

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**  
**RESOLUTION 32/2015**  
**PRECAUTIONARY MEASURE 489-15<sup>1</sup>**  
September 29, 2015

**INTRODUCTION**

1. On September 27, 2015 the Inter-American Commission on Human Rights (hereinafter “Commission” or “IACHR”) received a request for precautionary measures presented by the Virginia Capital Representation Resource Center, Office of the Federal Public Defender for the Central District of California and Robert F. Kennedy Human Rights in favor of Alfredo Rolando Prieto (hereinafter “the proposed beneficiary”), a Salvadoran national, sentenced to the death penalty and scheduled to be executed by lethal injection on October 1, 2015, in the Commonwealth of Virginia in the United States. The request for precautionary measures is related to individual petition P-1503-15, which alleges violations of Articles I (right to life and personal security), XVIII (right to a fair trial), XXIV (right of petition) and XXVI (right to due process of law), of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration” or “the Declaration”). The applicants ask the Commission to require the United States of America (hereinafter “the State,” “United States” or “U.S.”) to halt the scheduled execution in order to prevent further violations and irreparable harm to the proposed beneficiary, among other requirements.

2. After analyzing the factual and legal arguments put forth by the applicants, the Commission considers that, if Mr. Alfredo Rolando Prieto is executed before it has an opportunity to examine the merits of this matter any eventual decision would be rendered moot in respect of the effectiveness of potential remedies resulting in irreparable harm. Consequently, pursuant to Article 25.1 of its Rules of Procedure, the Commission hereby requests that the United States take the measures necessary to preserve the life and physical integrity of Mr. Alfredo Rolando Prieto until the IACHR has pronounced on his petition, so as not to render ineffective the processing of his case before the Inter-American system.

**II. BRIEF SUMMARY OF THE INFORMATION AND ARGUMENTS PROVIDED BY THE APPLICANTS**

3. According to the request filed by the applicants, the proposed beneficiary was sentenced to death in 2010 for murders he allegedly committed in 1988. The annexed documents provided by the applicants indicate that the Commonwealth of Virginia charged the proposed beneficiary with two counts of murder, rape, two counts of using a firearm in the commission of a felony and grand larceny. The annexed documents note that the proposed beneficiary came to the United States from El Salvador in 1981, when he was 15 years old.

4. The applicants contend that there is significant evidence that the proposed beneficiary is a person with intellectual disability. According to several descriptions of the proposed beneficiary’s behavior and functioning during his youth, he consistently exhibited limitations in conceptual skills, which are defined as skills related to language, reading and writing, and number concepts. The proposed beneficiary also reportedly demonstrated significant limitations in developing social and practical skills. According to the applicants, social skills include “matters relating to interpersonal relations, responsibility, self-esteem, gullibility, naïveté, ability to conform to rules and laws, avoiding victimization, and social problem solving” and practical skills encompass “activities of daily living, occupational skills, and skills required to

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<sup>1</sup> In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner James Cavallaro, a national of the United States of America, did not participate in the discussion or vote of this precautionary measure.

maintain safe environments.” The request for precautionary measures states that the proposed beneficiary consistently scored in the “Extremely Low” range in a standardized adaptive behavior evaluation that was administered prior to his 2008 trial. Tests have allegedly placed his intelligence quotient (“IQ”) score at approximately 68, which is in the bottom one-percent of the population. The applicants further contend that even in IQ tests performed by state experts, the proposed beneficiary has never scored higher than 73, which is still well within the clinical definition of “intellectual disability.”

5. In February 2006, the Governor of California and the Governor of Virginia reportedly reached an Executive Agreement for the proposed beneficiary’s extradition to Virginia to undergo trial for the murders he allegedly committed in 1988. That Agreement allegedly provided that the proposed beneficiary would be transferred, but that “the State of California is specifically not waiving jurisdiction over [Mr. Prieto] by permitting and ordering his extradition to Virginia.” The Agreement also allegedly contemplated the proposed beneficiary’s return for completion of his California appeals. Thus, the proposed beneficiary was sent to Virginia for trial, yet the applicants contend that the proceedings he faced were plagued by error. As examples, the applicants affirm the following: i) juror misconduct during the penalty phase of the 2007 trial, which caused a mistrial; ii) the strict IQ score cutoff of 70 for intellectual disability pursuant to Virginia law, which meant that the proposed beneficiary, with a score of 73, was not determined to be intellectually disabled; and iii) the use of an unconstitutional sentencing verdict form by jurors. At the resentencing trial in 2010, jurors were allegedly not asked to decide whether the proposed beneficiary is a person with intellectual disability. When he sought to have a determination of his intellectual disability made in state habeas proceedings, the Supreme Court of Virginia reportedly held that it could not address the claim due to state rules of procedural default. As a result, according to the applicants, the state court did not review the merits of the claim. The United States Court of Appeals for the Fourth Circuit (hereinafter “Fourth Circuit”) allegedly did not allow the proposed beneficiary an opportunity to develop and present evidence of intellectual disability. Rather, the Fourth Circuit simply considered whether the existing evidence established by “clear and convincing evidence” that he is a person with intellectual disability, and found that the existing evidence did not meet this standard. The applicants indicate that the proposed beneficiary’s execution date was set immediately after the Fourth Circuit’s decision; and that he has allegedly not been afforded the opportunity for his petition for certiorari to be ruled upon by the United States Supreme Court.

