

OEA/Ser.L/V/II
Doc. 270
10 October 2023
Original: English

REPORT No. 251/23
PETITION 191-14
REPORT ON ADMISSIBILITY

WIDZA MATHURIN ET AL
UNITED STATES OF AMERICA

Approved electronically by the Commission on October 10, 2023.

Cite as: IACHR, Report No. 251/23, Petition 191-14. Admissibility. Widza Mathurin et al.
United States of America. October 10, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Caroline Bettinger-López ¹ , Kelleen Corrigan ² Jessica Sblendorio, James Slater, Human Rights Clinic University of Miami School of Law, Rebecca Sharpless, Romy Lerner, Adam Hooock, Dana Turjman, Immigration Clinic University of Miami School of Law, Cheryl Little, Joseph Anderson, Americans for Immigrant Justice (Formerly Florida Immigrant Advocacy Center), Michelle Karshan, Alternative Chance, Marleine Bastien, FANM Haitian Women of Miami, Brian Concannon, Institute for Justice and Democracy in Haiti
Alleged victims:	(1) Widza Mathurin, (2) Emmanuel Charles Pinette, (3) Carmeline Nazaire, (4) James Sainvil, Darline Fleury, and (5) Sylvania Gustave
Respondent State:	United State of America ³
Rights invoked:	Articles I (right to life, liberty and personal security), V (right to protection of honor, personal reputation, and private and family life), VI (right to a family and to protection thereof), VII (right to protection for mothers and children), XI (right to the preservation of health and to well-being), XVIII (right to a fair trial), and XXVI (right to due process of law) of the American Declaration of Rights and Duties of Man ⁴

II. PROCEEDINGS BEFORE THE IACHR

Filing of the petition:	February 14, 2014
Additional information received at the stage of initial review:	March 6, 2015, May 29, 2015, April 29, 2019
Notification of the petition to the State:	April 29, 2019
State's first response:	May 26, 2020
Additional observations from the petitioner:	May 23, 2023
Notification of the possible archiving of the petition:	March 24, 2021
Petitioner's response to the notification regarding the possible archiving of the petition:	January 13, 2022

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)

¹ Later withdrew as petitioner on March 6, 2015.

² Later substituted by Sarah Paoletti on May 29, 2015]

³ Hereafter "United States", "U.S." or "the State".

⁴ Hereinafter "the Declaration" or "the American Declaration"

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 V (right to protection of honor, personal reputation, and private and family life), VI (right to a family and to protection thereof), XI (right to the preservation of health and to well-being), XVIII (right to a fair trial), and XXVI (right to due process of law) of the American Declaration
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in terms of Section VI
Timeliness of the petition:	Yes, in terms of Section VI

V. ALLEGED FACTS

A. The petitioners

1. The petition is presented primarily on behalf of six Haitian nationals (“alleged victims”) who were deported to Haiti from the United States between 2011 and 2013. The petition alleges that the deportations were conducted in violation of multiple rights of the American Declaration including the right to due process. The petition also claims that the alleged victims were deported to post-earthquake Haiti (occurred in January 2010) without due consideration of the humanitarian and human rights crisis in Haiti, in violation of other fundamental rights, including the right to security and the right to family. The petition also alleges that the claims therein cover a larger class of deportees including both people who have been deported to post earthquake Haiti and people facing imminent removal to Haiti.

2. The named alleged victims are Ms. Widza Mathurin (“Ms. Mathurin”), Mr. Emmanuel Charles Pinette (“Mr. Pinette”), Ms. Carmeline Nazaire (“Ms. Nazaire”), Mr. James Sainvil (“Mr. Sainvil”), Ms. Darline Fleury (“Ms. Fleury”), and Ms. Sylvania Gustave (“Ms. Gustave”). All the alleged victims are Haitian nationals who appear to have been deported on account of having criminal records.

3. The allegations set forth in the petition are grounded largely in the context of (a) the US legal and policy framework governing deportations of legal permanent residents (LPRs) and legal non-permanent residents (NPRs); and (b) the humanitarian crisis existing in Haiti particularly after the earthquake of 2010. Both elements of this context are set out in greater detail below.

US legal and policy framework

4. The petition asserts that contrary to the jurisprudence of the IACHR, the US legal and policy framework does not incorporate an individualized balancing test prior to carrying out any deportation (regardless of the non-citizen's criminal record). The petition also contends that this framework does not consider humanitarian factors, such as the availability and accessibility of medicine and medical/mental health care, social services, and support in the country of origin, and the family and personal ties of the non-citizen with the country of origin and the host state. The petition also contends that this framework fails to balance these factors against the nature and severity of the criminal record (of the person subject to deportation).

5. According to the petition, one element of this legal and policy framework is the Immigration and Nationality Act (“INA”). The petition indicates that up to 1996, the INA permitted lawful permanent residents with criminal records—including aggravated felonies—to apply before an immigration judge for relief from deportation. Under this provision, immigration judges considered factors such as family ties within the United States; duration of residence in the country; hardship to both the applicant and the family due to deportation; military service; employment history; property and business ties; community value and service;

rehabilitation of criminal records; and other factors regarding the applicant's good character. After balancing the factors, the immigration judge was authorized to grant, or deny, relief. Following amendments to the INA in 1996, the discretion available to immigration judges was restricted only to a narrow class of lawful permanent residents. In this regard, the petition states that only legal permanent residents who meet stringent continuous residence requirements and who have no aggravated felony convictions can apply.

6. The petitioners also mention that three days after the earthquake in Haiti on January 12, 2010, the Secretary for the U.S. Department of Homeland Security ("DHS"), granted Temporary Protected Status (TPS) to certain Haitian nationals who were in the United States on January 12, 2010⁵. However, the petitioners argue that this measure has not provided any protection to the alleged victims. According to the petitioners, a foreign national of a designated country must meet several requirements to be eligible for TPS. One requirement of relevance to this petition is that an applicant cannot have been convicted of two misdemeanors or one felony. The petitioners argue that statutory bar prevents all the victims in this petition (and others in a comparable situation), from obtaining protection from deportation to Haiti.

7. The petitioners further contend that on April 1, 2011, the State introduced a discretionary policy to begin removing individuals to Haiti "*in a measured manner with a limited number of eligible aliens removed to Haiti each month, addressing the public safety needs of both the United States and Haiti*". The petitioners again argue that this policy operates to the detriment of the alleged victims. According to the petitioners, this policy is intended to apply a balancing test to all Haitian nationals subject to deportation, lawful permanent residents, and non-lawful permanent residents alike⁶. However, the petitioners argue that decisions under the policy are made entirely at the discretion of Immigration and Customs and Enforcement (ICE) officers; and lack clear guidelines. The petitioners add that there is no review by an independent adjudicator or right to appeal.

8. The petitioners further contends that relief provided by U.S. immigration law to those who fear persecution or torture in their countries of removal —asylum, withholding of removal, and relief under the Convention Against Torture— also fails to protect the alleged victims and many similarly situated Haitians. Individuals with criminal records, like the alleged victims, are very often statutorily ineligible for asylum and withholding of removal. Moreover, the petitioners argue that U.S. courts have narrowly interpreted persecution and torture in ways that exclude the alleged victims from relief. In this regard the petitioners assert that courts have held that general conditions that affect all people alike do not rise to the level of persecution for purposes of asylum and withholding of removal.⁷

Humanitarian crisis in Haiti

9. According to the petitioners Haiti has endured a long history of political instability and violence. The petitioners state that challenges facing Haiti's approximately 9.9 million inhabitants were severely compounded on January 12, 2010, when Haiti was struck by a 7.0 magnitude earthquake, which left over 230,000 dead, 300,000 injured, and 1.5 million homeless.

10. The petitioners indicate that a subsequent barrage of tropical storms, an increase in political instability, and a devastating cholera epidemic have made the post-earthquake situation even more dire. According to the petitioners, while medical and mental-health needs expanded after the earthquake, access to

⁵ According to the petitioners, U.S. immigration law authorizes the DHS Secretary to grant this temporary status to eligible nationals of countries that are experiencing armed conflict or environmental disasters or that are "unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state.

