TO THE HONORABLE MEMBERS OF
THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
ORGANIZATION OF AMERICAN STATES

TALAL AL-ZAHRANI, as the personal representative of
YASSER AL-ZAHRANI, and in his individual capacity,

NASHWAN AL-SALAMI, as the personal representative of
SALAH AL-SALAMI, and in his individual capacity,

Petitioners,

v.

UNITED STATES,

State.

PETITION ALLEGING VIOLATIONS OF THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

By the undersigned, appearing as counsel for Petitioners
under Article 23 of the Commission's Rules of Procedure

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I. INTRODUCTION

1. This Petition concerns two men who were detained by the United States at the U.S. Naval Base at Guantánamo Bay, Cuba ("Guantánamo"), for four years without charge or adequate review of their detention, subjected to torture and held in inhumane conditions, and ultimately died in 2006 under circumstances that raise serious questions about whether they were killed. While the government claims the men committed suicide in their cells, four soldiers who were stationed at Guantánamo at the time of the deaths have come forward with first-hand accounts that undercut the official narrative, provide evidence of a cover-up and suggest that the men may have been killed at the hands of the authorities.

2. The United States has opposed every effort by the families for information and a judicial inquiry into the deaths. A range of other actors – including this Commission, UN special rapporteurs, investigative journalists, academics, physicians, and human rights organizations – have also raised questions and concerns with the government to no avail. Six years after the deaths, there still has not been an adequate investigation or any accountability. Petitioners – the father and brother of the deceased – bring this Petition under the American Declaration of the Rights and Duties of Man ("American Declaration") in search of acknowledgement and responsibility by the United States for the wrongful detention and torture of their relatives at Guantánamo, and in a continued quest for the truth about how they died.

II. PETITIONERS

3. Talal Al-Zahrani is the father of Yasser Al-Zahrani. His son was a citizen of Saudi Arabia who was detained by the United States at Guantánamo from January 2002 until his death on or about June 9 or 10, 2006. Born in September 1984, he was 17 years old when he was transferred to Guantánamo. Talal Al-Zahrani, also a Saudi citizen, acts as the personal representative of his son's estate and in his individual capacity.

4. Nashwan Al-Salami is the brother of Salah Ali Abdullah Ahmed Al-Salami. His brother was a citizen of Yemen who was detained by the United States at Guantánamo from approximately June 2002 until his death on or about June 9 or 10, 2006. Nashwan Al-Zahrani, also a Yemeni citizen, acts as the personal representative of his brother's estate and in his individual capacity.

III. STATEMENT OF FACTS

A. Deaths of Yasser Al-Zahrani and Salah Al-Salami

5. Yasser Al-Zahrani and Salah Al-Salami died at Guantánamo on or about June 9 or 10, 2006. At the time of their deaths, each man had been detained for approximately four years without charge or judicial review of his detention, in conditions the International Committee of the Red Cross ("ICRC") had described as torture. Yasser Al-Zahrani, who

was 17 years old when he was transferred to Guantánamo, was 21 when he died. Salah Al-Salami died at the age of 37.

6. The morning following the deaths, the U.S. Southern Command issued a public announcement stating that Yasser Al-Zahrani and Salah Al-Salami, along with a third detainee, Mani Al-Utaybi, had died of "apparent suicides" and that the Naval Criminal Investigative Service ("NCIS"), the main law enforcement arm of the U.S. Navy, had begun an investigation to determine the cause and manner of the deaths. Despite having just initiated an investigation, the authorities were quick to provide further details to the press: the men had hung themselves in their cells with their clothes and bed sheets, guards had found them shortly after midnight and attempts to resuscitate them had failed. The authorities also made a number of derisive comments to the press. The top commander at Guantánamo, Rear Adm. Harry Harris, called the deaths an "act of asymmetric warfare."[1] A top Department of State official said they were "a good PR move."[2] The Deputy Assistant Secretary of Defense compared all Guantánamo detainees to Nazis during World War II and called them terrorists.[3] The chief press officer for the Defense Department specifically described Salah Al-Salami as "a mid-to-high-level Al Qaeda operative" and Yasser Al-Zahrani as "a frontline Taliban fighter."[4] Another Guantánamo commander, Col. Mike Bumgarner, said there was "not a trustworthy son of a … in the entire bunch."[5]

7. Yasser Al-Zahrani's and Salah Al-Salami's remains were not repatriated until five to six days after they died, and the families were prevented from receiving the bodies for nearly another week, even though their Islamic faith called for their bodies to be prepared for burial within 24 hours of death. When Yasser Al-Zahrani's family finally did receive his remains, they saw injuries on his chest and signs of trauma on his face, and his larynx had been removed. Salah Al-Salami's body was badly bruised, with marks resembling chemical burns, and his larynx and neck matter had also been removed. The families were never directly contacted by the United States about the deaths but learned the news second-hand—from television reports, in the case of Mr. Al-Zahrani's family—and were in disbelief. After repeated unanswered requests to the authorities for an explanation about the condition of the bodies, they sought second autopsies from independent pathologists, who also requested information from the authorities to no avail. In Mr. Al-Salami's case, a formal letter with detailed questions, including about the missing neck parts and the fact that his fingernails and toenails had been freshly cut, was sent to the U.S. military pathologist in charge of the original autopsy, who responded that he was not

[1] BBC, *Guantánamo suicides 'acts of war*,' June 11, 2006, *available at* http://news.bbc.co.uk/2/hi/5068606.stm.
[2] BBC, *Guantánamo suicides 'a PR move*,' June 11, 2006, *available at* http://news.bbc.co.uk/2/hi/americas/5069230.stm.
[3] U.S. Dep't Defense, News Transcript, *Radio Interview with Deputy Assistant Secretary Stimson*, June 21, 2006, *available at* http://www.defense.gov/transcripts/transcript.aspx?transcriptid=22.
[4] The Guardian, *How US hid the suicide secrets of Guantánamo*, June 17, 2006, *available at* http://www.guardian.co.uk/world/2006/jun/18/usa.Guantánamo.
[5] The Guardian, *Briton could be 'next dead body' at Guantánamo*, June 14, 2006, *available at* http://www.guardian.co.uk/world/2006/jun/14/Guantánamo.usa.

authorized to assist.[6] The independent pathologist who performed Al-Salami's second autopsy found that there were troubling and unexplained facts in relation to the missing neck parts and the cleanly-cut nails, but was prevented from giving a clear opinion on the cause of death without more information.[7]

8. The deaths, as the first reported at Guantánamo, generated considerable public attention and concern, with widespread calls for information and transparency, including from this Commission.[8] Despite the concern and requests, the government failed to provide any meaningful information to the families or the public for a full two years following the deaths.[9]

1. Military Investigation

9. In June 2008, after being compelled by a Freedom of Information Act lawsuit filed by attorneys for the deceased, the NCIS released files from its investigation, which concluded that Yasser Al-Zahrani, Salah Al-Salami and Mani Al-Utaybi had committed suicide by hanging.[10] The relevant findings include:

- That the men were each discovered in their cells on "Alpha Block" in "Camp 1," which was one of four smaller camps contained within the main prison camp, "Camp Delta," early in the morning on June 10;

- That guards discovered the first detainee, Yasser Al-Zahrani, between approximately 12:28 a.m. and 12:39 a.m.;

- That a team of guards carried each detainee on a backboard from his cell to the camp medical clinic, where attempts were made to resuscitate the men. Salah Al-Salami died at the clinic. Yasser Al-Zahrani was transported to the camp hospital for further efforts to resuscitate him and died there.

10. Despite the two-year duration of the NCIS' investigation and the voluminous – although heavily-redacted – files released, there are significant gaps and inconsistencies in its findings. In December 2009, Seton Hall University Law School issued a

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[6] Scott Horton, *Six Questions for Rachid Mesli: The missing throats*, *Harper's Magazine*, Feb. 3, 2010, *available at* http://www.harpers.org/archive/2010/02/hbc-90006471. Military officials later denied that they had ever received a formal request by the independent pathologists. *See* Scott Horton, *Rules for Drone Wars: Six Questions for Philip Alston*, *Harper's Magazine*, June 9, 2010, *available at* http://www.harpers.org/archive/2010/06/hbc-90007190.

[7] Scott Horton, *Six Questions for Rachid Mesli: The missing throats*, *Harper's Magazine*, Feb. 3, 2010.

[8] On June 12, 2006, as part of its Precautionary Measures in favor of Guantánamo detainees, the Commission requested that the United States provide information about the deaths within ten days.

[9] The United States' response to this Commission's inquiry, for example, which was submitted four months after the Commission's request, consisted of a meager packet of press releases, briefings and interviews that did little to illuminate the deaths.

[10] *See* Seton Hall University Law School, Center for Policy and Research, *Death in Camp Delta* (2009), *available at* http://law.shu.edu/About/News_Events/Guantánamo_report_death_camp_delta.cfm.

comprehensive analysis of the documents that raised a number of unexplained questions,[11] including:

- The investigation found that the men had been dead for more than two hours before they were discovered; how could three bodies could have hung in wire-mesh cells undetected for two hours, when the cells were under constant supervision, both by video camera and guards continually walking the corridors and guarding only about two dozen detainees?

- Why is there no indication in the documents that guards or medics walking the block that night observed anything out of the ordinary, when the process the deceased would have had to undergo to hang themselves in the manner described by the military would have required each detainee to do the following: braid a noose by tearing up his sheets and/or clothing, make a mannequin of himself so it would appear to guards that he was asleep in his cell, hang sheets to block vision into the cell (a violation of the Standard Operating Procedures at Guantánamo ("SOPs")), tie his feet together, tie his hands together, hang the noose from the metal mesh of his cell wall and/or ceiling, climb up onto the sink, put the noose around his neck and release his weight to result in death by strangulation, hang until dead, and hang for at least two hours completely unnoticed by guards?

- Why did the two-year investigation failed to review information as critical as, *inter alia*, the guard roster for Alpha Block that night?

- Why do the documents indicate that certain Alpha Block guards were advised that they were suspected of making false statements or failing to obey direct orders?

- Why is there not a single sworn statement from a guard, a medic or any other personnel about the events of that night, as required after such incidents by the SOPs? Why do the documents indicate that Col. Bumgarner, the Commander in charge of detention operations at Guantánamo, told guards not to provide such statements?

2. Subsequent Accounts from U.S. Soldiers at Guantánamo

11. In early 2009, a former soldier by the name of Joe Hickman approached Seton Hall Law School, whose work he had followed. Hickman was a decorated Army officer who had served a distinguished tour of duty at Guantánamo from March 2006 to March 2007 and had been on duty as "Sergeant of the Guard" the night Yasser Al-Zahrani and Salah Al-Salami died. He had decided to come forward because what he had seen that night was "haunting me" and he felt that "silence was just wrong."

12. On January 18, 2010, Hickman's account and interviews with three other soldiers on duty at Guantánamo on the night of the deaths – Specialist Tony Davila, Army

[11] *See id*.

Specialist Christopher Penvose, and Army Specialist David Caroll – were published in *Harper's Magazine*.[12] The soldiers describe a cover-up initiated by the authorities within hours of the deaths and say they were affirmatively told not to speak out. Despite having first-hand observations of camp activity that night, they were never approached or interviewed for the NCIS investigation. While the official account of the deaths concluded that the detainees had hung themselves in their cells, the soldiers' observations suggest that the men may have been transported from their cells to an unacknowledged "black site" nicknamed "Camp No" outside of the perimeter of the main prison camp, and died there or from events that transpired there. According to the soldiers' published accounts:

- Between approximately 6-8 p.m. on June 9, Hickman observed the van used to transport detainees drive up to the camp where the deceased were held three separate times in short succession. Each time, guards escorted a detainee from the camp to the van and drove away in the direction of Camp No. By the third time he saw the van approach the deceased's camp, Hickman decided to drive ahead of the vehicle in the direction of Camp No to confirm where it was going. From his vantage point shortly thereafter, he saw the van approach and turn toward Camp No, eliminating any question in his mind about its destination.

