
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 72/2021**

Precautionary Measure No. 679-21

Wilmer Alfredo Mendoza Espinoza and family regarding Nicaragua

August 30, 2021

Original: Spanish

I. INTRODUCTION

1. On July 28, 2021, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission,” or “the IACHR”) received a request for precautionary measures filed by the Permanent Commission on Human Rights of Nicaragua (CPDH) (“the applicants”), urging the Commission to require the State of Nicaragua (“the State” or “Nicaragua”) to adopt the necessary measures to protect the rights to life, personal integrity and health of Mr. Wilmer Alfredo Mendoza Espinoza (“the proposed beneficiary”) and his nuclear family.¹ According to the requesting organization, the proposed beneficiary is at risk in the context of the deprivation of his liberty due to attacks suffered during his detention, as well as his current conditions and the alleged lack of medical care.

2. In the terms of Article 25.5 of its Rules of Procedure, the IACHR requested information from the parties on August 3, 2021. The requesting organization submitted the required information on August 9. The Commission reiterated the request for information to the State on August 13, however, to date, it has not received a response.

3. Upon analyzing the submissions of fact and law furnished by the applicants, the Commission considers that the available information shows *prima facie* that Wilmer Alfredo Mendoza Espinoza is in a serious and urgent situation, given that his rights to life, personal integrity and health are at risk of irreparable harm. Consequently, Nicaragua is requested to: a) adopt the necessary measures to protect the rights to life, personal integrity and health of Mr. Wilmer Alfredo Mendoza Espinoza and his nuclear family. To this end, the State must ensure that its agents respect the life and personal integrity of the beneficiaries, and protect their rights in relation to threatening acts attributable to third parties, in accordance with the standards established by international law of the human rights; b) adopt the necessary measures to protect the rights to life, personal integrity and health of Mr. Wilmer Alfredo Mendoza Espinoza; in particular, by adopting immediate measures so he may have access to adequate medical treatment, including the necessary medications as prescribed by the corresponding health professionals, and the diagnoses and examinations necessary to evaluate his health on a regular basis, in accordance with the applicable international standards; c) taking into account the situation of potential harm to the life, personal integrity and health of Mr. Wilmer Alfredo Mendoza Espinoza as a result of the circumstances surrounding the current deprivation of his liberty, the State is requested to consider the possibility of granting alternative measures to deprivation of liberty, in accordance with its internal regulations and in light of the applicable inter-American standards; d) agree on the measures to be adopted with the beneficiaries and their representatives; and, e) report on the actions taken to investigate the alleged facts that motivated the adoption of this precautionary measure so as to avoid their reoccurrence.

II. BACKGROUND INFORMATION

4. Between May 17 and 21, 2018, the Commission visited Nicaragua and collected several testimonies on human rights violations committed in the framework of the protests that began the previous month. Subsequently, on June 21, 2018, the IACHR published a report on the serious human rights situation in the

¹ Belkys Fresia Vega González (wife), WJME (son, 8 years old), WJME (son, 4 years old), WJME (daughter, 1.5 years old).

country.² In order to follow up on the recommendations issued in this report, the Special Monitoring Mechanism for Nicaragua (MESENI) was created, which remained in the country until the State suspended its presence on December 19, 2018.³ For its part, the Interdisciplinary Group of Independent Experts (GIEI) for Nicaragua issued a report that analyzed the events that took place between April 18 and May 30, 2018, confirming the IACHR findings.⁴ In its Annual Report 2018, the IACHR included Nicaragua in Chapter IV.B, in accordance with the grounds established in its Rules of Procedure.⁵

5. During 2019, the Commission continued to condemn the ongoing acts of persecution, urging the State to comply with its obligations in matters related to human rights.⁶ In June, the State passed a Comprehensive Care for Victims Act and an Amnesty Law, both of which drew criticism for not complying with the international standards in matters of truth, justice, reparation, and guarantees of non-repetition.⁷ On September 2019, the IACHR reported an increase in harassment against human rights defenders and persons who, despite having been released from prison, continued to be intimidated.⁸ In the same regard, on November, the Commission once again called attention to the ongoing repression, noting that “[...] in addition to the closure of democratic spaces that currently characterizes the human rights crisis in Nicaragua, the families of people who have been deprived of their freedom during this crisis are increasingly becoming the targets of state persecution in the form of surveillance and the obstruction of peaceful actions.”⁹

6. Subsequently, the Commission again included Nicaragua in Chapter IV.B of its Annual Report 2019,¹⁰ noting that the serious human rights crisis in the country extended during 2019, due to the de facto installation of a state of emergency characterized by the abusive exercise of public force to repress any dissenting voices against the Government, the search, closure and censorship of media outlets, the imprisonment or exile of journalists and social leaders, the closure of civil society organizations without guarantees of due process, as well as the interference and control of the Executive Power over other public powers. Similarly, the Commission observed that the prolonged weakening of democratic institutions in Nicaragua has perpetuated the human rights crisis in the country and has led to structural impunity for serious human rights violations.¹¹

7. During 2020, the IACHR identified the consolidation of a fifth stage of state repression in the country, characterized by the intensification of acts of surveillance, harassment, and selective repression against people considered to be opponents of the Government.¹² Thus, in May 2020, the IACHR condemned the non-

² IACHR. [Gross Human Rights Violations in the Context of Social Protests in Nicaragua](#). OEA/Ser.L/V/II. Doc. 86. June 21, 2018, para. 1.