⁶ According to the petitioners the policy states that ICE officials will "make decisions on individuals to remove through the consideration of adverse factors, such as the severity, number of convictions, and dates since convictions and balance these against any equities of the Haitian national, such as duration of residence in the United States, family ties, or significant medical issues. In certain cases, where there are compelling medical, humanitarian, or other relevant factors, supervised release or other alternatives to detention programs may be appropriate.

⁷ In this regard, the petitioners cite U.S. Court of Appeals decision (*Najjar v. Ashcroft*, 257 F.3d 1262, 1288 (11th Cir. 2001) which ruled that that "political conditions 'which affect the populace as a whole or in large part are generally insufficient to establish [persecution].

adequate treatment and medication is scarce and expensive. The petitioners add that most people in Haiti also have insufficient access to water, housing, and other fundamental needs.

11. The petitioners claim that deportees from the United States are especially vulnerable to current conditions in Haiti. According to the petitioners, deportees face severe social stigmatization, discrimination, and violence because they are perceived as criminals who are primarily responsible for Haiti's high crime rate. The petitioners further assert that deportees report being refused jobs and housing on account of their status as deportees. In a country where 80% of the population lives below the poverty level and two thirds of the population lack formal jobs, the petitioners contend that deportees without family support in Haiti are particularly susceptible to long-term unemployment, poverty, and homelessness.

12. According to the petitioners, deportees have little to no access to adequate healthcare and medication for mental and physical health concerns; and that those with mental illnesses and no family members are particularly vulnerable. The petitioners also contend that deportees with disabilities also face stigmatization, a lack of medical and therapeutic care, and obstacles in mobility in a country lacking disability-friendly infrastructure. The petitioners further assert that female deportees to Haiti face risks of physical and sexual assault, lack of employment, and the specter of engaging in survival sex or taking other desperate measures to survive. According to the petitioners, this is especially true for women without close relatives or other support systems and those with mental or medical health concerns. The petitioners also mention that members of the LGBT community face increased risks of ostracism, estrangement from family, poverty, homelessness, and physical attacks.

13. The petitioners contend that all these factors militate against the integration of deportees into Haitian society, and also serve to compromise their lives, livelihoods, and dignity.

Narratives of alleged victims

14. With reference to the foregoing context, the petitioners provide the following information on each of the alleged victims.

Widza Mathurin

15. Ms. Mathurin is a thirty-six-year-old woman who was deported to Haiti in September 2012. The petitioners indicate that Ms. Mathurin has a history of mental illness. The petitioners state that Ms. Mathurin had lived in the United States for most of her life, after having arrived in September 1984 on a temporary visa. According to the petitioners, Ms. Mathurin experienced the loss of both of her parents and grew up in foster care. The petitioners also indicate that at age eighteen, Ms. Mathurin was on her own and was intermittently homeless while living in New York City. Ms. Mathurin has two brothers in the United States, including one whom she claims is in the U.S. Navy.

16. According to the petitioners, on July 30, 2012, an immigration judge ordered Ms. Mathurin removed on account of her criminal record, which included delivery of cocaine (an aggravated felony under U.S. immigration law). Despite her mental illness, the petitioners indicate that she represented herself pro se and did not file a Board of Immigration Appeals ("BIA") appeal.

17. The petitioners assert that there is nothing in the court record to indicate that the immigration judge conducted any inquiry into Ms. Mathurin's mental health or competency to proceed without counsel. According to the petitioners, the immigration judge proceeded without conducting a full inquiry into whether Ms. Mathurin was competent to proceed without counsel or was fully aware of her rights before the immigration court. Furthermore, the petitioners contend that the immigration judge failed to explicitly advise Ms. Mathurin of her right to seek counsel or provide her with the opportunity to exercise that right. Ultimately, the immigration judge ordered Ms. Mathurin removed after she admitted the charges of removability and failed to assert a legal defense to her removal.

18. The petitioners contend that Immigration and Customs Enforcement (ICE) officials were required to inquire into Ms. Mathurin's personal circumstances and conduct a balancing test in determining whether to pursue Ms. Mathurin's deportation under its own policies. However, the petitioners state that nothing in the record reveals that such an inquiry was conducted. The petitioners assert that had ICE done so, officials would have been compelled to find that Ms. Mathurin's mental health, long residence in the United States, and lack of family ties in Haiti, along with conditions in Haiti, particularly for the mentally ill, warranted permitting Ms. Mathurin to stay in the United States. The petitioners argue that because Ms. Mathurin's case was never properly considered by the immigration judge or immigration officials, she was denied due process in a proceeding that resulted in her ultimate deportation, in violation of her rights to life and to health.

19. The petitioners indicate that Ms. Mathurin has no family ties in Haiti. The petitioners further state that following her deportation, Ms. Mathurin stayed briefly at an accommodation center provided by Haiti's National Office on Migration ("ONM"). However, the petitioners allege that Ms. Mathurin subsequently became homeless, and was forced to resort to prostitution to survive. Subsequently, the International Organization on Migration ("IOM") tried to find permanent housing for Ms. Mathurin that was appropriate considering her mental illness but were unable to do so.

20. The petitioners indicate that in December 2013, they encountered Ms. Mathurin in a state mental hospital in Port-au-Prince. According to the petitioners, Ms. Mathurin was being forcibly medicated with Fluphenazine, a psychotropic medication. The petitioners state that Ms. Mathurin reported that she is being detained at the mental hospital-against her will because she has nowhere to live. The petitioners also mention that the hospital staff and other authorities told them that they were unable to release Ms. Mathurin without some type of mental health care. The petitioners also indicate that Ms. Mathurin is caught between living in a dismal jail-like facility where she is forcibly injected with psychotropic medication or living on the street and resorting to survival and living in danger.

Emmanuel Charles Pinette

21. Mr. Pinette is a fifty-eight-year-old man who was deported to Haiti in 2011. Prior to his deportation the petitioners indicate that Mr. Pinette had lived in the United States since June 1985 and had been a legal permanent resident since September 10, 1997.

22. The petitioners assert that Mr. Pinette has a history of serious mental health issues, including bipolar disorder and schizophrenia. Mr. Pinette's issues first began in the late 1980s when he was living in New York City with his wife and four children. The petitioners further state that after he began exhibiting signs of mental illness, Mr. Pinette was unable to provide for his family. As a result, his sister, Danielle, permitted Mr. Pinette and his family to live in her one-bedroom apartment in Brooklyn, New York. Subsequently, Danielle then gave Mr. Pinette and his family money to move to Florida. The petitioners state that once the family moved to Florida, Mr. Pinette's condition deteriorated, and his marriage fell apart. Mr. Pinette then moved in with his mother in Fort Lauderdale, Florida, and, shortly thereafter, he went to a medical clinic and was placed in an assisted living facility.

23. The petitioners indicate that in the early 1990s, Mr. Pinette returned to New York and was hospitalized. After he was released, the hospital arranged for transportation to take him to a daily counseling session and prescribed him medication for his mental illness. Over the years, the petitioners indicate that Mr. Pinette has been prescribed a number of different antipsychotic medications, including lithium salts, Mellaril, Haldol, Prolixin, Cogentin, and Zyprexa.

24. According to the petitioners, prior to the onset of his mental health issues, Mr. Pinette had never been arrested. However, following the onset of mental health issues, the petitioners state that Mr. Pinette started to have encounters with the criminal justice system. In this regard, the petitioners mention that his criminal record consists of convictions in 2002 for giving a false identification card, resisting an officer, and

possession of a forged driver's license; a 2003 conviction for trespass; a 2004 conviction for unauthorized use of livestock, boat, or vehicle under Maryland state law; and a 2009 trespass conviction.⁸

25. Based on this criminal record the U.S. immigration authorities commenced removal proceedings against Mr. Pinette following which an immigration judge ordered him removed on May 24, 2010. According to the petitioners, Mr. Pinette was permitted to appear pro se before the immigration judge, notwithstanding guidelines that instruct immigration judges to implement procedural safeguards, such as helping to secure counsel, for those with mental health issues. The petitioners further contend that Mr. Pinette's medical records from an ICE detention facility indicate that Mr. Pinette was diagnosed with schizophrenia and antisocial personality disorder and was prescribed Zyprexa. According to the petitioners, Mr. Pinette did not file an appeal to the BIA.