- Camp No is an unnamed and officially unacknowledged facility located outside the perimeter of the area enclosing the prison complex at Guantánamo. Guards nicknamed the facility "Camp No" because anyone who asked if it existed would be told, "No, it doesn't." Hickman was never briefed about the site, despite frequently being put in charge of security for the entire prison. He reported once hearing a "series of screams" coming from the facility.

- At approximately 11:30 p.m. from his position in a watchtower, Hickman watched the van he had seen transporting the detainees to Camp No return to the camp. This time, the van backed up to the entrance of the medical clinic, as if to unload something.

- At approximately 11:45 p.m., nearly an hour before the NCIS claims the first dead body (Yasser Al-Zahrani) was discovered in the cells, Army Specialist Christopher Penvose was approached by a senior navy officer who appeared to be extremely agitated and instructed Penvose to go the prison chow hall, identify a specific officer who would be dining there, and relay a specific code word. Penvose did as he was instructed. The officer leapt up from her seat and immediately ran out of the chow hall.

- At approximately 12:15 a.m. on June 10, Hickman and Penvose reported that the camp was suddenly flooded with lights and the scene of a frenzy of activity. Hickman headed to the medical clinic, which appeared to be the center of activity,

[12] Scott Horton, *The Guantánamo "Suicides": A Camp Delta Sergeant blows the whistle*, *Harper's Magazine*, Jan. 18, 2010, *available at* http://www.harpers.org/archive/2010/01/hbc-90006368/.

and was told by a medical corpsman there that three dead prisoners had been delivered to the clinic, that they had died because they had rags stuffed down their throats, and that one of them was severely bruised.

- According to Specialist Tony Davila, guards he talked to also said the men had died as the result of having rags stuffed down their throats.

- While the NCIS investigation found that the deceased were found dead in their cells and transported from there to the medical clinic, Penvose, who was on guard duty in a watchtower at the time the deceased would have been transported to the clinic, had an unobstructed view of the walkway between the camp and the clinic, which was the path by which any detainee would be delivered to the clinic. Penvose reported that he saw no detainees being moved from the camp to the clinic.

- Army Specialist David Caroll, who was also on guard duty in another watchtower at the time the NCIS investigation found that the deceased would have been transported to the clinic, also had an unobstructed view of the alleyway that connected the men's specific cellblock to the clinic. He similarly reported that he had seen no detainees transferred from the cellblock to the clinic that night.

- By dawn, news had circulated through the prison that three detainees had committed suicide by swallowing rags.

- On the morning of June 10, Col. Bumgarner called a meeting of the guards during which he announced that three detainees had committed suicide during the night by swallowing rags, causing them to choke to death. Bumgarner said that the media would instead report that the detainees had committed suicide by hanging themselves in their cells. He said that it was important that the guards make no comments or suggestions that in any way undermined the official report, and reminded them that their phone and email communications were being monitored. This account of the meeting was corroborated by various guards in independent interviews conducted by *Harper's Magazine*.

- On the evening of June 10, Rear Adm. Harris, the top commander at Guantánamo and Bumgarner's superior at the time, read this statement to reporters: "An alert, professional guard noticed something out of the ordinary in the cell of one of the detainees. ... When it was apparent that the detainee had hung himself, the guard force and medical teams reacted quickly to attempt to save the detainee's life. The detainee was unresponsive and not breathing. [The] guard force began to check on the health and welfare of other detainees. Two detainees in their cells had also hung themselves."

- In a press interview at the time, Bumgarner, contrary to his own admonition to the guards, let slip that each deceased detainee "had a ball of cloth in their mouth either for choking or muffling their voices."

- As soon as Bumgarner's interview was published, Harris called him for a meeting and told him that the article "could get me relieved." The same day, an investigation was launched to determine whether classified information had been leaked from Guantánamo. Bumgarner was subsequently suspended.

- Hickman and Davila later learned that Bumgarner's home was raided by the FBI over a concern that he had taken classified materials and was planning to send them to the media or use them for writing a book.

- The only apparent discrepancy between Bumgarner's interview and the official Pentagon narrative was on one point: that the deaths had involved cloth being stuffed into the detainees' mouths.

13. For several months after Hickman first came forward, he and his attorneys attempted to pursue an investigation through the U.S. Department of Justice. Their first meeting was on February 2, 2009, where they related a detailed account of Hickman's observations and later handed over a list of corroborating witnesses with contact information. The Justice Department closed its investigation on November 2, 2009, concluding without explanation that "the gist of Sergeant Hickman's information could not be confirmed" and that his conclusions "appeared" to be unsupported.[13] It bears noting that nearly five months before the Justice Department concluded its investigation, the government had already represented in court in response to a civil lawsuit filed by Petitioners that U.S. officials had not acted unlawfully in relation to the deceased.

B. Arbitrary Detention

14. At the time of their deaths, Yasser Al-Zahrani and Salah Al-Salami had been detained at Guantánamo for four years without charge or any semblance of meaningful review, and without knowing whether or when their detention would end.

15. For over two years, from January 2002 until July 2004, there was no review at all of their detention. They like all Guantánamo detainees were held solely on the unilateral determination of executive branch officials that they were "enemy combatants."

16. In July 2004, the government set up ad-hoc Combatant Status Review Tribunals ("CSRTs") for administrative review of detainees' status. The rules for the CSRTs presumed detainees to be "enemy combatants" and limited the scope of review to confirming or reversing prior determinations. The tribunals consisted of mid-level military officers who had no institutional safeguards for independence in reviewing their superiors' determinations, in a context where for years prior to the CSRTs, high-ranking officials had repeatedly declared all detainees at Guantánamo to be dangerous terrorists. Detainees had no right under the rules to see or rebut any classified information, despite the tribunals' substantial reliance on classified information in making their decisions; no effective right to call witnesses or present other evidence; and no right to counsel, but

[13] *See id*.

only the option of a non-lawyer military officer who had no duty of confidentiality and an obligation to disclose any inculpatory information learned from the detainee. In addition, against a background where torture had been approved and used in interrogations for at least two years prior to the CSRTs, both at Guantánamo and other U.S.-controlled sites where detainees had been held prior to their transfer to Guantánamo, the rules for the CSRTs allowed evidence obtained through torture to be used as a basis for continued detention.

17. During the span of a few months in 2004, CSRTs were convened for all detainees at Guantánamo. Not surprisingly, the tribunals authorized the continued detention as "enemy combatants" of almost all detainees. In the rare instances where the tribunals reached a different outcome, re-hearings were ordered.

18. In September and November 2004, CSRTs were convened for Yasser Al-Zahrani and Salah Al-Salami, respectively. After an inherently biased and unfair proceeding, the tribunals confirmed that each man was an "enemy combatant." In 2005 and 2006, Administrative Review Boards ("ARBs") with similarly flawed procedures rubber-stamped their continuing detention.

19. In June 2004, the U.S. Supreme Court ruled in *Rasul v. Bush* that detainees had the right to access federal courts in the United States and to file petitions for the writ of *habeas corpus*, but it took months, even years, for many prisoners to retain and meet with attorneys and file petitions. The reasons why included the government's refusal to disclose identifying information about detainees and the resulting difficulty of attorneys in obtaining authorizations for representation; the government's own difficulty in confirming detainees' identities once *habeas* petitions were filed; and the government's opposition to the terms of a protective order governing attorneys' access to detainees, which had to be resolved before attorneys could meet with their clients.[14]

20. For these reasons, Salah Al-Salami was never able to meet with attorneys his family had retained for him, and Yasser Al-Zahrani did not have an attorney at the time he died.[15] The CSRTs and ARBs were thus the only tribunals to review the men's detention in their four years at Guantánamo.

[14] As the Commission itself noted in its 2005 Precautionary Measures for Guantánamo detainees, "[n]otwithstanding the Supreme Court's pronouncement [in *Rasul v. Bush*], the information before the Commission indicates that over one year since the decision, nearly half of the detainees at Guantánamo Bay have not been given effective access to counsel or otherwise provided with a fair opportunity to pursue a habeas corpus proceeding in accordance with the Supreme Court's ruling, despite the fact the purpose of habeas is intended to be a timely remedy aimed at guaranteeing personal liberty and humane treatment."

[15] *Habeas* petitions filed by other detainees were ultimately stayed on the basis of the 2006 Military Commissions Act, and it was not until the U.S. Supreme Court's decision in *Boumediene v. Bush* in June 2008, which held that detainees had a constitutional right to *habeas corpus*, that the petitions began moving forward.

C. Treatment and Conditions of Confinement[16]

21. In 2004, the ICRC charged in reports to U.S. authorities that the detention and interrogation system at Guantánamo, "…whose stated purpose is the production of intelligence, cannot be considered other than an intentional system of cruel, unusual and degrading treatment and a form of torture."[17]

22. The first detainees transferred to Guantánamo in January 2002, like Yasser Al-Zahrani, were held for the first few months of their detention in a temporary holding area called "Camp X-Ray" while more permanent facilities were being constructed. In Camp X-Ray, detainees were held in wire-mesh cages that measured six-by-six feet, had a cement slab for a floor and metal sheets overhead, and where detainees had no reprieve from the heat, humidity or the elements. The Muslim chaplain at Guantánamo in 2002 compared the camp to "an outdoor cattle stable."

23. In April 2002, detainees were moved to "Camp Delta," a large complex containing several separate detention facilities, including "Camp 1," where Yasser Al-Zahrani and Salah Al-Salami were detained at the time of their deaths. The cells in most of the facilities were identical, measuring six-by-eight feet with steel-mesh walls, and a steel sink next to a "squat" toilet in the floor, next to a bed. In Camp 1, florescent lights were on 24-hours a day. There was no air-conditioning, only exhaust fans.

24. The newest facility constructed before the deaths of Yasser Al-Zahrani and Salah Al-Salami was "Camp 5," which was modeled after super-max prisons in the United States and was more restrictive than any of the other facilities at Guantánamo at the time. Camp 5, which became operational in May 2004, is a 100-bed maximum-security facility where detainees were confined in concrete cells that have a narrow opaque window to the outside, another one-way "window" to the interior of the prison that allows guards to keep watch, and two slots at the middle and foot of a solid steel cell door through which meals were passed and detainees' arms and legs were shackled before they were led out of their cells. Cameras monitored each cell 24-hours a day. Florescent lights were on continuously day and night.

25. Pursuant to SOPs in effect at Guantánamo during Yasser Al-Zahrani and Salah Al-Salami's detention, detainees were issued certain basic items for personal use in their cells: a blanket, a thin rubber mat to cover the solid and sometimes metal beds, flip flops, an orange detainee uniform, shorts, a towel, and a Qur'an. All other items – including soap, toilet paper, a toothbrush, toothpaste, a t-shirt, a sheet – were considered "comfort" items. Detainees could earn such items by demonstrating "good behavior" like cooperating with interrogators, or lose them for "infractions" like talking to a detainee

[16] Petitioners note that they are unable to allege facts here with greater specificity because of the inherent obstacles to their ability to know the treatment of the deceased: the men themselves are dead, they had virtually no contact with the outside world during their detention, and the government controls much of the relevant information.

[17] Neil A. Lewis, *Red Cross Finds Detainee Abuse at Guantánamo*, N.Y. Times, Nov. 30, 2004, *available at* http://www.nytimes.com/2004/11/30/politics/30gitmo.html?8bl=&pagewanted=print&po.

across the block or keeping leftover food in their cells. Detainees were also moved between camps of greater or fewer restrictions depending on their "good behavior" or "infractions."

26. Government records indicate numerous instances when block guards requested disciplinary action for various "infractions" by Salah Al-Salami, including talking to another detainee across his cell block, refusing to return a food plate, possessing "contraband" (a salt packet), and refusing to return an uneaten apple left over from a meal.

27. During the period of their detention, the deceased and other detainees spent most of each day, every day, confined alone in their cells in the conditions described, effectively cut off from the rest of the world. Particularly before mid-2004 when attorneys were first permitted to visit the base, detainees had virtually no human contact with anyone other than their jailors and their interrogators, and were largely prohibited from speaking with other detainees. They also had numbingly little activity. A few times a week, they were shuffled out of their cells in shackles to small outdoor pens for 30 minutes of exercise and a five-minute shower. They had no educational, vocational or rehabilitative activities. Even access to reading materials was limited to one book at a time.