³ IACHR. [Press Release No. 135/18](#). IACHR Launches Special Monitoring Mechanism for Nicaragua (MESENI). June 24, 2018; IACHR. [Press Release No. 274/18](#). Press Release about Nicaragua. December 19, 2018. See also: IACHR. [Press Release No. 113/20](#). Two Years After Visit to Nicaragua, IACHR Condemns Lack of Compliance with its Recommendations and Calls on the State to Urgently Implement Them. May 16, 2020.

⁴ Interdisciplinary Group of Independent Experts (GIEI) for Nicaragua. [Report on the acts of violence occurred between April 18 and May 30, 2018](#), December 2018 [only in Spanish].

⁵ IACHR. [Annual Report 2018. Chapter IV.B Nicaragua](#).

⁶ See in this regard: IACHR. [Press Release No. 6/19](#). IACHR denounces the weakening of the rule of law in the face of serious human rights violations and crimes against humanity in Nicaragua. January 10, 2019; IACHR. [Press Release No. 26/19](#). IACHR Condemns Increasing Attacks on the Press and Ongoing Human Rights Violations in Nicaragua. February 6, 2019; IACHR. [Press Release No. 90/19](#). IACHR Condemns Continuing Acts of Repression in Nicaragua during Negotiating Table Talks. April 5, 2019.

⁷ IACHR. [Press Release No. 137/19](#). IACHR and OHCHR Express Concern Over the Passing of the Comprehensive Care for Victims Act in Nicaragua. June 3, 2019; IACHR. [Press Release No. 145/19](#). IACHR Expresses Concern Over the Passing of the Amnesty Law in Nicaragua. June 12, 2019.

⁸ IACHR. [Press Release No. 220/19](#). IACHR Speaks Out Against Ongoing Repression in Nicaragua and Expresses Its Concern at Increased Harassment of Human Rights Defenders and People Who Have Been Released from Prison. September 6, 2019.

⁹ IACHR. [Press Release No. 297/19](#). IACHR Condemns Persecution of Victims of Repression in Nicaragua and Calls on State to Prevent Revictimization and Promote Truth, Justice, Reparation, and Measures of Non-repetition. November 19, 2019.

¹⁰ IACHR. [Annual Report 2019. Chapter IV.B Nicaragua](#). OEA/Ser.L/V/II. Doc. 5, February 24, 2020, paras. 5-6.

¹¹ IACHR. [Annual Report 2019. Chapter IV.B Nicaragua](#). OEA/Ser.L/V/II. Doc. 5, February 24, 2020, para. 19.

¹² IACHR. [Press Release No. 80/20](#). Two Years into Nicaragua’s Human Rights Crisis, the IACHR Stresses its Permanent Commitment to Victims and Confirms the Consolidation of a Fifth Phase of Repression. April 18, 2020.

compliance with its recommendations and urged the State to implement them.¹³ In October 2020, the IACHR again called on the State to immediately cease persecution of persons identified as dissidents and to reestablish democratic guarantees in Nicaragua.¹⁴ Subsequently, the Commission once again included Nicaragua in Chapter IV.B of its Annual Report 2020.¹⁵

8. In 2021, the Commission condemned the increasing acts of harassment in the country against persons identified as opponents of the Government, human rights defenders, and the independent press,¹⁶ as well as the widespread impunity and the prolonged breakdown of the rule of law that persists in Nicaragua.¹⁷ More recently, the IACHR and the Regional Office of the United Nations High Commissioner for Human Rights (OHCHR) for Central America and Dominican Republic condemned the criminal prosecution of Nicaraguan opposition leaders and urged the State to release all the persons detained in the context of the crisis.¹⁸ Moreover, on August 11, 2021, the Commission condemned the systematic set of state actions carried out in recent months with the aim of preventing the opposition from participating in the general elections to be held in Nicaragua in November of this year, as well as the ongoing human rights violations in this context, urging the State to cease repression against people opposed to the government.¹⁹

III. SUMMARY OF FACTS AND ARGUMENTS

A. Information provided by the applicant organization

9. During the 2018 protests in Nicaragua, Mr. Mendoza Espinoza participated in different demonstrations against the Government. On July 5, 2018, in the city of Darío, the proposed beneficiary was wounded by a gunshot to his right knee and he was detained by a group of parastate officers that transferred him to the Darío Police Delegation as part of the execution of the “Clean-up Plan”. The following day, July 6, Mr. Mendoza Espinoza was transferred to the National Judicial Assistance Directorate, known as “El Chipote,” where he was allegedly subjected to torture and cruel, inhumane and degrading treatment, such as electric shocks to his testicles and waterboarding. Almost a year later, on April 16, 2019, the proposed beneficiary was released initially via the family coexistence legal concept and later, on July 25, 2019, via an amnesty issued by the Managua Court of Appeals. However, the requesting organization stated that Mr. Mendoza Espinoza and his next of kin remained under constant siege and surveillance by the police.