26. According to the petitioners, there is no indication that the Immigration judge made any inquiry or finding regarding Mr. Pinette's mental health or mental competence to proceed without counsel. The petitioners indicate that during the proceedings, Mr. Pinette manifested symptoms of mental health incompetence/unfitness. The petitioners mention that on one occasion the immigration judge provided Mr. Pinette with an application for cancellation of removal (a form of immigration relief for lawful permanent residents with certain criminal convictions), with instructions to file it with the Court at the next hearing. The petitioners indicate that at the subsequent hearing, however, Mr. Pinette declared that he was unable to file his application because "*after I have applied for it, there was a sabotage that took place, that made it so that it would not go through.*" He further explained that he did not mail the application to United States Citizenship and Immigration Service as required "*because the sabotage took place as to where I am located right now.*" On subsequent another occasion, the petitioners assert that Mr. Pinette appeared particularly confused. In this regard, the petitioners allege that when the immigration judge asked, "*are you Emmanuel Charles Pinette,*" Mr. Pinette responded, "*I thank you very much for the question.*" When the judge asked the question again, Mr. Pinette said "*that was my name.*" The petitioners also claim that when the judge asked for the third time "*Are you Emmanuel Charles Pinette,*" Mr. Pinette responded by speaking in Spanish and then in French, even though his native language is Haitian Creole, and his interpreter was speaking to him in Creole.

27. According to the petitioners, Mr. Pinette was eligible for cancellation of removal for lawful permanent residents, a form of relief which requires the immigration judge to balance the positive factors in the applicant's case against his criminal history. The petitioners assert that Mr. Pinette's long residence in the United States, strong family ties, mental illness, and relatively minor nonviolent criminal history weighed heavily in favor of a grant of cancellation. However, the petitioners contend that Mr. Pinette's mental illness prevented him from filing his application with the Court which ultimately led to his removal. The petitioners further argue that counsel would have protected Mr. Pinette's rights and been able to assist him in applying for relief. The petitioners emphasize that the immigration judge failed to adequately protect Mr. Pinette's due process rights by ignoring multiple indications of mental incompetence and ordering the deportation of Mr. Pinette without ensuring he had the benefit of counsel or other representation.

28. The petitioners state that they met with Mr. Pinette in Haiti on December 18, 2013, where they found him living in lockdown in a private mental health facility. The petitioners indicates that Mr. Pinette's mother (who lives in the United States), is paying for his stay there. However, the petitioners allege that Mr. Pinette has been unable to receive proper medication because the medicine is very expensive in Haiti and his family cannot afford to pay for both the facility and the medication. In addition, the petitioners indicate that some of the medication that Mr. Pinette had been taking in the United States is not available in Haiti.

29. According to the petitioners, Mr. Pinette was unable to directly answer most of the questions posed by petitioners, and that he made numerous statements that appeared to be delusional. In this regard, the petitioners indicate that in describing some of the issues in the facility, Mr. Pinette he said that there was

⁸ The petitioners indicate that Mr. Pinette's criminal history—which consists principally of non-violent offenses—is directly related to his mental illness. In this regard the petitioners state, for example that (a) he was convicted in Maryland of failing to return a rental car after he met a woman when he was in assisted living, in Florida and decided to go on a road trip with her; (b). his conviction for giving false information to a law enforcement official was the result of his delusional belief that a pastor was his father. Mr. Pinette started to use the pastor's last name and crossed out his name on his driver's license.

"radiation" and "radioactive" problems involving his television; and that he also described receiving shocks to his brain from the television while living in the facility.

Carmeline Nazaire

30. Ms. Nazaire is a thirty-four-year-old woman who was deported to Haiti in April 2012. Prior to her deportation, the petitioners indicate that Ms. Nazaire had lived in the United States as a lawful permanent resident since April 1986, when she was seven years old. They further assert that Ms. Nazaire has strong family ties to the United States; and that she is a single mother of three children (two sons and a daughter). Ms. Nazaire's children are all U.S. citizens and were living with her prior to her detention and deportation. Both of her parents also live in the United States, as do her aunts, uncles, and cousins. Her mother is a U.S. legal permanent resident, and her father is a U.S. citizen.

31. According to the petitioners, U.S. immigration authorities started removal proceedings against Ms. Nazaire on account of her criminal record, charging her as having an aggravated felony conviction. Her nonviolent criminal conviction record includes dealing in stolen property, fraudulent use of credit card and grand theft, and petty theft. Ms. Nazaire was ordered removed in September 2011. She appealed her case to the BIA, but her appeal was dismissed on February 15, 2012.

32. The petitioners assert that since Ms. Nazaire's deportation, her mother and three children have suffered immeasurably. In this regard, the petitioners claim that Ms. Nazaire's mother suffers from glaucoma and cannot properly take care of the children. The petitioners indicate all of Ms. Nazaire's children have now been split up among sisters, since no single sister is financially able to take care of all three of the children. Prior to her deportation, the petitioners state that Ms. Nazaire had been working in the United States as a home healthcare aide and supported her mother, herself, and her children. The petitioners contend that her deportation has caused extreme financial hardship for her family.

33. According to the petitioners, Ms. Nazaire suffers from severe migraine headaches resulting from a car accident that put her in a coma when she was very young. The petitioners indicate that Ms. Nazaire's headaches are debilitating, at times making it impossible to perform basic tasks. Prior to her deportation, the petitioners indicate that Ms. Nazaire had been taking prescription medication daily in the United States. Further, the petitioner state that Ms. Nazaire also suffers from severe acid reflux and had been under the regular care of a physician when she lived in the United States. In Haiti, the petitioners allege that Ms. Nazaire continues to suffer frequent migraines and has developed high blood pressure. However, she cannot afford to see a doctor or purchase the medication she needs for her medical conditions. Accordingly, her medical condition continues to be untreated.

34. The petitioners state that U.S. immigration authorities started removal proceedings against Ms. Nazaire because of account of her criminal record. According to the petitioners, Ms. Nazaire's nonviolent criminal conviction record includes dealing in stolen property, fraudulent use of credit card and grand theft, and petty theft. According to the petitioners, Ms. Nazaire was ordered removed in September 2011. Ms. Nazaire appealed the decision to the BIA, but her appeal was dismissed on February 15, 2012.

35. According to the petitioners, during the deportation proceedings, both the immigration judge and Counsel for the Department of Homeland Security both acknowledged that Ms. Nazaire's three children might suffer extreme hardship if Ms. Nazaire were deported to Haiti⁹. Nonetheless, the immigration judge determined that Ms. Nazaire's nonviolent criminal history outweighed her family ties, prolonged period of

⁹ According to the petitioners Ms. Nazaire, a long term lawful permanent resident, applied for a criminal waiver under Immigration and Nationality Act section 212(h), which, if granted, would have allowed her to maintain her status in the United States. In order to obtain a 212(h) waiver, the applicant must prove that a qualifying relative (child, spouse or parent) will suffer extreme hardship if the applicant is deported. The immigration judge must also determine if the waiver should be granted as a matter of discretion, with favorable factors outweighing the unfavorable factors in the applicant's case. Matters decided based on discretion are reviewed with great deference by appeals courts.

residence in the United States from a young age, and post-earthquake conditions in Haiti. Accordingly, the immigration judge ordered the removal of Ms. Nazaire.

36. According to the petitioners, on March 8, 2012, they requested ICE to review Ms. Nazaire's case for consideration under the April 1, 2011, Policy for Resumed Removals to Haiti considering the strong equities in her case. The petitioners state that in the following month ICE proceeded to deport Ms. Nazaire.

37. Following her deportation, Ms. Nazaire was detained by Haitian authorities her for approximately a week. She was kept in a cell with ten to twelve women who had to share one mattress on the floor; and that the guards verbally abused her and called her names. According to the petitioners, since her release, Ms. Nazaire has not found a stable place to live but stays with different friends. The petitioners further indicate that Ms. Nazaire has almost no family remaining in Haiti after most of her aunts and uncles died in the earthquake. The petitioners also state that the one remaining aunt of Ms. Nazaire has twelve children of her own and is unable to help her.