28. Detainees were also effectively deprived of communicating with their families. Family visits and telephone calls were prohibited. Letters, while permitted through the ICRC, were screened and censored by the government and took several months or more to reach family members.

29. In addition to these conditions, detainees were subjected to specific methods and acts of physical and psychological torture and abuse, including in connection with interrogations. In a memorandum approved by then-Secretary of Defense Donald Rumsfeld on December 2, 2002, a series of specific interrogation techniques were authorized for use at Guantánamo, including putting detainees in "stress positions" for up to four hours; forcing detainees to strip naked, intimidating detainees with dogs, interrogating them for 20 hours at a time, forcing them to wear hoods, shaving their heads and beards, keeping them in total darkness and silence, and using what was euphemistically called "mild, non-injurious physical contact."[18]

30. In April 2003, following receipt of a "Working Group Report," Rumsfeld authorized a new set of interrogation techniques for use at Guantánamo. The authorizing memorandum specifically recognized that certain of the approved techniques may violate the Geneva Conventions, including the removal of religious items, threats, intimidation, manipulation of temperatures and other environmental factors, and isolation. While the memorandum did not include approval for unlawful actions that had been ongoing for months, including hooding, forced nudity, shaving, stress positions, use of dogs and

[18] Action Memo for Secretary of Defense from William J. Haynes, General Counsel, Re: "Counter-Resistance Techniques," signed Dec. 2, 2002.

"mild, non-injurious physical contact," these practices continued to be employed against detainees at Guantánamo.

31. Some of the most brutal physical abuse reported by Guantánamo detainees was attributed to the Immediate Reaction Force ("IRF"). IRF squads, which were comprised of military police, functioned as a disciplinary force within the camps. Squad members wore riot gear, carried Plexiglas shields and frequently used tear gas or pepper spray. Video footage taken by the military at Guantánamo during the period of Yasser Al-Zahrani and Salah Al-Salami's detention shows five-member IRF squads punching detainees, kneeing them in the head, tying one to a gurney for interrogation, and forcing a dozen to strip from the waist down.[19] All-female IRF squads were also used to taunt and traumatize the all-Muslim detainee population at Guantánamo.

32. In letters retrieved by the government after his death, Yasser Al-Zahrani described multiple forms of physical and psychological abuse he and other detainees suffered, including beatings by IRF squads; sleep deprivation for up to 30 days; exposure to extreme temperatures of hot and cold; invasive and degrading body searches; religious interference and humiliation by guards, who prohibited detainees from sounding the Muslim call to prayer and praying communally according to custom, desecrated the Qur'an, and forcibly shaved detainees' heads and beards; the withholding of necessary medication; and what he generally described as the "continuous oppression" of being confined in a small steel cell each day and prohibited from human contact with other detainees.

33. In letters discovered after his death, Salah Al-Salami wrote of being held in solitary confinement "inside a very cold metal box," and that his captors "used the [IRF]'ing units and burning gases on us, they desecrated our religion, our bodies … all of this is known to the world." Government records indicate that Salah Al-Salami was subjected to IRF squads multiple times. Medical records from August 2005, for example, state that he had been "IRF'd" four months prior and had "banged [his] knees into wall" during the beating. The records state that he told the doctor that his level of knee pain from the injury was "10 out of 10" and that it felt "like [his] bones are rubbing together." The records also indicate that his severe knee pain persisted and that he repeatedly asked medical personnel for knee braces to no avail.

34. The ICRC consistently put the authorities on notice that Guantánamo detainees' treatment and conditions amounted to cruel treatment and even torture, and warned of the damaging effects. In 2003, the ICRC said publicly that the system of holding detainees indefinitely without allowing them to know their fates was unacceptable and would lead to mental health problems.[20] In confidential reports in 2004, the ICRC charged that the

[19] Paisley Dodds, *Videos of Riot Squads at Guantánamo Show Prisoners Being Punched and Stripped From the Waist Down*, Associated Press, Feb. 2, 2005, *available at* http://www.commondreams.org/headlines05/0202-03.htm.

[20] Neil A. Lewis, *Red Cross Criticizes Indefinite Detention in Guantánamo Bay*, N.Y. Times, Oct. 10, 2003, *available at* http://www.nytimes.com/2003/10/10/us/red-cross-criticizes-indefinite-detention-in-Guantánamo-bay.html?pagewanted=all&src=pm.

military was intentionally using psychological and physical coercion "tantamount to torture" on prisoners at Guantánamo.[21]

35. To protest their conditions and detention, hundreds of detainees, including the deceased, went on hunger strikes for weeks and months at a time. Available records indicate that Salah Al-Salami participated in hunger strikes several times during his imprisonment, in 2002, 2005 and 2006, for periods of up to six months. Yasser Al-Zahrani also went on hunger strike, including for a period of six months.

36. Force-feeding of detainees on hunger strike was and continues to be standard policy at Guantánamo. In December 2005, the authorities introduced the use of "restraint chairs" – marketed by their manufacturer as a "padded cell on wheels" – in force-feeding. Detainees are strapped into the chairs and restrained at the legs, arms, shoulders, and head. A tube described by detainees as the thickness of a finger is forcibly inserted up the nose and down into the stomach, and as much as 1.5 liters of formula is then pumped through the tube. Detainees are kept strapped in the chairs for an hour after "feeding" to prevent them from purging the formula. No sedatives or anesthesia are given during the procedure. The tubes are generally inserted and withdrawn twice a day, and the same tubes, covered in blood and stomach bile, have reportedly been used from one detainee to another without sanitization. Detainees have also reported verbal, religious and sexual abuse by military personnel standing watch during the feedings, with medical personnel either actively participating in the abuse or watching without intervening.

37. Military officials described Salah Al-Salami as "a long and dedicated striker, perhaps being tube fed longer than any other detainee in the camp." His medical records indicate that the tube used for feeding caused bleeding, severe inflammation and infection in his nasal passage to the point where his feedings had to be put on hold for a period of time.

D. Domestic Judicial Proceedings

38. Yasser Al-Zahrani and Salah Al-Salami died at Guantánamo before they could file *habeas corpus* petitions to challenge their detention. After their deaths, the United States had the sole ability to initiate criminal proceedings, which it has not pursued. To date, the government has not criminally prosecuted any senior official for alleged torture and mistreatment of detainees in its custody at Guantánamo or elsewhere.

39. On January 7, 2009, Petitioners filed a civil action for damages in the United States District Court in Washington, DC, against 24 named U.S. officials for their alleged role in the arbitrary detention, torture and mistreatment, and wrongful deaths of the deceased. Petitioners brought claims under the U.S. Constitution, the Federal Tort Claims Act, and international law on behalf of the deceased, and for infliction of emotional distress on behalf of themselves. On February 16, 2010, the district court dismissed the complaint without reaching the merits and without oral argument, holding that the officials were protected by immunity and that the constitutional claims were

[21] Neil A. Lewis, *Red Cross Finds Detainee Abuse at Guantánamo*, N.Y. Times, Nov. 30, 2004.

additionally barred by national security considerations.[22] The court's decision was based on precedent in the Court of Appeals in the D.C. Circuit in a similar Guantánamo civil damages case.[23]

40. On March 16, 2010, Petitioners filed a request with the district court to reconsider its dismissal on the basis of the new accounts from the soldiers and to allow them to amend their complaint. The district court denied their request on September 29, 2010.

41. On November 29, 2010, Petitioners noticed an appeal of the district court's dismissal of their original complaint and its denial of their request to amend their complaint to the D.C. Circuit Court of Appeals. Oral argument was held on October 6, 2011. The circuit court affirmed the district court's decisions on February 21, 2012, holding that Petitioners' claims were entirely barred by a provision of the Military Commissions Act of 2006 ("MCA").[24] According to Section 7 of the MCA:

> (a) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.
>
> (b) [N]o court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

Section 7(a) was at issue in *Boumediene v. Bush* and was invalidated by the court. The D.C. Circuit found that section 7(b) survived *Boumediene* and barred Petitioners' claims. Petitioners' right to appeal ended with the D.C. Circuit's dismissal.

IV. VIOLATIONS OF THE AMERICAN DECLARATION[25]

A. Right to Life: Article I

42. The Commission has described the right to life as "the supreme right of the human being, respect for which the enjoyment of all other rights depends."[26] It is one of

[22] *Al-Zahrani v. Rumsfeld*, 684 F. Supp. 2d 103 (D.D.C. 2010).
[23] *Rasul v. Myers*, 563 F.3d 527 (D.C. Cir. 2009).
[24] *Al-Zahrani v. Rodriguez*, 669 F.3d 315 (D.C. Cir. 2012).
[25] Petitioners note that the Commission has traditionally interpreted the scope of the obligations established under the American Declaration in the context of the international and Inter-American human rights systems more broadly, in light of developments in the field of international human rights law since the instrument was first adopted, and with regard to other rules of international law applicable to members states. *See, e.g.*, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶ 118 (2011).

the core rights protected by the American Declaration and has "undoubtedly attained the status of customary international law."[27]

43. The right to life is non-derogable. Accordingly, the right's core prohibition against the arbitrary deprivation of life applies in all circumstances, including situations of armed conflict and states of emergency.[28]

44. In situations outside the context of armed conflict, the jurisprudence of the Inter-American system holds that the use of lethal force may be justified only in narrow circumstances, for example, for the purpose of self-defense.[29] International standards provide that lethal force may only be used where "strictly unavoidable" in order to protect life.[30] The Commission and the Court have found the use of lethal force to be excessive or disproportionate and in violation of the right to life, *inter alia*, in the context of prison disturbances where the authorities used lethal force against prisoners who were unarmed or had surrendered.[31]

45. The rules governing situations of armed conflict under international humanitarian law also include constraints on the use of lethal force, including against prisoners of

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[26] *Jessica Lenahan (Gonzales)*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶ 112; *see also Report on Terrorism and Human Rights*, Inter-Am. Comm'n H.R., Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., ¶ 81 (2002).

[27] *Jessica Lenahan (Gonzales)*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶ 112; *see also, e.g.*, Universal Declaration of Human Rights, article 3; International Covenant on Civil and Political Rights, article 6; European Convention on Human Rights, article 2; African Charter on Human Rights and Peoples' Rights, article 4, among others.

[28] *See, e.g.*, *Third Report on the Human Rights Situation in Colombia*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.102, Doc. 9 rev. 1, chap IV, ¶ 24 (1999); *Chumbivilcas v. Peru*, Case 10.559, Inter-Am. Comm'n H.R., Report No. 1/96 (1996) (specifying that the prohibition against arbitrary deprivation of human life "is at the core of the right to life. The use of the term 'arbitrarily' might appear to indicate that the Convention allows exceptions to the right to life, on the mistaken assumption that life may be taken in certain circumstances provided this is not done arbitrarily. However, quite the opposite is the case …."); *Bustios Saavedra v. Peru*, Case 10.548, Report No. 38/97, ¶ 59 (1997); *Arturo Ribón Avila v. Colombia*, Case 11.142, Inter-Am. Comm'n H.R., Report No. 26/97, ¶ 135 (1997); *Juan Carlos Abella v. Argentina*, Case 11.137, Inter-Am. Comm'n H.R., Report No. 55/97, ¶ 158 (1997); *Coard v. United States*, Case 10.951, Inter-Am. Comm'n H.R., Report No. 109/99, ¶ 39 (1999).

[29] *See, e.g.*, *Carandiru v. Brazil*, Case 11.291, Inter-Am. Comm'n H.R., Report No. 34/00, ¶¶ 63, 88 (2000) (finding that several deaths caused by the use of force by the police during a riot in a Brazilian prison was not for purposes of self-defense or for disarming the rioters).

[30] For example, Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials specifies that "enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life." Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, ¶ 9 (1990).

