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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 10/2022**

Precautionary Measure No. 1170-21  
**Melissa Lucio regarding the United States of America**  
February 18, 2022  
Original: English

**I. INTRODUCTION**

1. On December 20, 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 Cornell Law School (“the applicants”). The application urges the Commission to require that the United States of America (“the State” or “United States”) adopt the necessary measures to protect the rights of Melissa Lucio (“the proposed beneficiary”), who is currently facing the risk of imminent execution in the state of Texas, where she has been held in solitary confinement on death row for 14 years. The request for precautionary measures is linked to petition 2227-21 in which the applicants allege violations of Article I (right to life, liberty and personal security), Article II (right to equality before the law), Article VII (right of the child to special protection), Article XVIII (right to a fair trial), Article XXV (right to humane treatment in custody) and Article XXVI (right to due process of law and right not to receive cruel, infamous or unusual punishment) of the American Declaration of the Rights and Duties of Man (“American Declaration” or “Declaration”).

2. Pursuant to Article 25.5 of its Rules of Procedure, the IACHR requested information from the State on January 21, 2022. The IACHR reiterated the request on February 1, 2022. Subsequently, the State submitted its observations on February 3, 2022.

3. Having analyzed the submissions of fact and law presented by the parties, the Commission considers that the information submitted demonstrates prima facie that there is a serious and urgent risk of irreparable harm to Ms. Lucio’s rights to life and personal integrity in accordance with Article 25 of its Rules of Procedure. Moreover, in the event that Ms. Lucio is executed before the Commission has the opportunity to examine the merits of her petition, any eventual decision would be rendered moot, leading to irreparable harm. Consequently, the Commission requests that the United States of America: a) adopt the necessary measures to protect the life and personal integrity of Melissa Lucio; b) refrain from carrying out the death penalty on Melissa Lucio until the IACHR has had the opportunity to reach a decision on her petition; c) ensure that Melissa Lucio’s detention conditions are consistent with international standards, giving special consideration to her personal conditions; and d) agree on the measures to be adopted with the beneficiary and her representatives.

**II. SUMMARY OF FACTS AND ARGUMENTS**

**A. Information provided by the applicants**

4. The proposed beneficiary is currently facing the risk of imminent execution in the state of Texas, United States. She has been held in solitary confinement on death row for over 14 years. According to the applicants, Ms. Lucio exhausted all domestic remedies available to her on October 18, 2021. On January 14, 2022, the applicants informed that the District Court set the date of the proposed beneficiary’s execution to April 27, 2022.

**1. The proposed beneficiary’s life**

5. According to the application, the proposed beneficiary's life was shaped by physical, emotional, and sexual abuse. She is a survivor of multiple rapes, stating when she was six years old, and was a victim of gender-based violence from relatives and partners. The applicants also argued that she was a "child bride", marrying by the age of sixteen.

6. Her mother gave birth to the proposed beneficiary as a single mother and had three serious relationships throughout Melissa's childhood. Melissa's stepfathers repeatedly beat her mother in front of her, and one of them raped Melissa for at least two years. Around this time Ms. Lucio was also repeatedly raped by her uncle. According to the application, Melissa was castigated by her mother when she tried to disclose the abuse when she was nine years old.

7. To escape her situation, Ms. Lucio married at sixteen – although this marriage was otherwise illegal, given that Melissa was a minor, the marriage was permitted in the State of Texas at that time because her mother consented. Melissa was physically and emotionally abused by her husband and struggled with cocaine addiction during her marriage. At age seventeen, Melissa suffered a miscarriage, and later had five children by the time she was twenty-four, when her husband suddenly abandoned the family.

8. After that, the proposed beneficiary quickly entered a new relationship, again suffering physical, emotional, and verbal abuse. In this new relationship, Ms. Lucio suffered two miscarriages and gave birth to seven more children. During the relationship, their children reported to the Texas Department of Family and Protective Services (DFPS) that they were experiencing domestic violence in their household. The violence against Melissa was also reported by the school principal, after her husband punched her in school grounds. On the other hand, a DFPS report investigated allegations of sexual abuse of the children by her partner and one of Melissa's older sons. Although the Harlingen Police Department filed charges against her son, the applicants argue that the police and DFPS both failed to intervene to stop the abuse against Melissa.