38. According to the petitioners, Ms. Nazaire has been unable to find a job since she was deported; and that her family in the United States has been unable to provide her with much financial support. As a result, Ms. Nazaire has often gone hungry for days for lack of money to buy food.

James Sainvil

39. Mr. Sainvil, a thirty-year old, was deported to Haiti in May 2012, having previously lived in the United States as a lawful permanent resident since August 2002. The petitioners assert that Mr. Sainvil has strong family ties in the United States: (a) he has two daughters (ages seven and eight) who are US citizens; (b) his parents (his mother is permanent legal resident, and his father is a US citizen). The petitioners indicate that Mr. Sainvil also has three sisters, two of whom live in the United States and one who lives in Canada.

40. The petitioners indicate that ICE started removal proceedings against Mr. Sainvil on account of a single 2008 conviction for aggravated assault, which was considered an aggravated felony under U.S. immigration law; subsequently, on October 27, 2011, an immigration judge ordered his removal. A following appeal to the BIA was dismissed on April 6, 2012.

41. Prior to being detained by U.S. immigration authorities, the petitioners indicate that Mr. Sainvil worked full time at a Taco Bell in Georgia. With his earnings, Mr. Sainvil supported himself as well as members of his family. The petitioners further state since Mr. Sainvil's deportation, his family has suffered significant financial and emotional hardship.

42. The petitioners state that while in immigration detention, Mr. Sainvil sustained an injury to his left ear while playing soccer. According to the petitioners, Mr. Sainvil was told that his eardrum had burst and that he would require corrective surgery. The petitioners indicate that he was not provided with the necessary surgery, and that he was subsequently transferred to another immigration facility in Texas. After a short time in this facility, the petitioners assert that Mr. Sainvil was transferred a detention center in Louisiana following which he was deported to Haiti. The petitioners emphasize that the immigration authorities deported Mr. Sainvil without providing the necessary corrective surgery or medical treatment.

43. According to the petitioners, since his deportation, Mr. Sainvil cannot hear anything from his left ear, and he sometimes experiences pain in his ear and has balance problems. They further indicate that Mr. Sainvil currently has no access to either the surgery or treatment needed to address his medical problem. Following his deportation, Mr. Sainvil was hit by a car that did not stop. As a result, he has suffered and continues to suffer from pain in his leg (particularly when walking).

44. The petitioners assert that when Mr. Sainvil arrived in Haiti, he was informed of a reintegration program for deportees. However, the petitioners state that, has not helped him. When he called the program for medical help after he was hit by the car, they said that they could not assist him. The petitioners indicate that Mr. Sainvil has no stable place to live in Haiti and cannot find a job. Further that. his father and

sister are only able to send money intermittently. Accordingly, when he does not receive money, he goes without food.

45. According to the petitioners, Mr. Sainvil has also been targeted by criminal gangs in Haiti, and on July 5, 2022, he was kidnapped and beaten before he was ultimately released. The petitioners add that Mr. Sainvil has reached such a level of desperation in Haiti that he has attempted suicide.

Darline Fleury

46. Ms. Fleury, a twenty-five-year-old, was deported to Haiti in September 2013, having previously been a lawful permanent resident since the age of four. They state that she has strong family ties to the United States. Her father, as well as her two sisters and four brothers, all live in the United States. Prior to her deportation, Ms. Fleury was living with her father, and other family members. The petitioners also indicate that Ms. Fleury's father suffers from depression and has become more depressed since his daughter's deportation. Ms. Fleury was employed in the United States as a crew trainer at McDonald's and as a prep chef at an Italian restaurant called Cucinas. With her earnings, she supported herself and her brothers and sisters. Because of her deportation Ms. Fleury is no longer able to financially support her siblings or herself.

47. According to the petitioners, U.S. immigration authorities commenced removal proceedings against Ms. Fleury on account of four criminal convictions including one for drug possession, one for possession of drug paraphernalia, and two for petty theft (shoplifting and retail theft). During the removal proceedings, the petitioners submit that Ms. Fleury instructed her lawyer to file for relief from deportation based on her fear of persecution since she is a lesbian. The petitioners indicate that her lawyer did not do so, however, and instead filed for asylum based only on Ms. Fleury's father's political opinion. Ms. Fleury lost her case and was ordered removed on March 21, 2013. According to the petitioners, Ms. Fleury then filed an appeal to the BIA, which was dismissed on July 30, 2013.

48. The petitioners state that Ms. Fleury is currently staying in Haiti with her aunt and her aunt's five daughters, in a low-income area of Port-au-Prince. The petitioners further submit that Ms. Fleury's aunt is not in a financial position to support her. Further, Ms. Fleury's family in the United States finds it difficult to send her money; and that in this regard, her father has only been able to send USD\$. 50-100 about three to four times to her and her aunt for housing.

49. The petitioners also submit that Ms. Fleury cannot find work to support herself, and she is concerned that her status as a lesbian deportee will indefinitely prevent her from finding work. The petitioners also indicate that Ms. Fleury does not feel safe in Haiti on account of being a deportee and a lesbian. In this regard, the petitioners state that some people have threatened Ms. Fleury based on her appearance and their suspicion of her being a lesbian. Further, the petitioners state that three men have told her that they "better not catch her late at night" because they would rape her to prove that she is female.

Sylvania Gustave

50. Ms. Gustave is a thirty-five-year-old Haitian woman who was deported in October 2013. She had lived in the United States since the age of twelve and was a lawful permanent resident. The petitioners add that Ms. Gustave spent most of her childhood in foster care; that she never knew her father and has no relationship with her mother.

51. Ms. Gustave has criminal convictions for simple battery, resisting an officer without violence, and disorderly conduct. Based on this criminal history, the petitioners indicate that ICE instituted removal proceedings against Ms. Gustave in 2003, and an immigration judge ordered her removed in 2004. Ms. Gustave did not appeal the decision; thus, she was detained by ICE before being deported to Haiti in 2013.

52. Prior to Ms. Gustave's detention by ICE, she had been working as a home health aide and nursing assistant. The petitioners further submit that in Haiti, she has no job and no source of income or other funds. In the absence of close family in the United States or Haiti, she receives no financial or other support.

53. According to the petitioners, Ms. Gustave has reported feeling depressed and worried; and that she also suffers from regular back pain due to a past accident. Ms. Gustave stated that she had muscle relaxants for her back but could only use them sparingly since she had no money or access to medical care or medication in Haiti.

54. The petitioners indicate that they met with Ms. Gustave in Haiti on December 18, 2013. At that time, the petitioners state that she was living in a group home used by ONM to provide temporary shelter to deportees while they locate family members. Ms. Gustave reported that after a few days at the home, ONM personnel informed her that they had located a family member and sent her to live with him. After two weeks, the petitioners state that the man threw Ms. Gustave's clothes out of the house and called ONM to pick her up. The petitioners also indicate that during the time Ms. Gustave lived with her purported relative, he assaulted and beat her.

55. According to the petitioners Ms. Gustave later returned to the group home, where she feels almost equally unsafe. The petitioners indicate that there were at least three men and no other women living in the home at the time of their interview with Ms. Gustave. Ms. Gustave reported that a male deportee, who acts as a security guard for the home, had thrown her to the ground and assaulted her for attempting to enter the kitchen without his permission. The petitioners also indicate that in addition to fearing for her physical safety, Ms. Gustave feels uncomfortable because the men look at her with sexual intent. According to the petitioners, on the day that they interviewed Ms. Gustave, she reported that she had been told that she would have to leave the home and find a new place to stay because the housing was meant to be temporary. Ms. Gustave also stated that she had no idea where she would go or how she would survive.

Exhaustion of domestic remedies

56. Relying on the IACHR's jurisprudence in the cases of Andrea Mortlock¹⁰ and Smith & Armendariz,¹¹ the petitioners argue that the alleged victims are exempt from exhausting domestic remedies because available domestic remedies did not and do not afford due process of law for protection of the right or rights that have allegedly been violated. The petitioners submit that the IACHR's jurisprudence established that the United States' immigration laws offer no opportunity for certain categories of individuals with final orders of removal to present humanitarian defenses before the immigration judge, the BIA, or the U.S. Court of Appeals¹². The petitioners further submit that there is no possibility for judges to adopt a humanitarian balancing test that would consider factors such as the seriousness and date of the offense; family ties; length of residency in the United States; the danger that the applicant poses to the community; and any evidence of rehabilitation when deciding whether to deport individuals¹³.