10. Subsequently, on May 11, 2020, the proposed beneficiary was arrested and transferred to District II of the National Police, in the city of Managua, under charges of trafficking of drugs, psychotropics and other controlled substances. A few days later, on May 14, he was transferred to the Central Judicial Complex of Managua for the preliminary hearing, at which time Mr. Mendoza Espinoza stated that officers from District II of the National Police had beaten him while he was handcuffed in his cell. The applicants highlighted that, at the hearing, there were evident signs of torture on the body of the proposed beneficiary, who had purple and inflamed eyes, and multiple blows all over his body. In addition, it was pointed out that Mr. Mendoza Espinoza

¹³ IACHR. [Press Release No. 113/20](#). Two Years After Visit to Nicaragua, IACHR Condemns Lack of Compliance with its Recommendations and Calls on the State to Urgently Implement Them. May 16, 2020.

¹⁴ IACHR. [Press Release No. 249/20](#). IACHR Calls for Persecution of People Identified as Dissidents to End and for Democratic Guarantees to be Reestablished in Nicaragua. October 10, 2020.

¹⁵ IACHR. [Annual Report 2020. Chapter IV.B Nicaragua](#), February 2021, paras. 5-29.

¹⁶ IACHR. [Press Release No. 152/21](#). IACHR Condemns the Serious Escalation of Repression in Nicaragua. June 18, 2021.

¹⁷ IACHR. [Press Release No. 93/21](#). Three Years After the Start of the Human Rights Crisis in Nicaragua, IACHR Condemns Ongoing Impunity. April 19, 2021.

¹⁸ IACHR. [Press Release No. 145/21](#). IACHR and OHCHR Categorically Condemn Criminal Prosecution of Presidential Precandidates and Urge State of Nicaragua to Release Them Immediately. June 9, 2021; IACHR. [Press Release No. 171/21](#). Nicaragua: IACHR and OHCHR Demand an End to Arbitrary Arrests and the Release of All Individuals Detained Since the Start of the Crisis in Nicaragua. July 9, 2021.

¹⁹ IACHR. [Press Release No. 209/21](#). IACHR condemns the set of state actions that aim to put an end to the participation of the opposition in the next elections in Nicaragua. August 11, 2021 [only in Spanish].

suffered from fainting and urinary incontinence during the course of the hearing. The authorities present allegedly failed to do anything about it.

11. The requesting organization stated that, since being transferred to the Jorge Navarro Penitentiary Complex (known as "La Modelo"), the proposed beneficiary has suffered threats, harassment and attacks by the prison authorities.

12. Thus, on May 20, 2021, the proposed beneficiary's wife, Mrs. Belkys Fresia Vega Gonzáles, publicly denounced the detention and health conditions of Mr. Mendoza Espinoza on a national television channel. She reportedly talked about a visit with him in the maximum-security section of the Jorge Navarro Penitentiary Complex, where she could only speak with him through a telephone and see him through dark glass. However, even under those conditions, Mrs. Vega Gonzáles alleges she was able to observe that Mr. Mendoza Espinoza had bruises near his eyes, his face was totally swollen, and the skin of his wrists had marks from the handcuffs. During this visit, the proposed beneficiary told his wife that, on April 16, 2021, in the morning, while bathing in his cell, a prison official, accompanied by twenty other officers, informed him that he would be transferred to the cells of maximum security. After the proposed beneficiary asked about the reason for his transfer, the officers kicked him, threw him to the ground and began to kick his entire body. At this moment, the deputy director of the jail arrived, who ordered the officers to handcuff Mr. Mendoza Espinoza and transfer him to the maximum-security area. During the transfer, the proposed beneficiary had to go through a metal detector, which went off when he passed. He explained that he had two projectiles lodged in his knee due to the gunshot received during the protests in July 2018. The prison director reportedly ordered that his clothes be removed, but the metal detector continued to go off, so they called the prison doctor and ordered him to check the proposed beneficiary's anus to determine if he was carrying a cell phone. The proposed beneficiary began to convulse when the doctor started carrying out the orders, to which the prison director responded that "*he is dying, he is a coup leader anyway*" and they left him there with the handcuffs on until the next day. On April 17, 2021, a prison official approached the proposed beneficiary's cell with a photo of his wife and told him: "*see, your bitch wife is talking shit,*" referring to the complaints that Mrs. Vega Gonzáles made on television.