[31] *See*, *e.g.*, *Neira Alegría v. Peru*, Inter-Am. Ct. H.R., Ser. C, No. 21 (1995); *Carandiru*, Case 11.291, Inter-Am. Comm'n H.R., Report No. 34/00.

war[32] and persons not directly participating in hostilities in a non-international armed conflict.[33]

46. As with other obligations under the American Declaration, states are required not only to respect the right to life – that is, refrain from arbitrary deprivations – but also to take positive measures to protect and prevent violations.[34]

47. The positive obligation of states to protect and preserve the right to life includes the duty to investigate violations, punish the responsible parties and provide reparations.[35] As the Commission and the Court have recognized, failures to investigate are especially grave in cases involving the right to life, particularly when they take place as part of a pattern of systematic human rights violations, because they foster a favorable climate for the chronic repetition of such breaches.[36]

48. In *Sebastião Camargo Filho v. Brazil*, the Commission held that Brazil's positive obligation to protect the right to life "necessarily required an effective official investigation when individuals have been killed as the result of the use of force by … agents of the State."[37] The Commission cited international and regional human rights decisions holding that "any violation of right to life requires the state involved to undertake a judicial investigation by a criminal court instructed to prosecute criminally, try and punish those held responsible for such violations."[38] The Commission found Brazil liable because "such a process of investigation, prosecution, and compensation has not been undertaken in a serious and exhaustive fashion … which gives rise to its international responsibility."[39]

49. In *James Zapata Valencia v. Colombia*, the Commission found that "gaps or defects in the investigation that prevent effective action to determine the cause of death or to identify the responsible parties or the masterminds behind the crime imply noncompliance with the obligation to guarantee the right to life."[40] The Commission noted that the Inter-American Court has repeatedly ruled that in cases of extrajudicial executions, forced disappearances, torture, and other serious human rights violations, "an

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[32] *See, e.g.,* Third Geneva Convention, Article 13; s*ee also* Additional Protocol I, Article 75(2).
[33] *See* Common Article 3 of the Geneva Conventions.
[34] *See Jessica Lenahan (Gonzales)*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶¶ 117-118, 164; *see also Víctor Hugo Maciel v. Paraguay*, Case 11.607, Inter-Am. Comm'n H.R., Report No. 85/09, ¶ 124 (2009) (finding a violation of the State's obligation to guarantee the right to life in its failure to conduct appropriate medical examinations of the victim); *Sebastião Camargo Filho v. Brazil*, Case 12.310, Inter-Am. Comm'n H.R., Report No. 25/09, ¶ 102 (2009) (finding a violation of the State's obligation to guarantee the right to life in its failure to prevent the violation despite learning of an imminent risk facing the victims).
[35] *See Víctor Hugo Maciel*, Case 11.607, Inter-Am. Comm'n H.R., Report No. 85/09, ¶ 123; *Sebastião Camargo Filho*, Case 12.310, Inter-Am. Comm'n H.R., Report No. 25/09, ¶ 90.
[36] *See Sebastião Camargo Filho*, Case 12.310, Inter-Am. Comm'n H.R., Report No. 25/09, ¶ 90.
[37] *Id*. ¶ 101.
[38] *Id*., citing *Bautista v. Colombia*, UN Human Rights Committee, ¶ 8.6 (1995).
[39] *Sebastião Camargo Filho*, Case 12.310, Inter-Am. Comm'n H.R., Report No. 25/09, ¶ 101.
[40] *James Zapata Valencia v. Colombia*, Case 10.916, Inter-Am. Comm'n H.R., Report No. 79/11, ¶ 145 (2011).

ex officio investigation that is prompt, serious, impartial, and effective is a fundamental element" of the obligation to protect the affected rights, such as personal liberty, humane treatment, and life.[41]

50. The obligation of states to investigate and punish violations of the right to life requires not only that the actual perpetrators be punished, but also the intellectual authors of the acts and any accomplices.[42] The state "incurs international responsibility when its judicial organs do not seriously investigate and punish, as applicable, the material and intellectual authors and accomplices or accessories for human rights violations."[43]

51. The duty to investigate also encompasses the right of victims, their families and society in general to knowledge about the circumstances of deaths resulting from violations by a state.[44] As the Inter-American Court stated in *Víctor Hugo Maciel v. Paraguay*:

> Only if it has clarified all the circumstances of a violation will the State have provided the victims and their next of kin with effective recourse, and complied with its general obligation to investigate and punish, thereby permitting the next of kin of the victim to learn the truth, not only as regards the whereabouts of his mortal remains, but also with regard to what happened to the victim.[45]

52. In *Carandiru v. Brazil*, state authorities used lethal force to suppress a prison riot, resulting in the deaths and injuries of inmates. The Commission held that "[t]the failure, through negligence or fraud, to notify the families, who had been waiting for days immediately outside the prison for reliable news, is in itself a violation and causes a specific harm for which the State must assume responsibility and make amends and every effort must be made to ensure that it is not repeated."[46]

53. The jurisprudence of the Inter-American system does not require petitioners to establish the culpability or intentionality of perpetrators, or to identify individually the agents to whom the acts of a violation are attributed.[47]

54. In holding Yasser Al-Zahrani and Salah Al-Salami in its exclusive custody and care at Guantánamo, the United States had obligations to respect and protect their right to life under the American Declaration. Whether the deaths resulted from an excessive use of force at the hands of the authorities or were acts of

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[41] *Id*.; *see also Sebastião Camargo Filho*, Case 12.310, Inter-Am. Comm'n H.R., Report No. 25/09, ¶ 90.
[41] *Id*. ¶ 102.
[42] *See Víctor Hugo Maciel*, Case 11.607, Inter-Am. Comm'n H.R., Report No. 85/09, ¶ 150.
[43] *Id*.
[44] *See Sebastião Camargo Filho*, Case 12.310, Inter-Am. Comm'n H.R., Report No. 25/09, ¶ 90.
[45] *Víctor Hugo Maciel*, Case 11.607, Inter-Am. Comm'n H.R., Report No. 85/09, ¶ 147; *see also James Zapata Valencia*, Case 10.916, Inter-Am. Comm'n H.R., Report No. 79/11, ¶ 145.
[46] *Carandiru*, Case 11.291, Inter-Am. Comm'n H.R., Report No. 34/00, ¶ 89.
[47] *Sebastião Camargo Filho*, Case 12.310, Inter-Am. Comm'n H.R., Report No. 25/09, ¶ 76.

suicide within a system designed to break detainees physically and emotionally, the facts alleged demonstrate a violation of those obligations.

55. The facts also show that the United States failed to conduct an impartial and effective investigation or to punish those responsible, as required by the law of the Inter-American system. The authorities not only failed to conduct a thorough investigation, but may also have actively obstructed and destroyed evidence. Six years later, the United States' continuing failure to clarify the circumstances of the deaths and provide adequate information to the families of the deceased and the public constitutes a distinct harm for which the government is responsible.

B. Right to Liberty: Articles I, XVIII, XXV and XXVI

56. Articles I and XXV of the American Declaration prohibit the arbitrary deprivation of liberty. Article XXV provides more specifically that "No person may be deprived of his liberty except … according to the procedures established by pre-existing law," and guarantees the right of every person deprived of his liberty "to have the legality of his detention ascertained without delay by a court."

57. These protections apply in all situations, including those of armed conflict and other emergencies.[48] The Inter-American system's jurisprudence has specifically held that the writ of *habeas corpus* is a non-derogable right.[49]

58. Articles XVIII and XXVI of the American Declaration guarantee certain fundamental due process protections to persons deprived of their liberty,[50] including the right to a hearing by a competent, independent and impartial tribunal within a reasonable time,[51] access to the evidence against oneself and the right to obtain witnesses and

[48] *See Report on Terrorism*, Inter-Am. Comm'n H.R., Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., ¶ 61. In the latter context, however, international humanitarian law may serve as the *lex specialis* in interpreting international human rights instruments, such as the American Declaration. *See id*.

[49] *See id*. ¶¶ 126-27, 139. The Inter-American Court has ruled that the right to habeas corpus under Article 7(6) of the American Convention may not be subject to derogation in the Inter-American system. *See id.* at ¶ 126, n. 342. This position is also in line with the interpretations of UN bodies. *See* UN Human Rights Committee, General Comment No. 29 (2001), ¶ 11 (explaining that Article 9(4) of the International Covenant on Civil and Political Rights is non-derogable even in times of emergency).

[50] *See Report on Terrorism*, Inter-Am. Comm'n H.R., Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., ¶ 218. The due process protections of Articles XVIII and XXVI have been considered most frequently by the Commission and the Court in the context of criminal proceedings, but the system's jurisprudence clearly establishes that such protections are also applicable in "non-criminal proceedings for the determination of a person's rights and obligations of a civil, labor, fiscal or any other nature." *Id.* at ¶¶ 219, 240. The Inter-American Court has observed, for example, that "the due process of law guarantee must be observed in the administrative process and in any other procedure whose decisions may affect the rights of persons." *Sawhoyamaxa Indigenous Community v. Paraguay*, Inter-Am. Ct. H.R., Ser. C, No. 146, ¶ 82 (2006).

[51] *See Report on Terrorism*, Inter-Am. Comm'n H.R., Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., ¶ 218.

evidence in one's defense,[52] and the assistance of counsel.[53] These protections are also non-derogable.[54]

59. In its first Precautionary Measures in favor of Guantánamo detainees in 2002, the Commission, in responding to information that detainees were being held incommunicado, without access to counsel, called for the United States to take the "urgent measures necessary to have the legal status of the detainees at Guantánamo Bay determined by a competent tribunal."[55] As the Commission explained, determining detainees' status was indispensable to identifying the scope of their rights and assessing whether their rights were being respected, and was an obligation of the United States as the detaining state.[56] The Commission expressed concern that "it remains entirely unclear from their treatment by the United States what minimum rights under international human rights and humanitarian law the detainees are entitled to."[57]

60. The Commission reiterated this request in 2003, 2004 and 2005, before calling for the closure of Guantánamo in 2006.[58] In 2005, the Commission, responding to information about the CSRTs, repeated that "it remains entirely unclear from the outcome of [the CSRTs and ARBs] what the legal status of the detainees is or what rights they are entitled to under international or domestic law," and that the tribunals did not adequately respond to the Commission's concerns.[59]

61. In its 2005 Precautionary Measures, the Commission also emphasized "the longstanding and fundamental role that the writ of habeas corpus plays as a means of reviewing Executive detention" and underscored that *habeas* is intended to be a timely remedy.[60] In situations involving the detention of individuals suspected of terrorism, both the Commission and the Court have found that holding the person for more than 20 days without charge or judicial review violates the right to be free from arbitrary detention.[61]

62. As the facts alleged show, Yasser Al-Zahrani and Salah Al-Salami were detained at Guantánamo from 2002 until their deaths in 2006 without ever having the legality of

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[52] *See Report on Terrorism*, Inter-Am. Comm'n H.R., Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., ¶ 238.
[53] *See Report on Terrorism*, Inter-Am. Comm'n H.R., Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., ¶ 236.
[54] *See id.* at paras. 258-59; *see also* Human Rights Committee, General Comment No. 29 (2001), at para. 11.
[55] Precautionary Measures No. 259, Inter-Am. Comm'n H.R. (2002).
[56] *See id*. at 3.
[57] *Id*.
[58] *See* Precautionary Measures No. 259, Inter-A. Comm'n H.R. (2003, 2004, and 2005); Press Release No. 27/06.
[59] Precautionary Measures No. 259, Inter-A. Comm'n H.R. (2005).
[60] *Id*. at 8.
[61] *See*, *e.g.*, *Cantoral Benavides v. Peru*, Inter-Am. Ct. H.R., Ser. C, No. 69, at ¶¶ 63, 66, 74 (2000). In ordinary circumstances, the Commission has suggested that a delay of more than two or three days in bringing a detainee before a judicial authority would generally not be considered reasonable. *See Report on Terrorism*, Inter-Am. Comm'n H.R., Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., ¶¶ 122, n. 334; *see also Suarez-Rosero v. Ecuador*, Inter-Am. Ct. H.R., Ser. C, No. 35 (1997) (finding that a judicial proceeding occurring one month after a defendant's arrest constituted arbitrary detention).

their detention ascertained by a court. Indeed, U.S. officials chose Guantánamo as the site of their prison and intended to hold foreign citizens there indefinitely without judicial review precisely because they believed detainees would be beyond the reach of U.S. laws and international obligations. Yasser Al-Zahrani and Salah Al-Salami were denied judicial review by law until the U.S. Supreme Court's ruling in *Rasul v. Bush* in June 2004, and then effectively prevented from accessing attorneys and filing *habeas* petitions because of government obstruction. In their four years of detention, the only review the men received was by the sham CSRTs and ARBs. Regardless of whether their right to liberty would be properly analyzed under international human rights or the *lex specialis* of international humanitarian law, their detention at Guantánamo for four years without charge or any measure of adequate review constitutes a clear violation of their rights under the American Declaration.