57. The petitioners further submit that the Commission has found that a "balancing test," is the only mechanism to reach a fair decision between the competing individual human rights and the-needs asserted by the State."¹⁴ The petitioners also submit that in the Mortlock case, the Commission found that "*pursuing a remedy before a Court of Appeals would be futile and with no reasonable prospect of success*", because both "*the administrative and judicial appeal mechanisms under the INA and other applicable legislation [do not] constitute effective remedies to address the alleged violations of the American Declaration, within the meaning of Article 31 of the Commission's Rules of Procedure.*"¹⁵

¹⁰ IACHR Report N° 63/08 Case 12.534 Admissibility and Merits (Publication) Andrea Mortlock, Unites States of America, July 25, 2008 (hereafter referred to as ("Mortlock").

¹¹ IACHR Report N°. 81/10 CASE 12.562 Publication Wayne Smith, Hugo Armendariz, et al, United States of America, July 12, 2010 (hereafter referred to as "Smith & Armendariz").

¹² Citing Mortlock, paras.15,20.

¹³ Citing Smith & Armendariz, paras. 51-58.

¹⁴ Citing Smith & Armendariz, paras 58-59.

¹⁵ Citing Mortlock, para. 66.

58. The petitioners submit that the alleged victims have compelling humanitarian factors similar to the victims in the cases of Mortlock and Smith & Armendariz. The petitioners further submit that these humanitarian factors may be even more compelling considering the circumstances of post-earthquake Haiti.

59. According to the petitioners, the alleged victims bring similar claims to those raised in the cases of Mortlock and Smith & Armendariz concerning the unavailability of effective remedies that would allow them to raise humanitarian defenses before an immigration judge, the BIA, or the U.S. Courts of Appeals. The petitioners submit that as in the cases of Mortlock and Smith & Armendariz, the alleged victims in the present case were unable to present humanitarian defenses to a judge prior to being deported to Haiti. The petitioners further assert that it is irrelevant whether the alleged victims appealed their cases —some did, others did not— because they had no opportunity to present humanitarian defenses at any stage of their immigration proceedings. Accordingly, the petitioners submit that the alleged victims are thus excused from the exhaustion requirement pursuant to Article 31(2) (a) of the Commission’s Rules of Procedure.

60. The petitioners submit that in the case of deportations to Haiti, there are additional remedies that were theoretically available to the alleged victims but were neither adequate nor effective. They mention: (a) the policy of Temporary Protected Status (TPS); (b) the April 1, 2011, Haitian Deportation Policy¹⁶ issued by ICE; and (c) relief based on a fear of harm that qualifies as persecution or torture. Regarding TPS, the petitioners indicate that the alleged victims were categorically barred from receiving TPS benefits due to their criminal histories. They submit that TPS is unavailable to anyone with either two misdemeanors or one felony conviction.

61. The petitioners submit that the April 1 Policy purportedly engages in an individualized humanitarian balancing test prior to deporting individuals to Haiti. However, the petitioners indicate that this process is exercised at the sole discretion of U.S. immigration enforcement officials (i.e., there is no process for review by an independent adjudicator) and provides no transparency, right to appeal, or any mechanism to ensure that cases are reviewed. under this policy. The petitioners further submit that individuals receive no notice of the policy and do not have an opportunity to present documentation to prove their “equities”/humanitarian considerations. According to the petitioners, the alleged victims in this case have compelling equities, such as strong family ties to the United States as well as serious medical and mental health issues, which should have weighed in favor of not deporting these individuals under the April 1 Policy’s balancing test. Nevertheless, the petitions state that alleged victims were all deported to Haiti.

62. The petitioners indicate that some of the alleged victims have applied for, or were eligible to apply for, relief based on a fear of persecution or torture in Haiti. However, the petitioners assert that this type of fear-based relief is extremely limited and has not been granted to Haitians facing the harms being experienced by the alleged victims.¹⁷

Timeliness

63. The petitioners submit that the alleged victims Ms. Fleury and Ms. Gustave were deported in September and October 2013, respectively, within six months of the date of filing this petition. The petitioners also submit that although the alleged victims Ms. Mathurin, Mr. Pinette, Ms. Nazaire, and Mr. Sainvil were deported during 2011 and 2012, (more than six months prior to the date of filing this petition), these individuals are exempt from the exhaustion requirement (based on the foregoing submission on exhaustion pursuant to Article 31(2)(a)). They further submit that these alleged victims have presented their claims within

¹⁶ Hereafter “April 1 Policy”.

¹⁷ In this regard, the petitioners submit that US court have held that general conditions that affect all people alike do not rise to the level of persecution for purposes of asylum and withholding of removal. In this regard, the petitioners cite U.S. Court of Appeals decision (Najjar v. Ashcroft, 257 F.3d 1262, 1288 (11th Cir. 2001) which ruled that that “political conditions ‘which affect the populace as a whole or in large part are generally insufficient to establish [persecution]”.

a reasonable time. In this regard, the petitioners also submit that the alleged victims continue to suffer ongoing human rights violations¹⁸.

B. State's observations

64. The State rejects the petition as inadmissible on several grounds. Firstly, submits that to the extent that the petition contains generalized allegations of violations of the American Declaration beyond those cognizable in relation to alleged victims, the petition must be dismissed because the Commission lacks competence *ratione personae* to entertain claims based on a theory of *actio popularis*.

65. Secondly, the State contends that the petition is inadmissible under Article 31 of the Commission's Rules of Procedure for failure to pursue and exhaust domestic remedies in the United States.

66. Thirdly, the State submits that the petition is untimely, and therefore inadmissible under Article 32 of the Commission's Rules of Procedure.

67. Fourthly the State submits that with respect to Article 34, the petition is inadmissible because it fails under Article 34(a) to state facts that tend to establish violations of rights set forth in the American Declaration and is manifestly groundless under Article 34(b).

68. Finally, the State contends that the petition is inadmissible because the petitioners seek to use the Commission as a "fourth instance" review of U.S. immigration court decisions.

Ratione personae/Actio popularis

69. The State notes that the petition is filed on behalf of six named Haitian nationals: The State acknowledges that the Commission has competence to review particularized claims with respect to these individuals. However, alleges that the petition also contains generalized allegations about violations suffered generally by other (unnamed) persons removed to Haiti. The State submits that such allegations are tantamount to an *actio popularis*, and that the Commission lacks the competence *ratione persone* to entertain said allegations. The State asserts that an individual petition is not the proper means to request a decision about alleged violations suffered generally by persons removed to Haiti. Accordingly, the USA concludes that these allegations are inadmissible.

Failure to exhaust domestic remedies

70. The State contends that the alleged victims have manifestly failed to exhaust their domestic remedies. Regarding Ms. Mathurin, Mr. Pinette, and Ms. Gustave, the State submits that they failed to appeal their final orders of removal to the BIA for reasons that the petition leaves unexplained. The State notes that the other three alleged victims, (Ms. Nazaire, Mr. Sainvil, and Ms. Fleury) did appeal their cases to the BIA, but none of them was successful, and none of them filed a petition for review of the BIA decision with the federal circuit court with jurisdiction over their case.

71. The USA notes that the petition, relies on the Commission's decisions in *Mortlock and Smith & Armendariz v. United States*, to argue that the failure of the alleged victims to appeal their cases is "irrelevant... because they had no opportunity to present humanitarian defenses at any stage of their immigration proceedings." However, contends that alleged victims in the present case were free to attempt to raise such a defense before the BIA or the federal circuit courts, notwithstanding the unlikelihood that it would succeed. The fact the alleged victims believed that the BIA and federal circuit courts would be skeptical of such a defense or would be unable to grant relief or protection based on it consistent with the INA and applicable regulations, does not excuse them from exhausting these domestic remedies.

¹⁸ In this regard, the petitioners, mention for example, that the alleged victims suffer from an ongoing lack of adequate food, shelter, medical care, and medicine.