9. In addition to the abuse, the family lived in a "constant state of economic hardship and housing instability". The family moved twenty-six times between 1994 and 2007 because they were unable to pay rent. At various points, Melissa and her children were homeless, lived in a park, and relied on food banks and the school for the children's meals and hygiene needs. The application states that following an order from DFPS Ms. Lucio was diagnosed with Cocaine Abuse and Dysthymic Disorder, a "chronic mood disorder". The doctor recommended individual counseling, alcohol/drug abuse counseling, continued DFPS behavioral supervision, vocational counseling, guidance, and parenting education.

10. In 2004, DFPS removed the seven youngest children from Melissa's custody. The application states that the DFPS mostly reported parental negligence "deriving primarily from poverty, including a lack of supervision, an unclean home environment, inadequate food, lack of electricity or water, and homelessness". The only instance of "physical abuse" by Melissa occurred when two of her infants tested positive for cocaine at birth, which is automatically classified as abuse by the DFPS. The DFPS later returned the children to Melissa and her partner, at this point living at a "second-story apartment at the top of a steep and poorly maintained exterior flight of stairs".

## **2. The facts that led to the proposed beneficiary's conviction and death sentence**

11. According to the application, on February 15, 2007, Melissa's youngest daughter, M., "fell down the dangerously steep exterior stairs" and "although her injuries did not appear life-threatening, two days later, M. went down for a nap and never woke up".

## **3. Interrogation and arrest**

12. The same night that M. died Ms. Lucio was taken to the police station for questioning. According to the applicants, “an armed, male investigation team” aggressively interrogated the proposed beneficiary for five hours, “treating her as guilty from the very beginning” due to her “perceived flat affect and emotional removal”, as evidence of her guilt. The applicants argue that Melissa’s lack of emotional reaction was a survival mechanism because of decades of abuse from adult men.

13. During the interrogation Ms. Lucio was not allowed to sleep or eat and grew increasingly emotionally, mentally, and physically exhausted. The investigators allegedly rejected Melissa’s explanation that M. had fallen down the stairs, showed her images of her dead child, “compelled Melissa to hit a baby doll multiple times in the alleged manner in which she abused M.”, and used coercive interrogation techniques. Melissa eventually capitulated to her interrogator’s assertions, saying, “I guess I did it”. The applicants argue that “Melissa’s coerced admissions” were another manifestation of her trauma rather than an indication of any actual culpability in M.’s death. Following Melissa’s interrogation, the State of Texas charged Melissa with capital murder for M.’s death.

14. Furthermore, the applicants argue that following Melissa’s arrest she was diagnosed with post-traumatic stress disorder (PTSD), “battered woman syndrome” directly resulting from her early childhood trauma and physical, sexual, and emotional abuse and “significant cognitive impairments”.

#### **4. Allegations of due process of law and right to a fair trial violations**

15. The application alleges that Ms. Lucio’s trial counsel failed to provide her an adequate defense and was unable to meet both the “minimum threshold for international standards of due process” and the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases. The applicants sustained that her attorney committed errors which “fatally undermined the fairness of Ms. Lucio’s capital murder trial”, *inter alia*, he “failed to file a pre-trial motion to suppress her false confession on the grounds that it was involuntary”; failed to “challenge the prosecution’s evidence and experts through effective cross-examination”; failed to obtain the assistance of other experts, such as a forensic pathologist and other competent defense experts who could have casted doubt on the State’s “erroneous theory surrounding M.’s injuries and death” and by neglecting her gender-based violence history.

16. Even though the trial court appointed a lawyer to represent Ms. Lucio on May 31, 2007, he “did not identify or request any defense experts for nearly six months following his appointment”, and neither “presented key evidence to refute the capital charge against her nor investigated mitigating evidence crucial to the fair determination of her sentence”. According to the applicants, Ms. Lucio’s lawyer “failed to request the assistance of a mitigation specialist until it was too late” to do a complete investigation of Ms. Lucio’s life history. As a result, “the jury sentenced Ms. Lucio to death with only a fragment of the relevant evidence that should have been available to them”, for example, that Ms. Lucio’s emotional reaction was “symptomatic of her mental illness and were unable to connect her response to the police interrogation to her lifelong learned behavior of acquiescence to powerful men”.