13. The requesting organization reported that several domestic remedies have been filed in relation to the detention conditions and state of health of Mr. Mendoza Espinoza. Thus, on August 11, 2020, the Tenth Court of the Criminal District of Managua was requested to transfer Mr. Mendoza Espinoza to the Institute of Legal Medicine for an assessment of his health because he was presenting dizziness, headache and loss of vision of the left eye, product of the blows he suffered in District II of the National Police. A week later, on August 19, the same court was again asked to request a report from the prison authorities about the reasons for not having sent the proposed beneficiary for medical evaluation, but no response has been received to date. Then, on September 22, a document was filed with the Criminal Chamber of the Court of Appeals requesting a report from the prison authorities on the health condition of the proposed beneficiary, but it was rejected.

14. Some months later, on January 19, 2021, the Tenth Court of the Criminal District of Managua was requested to order the transfer of the proposed beneficiary to a hospital for presenting intense fevers and vomiting, but this request was ignored again. On March 24, the Managua Court of Appeals was requested to order his transfer to the Institute of Legal Medicine or to a hospital because he had COVID-19 symptoms, such as high fever, loss of taste and smell, and severe earache. The transfer did not occur either. Subsequently, on April 23, an appeal for personal exhibition was filed given the alleged violation of the personal integrity of the proposed beneficiary, which was considered inadmissible by the Court of Appeals.

15. Finally, on July 7, 2021, a document was filed with the Criminal Chamber of the Supreme Court of Justice requesting the transfer of the proposed beneficiary to the Institute of Legal Medicine, since he had a lump in his lower abdomen as a result of the blows suffered on April 16, 2021. However, the applicants reported that no response has yet been received on this request.

16. The requesting organization pointed out that Mr. Mendoza Espinoza still has the lump in his lower abdomen and that it grows more every day, while he continues without receiving adequate medical care, in addition to being constantly threatened by the prison authorities.

17. On the other hand, the applicants stated that the proposed beneficiary's wife is constantly subjected to police harassment and surveillance at her home, where she lives with her three minor children. Further, from October 2020 to date, in all of her visits to the prison, she is photographed by the authorities, in addition to being forced to sign documents stating that Mr. Mendoza Espinoza is being treated well in order to visit him.

B. Information provided by the State

18. The Commission requested information from the State on July 28, 2021, and reiterated this request on August 13. However, to date, the State has not submitted the required information.

IV. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY, AND IRREPARABLE HARM

19. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with human rights obligations, as established in Article 106 of the Charter of the Organization of American States. These general oversight functions are established in Article 18 (b) of the Statute of the IACHR, and the precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. In accordance with that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm.

20. The Inter-American Commission and the Inter-American Court of Human Rights ("the Inter-American Court" or "I/A Court H.R.") have repeatedly established that precautionary and provisional measures have a dual nature, both protective and precautionary.²⁰ Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.²¹ To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and how vulnerable the persons proposed as beneficiaries would be left in case the measures are not adopted.²² Regarding their precautionary nature, these measures have the purpose of preserving legal situations while under the consideration of the IACHR. The purpose of precautionary measures is to preserve the rights at risk until the petition pending before the inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision

²⁰ See in this regard: I / A Court HR. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Case of Carpio Nicolle et al. v. Guatemala](#). Provisional Measures. Order of July 6, 2009, considerandum 16.

²¹ See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. [Case of Bámaca Velásquez](#). Provisional Measures regarding Guatemala. Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional Measures regarding Mexico. Order of the Court of April 30, 2009, considerandum 5; I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish].

²² See in this regard: I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish]; I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 9; I/A Court H.R. [Matter of the Criminal Institute of Plácido de Sá Carvalho](#). Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6 [only in Spanish].

and, if necessary, to implement the ordered reparations.²³ In the process of reaching a decision, and according to Article 25(2) of the Rules of Procedure, the Commission considers that:

- a. “serious situation” refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the inter-American system;
- b. “urgent situation” refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

21. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. The information provided should be assessed from a prima facie standard of review to determine whether a serious and urgent situation exists.²⁴ Similarly, the Commission recalls that it is not called upon to make determinations on the criminal liability of individuals, nor to determine through this mechanism any violation of due process in the local investigations or proceedings, which is specific to a petition or case. The Commission will only analyze whether the proposed beneficiary is at risk pursuant to Article 25 of the Rules of Procedure, which can be done without making any determinations on the merits.²⁵

22. In the matter at hand, the Commission observes that the alleged situation of risk of the proposed beneficiary is framed within the current context of Nicaragua,²⁶ particularly under the unique situation of exposure faced by persons who have demonstrated against the actions of the government and those who have been released from prison²⁷. In this regard, the Commission notes that the proposed beneficiary's situation is not an isolated one; rather, it is embedded in a context characterized by the practice of arbitrary detentions, criminalization of human rights defenders and opponents, and a subsequent lack of adequate medical care for

²³ See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 7; I/A Court H.R. [Matter of “El Nacional” and “Así es la Noticia” newspapers](#). Provisional Measures regarding Venezuela. Order of the Court of November 25, 2008, considerandum 23; I/A Court H.R. [Matter of Luis Uzcátegui](#). Provisional Measures regarding Venezuela. Order of the Court of January 27, 2009, considerandum 19.