Untimeliness of the petition

72. The State contends that even if the Commission determines that petitioners have exhausted their domestic remedies, the petition should be dismissed as untimely. The State indicates that the Commission received the petition on February 14, 2014, which, was more than six months after all the alleged victims, except Ms. Fleury and Ms. Gustave, were removed to Haiti. The State further contends that even the claims of Ms. Fleury and Ms. Gustave are untimely because they were notified of the latest decision in their domestic proceedings (remedies they failed to exhaust) more than six months prior to filing of the petition (on February 14, 2014). With respect to Ms. Fleury, the State indicates that her appeal to the BIA was dismissed on July 30, 2013. Regarding Ms. Gustave, the State indicates that she received her final order of removal in 2004, which she did not appeal. Accordingly, the State concludes that none of the claims in the petition is timely under Article 32(1) of the Commission's Rules of Procedure.

73. Noting that none of the alleged victims are exempt from the exhaustion requirement, the State rejects the petitioners' assertion that the claims of Ms. Mathurin, Mr. Pinette, Ms. Nazaire, and Mr. Sainvil were filed in a reasonable period of time. In this regard, the State further submits that the petitioners have failed to provide any facts to support their submission that the petition was filed within a reasonable time pursuant to Article 32 (2) of the Commission's Rules of Procedure.

74. The State rejects the claim of the alleged victims that they are excused from filing within six months of exhaustion or within a reasonable period of time because they "experience ongoing human rights violations. The State notes that in this case, all the alleged victims had already been removed from the United States to Haiti when the petition was filed on February 14, 2014. The State indicates that notwithstanding the adverse consequences on the alleged victims because of their deportations to the United States, the alleged victims could not have been subject to an ongoing violation by the United States at the time of filing.

Failure to state facts to establish prima facie violations/manifestly groundless

75. The State asserts that the American Declaration does not incorporate a right of foreign nationals convicted of serious crimes to be protected from return to a country based upon the general conditions in that country. The State further submits that it is well-established that States have the sovereign right to control the admission of foreign nationals, their departure, and their conditions and duration of stay within the country, subject to their obligations under international law.

76. The State rejects the petitioners' claim that, removal of the alleged victims to Haiti "without due consideration of the humanitarian and human rights crisis in Haiti [...] and the individual circumstances of the deportees," resulted in violations of Article I (right to life, liberty, and security of person), Article V (right to protection of honor, personal reputation, and private and family life), Article VI (right to a family and to protection thereof), Article VII (right to protection for mothers and children), Article XI (right to the preservation of health and to well-being), Article XVIII (right to a fair trial), and Article XXVI (prohibition on cruel or unusual punishment) of the American Declaration.

77. The State acknowledges that all these provisions impose limitations on action by the U.S. government in U.S. territory, but none of them protects foreign nationals convicted of serious crimes from being returned by the United States to a country based upon the general conditions in that country. The State further submits that even if the facts alleged by petition establish violations of the rights of the alleged victims, those violations were committed in Haiti by the Haitian government officials after the U.S. government removed the alleged victims from U.S. territory.

Articles V, VI, and VII of the American Declaration

78. The State submits that the removal of the alleged victims did not violate their rights under Articles V, VI, and VII of the American Declaration. It contends that the removal of the alleged victims from the United States was merely the civil consequence of their failure to comply with the terms and conditions bearing upon their residence in the country. The State further asserts that Articles V and VI are not implicated where

the State has conducted a lawful removal. The State submits that the mere fact that an individual subject to removal has family in the country from which he or she is lawfully removed, and who may be adversely effected by such removal, cannot transform such removal into “an abusive attack” upon private or family life within the meaning of Article V or be construed as a denial of the right to a family within the meaning of Article VI.

79. With respect to petitioners’ allegations that the United States violated Article VII, the State argues that the protection of children is not directly implicated here because all the alleged victims were adults when they committed the crimes that resulted in their removal. The State further submits that the mere fact that alleged victims Ms. Nazaire and Mr. Sainvil apparently had minor children (at the time they were lawfully removed from the United States cannot, without more, constitute a denial of the right of those children to “special protection, care, and aid” within the meaning of Article VII. The State further submits that the removal of Nazaire and Sainvil simply indicates that the United States does not adhere to petitioners’ position that equities such as family ties should always outweigh criminal history. The State indicates that while the alleged victims clearly disagree with the outcome of their removal proceedings, such disagreement is insufficient to substantiate a violation of American Declaration.

80. The State notes that in the case of Smith & Armendariz, the Commission previously found that the United States violated Articles V, VI, and VII by removing foreign nationals without considering on an individualized basis their rights to family and the best interest of their children. However, the State submits that Smith & Armendariz was wrongly decided. The State submits that the claim of the alleged victims that their removal to Haiti violated Articles V, VI, and VII of the American Declaration should be dismissed for failure to establish a claim and for being manifestly groundless.

Articles I and XI of the American Declaration

81. The State contends that the petitioners have failed to establish to establish a claim under Articles I and XI of the American Declaration. It submits that the right to life, liberty, and personal security under Article I of the Declaration was not intended to protect foreign nationals convicted of serious crimes from being removed to their country of origin based on general country conditions. The State further notes that petitioners rely on the Commission’s decisions in Smith & Armendariz and Mortlock to support their claims. However, neither case was decided on Article I grounds.

82. The State submits that petitioners’ claims under Article XI must also fail because neither the text of the Declaration nor the Commission’s case law suggests that it incorporates an obligation not to return an individual to a country where they might lack access to certain medications or medical services. The State indicates that even assuming arguendo that foreign nationals have a right under Article XI to remain in a State for medical services, that right would still be subject to Article XXVIII of the Declaration; and, accordingly, it would be appropriate for Congress, considering the “general welfare” of the United States, to limit that right to foreign nationals who have not been convicted of serious crimes.

Articles XVIII and XXVI of the American Declaration

83. The State submits that the petitioners have mischaracterized the procedural protections articulated in Articles XVIII and XXVI of the American Declaration. According to the USA, under the American Declaration, procedural guarantees exist to ensure respect for substantive rights to which an individual is entitled—that is, for the “legal rights” referenced in Article XVIII. The State therefore argues that no person has a “right” to receive any particular procedure unless the State is depriving him or her of some other protected, substantive right. The State further submits that Articles I, V, VI, VII, and XI do not confer a substantive right (on the alleged victims) to remain in the United States after having been convicted of serious crimes—nor do they possess any “fundamental constitutional rights” under U.S. constitutional law with respect to the same question. Accordingly, the State submits that the alleged victims are not entitled to any particular level of process concerning their removals under Article XVIII.

84. Nevertheless, the State argues that as a matter of U.S. domestic law, the alleged victims were guaranteed access to numerous administrative and judicial procedures prior to their removal, affording them

more than adequate due process. The State asserts that Article XXVI addresses due process in criminal proceedings, and that removal proceedings are not criminal proceedings. The State indicates that the alleged victims were entitled to a fair trial and due process of law under Articles XVIII and XXVI with respect to their criminal charges in the different U.S. states where they were prosecuted. The alleged victims received those protections in their respective criminal proceedings, and the petition do not suggest otherwise. The State further asserts that procedural protections in criminal proceedings for foreign nationals is no different from the protections accorded to US citizens.

85. In the immigration setting, however, the United States reaffirms that Article XXVI—concerned as it is with protecting the rights of criminal defendants— simply does not apply (to the alleged victims). The State submits that removal is merely the civil consequence of a foreign national’s non-compliance with the terms and conditions upon his or her residence in the country, bearing in mind that no foreign national has a right to live in the United States.

86. The State submits that even if Articles XVIII and XXVI did apply to removal proceedings (of the alleged victims), these proceedings would have more than exceeded any reasonable set of requirements one might fashion for those Articles. During removal proceedings, the State asserts that foreign nationals may present applications for relief and protection from removal. According to the State, foreign nationals have several rights in removal proceedings, including the right to be represented by counsel, the right to present evidence, the right to cross-examine the witnesses presented by the government, among other rights. The State also indicates that if a final order of removal is issued, foreign nationals have the right to appeal to the BIA, which exercises de novo review over questions of law. The State also indicates that the foreign nationals may further apply to a federal circuit court for review of decisions of the BIA.

87. The State submits that the alleged victims simply were not entitled to the substantive relief or protection they sought; and that their dissatisfaction with the outcome of process they received does not constitute a denial of due process.

Fourth instance

88. The State submits that the petition is an effort by to use the Commission as a “*fourth instance*” body to review claims already heard and rejected in administrative and judicial proceedings in the United States. The State notes that the domestic courts provided various options for the alleged victims to challenge their removals. The State notes that instead of appealing their final removal orders to the BIA and/or the federal courts, the petitioners have opted to pursue an “appeal” internationally before the Commission. In this regard, the State also notes that the petitioners have argued that the State should have applied different standards in the removal proceedings. The State argues that the Commission cannot be used as substitute for appeal in the US judicial system.

89. The State further submits that moreover, if the Commission were to accept a petition based on the same humanitarian and hardship arguments that the alleged victims have litigated and lost in the United States, it would be acting precisely as the type of fourth instance review mechanism it has consistently refused to embody. Accordingly, the State concludes that the fourth instance doctrine precludes the Commission from considering the petition.

Other observations by the United States

90. The State also addresses the claim of the petitioners that the alleged victims were removed without conducting a balancing test that considered facts specific to their individual circumstances, such as their family ties to the United States and their medical issues, as well as the general humanitarian and human rights situation in Haiti. The State asserts that contrary to the petitioners’ claim, this balancing test was applied to all the alleged victims.

91. In this regard, the State submits that in addition to offering the alleged victims the opportunity to seek protection from return to persecution or torture on an individualized basis before an immigration

judge, the United States implemented two discretionary measures with respect to Haitians during the relevant period: Temporary Protected Status (“TPS”); and ICE’s April 1, 2011 “Policy for Resumed Removals to Haiti.” The State further indicates that in 2010, the Secretary of Homeland Security, recognizing the extraordinary and temporary conditions caused by the earthquake, designated Haiti for TPS, which temporarily allowed certain otherwise removable Haitian nationals to remain and work in the United States. The State submits that having been convicted of at least two misdemeanors, or at least one felony, the alleged victims were, as a matter of U.S. law, ineligible to be TPS beneficiaries. According to the State, as a matter of policy, ICE only removed Haitian nationals ineligible for TPS, because of their criminal records after taking into consideration adverse factors, such as the severity, number of convictions, and dates since convictions, and balancing these against any equities of the Haitian national, such as duration of residence in the United States, family ties, or significant medical issues.

92. The State submits that this policy was consistent with the Commission’s decisions in *Mortlock* and *Smith & Armendariz*; and that in accordance with this, ICE determined that alleged victims were eligible for removal to Haiti.

93. The State acknowledges that the removal of alleged victims caused disruption in their lives and had unfortunate consequences for them and their families. However, affirms that this is true of nearly all removals from the United States. The State emphasizes that the removal of the alleged victims was a collateral consequence of their convictions for committing serious crimes. The State asserts that the consequential hardship for the alleged victims does not mean that the conduct of the State in removing them from its territory was inconsistent with its commitments under the American Declaration, much less that their removals were unlawful or otherwise impermissible.

C. Additional allegations by petitioners/response to State

94. The petitioners dispute the observations of the State. Regarding the State’s contention that the generalized claims in the petition are inadmissible *ratione persone*, the petitioners contend the Commission is equipped to review the claims of the group of individuals not specifically identified by name. The petitioners argue that like the unidentified individuals share similar certain specific characteristics (with the alleged victims) namely: (1) they were forcibly removed from the U.S. to Haiti; (2) their applications for relief were denied because they did not meet the strict legal requirements for asylum or withholding of removal under the INA or relief under the Convention Against Torture; (3) they were statutorily ineligible for the relief of Temporary Protected Status (“TPS”) because of their past criminal convictions; and (4) they were precluded from judicial review of final orders of removal, where those determinations were based either on ineligibility under existing domestic law, or because the immigration judge denied relief as a matter of discretion.

95. The petitioners state that while they are unable to identify each of those individuals by name, the U.S. government should be able to readily identify the individuals who meet the criteria set out above which are sufficiently particularized for the purposes of a favorable admissibility finding.

96. The petitioners reject the State’s argument that the alleged victims failed to exhaust domestic remedies. In this regard, the petitioners reiterate that available domestic remedies did not and do not afford due process of law for protection of the right or rights that have allegedly been violated, thereby exempting the alleged victims from the general rule of exhaustion (consistent with Art. 31 of the Commission’s Rules of Procedure). With reference to the Commission’s decisions in the cases of *Smith & Armendariz* and *Mortlock*, the petitioners submit that alleged victims are not required to pursue domestic remedies where such a pursuit would be futile. Based on this jurisprudence, the petitioners further reaffirm that the alleged victims were not provided sufficient opportunity to present a humanitarian defense to deportation or accorded a balancing test between the State’s asserted needs and the competing individual human rights of the alleged victims. The petitioners note that the futility of pursuing domestic remedies is reflected in the State’s position that the alleged victims were free to attempt to raise their claims before the Board of Immigration (“BIA”) or the federal circuit courts, “notwithstanding the unlikelihood that it would succeed. The petitioners conclude that the requirements of exhaustion do not require the alleged victims to engage in such a futile exercise.

97. The petitioners also submit that when assessing whether the alleged victims have met an exception to the exhaustion of domestic remedies requirement, the Commission must also examine whether any underlying due process issues hindered their ability to exhaust. In this regard, the petitioners indicate that where an applicant appears before the court pro se –and particularly where the applicant presents with mental health issues– the courts must take additional precautions to ensure due process rights are fulfilled. The petitioners indicate that such precautions were not taken regarding the alleged victims, Ms. Mathurin, and Mr. Pinette, who both presented with significant mental health issues.

98. Contrary to the State’s position the petitioners submit that the petition was timely. The petitioners reiterate that the alleged victims were exempt from the six-month deadline, having established that they are exempt from the exhaustion requirement. They further reaffirm that the petition has been filed within a reasonable time given that the violations experienced by the alleged victims are continuous and ongoing.

99. Contrary to the State’s position, the petitioners reaffirm that the alleged victims have set forth colorable claims under the American Declaration on the Rights and Duties of Man. Further, the petitioners, the petitioners submit that they are not seeking fourth instance review by the Commission. Petitioners assert that they are not appealing to the Commission to “second guess” claims heard and rejected by the domestic courts. Instead, they seek review of the very laws and policies that gave rise to their deportation–laws and policies from which the courts did not have jurisdiction to fully review in their cases.

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

100. As a preliminary consideration, the Commission notes that the petition is principally about the alleged violations resulting from the deportations of six named alleged victims. However, the Commission observes that the petition alleges that the claims therein cover a larger class of (unnamed) deportees including both people who have been deported to post earthquake Haiti and people facing imminent removal to Haiti.

101. In this regard, the Commission has not identified any basis (*ratione personae*) to consider claims other than those presented in relation to the named alleged victims. However, the Commission will consider the information presented in relation to the unnamed person for the purpose of providing context to the allegations presented on behalf of the alleged victims. Accordingly, for the purpose of this report, the Commission will therefore only consider the allegations relating to the (named) alleged victims.

102. The Commission observes that the parties diverge on the issue of domestic remedies. On the one hand, the State contending that the alleged victims failed to exhaust domestic remedies. On the other hand, the petitioners argue that the alleged victims are exempt from exhausting domestic remedies because available domestic remedies did not and do not afford due process of law for protection of the right or rights that have allegedly been violated.

103. In considering the question of exhaustion, the Commission notes that all the alleged victims were deported (between 2011 and 2013) because of their pre-existing criminal records. The petitioners contend that pursuant to the legal framework of the State, the alleged victims had no opportunity for individuals with final orders of removal to present humanitarian defenses before the relevant domestic authorities (i.e., an immigration judges, the BIA, or the U.S. Court of Appeals).

104. The petitioners acknowledge that only some of the alleged victims challenged the deportation orders made against them (by immigration judges). In this regard, the petition indicates that (a) Ms. Mathurin did not appeal her July 2012 removal order to the BIA; (b) Mr. Pinette did not file an appeal of his May 24, 2010, removal order to the BIA; (c) Ms. Nazaire appealed her September 2011 order to the BIA, but this was dismissed on February 15, 2012; (d) Mr. Sainvil appealed his October 27, 2011 removal order, but this was dismissed by the BIA on April 6, 2012; (e) Darline Fleury appealed to her March 21, 2013 removal order, but this was dismissed by the BIA on July 30, 2013; and (f) Ms. Gustave was ordered removed in 2004, but she did not appeal to the BIA; thus, she was subsequently deported in 2013.

105. Regarding the IACHR's jurisprudence in the cases of Andrea Mortlock¹⁹ and Smith & Armendariz²⁰, the petitioners argue that the alleged victims are exempt from exhausting domestic remedies, because available domestic remedies did not and do not afford due process of law for protection of the right or rights that have allegedly been violated. The petitioners submit that the IACHR's jurisprudence established that the United States' immigration laws offer no opportunity for certain categories of individuals with final orders of removal to present humanitarian defenses before the immigration judge, the BIA, or the U.S. Court of Appeals.²¹ They further submit that there is no possibility for judges to adopt a humanitarian balancing test that would consider factors such as the seriousness and date of the offense, family ties, length of residency in the United States, the danger that the applicant poses to the community, and any evidence of rehabilitation when deciding whether to deport individuals.²² The petitioners insist that it is irrelevant whether the alleged victims appealed their cases, because they had no opportunity to present humanitarian defenses at any stage of their immigration proceedings.

106. The Commission notes that the cases of Mortlock and Smith & Armendariz deal specifically with individuals who were subject to deportation because of pre-existing criminal records. In the case of Mortlock, she was ordered deported in 1995 because of convictions for several non-violent offences. No appeal was taken, and the order of deportation became final. However, in 1998, Mortlock tested positive for human immunodeficiency virus ("HIV") and was subsequently diagnosed with Acquired Immune Deficiency Syndrome ("AIDS"). She began receiving treatment for this life-threatening illness. This treatment included several medications that would not be available to her in Jamaica.

107. In the case of Smith, he was deported to Trinidad & Tobago in December 1998. The deportation proceedings against him arose from conviction in February 1990 for possession of cocaine and attempted distribution. At the time of deportation, Smith had a family (wife and children) that depended on him. The essence of Smith's complaint was that there was no opportunity to present his family and other circumstances as equitable considerations in determining whether he should have been deported from the United States. Similarly in the case of Armendariz, he was ordered deported, but complained that there was no opportunity to present any equitable considerations in determining whether he should be deported.

108. In considering the issue of exhaustion, the Commission has previously established that each Member State's administrative or judicial bodies, charged with reviewing deportation orders, must be permitted to give meaningful consideration to a non-citizen resident's defense, balance it against the State's sovereign right to enforce reasonable, objective immigration policy, and provided effective relief from deportation if merited.²³

109. On the other hand, the State contends that alleged victims were free to attempt to raise humanitarian considerations before the BIA or the federal circuit courts, notwithstanding the unlikelihood that it would succeed. According to the State, the fact that the alleged victims believed that the BIA and federal circuit courts would be skeptical of such a defense or would be unable to grant relief or protection does not excuse the failure of the alleged victims to exhaust these domestic remedies.

110. The Commission notes that in the cases of Mortlock and Smith & Armendariz, it concluded that the legal framework of the State did not allow for meaningful consideration of humanitarian and other relevant considerations during deportation proceedings. Thus, based on the record, it appears that the legal framework that applied to the alleged victims in this matter is no different from the legal framework that was in operation in the cases of Mortlock and Smith & Armendariz.

¹⁹ IACHR Report N° 63/08 Case 12.534 Admissibility and Merits (Publication) Andrea Mortlock, Unites States of America, July 25, 2008 (hereafter referred to as "Mortlock").

²⁰ IACHR Report N°. 81/10 CASE 12.562 Publication Wayne Smith, Hugo Armendariz, et al, United States of America, July 12, 2010 (hereafter referred to as "Smith & Armendariz").

²¹ Citing Mortlock, paras.15,20.

²² Citing Smith & Armendariz, paras. 51-58.

²³ See case of Smith & Armendariz, para. 5.

111. In these circumstances, the Commission cannot consider the administrative and judicial appeal mechanisms of the State to constitute effective remedies to address the alleged violations of the American Declaration, within the meaning of Article 31 of the Commission's Rules of Procedure. In this regard, the Commission reaffirms that in accordance with general principles of international law, a petitioner need not exhaust domestic remedies if on the evidence such proceedings would be obviously futile or have no reasonable prospect of success. Consequently, based upon the information and arguments before it, the Commission finds that the alleged victims are qualify for an exception to the requirement of exhaustion of domestic remedies in accordance with Article 31 (2) (b) of the Commission's Rules of Procedure.

112. In considering the issue of timeliness, the Commission observes that the alleged victims were deported between 2011 and 2013, and that the petition was submitted on February 14, 2014. The Commission considers that the petition was filed within a reasonable time pursuant to Article 32 (2), given that some of the effects of the alleged complaints persist to date, such as the alleged denial of adequate or effective remedies.

VII. ANALYSIS OF COLORABLE CLAIM

113. The Commission observes that the petition contains multiple claims presented on behalf of six alleged victims, arising from their deportation to Haiti, on account of previous criminal convictions. Broadly, the petition alleges that the deportations were conducted in violation of the right to due process, the right to health and well-being, and the right to family. The Commission notes that the petition's claim that the deportations were conducted while Haiti was undergoing a severe humanitarian crisis that was largely precipitated by the 2010 earthquake.

114. With respect to the right to due process the Commission considers that the allegations (presented on behalf of all six alleged victims) regarding the lack of opportunity to present a defense against deportation based on humanitarian and other considerations (like family ties) could establish *prima facie* violations of Articles XVIII and Article XXVI of the American Declaration.

115. Given the foregoing conclusion, the Commission considers that the alleged violations of the right to family (under Articles V and VI) flow from the alleged violation of the right to due process. In this regard, the Commission notes the petitioners' allegation that the deportation process did not allow the opportunity to present considerations like the right to family.

116. The Commission reaffirms there can be situations in which the right to protection of family association outweighs a state's interest in deporting non-citizens even when the non-citizen was considered to pose a threat to society and public order. The Commission deems that the rights governing the protection of the family are potentially pertinent considerations in the context of the principles and standards of the inter-American Human Rights system in evaluating the expulsion of non-citizens from OAS member states. After reviewing the information provided by the parties, the Commission considers that the petition states facts that, if proven, tend to establish violations of Articles V and VI of the American Declaration in relation to the alleged victims.²⁴

117. Regarding the right to health and well-being (pursuant to Article XI of the Declaration), the Commission notes that there are claims in relation to the following alleged victims: Ms. Mathurin, Mr. Pinette, and Mr. Sainvil. The petition alleges that Ms. Mathurin and Mr. Pinette were both deported despite having serious mental illnesses. The petition also alleges their mental conditions were not fully or fairly considered during the course of their respective deportation proceedings; and that no consideration was given to the issue of whether they would be able to access adequate medical treatment upon deportation to Haiti.

118. In relation to Mr. Sainvil, the petition alleges that he sustained a severe injury to his eardrum while in pre-deportation detention. The petition also claims that Mr. Sainvil did not receive the requisite

²⁴ See generally IACHR Report N^o 57/06 Petition 526-03 Admissibility Hugo Armendariz UNITED STATES (July 20, 2006, para. 50.

medical treatment while in detention. Further that given the humanitarian crisis in Haiti, he has not been able to access the necessary treatment needed to address his medical problem.

119. After carefully reviewing the information and arguments provided, the Commission considers that these allegations are not manifestly groundless, and, if proven could establish violations of Article XI of the American Declaration.

120. 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.

121. Finally, regarding Article I (right to life, liberty, and personal security) of the American Declaration, the Commission finds that petitioners do not provide enough basis to assert, even *prima facie*, its potential violation on the part of the State.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles V, VI, XI, XVIII, and XXVI of the American Declaration.

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 October 2023. (Signed:) Margarete May Macaulay, President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón and José Luis Caballero Ochoa, Commissioners.