17. On the other hand, the applicants argue that “the United States undermined Ms. Lucio’s right to a fair trial” because the trial court excluded the testimony of a psychologist and a social worker who were “two critical witnesses for the defense”. According to the applicants “without their testimony, the jury had no reason to doubt the truthfulness of Ms. Lucio’s incriminating statements, which became the centerpiece of the prosecution’s case”.

18. The application also states that, during the penalty phase of the trial, the State presented information to falsely portray Ms. Lucio as a remorseless criminal and that the prosecution argued that the proposed beneficiary did not cry or scream in prison, using “this evidence as ‘proof’ of her lack of remorse at her

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daughter's death". Allegedly, the prosecution mischaracterized the "symptoms of Melissa's mental illness as evidence of her blameworthiness".

#### **4. The proposed beneficiary's conviction and death sentence**

19. Ms. Lucio was sentenced to death on July 22, 2008.

20. Ms. Lucio filed several petitions regarding the ineffectiveness of her legal assistance and other violations of her right to a fair trial. Ms. Lucio's arguments about the deficiency of her legal defense have been denied in both state and federal courts. After the United States District Court for the Southern District of Texas denied her a certificate of appealability on these claims, she appealed to the Fifth Circuit Court of Appeals. The Fifth Circuit likewise denied her leave to appeal.

21. In relation to the proposed beneficiary's claim that the state court violated her right to a fair trial, the Federal District Court for the Southern District of Texas rejected her claim. On appeal, a panel of the United States Court of Appeals for the Fifth Circuit unanimously granted her a certificate of appealability and granted her relief. Nonetheless, Texas petitioned for rehearing *en banc*, and after granting the rehearing, the *en banc* Fifth Circuit vacated the panel opinion. While the majority of the judges agreed with the result and agreed that the Anti-Terrorism and Effective Death Penalty Act (AEDPA) barred relief, no majority agreed on the reasoning for denying relief.

22. Finally, on October 18, 2021, the United States Supreme Court denied a writ of certiorari based on these claims.

#### **5. The proposed beneficiary's current conditions of confinement**

23. After being sentenced to death, Ms. Lucio was placed in solitary confinement, where she has remained for over 14 years. The confinement is "particularly torturous for Ms. Lucio" due to the proposed beneficiary's depression and post-traumatic stress disorder. The applicants also claim that the proposed beneficiary has an IQ of 70 and that "Ms. Lucio's limited cognitive abilities and mental illness have made her even more vulnerable to the acute trauma inherent in solitary confinement under sentence of death".

24. According to the application, Ms. Lucio spends at least 23 hours a day in a brick and concrete room the size of a parking space with negligible educational and environmental stimuli. Her cell includes a narrow bed comprised of a metal frame and a thin mattress pad. A steel sink and toilet are an arm's length away from her bed. There is a small desk with a metal stool. All the furniture is bolted to the floor and walls. She is not allowed to put pictures, letters, or even a calendar on the wall. The cell has a small window that is barred and covered in a glaze that makes it near impossible to see anything outside. Within her cell, Ms. Lucio has no access to television, educational opportunities, or consistent recreation. Nearly all of Ms. Lucio's time is idle, writing letters or reading a limited selection of books.

25. Moreover, Ms. Lucio's prison building contains inmates on death row and inmates subjected to administrative or protective segregation, including women who suffer extreme mental illness and women whom the prison has identified as unsafe to the general prison population. In this sense, the applicants claim that Ms. Lucio "hears screaming, cursing, banging, and slamming doors throughout the prison", by both inmates and prison guards, and is frequently exposed to "airborne chemical agents, which are used to subdue prisoners who are deemed to be acting out". These noises and smells often prevent Ms. Lucio from thinking clearly and sleeping - according to the applicants, Ms. Lucio has woken up multiple times due to the excessive noise every night for the past fourteen years.

26. The application argues that Ms. Lucio's prolonged solitary confinement has irreparably harmed not only her physical well-being but also her psychological and emotional well-being. She rarely has access to the touch of another human being. Death row inmates in Texas are not allowed contact visits, therefore Ms. Lucio has never touched or held any of her grandchildren.

#### **6. Execution date**

27. On January 14, 2022, the applicants informed that the District Court set the date of the proposed beneficiary's execution to April 27, 2022.

#### **B. Information provided by the State**

28. The United States submitted information on February 3, 2022. According to the State, the request for information was forwarded to the Attorney General of the State of Texas on February 2, 2022.