²⁴ See in this regard: I/A Court H.R. [Matter of Members of the Miskitu Indigenous Peoples of the North Caribbean Coast regarding Nicaragua](#). Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018, considerandum 13 [only in Spanish]; I/A Court H.R. [Matter of Children Deprived of Liberty in the “Complexo do Tatuapé” of the Fundação CASA](#). Request for extension of provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006, considerandum 23.

²⁵ In this regard, the Court has indicated that “[it] cannot, in a provisional measure, consider the merits of any arguments pertaining to issues other than those which relate strictly to the extreme gravity and urgency and the necessity to avoid irreparable damage to persons.” See in this regard: I/A Court H.R. [Matter of James et al. regarding Trinidad and Tobago](#). Provisional Measures. Order of the Inter-American Court of Human Rights of August 29, 1998, considerandum 6; I/A Court H.R. [Case of Barrios Family v. Venezuela](#). Provisional Measures. Order of the Inter-American Court of Human Rights of April 22, 2021, considerandum 2 [only in Spanish].

²⁶ IACHR. [Press Release No. 93/21](#). Three Years After the Start of the Human Rights Crisis in Nicaragua, IACHR Condemns Ongoing Impunity. April 19, 2021; IACHR. [Press Release No. 80/20](#). Two Years into Nicaragua’s Human Rights Crisis, the IACHR Stresses its Permanent Commitment to Victims and Confirms the Consolidation of a Fifth Phase of Repression. April 18, 2020; IACHR. [Press Release No. 220/19](#). IACHR Speaks Out Against Ongoing Repression in Nicaragua and Expresses Its Concern at Increased Harassment of Human Rights Defenders and People Who Have Been Released from Prison. September 6, 2019.

²⁷ IACHR. [Press Release No. 80/20](#). Two Years into Nicaragua’s Human Rights Crisis, the IACHR Stresses its Permanent Commitment to Victims and Confirms the Consolidation of a Fifth Phase of Repression. April 18, 2020; IACHR. [Press Release No. 220/19](#). IACHR Speaks Out Against Ongoing Repression in Nicaragua and Expresses Its Concern at Increased Harassment of Human Rights Defenders and People Who Have Been Released from Prison. September 6, 2019; I/A Court H.R. [Matter of Juan Sebastián Chamorro et al. regarding Nicaragua](#). Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 24.

persons deprived of liberty for political reasons.²⁸ In this regard, the IACHR has granted several precautionary measures²⁹ and the Inter-American Court a provisional measure to persons identified as dissidents who are deprived of liberty in Nicaragua.³⁰

23. On the other hand, the Commission recalls that, in relation to persons deprived of liberty in general, the State is in a special position of guarantor that implies the duty to respect their life and personal integrity, inasmuch as prison authorities exercise a strong control or command over the persons in their custody.³¹ This is due to the unique relationship and interaction of subordination between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate their rights and obligations, and by the very circumstances of imprisonment, where prisoners are prevented from satisfying on their own a series of basic needs that are essential for the development of a dignified life.³² More specifically, and in light of the facts described by the requesting organizations, the Commission recalls that the Inter-American Court has indicated that the State must ensure that a person is detained in conditions that are compatible with respect for their human dignity, that the manner and method of exercising the measure does not subject them to distress or hardship that exceeds the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately ensured.³³

24. Moreover, in the context of the COVID-19 pandemic, the Commission has urged States to adopt urgent measures to guarantee the health and integrity of the population deprived of liberty so as to address the effects of the pandemic, and to ensure dignified and adequate conditions of detention in centers of deprivation of liberty, noting that this context may mean a greater risk for those persons who make up groups in vulnerable situations.³⁴ In addition, the IACHR called on States to reduce the prison population through the implementation of alternative measures to imprisonment, such as parole, house arrest or early release.³⁵

25. Considering this particular context of Nicaragua, the Commission will analyze the procedural requirements with respect to Mr. Mendoza Espinoza.

²⁸ IACHR. IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua. OEA/Ser.L/V/II. Doc. 86. June 21, 2018; Interdisciplinary Group of Independent Experts (GIEI) for Nicaragua. Report on the acts of violence occurred between April 18 and May 30, 2018, December 2018 [only in Spanish]. See: IACHR, Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018, OEA/Ser.L/V/II. 287, October 5, 2020, para. 5; IACHR. Annual Report 2020. Chapter IV.B Nicaragua, February 2021, para. 154.

²⁹ See in this regard: IACHR. Resolution 49/2021. Precautionary Measure No. 480-21. Cristiana María Chamorro Barrios et al. regarding Nicaragua. June 24, 2021; IACHR. Resolution 37/2021. Precautionary Measure No. 96-21. Gustavo Adolfo Mendoza Beteta and his family regarding Nicaragua. April 30, 2021; IACHR. Resolution 33/2021. Precautionary Measure No. 205-21. Kevin Roberto Solís regarding Nicaragua. April 22, 2021; IACHR. Resolution 82/2020. Precautionary Measure No. 489-20. Maycol Antonio Arce and 40 other persons deprived of their liberty, regarding Nicaragua. November 2, 2020; IACHR. Resolution 62/2019. Precautionary Measure No. 1105-19. Amaya Coppens et al. regarding Nicaragua. December 24, 2019.