6. The applicants contend that the proposed beneficiary’s efforts to receive a fair hearing on the issue of mental capacity have been “consistently thwarted by the Virginia proceedings.” The applicants indicate that at present, the proposed beneficiary’s petition seeking exemption from execution based on his intellectual disability is awaiting decision from the California Supreme Court, and that the federal petition is pending in district court.

7. The applicants indicate that the aforementioned proceedings have violated the United States’ constitutional laws that prohibit the execution of the intellectually disabled and the application of strict standards for determining mental capacity in capital cases. The applicants contend that special protections and due process guarantees are applicable to death penalty proceedings. However, the rights to life, personal security, due process and freedom from cruel, infamous or unusual punishment, enshrined in the American Declaration, have allegedly not been adhered to in the present situation.

### **III. ANALYSIS OF THE ELEMENTS OF GRAVITY, URGENCY AND IRREPARABILITY**

8. The mechanism of precautionary measures is part of the Commission’s function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter, and in the

case of Member States that have yet to ratify the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man. These general oversight functions are set forth in Article 18 of the Commission's Statute, and the mechanism of precautionary measures is detailed in Article 25 of the Commission's Rules of Procedure. According to this Article, the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

9. The Inter-American Commission and Court have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR. Their precautionary nature aims at preserving those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the ordered reparations. As such, for the purposes of making a decision, and in accordance with Article 25.2 of its 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.

10. The present request for precautionary measures aims to protect the right to life and personal integrity of Mr. Alfredo Rolando Prieto, a Salvadoran national who was sentenced to death in 2010 and who is scheduled to be executed by lethal injection on October 1, 2015. The request for precautionary measures is related to individual petition P-1503-15 in which the applicants allege violations of Articles I (right to life and personal security), XVIII (right to a fair trial), XXIV (right of petition) and XXVI (right to due process of law) of the American Declaration.

11. In the present situation, the requirement of gravity is met, in its precautionary and protective aspects; the rights involved include primarily the right to life under Article I of the American Declaration in relation to the risk resulting from the imminent application of the death penalty in the Commonwealth of Virginia. In this regard, it has been alleged that the criminal proceedings against Mr. Alfredo Rolando Prieto did not observe the rights protected under either U.S. constitutional standards proscribing the execution of individuals with intellectual disability or international human rights law, particularly the rights to life and personal security, fair trial, petition and due process under Articles I, XVIII, XXIV and XXVI of the American Declaration.

12. Regarding the requirement of urgency, the Commission notes that Mr. Alfredo Rolando Prieto has been scheduled to be executed by lethal injection on October 1, 2015. In that case, the Commission would be unable to complete an assessment of the allegations of violations of the American Declaration submitted in his petition prior to his execution. Consequently, the Commission deems the requirement

of urgency satisfied as it pertains to a timely intervention, in relation to the immediacy of the threatened harm argued in the request for precautionary measures.

13. Concerning the requirement of irreparability, the Commission deems the risk to the right to life to be evident in light of the imminent implementation of the death penalty; the loss of life imposes the most extreme and irreversible situation possible. Regarding the precautionary nature, the Commission considers that if Mr. Alfredo Rolando Prieto is executed before the Commission has an opportunity to fully examine this matter, any eventual decision would be rendered moot in respect of the efficacy of potential remedies, resulting in irreparable harm.

14. Under Article 25.5 of the Rules of Procedure, the Commission generally requests information from the State prior to taking its decision on a request for precautionary measures, except in a matter such as the present case where immediacy of the potential harm allows for no delay.

#### **IV. DECISION**

15. In view of the above-mentioned information, taking into account the human rights obligations of the United States as a member of the OAS, and as part of the Commission's function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter,<sup>2</sup> and in the case of Member States that have yet to ratify the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, the Commission considers that this matter meets *prima facie* the requirements of gravity, urgency and irreparability set forth in Article 25 of its Rules of Procedure. Consequently, the Commission hereby requests that the United States take the measures necessary to preserve the life and physical integrity of Mr. Alfredo Rolando Prieto until the IACHR decides on his petition so as not to render ineffective the proceedings of his case before the Inter-American system.

16. The Commission also requests that the Government of the United States provide information within a period of 5 days from the date that the present resolution is issued on the adoption of the precautionary measures required and provide updated information periodically.

17. The Commission wishes to point out that, in accordance with Article 25.8 of its Rules of Procedure, the granting of precautionary measures and their adoption by the State shall not constitute a prejudging of any violation of the rights protected in the American Declaration on the Rights and Duties of Man or any other applicable instrument.

18. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the United States of America and to the applicants.

19. Approved on September 29, 2015 by: Rose-Marie Antoine, President; José de Jesus Orozco, Second Vice-president; Felipe Gonzalez, Rosa María Ortiz, Tracy Robinson, members of the IACHR.

Mario López-Garelli  
By authorization of the Executive Secretary

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<sup>2</sup> Charter of the Organization of American States, Article 106, [http://www.oas.org/dil/treaties\\_A41\\_Charter\\_of\\_the\\_Organization\\_of\\_American\\_States.htm](http://www.oas.org/dil/treaties_A41_Charter_of_the_Organization_of_American_States.htm).