29. Moreover, the State reaffirmed "its longstanding position that the Commission lacks the authority to require that States adopt precautionary measures". Consequently, "should the Commission adopt a precautionary measure resolution in this matter, the United States would take it under advisement and construe it as recommendatory".

### **III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY, AND IRREPARABLE HARM**

30. The precautionary measures mechanism is part of the Commission's functions of overseeing Member States' compliance with the human rights obligations established in Article 106 of the Charter of the Organization of American States ("OAS"). These general functions are set forth in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR. Moreover, the precautionary measures mechanism is enshrined in Article 25 of the Rules of Procedure, by which the Commission grants precautionary measures in serious and urgent situations, where such measures are necessary to prevent irreparable harm.

31. 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.<sup>1</sup> Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.<sup>2</sup> 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.<sup>3</sup> Regarding their precautionary nature, these measures have the purpose of preserving legal situations while under the consideration of the IACHR. Their precautionary nature aims at safeguarding the rights at risk until the request pending before the

<sup>1</sup> See in this regard: I/A Court H.R. [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.

<sup>2</sup> 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].

<sup>3</sup> 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].

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 and, if necessary, to implement the ordered reparations.<sup>4</sup> 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” is determined by means of the information provided and refers to risk of 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.

32. In analyzing these requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. Rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.<sup>5</sup>

33. As a preliminary observation, the Commission considers it necessary to highlight that, according to its mandate, it is not called upon to determine the criminal responsibility of individuals in relation to their alleged commission of crimes or infractions. Additionally, the IACHR does not have the mandate, through the precautionary measures mechanism, to determine whether the State has incurred violations of the American Declaration as a result of the alleged events. In this sense, the Commission reiterates that, with respect to the precautionary measures procedure, it is only called upon to analyze whether the proposed beneficiary is in a situation of seriousness and urgency facing harm of an irreparable nature, as established in Article 25 of its Rules of Procedure. With regards to P-2227-21, which alleges violations of the rights of the proposed beneficiary, the Commission recalls that the analysis of these claims will be carried out in compliance with the specific procedures of its Petition and Case System, in accordance with the relevant provisions of its Statute and Rules of Procedure.

34. The Commission also finds it pertinent to underscore that, while the exhaustion of domestic remedies is indeed a requirement for the admissibility of petitions in accordance with Article 31 of its Rules of Procedure, this same requirement does not apply to the granting of precautionary measures. In this sense, Article 25.6.a of the Rules of Procedure establishes that whether the situation has been brought to the attention of the pertinent authorities should be taken into account when reviewing a request for precautionary measures. However, such actions do not bar the Commission from granting precautionary measures under the consideration of the requirements of seriousness, urgency and irreparable harm. Additionally, as indicated

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<sup>4</sup> 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 [only in Spanish]; I/A Court H.R. [Matter of Luis Uzcátegui](#). Provisional Measures regarding Venezuela. Order of the Court of January 27, 2009, considerandum 19.

<sup>5</sup> See in this regard: I/A Court H.R. [Matter of Residents of the Communities of the Miskitu Indigenous People of the North Caribbean Coast Region regarding Nicaragua](#). Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018, considerandum 13; I/A Court H.R. [Matter of the children and adolescents deprived of their liberty in the “Complexo do Tatuapé” of the Fundação CASA](#). Request for extension of precautionary measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006, considerandum 23.

above, the Commission's competence to grant precautionary measures extends to all Member States of the OAS and does not derive solely from the American Convention on Human Rights.

35. Additionally, the Inter-American Commission recalls that the death penalty has been subject to strict scrutiny within the Inter-American human rights system.<sup>6</sup> While most OAS Member States have abolished the death penalty, a significant minority still hold on to this form of punishment.<sup>7</sup> With regards to the States that maintain the death penalty, there are a series of restrictions and limitations established in regional human rights instruments that States are bound to comply with in accordance with international law.<sup>8</sup> These restrictions and limitations are based on the broad recognition of the right to life as the supreme human right and as the *sine qua non* of the enjoyment of all other rights, thus requiring greater scrutiny to ensure that any deprivation of life resulting from the application of the death penalty complies strictly with the requirements of the applicable inter-American human rights instruments, including the American Declaration.<sup>9</sup> In this sense, the Commission has underlined that the right to due process plays an essential role in guaranteeing the protection of the rights of persons who have been sentenced to death. In order to protect due process guarantees, States have the obligation to ensure the exercise of the right to a fair trial, the strictest compliance with the right to defense, and the right to equality and non-discrimination.<sup>10</sup> In this sense, the Commission highlights that it has granted a number of precautionary measures to individuals on death row, considering both the precautionary and protective dimensions of the precautionary measures mechanism.<sup>11</sup>