³⁰ I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021. See also: I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Adoption of urgent measures in favor of Daisy Tamara Dávila Rivas and her family. Order of the President of the Inter-American Court of Human Rights. July 19, 2021.

³¹ See in this regard: I / A Court HR. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 38; I/A Court H.R. Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C No. 260, para. 188; IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA / Ser.L / V / II., Doc. 64, December 31, 2011, para. 49.

³² IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA / Ser.L / V / II., Doc. 68, December 31, 2011, paras. 49-50.

³³ I/A Court H.R. Matter of seventeen persons deprived of liberty regarding Nicaragua. Provisional Measures. Adoption of Urgent Provisional Measures. Order of the President of the Inter-American Court of Human Rights of May 21, 2019 [only in Spanish].

³⁴ IACHR. Press Release No. 66/20. The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic. March 31, 2020; IACHR. Resolution 1/2020. Pandemic and Human Rights in the Americas. Adopted by the IACHR on April 10, 2020.

³⁵ IACHR. Press Release No. 66/20. The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic. March 31, 2020; IACHR. Press Release No. 212/20. IACHR concerned about specific risks faced by Persons Deprived of Liberty in the Americas during the COVID-19 pandemic. September 9, 2020.

26. As for the requirement of seriousness, the Commission considers that it has been met. When assessing this requirement, in view of the above context, the Commission observes that Mr. Mendoza Espinoza is deprived of his liberty without adequate medical care, and that the alleged facts are being attributed to the State authorities responsible for his custody, which is particularly serious. Additionally, the Commission notes that the situation of risk is reportedly further connected to the proposed beneficiary's profile as an opponent of the Government, as well as that he was allegedly detained in the context of the April 2018 protests, after which he was released.

27. Thus, after being deprived of his liberty again on May 11, 2020, the Commission observes that Mr. Mendoza Espinoza was beaten and kicked at least three times by the prison authorities. He was also reportedly threatened by the prison staff, he allegedly had black and swollen eyes, multiple blows to his body, and he fainted and suffered from urinary incontinence during a hearing held on May 14, 2020, while on May 16, April 2021, he was forced to undress in front of prison officials and a prison doctor was ordered to insert his finger in the proposed beneficiary's anus to check whether he was carrying a cell phone.

28. The Commission also notes that on at least three occasions, the proposed beneficiary has been denied medical care despite suffering from dizziness, headache, loss of vision, intense fevers, vomiting and, on one occasion, COVID-19 symptoms. Further, Mr. Mendoza Espinoza currently has a lump in his lower abdomen, presumably from the blows he received on April 16, 2021, without, to date, having received medical care.

29. The Commission also notes the applicants' allegations that the proposed beneficiary's wife is being subjected to police harassment at her house, where she lives with three minors, as well as that she is intimidated and harassed by the prison authorities when she goes to visit Mr. Mendoza Espinoza.

30. For the Commission, the above facts indicate a serious situation that the proposed beneficiary has been facing as a person deprived of his liberty, given that the specific incidents reported are attributable to state agents responsible for his custody. Moreover, the numerous occasions on which he was beaten, and the lack of medical care can allegedly have irreversible effects on his health, personal integrity and life. In this regard, the Commission observes that at least seven judicial remedies were filed in order for the proposed beneficiary to receive medical care, all of which have been denied or not answered by the judiciary. In this regard, the Inter-American Court has indicated that the lack of adequate medical care for a person deprived of their liberty and in the custody of the State could be considered a violation of the prohibition against torture.³⁶

31. In view of the situation previously analyzed, the Commission regrets the lack of information from the State. Even though the foregoing is not enough *per se* to justify the granting of a precautionary measure, it does prevent the Commission from analyzing whether the submissions of the applicants may be disproved, or to learn of any actions that the authorities may be taking, as appropriate, to address the alleged situation of risk. The foregoing is particularly relevant given that the threatening incidents have been attributed to state agents and considering the State's unique position as guarantor of the rights of the proposed beneficiary, who is in its custody.

32. In this regard, the Commission observes that, according to the information available, the State was made aware of the health situation of Mr. Mendoza Espinoza at least since August 2020 through requests made before the Tenth Court of the Criminal District of Managua, the Chamber Criminal Court of Appeals of Managua and the Criminal Chamber of the Supreme Court of Justice. However, the Commission notes that despite such actions, the situation of the proposed beneficiary was not addressed by the State, nor was he allowed to be transferred to a medical center for evaluation.

³⁶ I/A Court H.R. Case of Chinchilla Sandoval v. Guatemala. Judgment of February 29, 2016 (Preliminary Objection, Merits, Reparations and Costs). Series C No. 312, para. 173.