C. Right to Humane Treatment: Articles I, XXV, in Conjunction with Articles XI and III

63. Article I of the American Declaration guarantees the right to personal security, which the Commission has consistently interpreted to include the right to humane treatment, specifying that "[a]n essential aspect of the right to personal security is the absolute prohibition of torture."[62] Article XXV of the Declaration specifically protects the right of persons in state custody to humane treatment. Article 5 of the American Convention, the analog to these guarantees, provides in more explicit terms the right of "[e]very person … to have his physical, mental, and moral integrity respected. … No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."[63]

64. Articles XI and III of the American Declaration specifically guarantee the rights to health and religion, distinct violations of which have been found by the Commission and other human rights bodies in the context of abuse of prisoners in state custody.[64]

65. The law of the Inter-American system, like international law in general, considers the prohibition of torture in all its forms to be a *jus cogens* norm that cannot be subject to derogation for any reason,[65] and violations of which must be prosecuted and punished.[66]

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[62] *Report on Terrorism*, Inter-Am. Comm'n H.R., Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., ¶¶ 155, n. 389.

[63] The Commission has interpreted Article I of the American Declaration as containing a prohibition similar to that under the American Convention. *See Report on Terrorism*, Inter-Am. Comm'n H.R., Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., ¶ 155 n. 388.

[64] *See* Cuba, Case 6091, Inter-Am. Comm'n H.R., Res. No. 3/82, OEA/Ser.L/V/II.57, doc. 6 rev. 1 (1982) (finding that prisoners' denial of adequate medical care constituted a violation of their right to humane treatment under Article XXV and a separate violation of the right to health under Article XI); *Clement Boodoo v. Trinidad and Tobago*, UN Human Rights Committee, Communication No. 721/1996, UN Doc. CCPR/C/74/D/721/1996, ¶ 6.6 (2002) (finding that the State violated a detainee's right to religious freedom where the detainee's government captors had forcibly shaved him, removed his prayer books and prevented him from participating in religious services).

[65] *See* Report on the Situation of Human Rights Asylum Seekers within the Canadian Refugee Determination System, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.106, doc. 40 rev., ¶ 154 (2000); *Lori*

The decisions of the Inter-American Court also make clear that the prohibition against cruel, inhuman and degrading punishment is universal and non-derogable.[67]

66. In interpreting the scope and content of the prohibition on torture, the Commission and the Court have generally looked to the Inter-American Convention to Prevent and Punish Torture ("Inter-American Torture Convention").[68] Article 2(1) of the Inter-American Torture Convention defines torture as follows:

> "For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. …"

67. As this definition and the decisions of the Inter-American Court reflect, mental and psychological suffering, even in the absence of physical injuries, can constitute inhuman treatment.[69]

68. The Commission has held that the key factor distinguishing torture from other cruel, inhuman or degrading treatment or punishment "primarily results from the intensity of the suffering inflicted."[70] For treatment to be considered inhuman or degrading, it must attain "a minimum level of severity," which depends on the circumstances in each case, including the duration of the treatment, its physical and mental effects, and the age and health of the victim.[71] In *Gomez Paquiyauri brothers v. Peru*, the Inter-American Court's finding that the physical and mental abuse at issue constituted torture took into particular account the fact that the victims were minors.[72]

Berenson-Mejía v. Peru, Inter-Am. Ct. H.R., Ser. C, No. 119, ¶ 100 (2004) (finding that "[t]he prohibition of torture and cruel, inhuman or degrading punishment or treatment is absolute and non-derogable, even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crimes, martial law or a state of emergency, civil commotion or conflict, suspension of constitutional guarantees, internal political instability or other public emergencies or catastrophes") (citations omitted); *Caesar v. Trinidad and Tobago*, Inter-Am. Ct. H.R., Ser. C, No. 123, ¶ 70 (2005); *Maritza Urrutia v. Guatemala*, Inter-Am. Ct. H.R., Ser. C, No. 103, ¶ 92 (2003); *see also* Inter-American Torture Convention, art. 5.

[66] *See Goiburu v. Paraguay,* Inter-Am. Ct. H.R., Ser. C, No. 154, ¶ 128 (2006).

[67] *Ximenes-Lopes v. Brazil*, Inter-Am. Ct. H.R., Ser. C, No. 139, ¶ 126 (2005).

[68] *See Raquel Martin de Mejia v. Peru*, Case 10.970, Inter-Am. Comm'n H.R., Report No. 5/96, ¶ 185 (1995) (declaring that, while the American Convention does not define "torture," "in the Inter-American sphere, acts constituting torture are established in the Inter-American Convention to Prevent and Punish Torture"). The Inter-American Court has stated that the Inter-American Convention to Prevent and Punish Torture constitutes part of the Inter-American *corpus iuris*, and that the Court must therefore refer to it in interpreting the scope and content of Article 5(2) of the American Convention. *See Tibi v. Ecuador*, Inter-Am. Ct. H.R., Ser. C, No. 114, ¶ 145 (2004).

[69] *See Report on Terrorism*, Inter-Am. Comm'n H.R., Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., ¶ 159.

[70] *Id*. ¶ 158.

[71] *Id*. ¶ 157.

[72] *Gomez-Paquiyauri brothers v. Peru*, Inter-Am. Ct. H.R., ¶ 117 (2004).

69. The Commission and the Court have held that the concept of inhumane treatment includes degrading treatment.[73] The Court has described degrading treatment as "the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance," and that the degrading aspect of the treatment "is exacerbated by the vulnerability of a person who is unlawfully detained."[74]

70. The jurisprudence of the Inter-American system also recognizes that the next-of-kin of victims of grave human rights violations can experience secondary pain and suffering, which can rise to the level of cruel, inhuman or degrading treatment or punishment for which the state is responsible.[75] In *Gomez Paquiyauri brothers*, the Inter-American Court found that the immediate next-of-kin of the victims had suffered psychological harm as a direct consequence of their relatives' arbitrary detention, mistreatment and torture, ultimate deaths, and slander by the State as "subversives," and that their rights to protection against cruel, inhumane and degrading treatment had also been violated.[76]

71. The Inter-American system's jurisprudence on the right to humane treatment establishes that persons deprived of their liberty have the right to conditions of detention that respect their personal dignity, and that the State is obligated to ensure conditions that safeguard prisoners' fundamental rights.[77]

72. In *Velasquez Rodriguez v. Honduras*, the Court held that "[p]rolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being" – a position the Court and the Commission have consistently held in their jurisprudence on prisoners' right to humane treatment.[78] In other decisions, the Court has warned that "[i]ncommunicado [detention] may only be used exceptionally, taking into account its severe effects, because isolation from the exterior world produces moral suffering and mental stress on any individual, which place[s] him in an exacerbated situation of vulnerability, creating a real risk of aggression and abuse of authority in prisons."[79]

73. In *Lori Berenson Mejia v. Peru*, the Court found that the detention conditions at

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[73] *See Report on Terrorism*, Inter-Am. Comm'n H.R., Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., ¶ 158.
[74] *Id.* ¶ 159.
[75] *See Gomez-Paquiyauri brothers v. Peru*, Inter-Am. Ct. H.R., ¶ 118.
[76] *Id*.
[77] *See, e.g., Bulacio v. Argentina,* Inter-Am. Ct. H.R., Ser. C, No. 100, ¶ 126 (2003); *Cantoral Benavides v. Peru*, Inter-Am. Ct. H.R., Ser. C, No. 69, ¶ 87 (2000); *Lori Berenson-Mejía*, Inter-Am. Ct. H.R., Ser. C, No. 119, ¶ 102. The Commission has also interpreted Article XXV's guarantee of humane treatment for individuals in state custody along the lines of international standards for the confinement and treatment of prisoners, including the United Nations' Standard Minimum Rules for the Treatment of Prisoners. *See Oscar Elias Biscet v. Cuba*, Case. 12.476, Inter-Am. Comm'n H.R., Report No. 67/06 (2006).
[78] *Velasquez Rodriguez v. Honduras*, Inter-Am. Ct. H.R., Ser. C, No. 4, ¶ 156 (1988).
[79] *Case of Lori Berenson*, cit., at para. 104 (internal quotations omitted); *cf. Case of Maritza Urrutia v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 103, at para. 87 (Nov. 27, 2003); *Case of Bámaca-Velásquez*, cit., at para. 150; *Case of Cantoral Benavides*, cit., at para. 84.

issue – continuous solitary confinement for one year in a small cell without ventilation, natural lighting or heating, adequate food, sanitary facilities or necessary medical care, and with severe restrictions on receiving visitors – constituted cruel, inhuman and degrading treatment.[80]

74. The jurisprudence of the Inter-American system has also addressed specific acts and methods of harm and found them to constitute inhumane treatment, generally and specifically in the context of detention and interrogation.[81] These include beatings;[82] electric shocks;[83] hooding;[84] holding a person's head in water until the point of drowning;[85] rape;[86] standing or walking on top of individuals;[87] mock burials and mock executions;[88] threats of a behavior that would constitute inhumane treatment;[89] death threats;[90] and exposure to the torture of other victims.[91] More broadly, the Court has held that "any use of force that is not strictly necessary to ensure proper behavior [by] the detainee constitutes an assault on the dignity of the person in violation of Article 5 of the American Convention."[92]

75. In its 2005 Precautionary Measures in favor of Guantánamo detainees, the Commission expressed concern that instances of abuse and other inhumane treatment may be continuing, including the denial of adequate medical treatment to detainees who had participated in hunger strikes and interrogation methods directed at the religion of the men. The Commission reiterated its request that the United States investigate and prosecute instances of torture and other mistreatment at Guantánamo, and expressed concern that all investigations that had been undertaken thus far had been conducted by the Department of Defense, the very institution alleged to be responsible for the abuse, calling into question the impartiality of the investigation.[93]

76. In its 2006 review of the United States' compliance with the Convention Against

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[80] *Lori Berenson-Mejía*, Inter-Am. Ct. H.R., Ser. C, No. 119, ¶¶ 106, 109.
[81] *See Report on Terrorism*, Inter-Am. Comm'n H.R., Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., ¶ 164 (referring specifically to the European Court of Human Rights' decision in *Ireland v.* UK and stating that the Commission and the Court have suggested that similar acts – including stress positions, hooding, subjection to extreme noise, and sleep and food deprivation – are prohibited in any interrogations by state agents).
[82] *See id*. ¶ 161 n. 405.
[83] *See id*. ¶ 161 n. 402
[84] *See id*. ¶ 161 n. 400, 407
[85] *See id*. ¶ 161 n. 403.
[86] *See id*. ¶ 161 n. 408
[87] *See id*. ¶ 161 n. 404.
[88] *See id*. ¶ 161 n. 409
[89] *See id*. ¶ 161 n. 410.
[90] *See id*. ¶ 161 n. 412.
[91] *See id*. ¶ 161 n. 411. The United Nations Special Rapporteur on Torture has listed several similar acts severe enough to constitute torture. These include beating, burns, electric shocks, suspension, suffocation, exposure to excessive light or noise, sexual aggression, administration of drugs in detention or psychiatric institutions, prolonged denial of rest or sleep, food, sufficient hygiene, or medical assistance, total isolation and sensory deprivation, being held in constant uncertainty in terms of space and time, threats to torture or kill relatives, and simulated executions. *See id*. ¶ 162 n. 413.
[92] *See id*. ¶ 166.
[93] Precautionary Measures No. 259, Inter-A. Comm'n H.R. (2005).