36. In the present matter, the Commission considers that the requirement of seriousness has been fulfilled. With regards to the precautionary dimension, the Commission observes that, according to petition 2227-21 presented by the applicants, the legal proceedings which led to Ms. Lucio's death sentence allegedly did not comply with her rights to a fair trial and due process of law. In particular, the applicants claim that, during the criminal proceedings, Ms. Lucio's state appointed lawyer allegedly failed to argue that she was under duress during the interrogation, and was submitted to coercive interrogation techniques that allegedly led to her false confession. Further, it was alleged that her lawyer failed to conduct a comprehensive mitigation investigation, and failed to obtain critical expert assistance. As a result, the jury never learned about her long history of sexual assault and domestic violence. Additionally, was alleged that the trial court excluded the testimony of a psychologist and a social worker, two critical witnesses, who would have presented evidence essential to Ms. Lucio's defense. In this regard, while the imposition of the death penalty is not prohibited *per se* under the

<sup>6</sup> IACHR. [Press Release No. 248/20](#). The IACHR stresses its call for the abolition of the death penalty in the Americas on the World Day Against the Death Penalty. October 9, 2020.

<sup>7</sup> IACHR. [The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition](#). OAS/Ser.L/V/II., Doc. 68, December 31, 2011, paras. 12 & 138; IACHR. [Press Release No. 248/20](#). The IACHR stresses its call for the abolition of the death penalty in the Americas on the World Day Against the Death Penalty. October 9, 2020.

<sup>8</sup> IACHR. [The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition](#). OAS/Ser.L/V/II., Doc. 68, December 31, 2011, paras. 138-39.

<sup>9</sup> IACHR. [Report No. 210/20](#). Case 13.361. Admissibility and Merits (Publication). Julius Omar Robinson (United States of America), August 12, 2020, para. 55; IACHR. [Report No. 200/20](#). Case 13.356. Admissibility and Merits (Publication). Nelson Ivan Serrano Saenz (United States of America), August 3, 2020, paras. 44-45; IACHR. [Report No. 211/20](#). Case 13.570. Admissibility and Merits (Publication). Lezmond C. Mitchell (United States of America), August 24, 2020, paras. 72-73.

<sup>10</sup> IACHR. [The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition](#). OAS/Ser.L/V/II., Doc. 68, December 31, 2011, para. 141.

<sup>11</sup> See, in this regard: IACHR. [Resolution 95/2020](#). Precautionary Measure No. 1080-20. Christa Pike regarding the United States of America. December 11, 2020; IACHR. [Resolution 91/2020](#). Precautionary Measure No. 1048-20. Lisa Montgomery regarding the United States of America. December 1, 2020; IACHR. [Resolution 77/2018](#). Precautionary Measure No. 82-18. Ramiro Ibarra Rubí regarding the United States of America. October 1, 2018; IACHR. [Resolution 32/2018](#). Precautionary Measure No. 334-18. Charles Don Flores regarding the United States of America. May 5, 2018 (available only in Spanish); IACHR. [Resolution 41/2017](#). Precautionary Measure No. 736-17. Rubén Ramírez Cárdenas regarding the United States of America. October 18, 2017; IACHR. [Resolution 21/2017](#). Precautionary Measure No. 250-17. Lezmond Mitchell regarding the United States of America. July 2, 2017; IACHR. [Resolution 14/2017](#). Precautionary Measure No. 241-17. Matter of Víctor Hugo Saldaño regarding the United States of America. May 26, 2017; IACHR. [Resolution 9/2017](#). Precautionary Measure No. 156-17. William Charles Morva regarding the United States of America. March 16, 2017.

