursuant to recognized principles of international law. This requirement is aimed at enabling national authorities to learn about the alleged violation of the protected right and, if appropriate, resolve the matter before it is heard by an international body.

52. Based on the documents and information provided, it appears that the family of Laura S. initially filed a suit before a US District Federal Court in 2013 (a "Bivens claim"); claiming that CPB agents had violated the due process rights of Laura S. (and other rights) by coercing her into signing a voluntary return form; and forcibly removing her to Mexico, where she was later murdered by her ex-partner. According to the record, the District Court granted a motion for summary judgment (on the application of the defendants), holding that they were entitled to qualified immunity because their actions were not clearly contrary to law. The District Court also ruled that the family of Laura S. had failed to create a fact issue she had been coerced into signing the voluntary return form. The record further indicates that the family of Laura S. appealed to Fifth Circuit Court of Appeals which dismissed the appeal on July 21, 2017. The family of Laura S. then pursued a writ of certiorari before the U.S. Supreme Court, which was denied on October 7, 2019. According to the petition, the family of Laura S. never received a hearing on the merits of their lawsuit against the CBP agents (given the grant of summary judgment that was subsequently upheld). The petition also submits that in any event, it appears that the alleged victims are not eligible for relief under the Bivens doctrine. The petition bases

this submission on a recent case issued in 2020 by the U.S. Supreme Court which determined that Bivens cannot be used to address cross-border cases, even when the complained of violations occurred on U.S. territory¹³.

53. In the absence of any evidence to the contrary, the Commission concludes that the decision by the U.S. Supreme Court represents the exhaustion of domestic remedies. Therefore, the current petition, received on April 7, 2020, complies with Articles 31 and 32 of the Commission's Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

54. As a preliminary consideration, the IACHR notes that the State contends that the American Declaration does not create legally binding obligations. The U.S. further contends that in relation to States that are not parties to the American Convention, Article 20 of the Commission's Statute effectively confines the Commission's jurisdiction *ratione materiae* to Articles I, II, II, IV, XVIII, XXV, and XXVI of the American Declaration; and therefore precludes the Commission from considering from the petitioners under Articles VI, XI, and XXVII of the Declaration.

55. According to the long-standing practice and jurisprudence of the inter-American human rights system, however, the American Declaration constitutes a source of international obligations for the United States and other OAS Member States that are not parties to the American Convention on Human Rights. These obligations are considered to flow from the human rights commitments of Member States under the OAS Charter, which Member States have agreed are contained in and defined by the American Declaration, as well as from the customary legal status of the rights protected under many of the Declaration's core provisions, and the Commission is empowered under Articles 18 and 20 of its Statute to receive and evaluate allegations that states have failed to respect these commitments. It is therefore appropriate to characterize a Member State's failure to guarantee the rights under the American Declaration as a violation of its obligations under international human rights law and the Commission rejects the State's contention that the American Declaration does not create legally binding obligations for Member States of the OAS.¹⁴

56. Accordingly, as regards the claims of the petition under Articles I, II, VI, XI, and XXVII the Commission is competent *ratione materiae* to examine the petition.

57. The Commission notes that this petition complains that Laura S. (an undocumented migrant) was coerced into signing a voluntary return form by CPB agents before she was forcibly removed to Mexico. It is uncontested by the parties that she was later killed in Mexico by her ex-partner Sergio. According to the record, Laura S. had previously been subject to domestic violence by Sergio (in the United States) as a result of which she had obtained a protective order against him. Sergio was subsequently deported to Mexico. According to the petition, Laura S. had repeatedly indicated to CPB agents that she would be at risk of being killed by Sergio if she were returned to Mexico. There is no disagreement between the parties that Laura S. was murdered by Sergio shortly after her return to Mexico. The petition complains that the death of Laura S. resulted from a failure of the US authorities to protect her due process (and other associated rights); and that this in turn resulted in violations of the rights of her surviving family, in particular her three children. For the State, Laura S. voluntarily chose to return to Mexico and that there was no coercion or any other circumstances that gave rise to the human rights violations alleged by the petition.

58. First, the Commission has unequivocally held that Article XXVI applies to immigration proceedings. In this regard, the Commission has established that to deny an alleged victim the protection afforded by Article XXVI simply by virtue of the nature of immigration proceedings would contradict the very object of this provision and its purpose to scrutinize the proceedings under which the rights, freedoms, and well-being of the persons under the State's jurisdiction are established¹⁵.