Torture, the Committee Against Torture called on the United States to "cease to detain any person at Guantánamo Bay and close this detention facility … in order to comply with its obligations under the Convention."[94] Noting that "detaining persons indefinitely without charge constitutes per se a violation of the Convention," the Committee expressed concern that Guantánamo detainees had been held "for protracted periods … without sufficient legal safeguards and without judicial assessment of the justification for their detention."[95] The Committee also expressed concern about certain interrogation methods used against detainees in executive custody, including sexual humiliation, "waterboarding," "short shackling," and "using dogs to induce fear," and called for the United States to "rescind any interrogation technique … that constitutes torture or cruel, inhuman or degrading treatment or punishment, in all places of detention under its de facto effective control, in order to comply with its obligations under the Convention."[96]

77. The conditions and treatment of Yasser Al-Zahrani and Salah Al-Salami in the custody of the United States at Guantánamo as described above constitute a clear violation of their non-derogable right to humane treatment under the American Declaration. As the ICRC charged before the men's deaths, the entire detention and interrogation system at Guantánamo could not be considered "other than an intentional system of cruel, unusual and degrading treatment and a form of torture." The Inter-American system's jurisprudence has also addressed specific aspects of the conditions and treatment to which the men were subjected, including prolonged isolation and incommunicado detention; many of the interrogation methods that were authorized at Guantánamo; and the beatings, sleep deprivation, exposure to temperature extremes, religious abuse, and denial of medical care described in letters by the men found after their deaths. The fact of men's deaths in state custody, whether they took their own lives or were killed, is itself an indication of the cruelty and torture they suffered at Guantánamo. That Yasser Al-Zahrani was a minor when he was detained only added to the intensity and impact of his mistreatment.

78. Petitioners, as the immediate next-of-kin of the deceased, have also suffered a distinct violation by virtue of the unlawful detention, torture and ultimate deaths of their relatives in U.S. custody. They have also been harmed in the aftermath of the deaths, including in receiving the injured remains of the men, in hearing the derisive statements of the authorities as the families were grappling with their loss, and in being denied the basic dignity of properly burying their loved ones.

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[94] Comm. Against Torture, Conclusions and Recommendations of the Committee Against Torture: United States of America, 36th Sess., May 1-19, 2006, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006), ¶ 22, *available at* http://www.unhchr.ch/tbs/doc.nsf/0/e2d4f5b2dccc0a4cc12571ee00290ce0/$FILE/G0643225.pdf. The CAT issued the findings in this subsection in response to the U.S. 2006 report.

[95] *Id*. ¶ 22.

[96] *Id*. ¶ 24.

E. Rights of the Family: Articles V and VI

79. The Commission has described the protections of Articles V and VI as prohibiting arbitrary or illegal government interference with family life.[97] While circumstances such as imprisonment inevitably limit full enjoyment of the right to family life, the Commission has emphasized that this is a fundamental right that can never be completely suspended.[98]

80. In the detention context, the Commission has consistently held that the right to family life obligates states to facilitate contact between a prisoner and his next of kin, notwithstanding the restrictions on personal liberty inherent in imprisonment.[99] Indeed, because of those inherent limitations, the Commission has held that states must take positive steps to guarantee the right to maintain and develop family relationships.[100] The Commission has also repeatedly indicated that ensuring visiting rights is a fundamental obligation of states in protecting the right to family life of the prisoner and his next of kin.[101]

81. With respect to Article V's guarantee of protection against abusive attacks on personal honor and reputation, the Commission found in *Cirio v. Uruguay* that the State's imposition of a penalty that was later recognized as arbitrary violated the victim's honor and reputation as protected under Article V.[102] In *Miguel Castro-Castro Prison v. Peru*, the petitioners alleged that the State had labeled detainees in preventive detention as "terrorists," despite the fact that they had not been convicted, and that the detainees had in turn been treated in the press as terrorists. The Inter-American Court found that the situation implied an insult to the honor, dignity and reputation of the detainees and their

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[97] *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.106, Feb. 28, 2000, ¶ 162 (2000).

[98] *Oscar Elias Biscet v. Cuba*, Case. 12.476, Inter-Am. Comm'n H.R., Report No. 67/06, ¶ 236; *X and Y v. Argentina*, Case 10.506, Inter-Am. Comm'n H.R., Report No. 38/96, ¶¶ 96-97 (1996) (interpreting the analog to the right to family life in Article 17 of the American Convention); *see also Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, ¶ 166 (holding that interference may only be justified where necessary to meet a pressing need to protect public order and where the means are proportional to that end").

[99] *See X and Y*, Case 10.506, Inter-Am. Comm'n H.R., Report No. 38/96, ¶ 98.

[100] *See id*.; *Oscar Elias Biscet*, Case. 12.476, Inter-Am. Comm'n H.R., Report No. 67/06, ¶ 237; *see also McVeigh, O'Neill and Evans v. United Kingdom*, App. Nos. 8022/77, 8025/77 and 8027/77, 5 Eur. Ct. H.R. 71, ¶¶ 52-53 (1983) (Commission Report), in which the European Commission on Human Rights held that a failure to allow persons detained under anti-terrorism legislation to communicate with their spouses constituted a denial of private and family life contrary to Article 8. Similarly, in *PK, MK and BK v. United Kingdom*, App. No. 19086/91 (1992), the European Commission noted, while finding no violation in the instant case, that significant limits on visits from family members may well raise Article 8 issues.

[101] *See X and Y*, Case 10.506, Inter-Am. Comm'n H.R., Report No. 38/96, ¶ 98; *Oscar Elias Biscet*, Case. 12.476, Inter-Am. Comm'n H.R., Report No. 67/06, ¶ 237; *see also Situation of Human Rights in Cuba Seventh Report*, Inter-Am. Comm'n H.R., Chap. III, ¶ 25 (1983); *Annual Report of the Inter-American Commission on Human Rights (Uruguay)*, Inter-Am. Comm'n H.R., Chap. IV, ¶ 10 (1983-1984).

[102] *Cirio v. Uruguay*, Case 11.500, Inter-Am. Comm'n H.R., Report No. 124/06, ¶¶ 91, 95 (2006); *see also Wayne Smith v. United States*, Case 12.562, Report No. 81/10, ¶ 48 (2010) (holding that state action that may not be directly aimed at harming family life but has secondary consequences for family life may present a colorable claim under the American Declaration).

next of kin, "since they were perceived by society as terrorists or the next of kin of terrorists, with all the negative consequences this implies," and could constitute a violation of the Convention.[103]

82. The United States violated its obligation to protect the right to family life of Yasser Al-Zahrani, Salah Al-Salami and their next of kin, and to respect their personal honor and reputation in several respects. The United States' detention of the deceased in essentially incommunicado conditions deprived the men and their families of their basic right to family relationships, of which they are now forever deprived. The government's designation of the deceased as "enemy combatants" was an arbitrary penalty and a slanderous label that the authorities continued to apply even after the men died – indeed, as the government announced their deaths. The military's conclusion that the deaths were suicide, despite its inherently biased internal investigation and the gaps, inconsistencies and questions that remain, has also been particularly devastating to the families because suicide is against the tenets of their Islamic faith.

D. Rights of the Child: Article VII

83. Article VII of the American Declaration requires specific measures of protection for the rights of children. The jurisprudence of the Inter-American system refers to the definition of "child" in the Convention on the Rights of the Child, which covers all persons under the age of 18, "unless, by virtue of an applicable law, he shall have attained his majority previously."[104] Under United States law, persons under 18 are also considered minors.

84. The Commission and the Court have also applied or referenced the Children's Rights Convention and other relevant international treaties in interpreting the human rights obligations of states regarding minors. The Children's Rights Convention specifically protects, *inter alia*, the right of children to non-discrimination; life; freedom from torture or cruel, inhuman or degrading treatment or punishment; and freedom from unlawful or arbitrary deprivation of liberty. With respect to deprivations of liberty, the Convention elaborates additional guarantees, including that "the arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time;" and that detained minors should be treated with humanity and respect, should have the right to prompt access to legal assistance and a prompt decision on any action challenging the legality of their detention, should generally be detained apart from adults, and should have the right to maintain contact with their family through correspondence and visits.[105] Consistent with these provisions, the Commission has found that violations of fundamental rights such as personal liberty, personal integrity and life are aggravated when the victim is a minor, necessitating special protection.[106] In the context of detention, the Commission has held that imprisonment of children can only

[103] *Miguel Castro Prison v. Peru*, Inter-Am. Ct. H.R., ¶¶ 352, 356-359 (2006) (interpreting Article 11 of the American Convention, which contains protections similar to Article V of the American Declaration).
[104] *Villagran-Morales v. Guatemala*, Inter-Am. Ct. H.R., ¶ 188 (1999).
[105] *See id*. ¶ 195 (discussing these rights).
[106] *Minors in Detention v. Honduras*, Case 11.491, Inter-Am. Comm'n H.R., Report Nº 41/99, ¶ 70 (1998).

be used as a last recourse and for the shortest time, and that children must never be kept *incommunicado* or incarcerated with adults.[107]

85. The Commission's concern for minors is reflected in its Precautionary Measures for Guantánamo detainees as well. In its 2005 Measures, the Commission reiterated its request that the United States provide information regarding allegations that juveniles who arrived at Guantánamo before the age of 18 continue to be held there.[108]

86. Yasser Al-Zahrani was 17 years old when he was taken into U.S. custody and transferred to Guantánamo. He was detained incommunicado and denied judicial review for over four years. During that time he was held without adequate exercise or educational or vocational activities, denied visits, phone calls and any meaningful contact with his family, and subjected to physical and psychological abuse, at the end of which he took his own life or was killed. In every respect, the United States violated its obligation to provide special protection for the human rights of Yasser Al-Zahrani.

D. Right to Judicial Protection: Article XVIII, in Conjunction with Article II

87. Article XVIII of the American Declaration protects the right of all persons to access judicial remedies when they have suffered human rights violations.[109] The guarantee of Article XVIII is similar in scope to the right to judicial protection under Article 25 of the American Convention, which the Commission has interpreted to encompass the right of every individual to access a tribunal when any of her rights have been violated; to obtain a judicial investigation by a competent, impartial and independent tribunal that establishes whether or not a violation has taken place; and to receive reparations for the harm suffered.[110] The Inter-American Court has described the guarantees of Article 25 as "one of the basic pillars, not only of the American Convention but of the very rule of law in a democratic society...."[111]

88. As with all other human rights in the American Declaration and Convention, states must respect and protect the right to judicial protection without discrimination, which is also protected under Article II of the American Declaration. The Inter-American Court has recognized "an inherent interconnection" between states' duties to respect and ensure human rights and to provide effective judicial protection for those rights – meaning that the failure to ensure the latter without discrimination has implications for the protection of human rights more broadly.[112]

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[107] *Report on Peru*, Inter-Am. Comm'n H.R., ¶¶ 23, 24 (2000); Annual Report, Inter-Am. Comm'n H.R., Ch. VI, Section IV, Subsection III-2 (1991), ¶ 308; Case 11.491, *Minors in Detention*, Case 11.491, Inter-Am. Comm'n H.R., Report Nº 41/99.
[108] Precautionary Measures No. 259, Inter-A. Comm'n H.R. (2005).
[109] *See Maria Da Penha Maia Fernandes* v. Brazil, Case 12.051, Inter-Am. Com'n H.R., Report No. 54/01, ¶ 37 (2001).
[110] *See, e.g.*, *Jessica Lenahan (Gonzales)*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶ 172.
[111] *Manoel Leal de Oliveira v. Brazil*, Case 12.308, Inter-Am. Comm'n H.R., Report No. 37/10, ¶ 113 (2010), citing Mapiripán Massacre Case, Inter-Am. Ct. H.R., ¶ 111.
[112] *See Report on Terrorism*, Inter-Am. Comm'n H.R., Doc. OEA/Ser.L./V/II.116 Doc. 5 rev. 1 corr., ¶ 340.