American Declaration,<sup>12</sup> the Commission has recognized systematically that the possibility of an execution in such circumstances is sufficiently serious to permit the granting of precautionary measures to the effect of safeguarding a decision on the merits of the petition filed.<sup>13</sup>

37. Regarding the protective dimension, the Commission observes that Ms. Lucio remains on death row in Texas, where she has been held in solitary confinement for over 14 years while awaiting execution. The Commission has stated that “in no instance should solitary confinement of an individual last longer than thirty days”.<sup>14</sup> It has further concluded that “it is widely established in international human rights law that solitary confinement for extended periods of time constitutes at the very least a form of cruel, inhuman or degrading treatment or punishment”.<sup>15</sup> As for the impact that solitary confinement may cause on the rights to life and personal integrity of an individual, the former United Nations Special Rapporteur on Torture, Juan E. Mendez, has stated that:

Individuals held in solitary confinement suffer extreme forms of sensory deprivation, anxiety and exclusion, clearly surpassing lawful conditions of deprivation of liberty. Solitary confinement, in combination with the foreknowledge of death and the uncertainty of whether or when an execution is to take place, contributes to the risk of serious and irreparable mental and physical harm and suffering to the inmate. Solitary confinement used on death row is by definition prolonged and indefinite and thus constitutes cruel, inhuman or degrading treatment or punishment or even torture.<sup>16</sup>

38. The Commission further emphasizes the serious impacts of long-term deprivation of liberty on death row, known as the “death row phenomenon”, which:

(...) consists of a combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death. Those circumstances include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held. Death row conditions are often worse than those for the rest of the prison population, and prisoners on death row are denied many basic human necessities.<sup>17</sup>

<sup>12</sup> IACHR. [The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition](#). OAS/Ser.L/V/II., Doc. 68, December 31, 2011, para. 2.

<sup>13</sup> See, in this regard: IACHR. [Resolution 95/2020](#). Precautionary Measure No. 1080-20. Christa Pike regarding the United States of America. December 11, 2020, para. 34; IACHR. [Resolution 91/2020](#). Precautionary Measure No. 1048-20. Lisa Montgomery regarding the United States of America. December 1, 2020, para. 40; IACHR. [Resolution 77/2018](#). Precautionary Measure No. 82-18. Ramiro Ibarra Rubí regarding the United States of America. October 1, 2018; IACHR. [Resolution 32/2018](#). Precautionary Measure No. 334-18. Charles Don Flores regarding the United States of America. May 5, 2018 (available only in Spanish); IACHR. [Resolution 41/2017](#). Precautionary Measure No. 736-17. Rubén Ramírez Cárdenas regarding the United States of America. October 18, 2017; IACHR. [Resolution 21/2017](#). Precautionary Measure No. 250-17. Lezmond Mitchell regarding the United States of America. July 2, 2017; IACHR. [Resolution 14/2017](#). Precautionary Measure No. 241-17. Matter of Víctor Hugo Saldaño regarding the United States of America. May 26, 2017; IACHR. [Resolution 9/2017](#). Precautionary Measure No. 156-17. William Charles Morva regarding the United States of America. March 16, 2017.

<sup>14</sup> IACHR. [Report No. 29/20](#). Case 12.865. Merits (Publication). Djamel Ameziane (United States), April 22, 2020, para. 151; 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. 411.

<sup>15</sup> IACHR. [Report No. 29/20](#). Case 12.865. Merits (Publication). Djamel Ameziane (United States), April 22, 2020, para. 152; 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. 413.

<sup>16</sup> United Nations General Assembly. [Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#). A/67/279, August 9, 2012, para. 48.

<sup>17</sup> United Nations General Assembly. [Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#). A/67/279, August 9, 2012, para. 42; IACHR. [Report No. 24/17](#). Case 12.254. Merits. Víctor Saldaño (United States), March 18, 2017, para. 241; IACHR. [Report No. 200/20](#). Case 13.356. Admissibility and Merits (Publication). Nelson Ivan Serrano Saenz (United States of America), August 3, 2020, para. 69; IACHR. [Report No. 210/20](#). Case 13.361. Admissibility and Merits (Publication). Julius Omar Robinson (United States of America), August 12, 2020, para. 115; IACHR.