¹³ The petition cites the U.S. Supreme Court decision of *Hernandez v. Mesa*.

¹⁴ See IACHR, Report No. 55/23, Petition 620-18. Admissibility. Sigfredo Anahel Hernandez-Palomo and Jose Fernando Hernandez-Palomo. United States of America. May 12, 2023, para.32.

¹⁵ See IACHR Report, Report No. 63/08, Case No. 12.534 (admissibility and merits), Andrea Mortlock, July 25, 2008, para. 83.

59. The Commission also takes note of the State's submission that Article XXVII of the American Declaration does not provide for protection from *refoulement*. While the Commission acknowledges that the American Declaration does not contain a specific provision on non-refoulement, it has previously established other human rights prohibit refoulement or expulsion where that might lead to a violation of those rights.¹⁶

60. While the parties diverge on the issue of whether Laura S.'s removal to Mexico resulted from coercion, the record appears to reflect that: (a) Laura S. was murdered by her ex-partner after her return to Mexico; (b) prior to her removal to Mexico, Laura S. had advised the CPB agents that she was at risk of being killed by her ex-partner if returned to Mexico but that his does not appear to have been investigated by the CPB; (c) Laura S. was removed to Mexico by the CPB within hours of having been initially detained by the CPB, thus limiting the time for her to obtain legal assistance; (d) the removal was done without judicial approval or intervention; (e) the subsequent litigation brought by Laura S.'s family was essentially concluded with a summary judgment, with no full hearing on the merits of the claims brought by Laura S.'s family. The State insists that Laura S.'s removal was entirely voluntary, and that there is no juridical basis for the claims brought by the family of Laura S.; and that this has been vindicated by the federal courts. The Commission also notes that petition mentions recent jurisprudence from the U.S. Supreme Court that effectively limits or bars surviving families from obtaining relief under the Bivens doctrine.

61. The petition also indicates that the removal of Laura S. (and her subsequent death) occurred within a larger pattern of coercive practices used by the State to induce immigrants in Laura's position to sign "voluntary return" forms. The petition also states that the U.S. authorities did not consider the country conditions prevailing in Mexico before removing Laura S.

62. Given the foregoing, the Commission considers that the arguments presented by both parties require an in-depth analysis of the substance of the matter to be resolved. Some of the petitioners' allegations will require very solid evidence to be established as human rights violations internationally attributable to the United States of America. In this regard, the Commission considers, *prima facie*, that the circumstances surrounding the removal of Laura S. to Mexico and her subsequent death could characterize violations of Articles I (right to life, liberty and security of the person), II (right to equality, XVIII (right to fair trial), XXV (right to humane treatment while in custody), XXVI (right to due process of law), and XXVII (right to seek and receive asylum).

63. The Commission further considers that these alleged violations give rise, *prima facie*, to violations of the right to family (under Articles V and VI) to the detriment of the surviving family of Laura S. The Commission notes that the children of Laura S. were all vulnerable minors at the time of Laura S.'s removal (and subsequent death) and that they were left to be cared for by Laura S.'s mother.

64. With respect to the State's fourth instance allegation, the Commission notes that by admitting this petition, it is not claiming to supersede the competence of domestic judicial authorities; rather, it will examine at the merits stage of the instant petition whether domestic judicial proceedings complied with all of the guarantees of due process and judicial protection and offered proper protection of access to justice for the alleged victim, as provided for under the American Declaration.

¹⁶ See IACHR Report on Due Process in Procedures for the Determination of Refugee Status and Statelessness and the Granting of Complementary Protection (approved August 5, 2020). At para. 122, the Commission stated that "In Case 10.675 (Haitian Interdiction - Haitian Boat People), the Commission concluded that the United States had violated the principle of nonrefoulement, having based its argument on the second part of Article XXVII (Right of asylum) of the American Declaration ("... in accordance with ... international agreements"), which refers, in this case, to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, which, in turn, enshrines non-refoulement. Further the Commission noted "that non-refoulement reflects a progressive development, based on the American Convention on Human Rights, the Convention relating to the Status of Refugees, the Inter-American Convention to Prevent and Punish Torture, and the United Nations Convention against Torture."

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, II, V, VI, XVIII, XXV, XXVI and XXVII of the American Declaration; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 10th day of the month of March 2024. (Signed:) Roberta Clarke, President; Arif Bulkan, Andrea Pochak, and Gloria Monique de Mees, Commissioners.