89. The duty of states to respect and ensure fundamental human rights through judicial protection without discrimination is non-derogable.[113] The law of the Inter-American system makes clear that no circumstance, including the declaration of a state of emergency, can justify the suppression or ineffectiveness of judicial guarantees required for the protection of rights not subject to derogation or suspension.[114]

90. The jurisprudence of the Inter-American system establishes that the right to a remedy includes not only the right of all persons who allege violations of their fundamental rights to have access to a judicial tribunal, but also that such a tribunal be capable of granting adequate and effective redress for the harm suffered.[115] In *Carranza v. Argentina*, the Commission held that Argentina violated the petitioner's right to an effective remedy when its courts applied the political question doctrine and refused to decide a case on the merits.[116] As the Commission explained, the right to effective judicial protection entitles a claimant to a judicial determination of the substance of her claims:

> [T]he logic of every judicial remedy – including that of Article 25 – indicates that the deciding body must specifically establish the truth or error of the claimant's allegation. The claimant resorts to the judicial body alleging the truth of a violation of his rights, and the body in question, after a proceeding involving evidence and a discussion of the allegation, must decide whether the claim is valid or unfounded.[117]

91. The right to an effective remedy encompasses the right of victims to have their violations investigated, prosecuted and punished, and to receive reparations for the harm suffered (*see supra* Part IV.A).[118] The Commission has held that investigations must be serious, prompt, thorough, and impartial.[119] In situations involving violent deaths, the Commission has referred to international standards for the investigation of extrajudicial

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[113] *See id*. ¶ 343.

[114] *See Gustavo Carranza v. Argentina*, Case 10.087, Inter-Am. Comm'n. H.R., Report No. 30/97, OEA/Ser.L/V/II.9, doc. 7 rev. ¶ 80 (1997); *see also Tinnelly and McElduff v. United Kingdom,* Eur. Ct. H.R., Case 62/1997/846/1052-1053, App. No. 20390/92, 27 EHRR 249 (1998) (recognizing the importance of the right to a judicial remedy as a safeguard for other rights, even when national security concerns are raised by the State).

[115] *See, e.g.*, *Velásquez-Rodríguez,* Inter-Am. Ct. H.R., Ser. C, No. 4 ¶¶ 62-64. In *Wayne Smith v. United States,* the Commission reiterated that "when a state fails to provide an adequate and effective remedy to a violation of a fundamental right under the American Declaration, that deficiency creates an independent violation of the right to judicial protection under Article XVIII of the American Declaration." *Wayne Smith,* Case 12.562, Inter-Am. Comm'n H.R., Report No. 81/10, OEA/Ser.L/V/II.127, doc. 4 rev. 1, ¶ 62 (citing *Ferrer-Mazorra v. United States,* Case No. 9903, Inter-Am. Comm'n H.R., Report No. 51/01, OEA/Ser.L/V/II.111, doc. 20, rev. t 1188, ¶ 243 (2001)).

[116] *Carranza v. Argentina,* Case 10.087, Inter-Am. Comm'n. H.R., Report No. 30/97, OEA/Ser.L/V/II.9, doc. 7 rev. ¶ 80 (1997).

[117] *Id*. ¶ 73.

[118] *See Franz Britton v. Guyana*, Case 12.264, Inter-Am. H.R., Report No. 1/06, ¶ 30 (2006).

[119] *See Jessica Lenahan (Gonzales)*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶ 181; *Manoel Leal de Oliveira*, Case 12.308, Inter-Am. Comm'n H.R., Report No. 37/10, ¶ 134.

killings as guidelines that states should follow.[120] The Commission has also held that responsibility for ascertaining the truth does not rest with the victim or her next-of-kin, but with states on their own initiative.[121]

92. When allegations of an improper investigation are raised, states have the burden of showing that the investigation "was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth."[122] When situations are not seriously investigated, "they are aided, in a sense, by the government, thereby making the State responsible on an international plane."[123]

93. The Commission has held that the right to a judicial remedy also includes the right of victims and society as a whole to know the truth of the facts connected with serious violations of human rights, as well as the identity of those who committed them. In *Oscar Romero v. El Salvador*, the Commission found that the right "to know the full, complete, and public truth as to the events that transpired, their specific circumstances, and who participated in them [forms part] of the right to reparation for human rights violations."[124]

94. In *Jessica Lenahan v. United States*, the Commission found that the United States had violated the right to judicial protection of the petitioner and her next-of-kin under Article XVIII, in part because it found, in addition to the government's failure to conduct a prompt, thorough, exhaustive and impartial investigation into the deaths of the petitioner's children, that the United States had failed to convey information to the family about the circumstances of the deaths.[125] In the domestic violence context of that case, the Commission found that compliance with this obligation was "critical to sending a social message in the United States" against violence and impunity.[126]

95. As the facts alleged demonstrate, the United States has denied Yasser Al-Zahrani and Salah Al-Salami judicial protection for every aspect of the human rights violations they suffered at Guantánamo. For their arbitrary detention, the government prevented the men from accessing the courts for the duration of their detention, even after the Supreme Court ruled in favor of detainees' right to *habeas corpus* in June 2004. For the civil claims of torture and other harms their families brought on their behalf after their deaths, the Department of Justice actively opposed judicial review and the D.C. Circuit Court ultimately dismissed the case, holding that the Military Commissions Act bars the court from exercising jurisdiction. The deceased were thus denied their basic right to access a tribunal for grave violations of their human rights.

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[120] *See Jessica Lenahan (Gonzales)*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶¶ 182-83 (referring to the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions).
[121] *See id*. ¶ 181.
[122] *Id*.; *Manoel Leal de Oliveira*, Case 12.308, Inter-Am. Comm'n H.R., Report No. 37/10, ¶ 115.
[123] *Manoel Leal de Oliveira*, Case 12.308, Inter-Am. Comm'n H.R., Report No. 37/10, ¶ 114.
[124] *Id*. ¶ 138, citing *Monsenor Oscar Arnulfo Romero v. El Salvador,* Case 11.481, Inter-Am. Comm. H.R., Report No. 37/00, OEA/Ser.L/V/II.106 Doc. 3 rev. at 671, ¶ 147 (1999); ¶ 193.
[125] *Jessica Lenahan (Gonzales)*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶ 196.
[126] *Id*. ¶ 195.

96. The men's inability to access to the courts of the United States also violated their right to judicial recourse, and the protection of their rights more broadly, without discrimination on the basis of nationality and religion. The MCA, which the government argued and the D.C. Circuit Court agreed should bar judicial review of their civil claims, applies by its plain terms only to non-U.S. citizens. As noted above, Section 7 of the MCA deprives only "an alien" enemy combatant of the right of access to the courts. In practice, the MCA also only applies to Muslim detainees, since no non-Muslim has been detained as an "enemy combatant" at Guantánamo or anywhere since 2001.[127] There is also is no legitimate purpose for the jurisdiction-stripping provisions of Section 7. The legislative history of the MCA makes clear that Congress created it based on a desire to punish individuals that Congress viewed—without a basis in law or fact—as terrorists.[128] No other rational motivation is evident other than the desire to further punish an unpopular group of individuals already arbitrarily tarred with the "enemy combatant" label.

97. In addition to denial of any judicial investigation, the investigations by the NCIS and the Department of Justice fell far short of required standards of thoroughness and impartiality. Indeed, military officials actively obstructed the internal investigation by the NCIS, which, *inter alia*, failed to interview key witnesses. The government also opposed, ignored or responded superficially to every request for information from the families, their advocates and international bodies, including the Commission and UN Special Rapporteurs. The United States thus remains in continuous breach of its duty to conduct an effective investigation into the deaths and to communicate that information to the families and the public, who, six years later, still have a right to the truth about what happened.

V. ADMISSIBILITY

A. Jurisdiction

98. Pursuant to Article 23 of the Commission's Rules of Procedure, the Commission has personal jurisdiction to consider this Petition because the alleged victims were persons who were subject to the jurisdiction of the United States and whose rights were

[127] The U.S. Congress was clearly aware of this fact. *See* 152 Cong. Rec. S.10,395 (daily ed. Sept. 28, 2006) (statement of Sen. Cornyn: "Let me just say a word about who that enemy is. ... it is an enemy that has hijacked one of the world's great religions, Islam"); *Id.* at S.10,403 (statement of Sen. McConnell: "We are a Nation at war, and we are at war with Islamic extremists.").

[128] *See, e.g.,* 152 Cong. Rec. H7538 (Sept. 27, 2006) (statement of Rep. McHugh) ("Why should an accused terrorist enjoy protections that exceed what the Constitution provides to every one of us as United States citizens?"); Hearing Before the Senate Judiciary Committee (Sept. 25, 2006) (statement of Sen. Cornyn) ("It is important to remember, and sometimes I think some forget, these are enemies of the United States, captured on the battlefield. These are not individuals who have been arrested for committing crimes and then who are entitled to all of the process an American citizen would in an Article III court."); 152 Cong. Rec S10,238-01 (Sept. 27, 2006) (Statement of Sen. Lott) ("Bring on the lawyers. What a wonderful thing we can do to come up with words like this. Our forefathers were thinking about citizens, Americans. They were not conceiving of these terrorists who are killing these innocent men, women, and children.")

protected under the American Declaration when the alleged violations occurred.[129] The violations Petitioners allege in their individual capacities – their pain and suffering as a result of their relatives' mistreatment and deaths; the denial of their right to family life; and the denial of their right to truth about the circumstances of their relatives deaths – have been recognized in the Inter-American system's jurisprudence as distinct violations vis-à-vis the next-of-kin of direct victims.

99. The Commission has subject-matter jurisdiction because the Petition alleges violations of human rights protected by the American Declaration, which the Commission has long held constitutes a source of binding international obligations for the United States.[130] The Commission has subject-matter jurisdiction over the Petition whether or not international humanitarian law also applies.[131]

100. The Commission has temporal jurisdiction to examine this Petition because the obligation to respect and guarantee the rights protected in the American Declaration was already in effect for the United States during the period of the violations alleged, which began in 2002 and, with respect to the right to judicial protection and the rights of the Petitioners as next-of-kin, are ongoing.[132]

101. The Commission is also competent to consider the Petition because the alleged violations at Guantánamo occurred within the territorial jurisdiction of the United States. The Commission has long established that a state's duty to protect the rights of persons on its territory may extend to conduct with an extraterritorial locus where the person concerned is located in the territory of another state, but subject to the "authority and control" of the acting state.[133]

102. Pursuant to the "authority and control" inquiry, the Commission has already established that detainees at Guantánamo are subject to the jurisdiction of the United States and benefit from the protection of the American Declaration. In deciding as admissible the petition of a Guantánamo detainee in *Djamel Ameziane v. United States*, the Commission stated unequivocally, "it is clear that the State exercises its jurisdiction over its Military facilities at Guantánamo Bay."[134] In finding jurisdiction, the Commission referred to the decision of the U.S. Supreme Court itself in *Rasul v. Bush*,

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[129] *See Djamel Ameziane v. United States*, Petition P-900-08, Inter-Am. Comm'n H.R., Report No. 17/12 (Admissibility), ¶ 27 (2012).
[130] *See, e.g., Jessica Lenahan (Gonzales)*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶ 115, ("according to the well-established and long-standing jurisprudence and practice of the inter-American human rights system, the American Declaration is recognized as constituting a source of legal obligation for OAS member states, including those States that are not parties to the American Convention on Human Rights"); *Wayne Smith*, Petition 8-03, Inter-Am. C.H.R. Report No. 56/06 (Admissibility), ¶ 32-33.
[131] *See Djamel Ameziane*, Petition P-900-08, Inter-Am. Comm. H.R., Report No. 17/12, ¶ 28 (noting that in situations of armed conflict, both international human rights law and international humanitarian law apply).
[132] The United States ratified the OAS Charter on June 19, 1951.
[133] *See Djamel Ameziane*, Petition P-900-08, Inter-Am. Comm. H.R., Report No. 17/12 ¶ 30, citing *Coard,* Case 10. 951, Inter-Am. Comm'n H.R., Report No. 109/99, ¶ 37, (1999); *Alejandre,* Case 11.589, Report No. 86/99, ¶ 23 (1999).
[134] *See id*. ¶ 33.

and the Commission's own issuance of Precautionary Measures in favor of Guantánamo detainees since 2002.