39. In this sense, in the case of Russell Bucklew, the IACHR found that “the very fact of spending 20 years on death row is, by any account, excessive and inhuman”.<sup>18</sup> In the case of Víctor Saldaño, the Commission concluded that “holding Víctor Saldaño on death row for more than 20 years in solitary confinement has constituted a form of torture, with severe and irreparable detriment to his personal integrity and, especially, his mental health”.<sup>19</sup>

40. According to the information provided by the applicants, for the last 14 years, Ms. Lucio has spent “at least twenty-three hours a day in a brick and concrete room the size of a parking space with negligible educational or environmental stimuli”. They alleged that she “has no access to television, educational opportunities, or consistent recreation”. In addition, the level of noise on Ms. Lucio’s prison building and the smell of airborne chemical agents prevents her from “sleeping, concentrating, having conversations, thinking clearly, and functioning in general”. The above elements illustrate the seriousness of the situation in which the proposed beneficiary currently finds herself.

41. The Commission observes that the United States did not present any specific information regarding the current situation that the proposed beneficiary finds herself in. In this sense, the Commission does not have information which indicates that measures are being adopted by domestic courts or administrative authorities to ensure humane detention conditions and to prevent any harm to Ms. Lucio.

42. In view of these aspects, and without prejudice to the petition presented, the Commission concludes that the rights of Ms. Lucio are prima facie at risk due to the imminent execution of the death penalty and its subsequent effects on her petition which is currently under the Commission’s analysis, as well as her ongoing conditions of detention in solitary confinement on death row and their impact on her rights to life and personal integrity.

43. The Commission considers that the requirement of urgency has been fulfilled. With regards to the precautionary dimension, according to the information presented by the applicants on January 14, 2022, the District Court set the date of the proposed beneficiary’s execution to April 27, 2022.

44. In this same sense, regarding the protective dimension, the Commission considers that the risks to the proposed beneficiary’s rights require immediate measures given the severe conditions of her detention in solitary confinement on death row and before the possible execution of the death penalty. As stated above, the information presented by the State did not controvert the proposed beneficiary’s alleged conditions of confinement, meaning that the IACHR does not have information which indicates that measures are being adopted by domestic courts or administrative authorities to ensure humane detention conditions and to prevent any harm to Ms. Lucio.

45. The Commission considers that the requirement of irreparability has been fulfilled, insofar as the potential impact on the rights to life and personal integrity of the proposed beneficiary constitutes the maximum situation of irreparability.

46. Regarding the precautionary aspect, the IACHR considers that if Ms. Lucio is executed before the Commission has had the opportunity to evaluate P-2227-21, any eventual decision on the merits of the case would be rendered moot, given that the situation of irreparable harm would already have materialized.

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[Report No. 211/20](#), Case 13.570. Admissibility and Merits (Publication). Lezmond C. Mitchell (United States of America), August 24, 2020, para. 132; IACHR. [Report No. 71/18](#). Case 12.958. Merits. Russell Bucklew (United States), May 10, 2018, paras. 85-91.

<sup>18</sup> IACHR. [Report No. 71/18](#). Case 12.958. Merits. Russell Bucklew (United States), May 10, 2018, para. 91.

<sup>19</sup> IACHR. [Report No. 24/17](#). Case 12.254. Merits. Víctor Saldaño (United States), March 18, 2017, para. 252.

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#### **IV. BENEFICIARY**

47. The Commission declares that the beneficiary of this precautionary measure is Melissa Lucio, who is duly identified in this proceeding.

#### **V. DECISION**

48. The Inter-American Commission on Human Rights concludes that the present matter meets prima facie the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the IACHR requests that the United States of America:

- a) adopt the necessary measures to protect the life and personal integrity of Melissa Lucio;
- b) refrain from carrying out the death penalty on Melissa Lucio until the IACHR has had the opportunity to reach a decision on her petition;
- c) ensure that Melissa Lucio's detention conditions are consistent with international standards, giving special consideration to her personal conditions;
- d) agree on the measures to be adopted with the beneficiary and her representatives.

49. The Commission requests the United States of America to inform, within a period of 15 days from the date of this resolution, on the adoption of the precautionary measures requested and to update such information periodically.

50. 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 prejudgment of any violation of the rights protected in the applicable instruments.

51. The Commission instructs its Executive Secretariat to notify the United States of America and the applicants of this resolution.

52. Approved on February 18, 2022, by Julissa Mantilla Falcón, President; Esmeralda Arosemena de Troitino, Second Vice-President; Joel Hernández García; Edgar Stuardo Ralón Orellana; Roberta Clarke; and Carlos Bernal Pulido, members of the IACHR.

Maria Claudia Pulido  
Assistant Executive Secretary