33. It should be noted that the IACHR has collected extensive information on the precarious and inhumane conditions of detention in "La Modelo," in particular the maximum-security areas known as "La 300", "Infiernillo" and "Chiquita"³⁷. According to the information received, "Gallery 300 has small cells, hermetically closed with a metal door, and without light. The persons held in these facilities are subjected to solitary confinement, with visits from family members and telephone calls once a month. Furthermore, contact with family members is reduced and only occurs through glass"³⁸. Moreover, the Commission has received information on the implementation of punishment cells or "maximum security" regimes against opponents, noting that "in maximum security facilities, detained persons experience differentiated treatment in relation to other persons detained under the same regime, consisting of the lack of provision of food and water in the same quantity and frequency received by other persons. Furthermore, the persons detained in the analyzed context are being punished with the sealing of their windows to the outside of their cells."³⁹

34. In this sense, the Commission has observed that most of the detentions carried out in the context of demonstrations and social protests in Nicaragua have been accompanied by different forms of cruel, inhuman, and degrading treatment, with some of the treatments described reaching the threshold of torture at the time of the detentions and while the persons were deprived of their liberty.⁴⁰ According to the information made available to the IACHR, "mistreatment has constantly occurred since the first detentions registered in the context of the social protests of April 2018, to date."⁴¹ Furthermore, information has been received indicating that complaints persist about the lack of adequate and timely medical care for persons with conditions prior to their deprivation of liberty, and that there is excessive bureaucracy to access health services in prison.⁴² The Commission has also verified that arbitrary detentions and deprivation of liberty have been used by the State of Nicaragua with the main intention of repressing any stance opposed to the current regime, and transmitting a message of fear and control to the population.⁴³

35. Although the above does not necessarily show the specific situation of the proposed beneficiary, the Commission considers that this contextual information is relevant when assessing the plausibility or credibility of the requesting organizations' allegations, especially upon verifying that the State, under the prima facie standard, has not properly disproved the existence of a risk concerning the proposed beneficiary.

36. In these circumstances, the Commission considers that the facts alleged by the applicants, which were not adequately contested by the State, and in light of the current context of Nicaragua, are likely to seriously affect the rights to life and personal integrity of the proposed beneficiary and his family. Thus, the Commission concludes, from the applicable prima facie standard, that it is sufficiently proven that the rights to life, personal integrity, and health of Mr. Wilmer Alfredo Mendoza Espinoza are at serious risk.

³⁷ IACHR. [Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018](#), OEA/Ser.L/V/II. 287. October 5, 2020. 120, 123 & 146; IACHR. [Press Release No. 122/19](#). IACHR Condemns Acts of Violence and the Death of One Person at a Nicaraguan Prison. May 20, 2019.

³⁸ IACHR. [Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018](#), OEA/Ser.L/V/II. 287. October 5, 2020. 146-48.

³⁹ IACHR. [Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018](#), OEA/Ser.L/V/II. 287. October 5, 2020. 145 and 147.

⁴⁰ IACHR. [Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018](#), OEA/Ser.L/V/II. 287, October 5, 2020, para. 152.

⁴¹ IACHR. [Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018](#), OEA/Ser.L/V/II. 287, October 5, 2020, para. 152; IACHR. [Annual Report 2020. Chapter IV.B Nicaragua](#), February 2021, paras. 156 and 158.

⁴² IACHR. [Annual Report 2020. Chapter IV.B Nicaragua](#), February 2021, paras. 159-63.

⁴³ IACHR. [Annual Report 2020. Chapter IV.B Nicaragua](#), February 2021, para. 155; IACHR. See: IACHR, [Persons Deprived of Liberty in Nicaragua in connection with the Human Rights Crisis that Began on April 18, 2018](#), OEA/Ser.L/V/II. 287, October 5, 2020, para. 5; I/A Court H.R. [Matter of Juan Sebastián Chamorro et al. regarding Nicaragua](#). Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, paras. 34 and 40.

37. Regarding the requirement of urgency, the Commission considers that it has been met, in view of the fact that the attacks against the proposed beneficiary have reportedly already materialized and are likely to continue and worsen over time. Added to this is his current state of health and the after-effects, and the fact that his relatives and legal representatives are not allowed to timely intervene and ensure that his detention conditions are adequate, thus requiring the adoption of immediate measures. In this regard, as previously indicated, the Commission lacks concrete or detailed information from the State to assess any potential actions taken to address the alleged risk faced by Mr. Mendoza Espinoza.

38. As it pertains to the requirement of potential irreparable harm, the Commission finds that it is met, since the possible impact on the rights to life and personal integrity constitutes the maximum situation of irreparability.