103. To the extent Yasser Al-Zahrani and Salah Al-Salami were held and mistreated under U.S. control in other facilities prior to their transfer to Guantánamo, like hundreds of other Guantánamo detainees, that conduct would also be subject to the jurisdiction of the United States and the Commission.[135]

B. Exhaustion of Domestic Remedies

104. Under Article 31 of the Commission's Rules of Procedure, individual petitions are admissible only where domestic remedies have been exhausted, or where such remedies are unavailable as a matter of law or fact. The Commission has specified that remedies are unavailable where the domestic legislation of the state concerned does not afford due process of law for protection of the right allegedly violated; where the party alleging the violation has been denied access to domestic remedies or prevented from exhausting them; or where there has been an unwarranted delay in reaching a final judgment under the domestic remedies.[136]

105. In addition, domestic remedies requiring exhaustion must be adequate, in the sense that they must be suitable to address an infringement of a legal right, and effective, in that they must be capable of producing the result for which they were designed.[137]

106. For claims alleging violations of fundamental rights such as the right to life and the prohibition against torture, the Commission has held that the adequate remedy is the criminal prosecution of those responsible. In *La Granja v. Colombia*, the petitioners' claims involved alleged violations of the rights to life and humane treatment, which under domestic law were offenses that could be prosecuted by the state on its own initiative; the Commission held that "therefore it is this process, pushed forward by the State, that should be considered for the purpose of determining the admissibility of the claim."[138] Notwithstanding the availability of disciplinary or damages remedies, the Commission found that

> whenever a crime is committed that can be prosecuted on the State's own initiative, the State has the obligation to promote and give impetus to the criminal process to its final consequences and that … this process is the suitable means for clarifying the facts, prosecuting the persons responsible, and establishing the corresponding criminal sanctions, in addition to making possible means of reparation other than monetary compensation."[139]

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[135] *See id*. ¶¶ 31-32.
[136] *See, e.g.*, *Graham v. United States*, Case 11.193, Inter-Am. C.H.R., Report No. 51/00, OEA/Ser.L/V/II.111, doc. 20, rev., ¶ 54 (2000).
[137] *See, e.g.*, *Velásquez Rodríguez*, Inter-Am. Ct. H.R., Ser. C, No. 4, ¶¶ 64-66.
[138] *La Granja, Ituango v. Colombia*, Case 12.050, Inter.-Am. Comm'n H.R., Report No. 57/00 (Admissibility), ¶ 41 (2000).
[139] *Id*. (internal citations omitted). "[T]he IACHR has established, in similar cases, that disciplinary proceedings do not meet the obligations established by the Convention in the area of judicial protection,

107. For claims alleging the arbitrary deprivation of liberty, the Commission has held that in general *habeas corpus* is the appropriate remedy.[140]

108. The Commission has also established that, as a general rule, "the only remedies that need be exhausted are those whose function within the domestic legal system is appropriate for providing protection to remedy an infringement of a given legal right," and that "in principle, these are ordinary rather than extraordinary remedies."[141] In *Juvenile Offenders v. United States*, the Commission affirmed that the exhaustion requirement does not mean that alleged victims must exhaust all available domestic remedies, "which implies that extraordinary remedies do not need to be exhausted because they have a discretionary character, and their procedural availability is restricted and does not fully satisfy the right of the accused to challenge the judgment."[142] As the Commission and the Court have maintained on numerous occasions, the rule requiring exhaustion is designed to allow the state the opportunity to remedy violations by internal means before having to respond to charges before an international body.[143] Thus, "if the alleged victim raised the issue by any lawful and appropriate alternative under the domestic juridical system and the State had the opportunity to remedy the matter within its jurisdiction, then the purpose of the international rule has thus been served."[144]

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since they are not an effective and sufficient means for prosecuting, punishing, and making reparation for the consequences of the extrajudicial execution of persons protected by the Convention. Therefore, in the context of this case, the disciplinary measures cannot be considered remedies that must be exhausted …. As regards exhaustion of the contentious-administrative jurisdiction, the Commission has already indicated that this type of proceeding is exclusively a mechanism for supervising the administrative activity of the State aimed at obtaining compensation for damages caused by the abuse of authority. In general, this process is not an adequate mechanism, on its own, to make reparation for human rights violations; consequently, it is not necessary for it to be exhausted when, as in this case, there is another means for securing both reparation for the harm done and the prosecution and punishment demanded" (internal citations omitted).

[140] *See Rochac Hernandez v. El Salvador*, Petition 731-03, Inter-Am. Comm'n H.R., Report No. 90/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1, ¶ 28 (2006).

[141] *Guillermo Patricio Lynn v. Argentina*, Petition 681-00, Inter-Am. Comm'n H.R., Report No. 69/08 (Admissibility), ¶ 41 (2008), citing *Christian Daniel Domínguez Domenchetti v. Argentina*, Case 11.819, Inter-Am. Comm'n H.R., Report 51/03, ¶ 45 (2003); *Santos Soto Ramírez v. Mexico*, Case 12.117, Inter-Am. Comm'n H.R., Report 68/01, ¶ 14 (2001); *Zulema Tarazona Arriate v. Peru*, Case 11.581, Inter-Am. Comm'n H.R., Report 83/01, ¶ 24 (2001); *see also Sebastian Claus Furlan v. Argentina*, Petition 531-01, Inter-Am. Comm'n H.R., Report No. 17/06 (Admissibility), ¶ 40, (2006); *Mendoza v. Argentina,* Inter-Am. Comm'n H.R., Report No. 26/08 (Admissibility) (2008). The European Court of Human Rights has also adopted this standard, repeatedly finding that discretionary or extraordinary remedies need not be exhausted. *See e.g., Cinar v. Turkey,* No. 28602/95, 13 Nov. 2003; *Prystavka v. Ukraine,* No. 21287/02, 17 Dec. 2002.

[142] *Juvenile Offenders Sentenced to Life Imprisonment Without Parole v. United States*, Petition 161-06, Inter-Am. Comm'n H.R., Report No. 18/12 (Admissibility), ¶¶ 46-48 (2012) (internal citations and quotations omitted).

[143] *See Guillermo Patricio Lynn*, Petition 681-00, Inter-Am. Comm'n H.R., Report No. 69/08 (Admissibility), ¶ 40.

[144] *Id.*; *see also Juvenile Offenders Sentenced to Life Imprisonment Without Parole*, Petition 161-06, Inter-Am. Comm'n H.R., Report No. 18/12 (Admissibility), ¶¶ 46-48.

109. Criminal remedies for the violations alleged here are effectively unavailable. As the Commission has recognized, in the United States, "the State holds a complete monopoly on bringing criminal prosecutions, and the system does not provide the presumed victim with a participatory role in the decision to prosecute or with any ordinary judicial appeal against a decision not to prosecute. Beyond notifying the proper authorities … there are no other measures [] alleged victims [can] pursue to exhaust criminal domestic remedies."[145] The United States has not pursued prosecution in this case.

110. Furthermore, domestic legislation provides U.S. government personnel with a defense to any criminal prosecution or civil action arising out of their engagement in the "detention and interrogation of aliens" whom the President or his designees believed were "engaged in or associated with international terrorist activity."[146] The defense is available for actions dating back to September 11, 2001.

111. As previously discussed, the remedy of *habeas corpus* was also unavailable as a matter of law and fact to Yasser Al-Zahrani and Salah Al-Salami before they died. Section 7(b) of the MCA also continues to be an obstacle to civil claims arising out of the detention and treatment of Guantánamo detainees.

112. Despite the unavailability of adequate remedies, Petitioners pursued civil claims in federal court challenging the detention, treatment and deaths of their relatives. Their claims were dismissed by the district court on immunity and national security grounds, including when petitioners attempted to amend their complaint with the new information suggesting a cover-up and killing. Petitioners appealed to the circuit court, which affirmed dismissal by holding that the claims were all barred by the MCA.

113. Petitioners did not seek *en banc* review in the D.C. Circuit or Supreme Court review, which are discretionary and extraordinary remedies of restricted scope and access.[147] The exhaustion rule does not require Petitioners to seek such "extraordinary" remedies.

114. In addition, Petitioners' pursuit of a remedy would have had to overcome the bar of the MCA by challenging its constitutionality. As the Inter-American Court has held, actions challenging the constitutionality of a law are also an "extraordinary recourse whose purpose is to question the constitutionality of a law, not to have a court ruling

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[145] *Case of Undocumented Migrant, legal resident and US Citizen victims of Anti-immigrant vigilantes v. United States*, Petition 478-05, Inter-Am. Comm'n H.R., Report No. 78/08 (Admissibility), ¶ 54 (2009).

[146] Detainee Treatment Act of 2005, section 1004(a); Military Commissions Act of 2006, section 8(b)(3). The defense applies to conduct arising out of detentions and interrogations that were "officially authorized and determined to be lawful at the time that they were conducted" if the individual "did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful."

[147] Pursuant to the rules for the D.C. Circuit Court, an *en banc* hearing "is not favored" and will only be granted in limited circumstances. Circuit Rules of the U.S. Court of Appeals for the D.C. Circuit, Rule 35(a). The *writ of certiorari* to the Supreme Court is also an extraordinary remedy. In practice, the U.S. courts of appeals are the final decision-making courts in over 98 percent of federal cases.

reviewed," and thus "cannot be counted among the domestic remedies that a petitioner is necessarily required to pursue and exhaust."[148] Petitioners have thus been denied access to adequate and effective domestic remedies for the harms they have suffered, or have exhausted domestic remedies.

C. Timeliness

115. Article 32(2) of the Commission's Rules of Procedure provides that where an exception to the exhaustion of domestic remedies rule applies, the petition shall be presented "within a reasonable time." Petitions must otherwise be presented within six months of the date on which the victim was notified of the decision that exhausted domestic remedies.

116. This Petition is being presented within six years of the deaths of Yasser Al-Zahrani and Salah Al-Salami, violations resulting from which are still continuing, including with respect to the right to judicial protection. The Petition is also being submitted within six months of the date Petitioners were notified of the D.C. Circuit Court's decision dismissing their civil case on February 21, 2012. The Petition is thus being submitted within a reasonable time consistent with the Commission's precedents,[149] or is timely with respect to the exhaustion of domestic remedies.

D. Duplication of proceedings

117. Article 33 of the Commission's Rules of Procedure establishes that the Commission may not consider a petition if its subject matter is pending before another international governmental organization or essentially duplicates a petition already decided by the Commission or another international governmental organization. The subject matter of this Petitioner is neither pending before the Commission or any other international governmental organization, nor has it previously been decided by any such body.

VI. CONCLUSION AND REQUESTED RELIEF

Petitioners respectfully request that the Inter-American Commission on Human Rights:

> Declare this Petition admissible with respect to Articles I, II, III, V, VI, VII, XI, XVIII, XXV, and XXVI of the American Declaration;
>
> Investigate the alleged violations, with hearings and witnesses as necessary;
>
> Declare, as the facts establish, that the United States is responsible for violating the rights of the deceased and the Petitioners under the American Declaration as described herein;

[148] *Herrera-Ulloa v. Costa Rica*, Inter-Am. Ct. H.R., Preliminary Objections, Ser. C, No. 107, ¶ 85 (2004).
[149] *See Djamel Ameziane*, Petition P-900-08, Inter-Am. Comm. H.R., Report No. 17/12 (Admissibility), ¶ 45.

Declare that the United States must adequately investigate and provide clarification to Petitioners and the public about the cause and circumstances of the deaths;

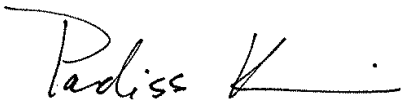
Declare that the United States must criminally prosecute those responsible for the violations of the deceased's fundamental rights and must provide adequate reparations;

Declare that Section 7(b) of the 2006 Military Commissions Act, to the extent it applies to Guantánamo detainees' civil claims, violates the right to judicial protection and non-discrimination;

Recommend such other remedies that the Commission considers adequate and effective in addressing the human rights violations described herein.

Dated: August 21, 2012

Respectfully submitted,



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Attachments

Appendix to Opening Brief in D.C. Circuit Court of Appeals, filed June 14, 2011