39. Lastly, upon identifying compliance with the procedural requirements, the Commission notes that, in the specific case of Nicaragua, on June 24, 2021, the Inter-American Court of Human Rights granted provisional measures to four persons identified as opponents, due to “the circumstances in which the detentions were carried out, the subsequent lack of information from the State on the whereabouts and conditions of detention of the proposed beneficiaries, their current situation of being held incommunicado, as well as the alleged delicate state of health and the lack of access to medicines and health care required by most of them.”⁴⁴ In addition, “the lack of information on the procedural status, such as the secrecy of the place of detention, the impossibility of legal assistance from trusted lawyers, the prolonged solitary confinement, the fact that the detainees are active politicians,” added to the context of the aforementioned country, led the Inter-American Court of Human Rights to conclude that those were “prima facie, arbitrary detentions.”⁴⁵ In view of all the foregoing, the Court considered it necessary, due to the exceptional circumstances of the matter, to order the immediate release of the beneficiaries.⁴⁶

40. Similarly, in May 2019, at the time of granting urgent measures in favor of 17 persons deprived of their liberty, the Presidency of the Inter-American Court of Human Rights indicated that in the Nicaraguan legal system there are possibilities for granting alternative measures to [deprivation of] liberty to persons, even when they are been subjected to criminal proceedings or have already been convicted.⁴⁷ On that occasion, given the risk assessment based on the confinement conditions of the persons deprived of their liberty, the Presidency of the Court asked the State to assess, immediately, the granting of alternative measures to deprivation of liberty, in accordance with its domestic regulations and the inter-American standards.⁴⁸ These provisional measures were subsequently lifted by the plenary session of the Inter-American Court when all the beneficiaries were released.⁴⁹

41. In light of these criteria, the Commission notes that, given the lack of response from the State, the elements in this matter are insufficient to disprove the allegations of the requesting organization, allegations that have been further verified by the Commission through its monitoring mechanisms, particularly regarding the detention conditions of the proposed beneficiary and the lack of adequate medical care. In this regard, as

⁴⁴ I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 39.

⁴⁵ I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 40.

⁴⁶ I/A Court H.R. Matter of Juan Sebastián Chamorro et al. regarding Nicaragua. Provisional Measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of June 24, 2021, para. 42.

⁴⁷ I/A Court H.R. Matter of seventeen persons deprived of liberty regarding Nicaragua. Provisional Measures. Adoption of Urgent Provisional Measures. Order of the President of the Inter-American Court of Human Rights of May 21, 2019 [only in Spanish]. Considerandum 30.

⁴⁸ I/A Court H.R. Matter of seventeen persons deprived of liberty regarding Nicaragua. Provisional Measures. Adoption of Urgent Provisional Measures. Order of the President of the Inter-American Court of Human Rights of May 21, 2019 [only in Spanish]. Operative Paragraph 3.

⁴⁹ I/A Court H.R. Matter of seventeen persons deprived of liberty regarding Nicaragua. Provisional Measures. Order of the Inter-American Court of Human Rights of October 14, 2019 [only in Spanish].

already indicated, the Commission considers that the requirements of Article 25 of the Rules of Procedure have been met.

42. Based on the above, the Commission requires that the State assess the possibility of granting alternative measures to deprivation of liberty, considering the particular situation of the proposed beneficiary, in order to protect his rights to life, personal integrity, and health, in compliance with the assessments made in this resolution in light of the available information.

V. BENEFICIARIES

43. The Commission declares as beneficiaries Mr. Wilmer Alfredo Mendoza Espinoza and his nuclear family, made up of Belkys Fresia Vega González (wife), WJME (son), WJME (son), and WJME (daughter), who are duly identified in this process.

VI. DECISION

44. The Inter-American Commission considers that this matter meets, prima facie, the requirements of seriousness, urgency, and irreparable harm set forth in Article 25 of the Rules of Procedure. Consequently, it requests that Nicaragua:

- a) adopt the necessary measures to protect the rights to life, personal integrity and health of Mr. Wilmer Alfredo Mendoza Espinoza and his nuclear family. To this end, the State must both ensure that state actors respect the life and personal integrity of the beneficiaries, and protect their rights in relation to acts of risk that are attributable to third parties in accordance with the standards established by international human rights law;
- b) adopt the necessary measures to protect the rights to life, personal integrity and health of Mr. Wilmer Alfredo Mendoza Espinoza; in particular, by adopting immediate measures so he may have access to adequate medical treatment, including the necessary medications as prescribed by the corresponding health professionals, and the diagnoses and examinations necessary to evaluate his health on a regular basis, in accordance with the applicable international standards;
- c) taking into account the situation presenting a risk to Mr. Wilmer Alfredo Mendoza Espinoza's life, personal integrity, and health as a result of the current circumstances surrounding the deprivation of his liberty, the State is called upon to assess the possibility of granting alternative measures to deprivation of liberty, in accordance with its internal regulations and in light of the applicable inter-American standards;
- d) consult and agree upon the measures to be adopted with the beneficiaries and their representatives; and
- e) report on the actions taken to investigate the alleged events that led to the adoption of this precautionary measure, so as to prevent such events from reoccurring.

45. The Commission requests as well that the State of Nicaragua report, within 15 days as from the day after this resolution, on the adoption of the precautionary measures granted and to regularly update this information.

46. The Commission emphasizes that, in accordance with Article 25(8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment on any violation of the rights protected in the applicable instruments.

47. The Commission instructs its Executive Secretariat to notify this resolution to the State of Nicaragua and the applicants.

48. Approved on August 30, 2021, by: Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay; Esmeralda Arosemena de Troitiño; and, Joel Hernández García, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary