

**IN THE  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

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Michael Brown, Jr. and Lesley McFadden,

*Petitioners*

v.

UNITED STATES OF AMERICA,

*Respondent State*

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**PETITION**

Dated: May 24, 2015

*Respectfully submitted on  
behalf of Michael Brown, Jr.  
and Lesley McFadden:*

Justin Hansford

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## **I. INTRODUCTION**

This petition is brought against the United States (U.S.) by Lesley McFadden on her own behalf and on behalf of her son, Michael Brown, Jr., for violating their rights guaranteed under the American Declaration on the Rights and Duties of Man (American Declaration).

In the aftermath of the killing of Mike Brown, a movement against racial profiling and police brutality against black people has swept across the United States. Technology has helped to demonstrate that thousands are killed by police every year, and little is done to even keep track of the number of killings, yet alone hold police accountable. This takes place in the context of a federal prison population that is 37.5% black, and a combined state and federal prison and jail population that is nearly 43 % black, when blacks make up only 13% of the general population. Mike Brown's case is the signature event in this movement, and he deserves justice.

## **II. IDENTIFICATION OF VICTIMS**

Michael Brown, Jr. killed at the age of 18, was born in Missouri and was a citizen of the United States of America. Michael Brown, Jr.'s parents, Lesely McSpadden, 34, and Michael Brown, Sr., 36, are both born in the United States, and are United States citizens living in Missouri.

## **III. FACTS**

### **1. The Killing of Michael Brown**

On August 9, 2014, eighteen year old Michael Brown had beaten the odds. He had attended Normandy High School, part of an underfunded school system with a graduation rate of 53 percent, where only 20 percent of the students go on to attend a four year college.<sup>1</sup> Nevertheless, Brown had graduated and had enrolled in Vaterott Technical College to study engineering.<sup>2</sup> He would have begun college two days later if Darren Wilson had not killed him. He had no criminal record.<sup>3</sup> He had his entire life ahead of him.

But at approximately noon on August 9, 2014, Michael Brown was walking down a small street near his grandmother's apartment complex with a friend when they were approached by a white police officer. According to his friend, the closest witness to the afternoon's events, the officer approached them in his SUV police vehicle, told them to "get

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<sup>1</sup> Michael Brown High School, Huffington Post, *available at*: [http://www.huffingtonpost.com/2014/08/21/michael-brown-high-school\\_n\\_5682852.html](http://www.huffingtonpost.com/2014/08/21/michael-brown-high-school_n_5682852.html)

<sup>2</sup> A Kid From a Broken Home Beat the Odds, Daily Mail, *available at*: <http://www.dailymail.co.uk/news/article-2730153/A-kid-broken-home-beat-odds-to-college-A-rapper-sang-smoking-weed-feds-A-violent-robbery-suspect-caught-shocking-video-just-real-Michael-Brown.html>

<sup>3</sup> Michael Brown Never Faced Serious Felony Charges, New York Times, *available at*: [http://www.nytimes.com/2014/09/04/us/michael-brown-never-faced-serious-felony-charge-st-louis-officials-lawyer-says.html?\\_r=0](http://www.nytimes.com/2014/09/04/us/michael-brown-never-faced-serious-felony-charge-st-louis-officials-lawyer-says.html?_r=0)

the [expletive] off the sidewalk,” which then escalated into a confrontation.<sup>4</sup> After a struggle, the officer began to shoot the teen. Brown ran away, as he was hit in the hand by the officer’s bullets. The officer chased the teen on foot, and according to multiple witnesses, even after Michael Brown raised his hands to surrender and begged the officer not to shoot, the officer continued to fire. No witness reported any orders being given to Brown as these shots were fired.<sup>5</sup>

As evidenced by audio recordings of the shooting,<sup>6</sup> Officer Wilson fired approximately six bullets, and then after several seconds, fired an additional four times. The teenager was hit by at least six shots according to an autopsy conducted by a pathologist not affiliated with the government.<sup>7</sup> The autopsy further revealed that the final shots included one that entered his eye, and another at the top of the head, which may have indicated his head was lowered as he collapsed or kneeled to surrender.<sup>8</sup>

Following his murder, Michael Brown’s body was left uncovered in the middle of the street that runs through the Canfield Green Apartments, a densely populated apartment complex, for over four hours. The officer made no effort to resuscitate him, nor did Darren Wilson call for an ambulance. This treatment of his body, grotesquely mutilated by the six bullets and left bleeding in the street in plain view, traumatized countless neighbors who witnessed either the shooting, its aftermath, or both. This trauma was all the more intense for Michael Brown’s family, who came to the scene only to find their young son’s remains quickly decomposing on the hot summer street.<sup>9</sup>

Given the history of racial tensions in the city of Ferguson and in the United States as a whole, this particularly disrespectful treatment of Brown’s body and callous disregard for the trauma it could cause Ferguson residents repeated and reinforced the longstanding degrading treatment of black racial minorities by an overwhelmingly white police force. Not only did the abandonment of the body convey to residents that the police officer regarded the black youth as less than human, but it also illustrated the officer’s brazen confidence that he would not be punished for such unwarranted violence. One local leader noted that this action was a message from the police that “we can do this to you any day,

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<sup>4</sup> Trymaine Lee, *Eyewitness to Michael Brown shooting recounts his friend’s death*, MSNBC, Aug. 12, 2014, <http://www.msnbc.com/msnbc/eyewitness-michael-brown-fatal-shooting-missouri>.

<sup>5</sup> Ryan Reilly & Amber Ferguson, *Witnesses to Michael Brown Shooting Tell the Same Basic Story About His Death*, The Huffington Post, Sep. 16, 2014, [http://www.huffingtonpost.com/2014/09/16/michael-brown-shooting-video\\_n\\_5831226.html](http://www.huffingtonpost.com/2014/09/16/michael-brown-shooting-video_n_5831226.html).

<sup>6</sup> Jason Hanna, *Audio captured at time of Michael Brown shooting, company says*, Aug. 28, 2014, <http://www.cnn.com/2014/08/28/justice/michael-brown-ferguson-shooting-audio/>.

<sup>7</sup> Frances Robles & Julie Bosman, *Autopsy Shows Michael Brown Was Struck at Least 6 Times*, NY Times, Aug. 17, 2014, <http://www.nytimes.com/2014/08/18/us/michael-brown-autopsy-shows-he-was-shot-at-least-6-times.html>.

<sup>8</sup> Id.

<sup>9</sup> Julie Bosman and Joseph Goldstein, *Timeline for a Body: 4 Hours in the Middle of a Ferguson Street*, NY Times, Aug. 23, 2014, <http://www.nytimes.com/2014/08/24/us/michael-brown-a-bodys-timeline-4-hours-on-a-ferguson-street.html>.

any time, in broad daylight, and there's nothing you can do about it."<sup>10</sup> This is similar to the American tradition of lynching, which took place in the era of Jim Crow segregation.<sup>11</sup> Similar to the intended message of terror conveyed by lynching in the past, a local resident shared her belief that these efforts were done to "set an example" and that "they shot a black man, and they left his body in the street to let you all know this could be you."<sup>12</sup>

## **2. Failures of the Missouri State Officials**

In the United States, prosecutions of police officers in the context of unlawful use of force most often take place on the state level, not the federal level. In the case of Darren Wilson, St. Louis County Prosecutor Robert McCulloch's office conducted the grand jury proceedings, and ultimately decided not to bring any charges against Darren Wilson. However, because no indictment issued, Mr. McCulloch's office could convene a new grand jury at any time, or a special prosecutor could be appointed to do so.

### **1.1. Improper Execution of the Grand Jury Process**

In the United States, normally a prosecutor provides a grand jury with the bare minimum amount of evidence needed to support probable cause, the low standard of evidentiary proof needed for an indictment. Because of this extremely low bar, less than .01 percent of prosecutions fail to go forward as a result of a grand jury failure to indict.<sup>13</sup> Often grand jury proceedings for murder take place within the span of a single day.<sup>14</sup>

However, from the outset of Mr. McCulloch's investigation into the killing of Mike Brown, he publicly announced his plan to provide a grand jury with "all available evidence."<sup>15</sup> Prosecutors from around the country commented on the proceedings, universally acknowledging the rarity of this approach; many had never heard of an approach of this type before.<sup>16</sup> By presenting both evidence supporting probable cause and evidence supporting the case of the defendant, a grand jury indictment is less likely to issue.

Mr. McCulloch seems to have only used this approach once before in his over twenty year career, in a case which took place in 2000 where police officers were accused of excessive

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<sup>10</sup> *Id.*

<sup>11</sup> Lynching as Racial Terrorism, OpEd, New York Times, *available at*: [www.nytimes.com/2015/02/11/opinion/lynching-as-racial-terrorism.html](http://www.nytimes.com/2015/02/11/opinion/lynching-as-racial-terrorism.html)

<sup>12</sup> St. Louis American, *available at*: [http://www.stlamERICAN.com/news/columnists/guest\\_columnists/article\\_c98ba178-50b9-11e4-8b41-83bc8185f474.html](http://www.stlamERICAN.com/news/columnists/guest_columnists/article_c98ba178-50b9-11e4-8b41-83bc8185f474.html)

<sup>13</sup> Ferguson Michael Brown Indictment, *DataLab*, *available at*: <http://fivethirtyeight.com/datalab/ferguson-michael-brown-indictment-darren-wilson/>

<sup>14</sup> *Id.*

<sup>15</sup> *See, e.g., Case: State of Missouri v. Darren Wilson*, Transcript of: Grand Jury Testimony (hereinafter "Grand Jury Testimony"), Volume 1 at 12.

<sup>16</sup> Ferguson Prosecutor Actions, LOHUD, *available at*: <http://www.lohud.com/story/news/local/2014/11/25/ferguson-prosecutor-actions-peculiar-grand-jury-expert-argues/70100122/>

use of force. No indictment was issued in that case, and a subsequent investigation found that Mr. McCulloch had taken actions to favor the police officers.<sup>17</sup>

In the grand jury proceedings involving Darren Wilson, Mr. McCulloch allowed Wilson to offer his own testimony, unchallenged by prosecutors, for over four hours—another highly unusual allowance. As the U.S. Supreme Court has explained in an opinion authored by Justice Antonin Scalia, grand jury proceedings are not meant to test the sufficiency of a grand jury target's affirmative defense. *United States v. Williams*, 504 U.S. 36, 51–52 (1992) (“[I]t is the grand jury’s function not ‘to enquire . . . upon what foundation [the charge may be] denied,’ or otherwise to try the suspect’s defenses, but only to examine ‘upon what foundation [the charge] is made’ by the prosecutor. . . . As a consequence, neither in this country nor in England has the suspect under investigation by the grand jury ever been thought to have a right to testify or to have exculpatory evidence presented.”). By allowing police officers more protections than other defendants without any basis in law for doing so, Mr. McCulloch promoted a double standard, denying fairness and equal application of the law.<sup>18</sup>

As explained in *State of Missouri ex inf. Montague Simmons, et al. v. Robert McCulloch*, a motion requesting the appointment of a special prosecutor in Saint Louis County in light of Mr. McCulloch’s failure to fulfill the duties of his office, Mr. McCulloch engaged in at least three (3) other instances of misbehavior in the grand jury proceedings that indicate the unfairness of the process.<sup>19</sup>

## **1.2. Presentation of Perjured Testimony**

Mr. McCulloch has admitted to providing the grand jury with testimony he knew to be perjured—that of grand jury witness 40.<sup>20</sup> Despite this, prosecutors did not challenge witness 40’s testimony.<sup>21</sup> In contrast, prosecutors in effect cross-examined witness 34, whose testimony supported a probable cause finding, by outright stating within questioning that the witness’s testimony did not comport with the physical evidence or with his prior statement to law enforcement.<sup>22</sup>

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<sup>17</sup> That Other Time Ferguson Prosecutor McCulloch Whitewashed a Police Killing, Think Progress, available at: <http://thinkprogress.org/justice/2015/01/10/3610288/that-other-time-ferguson-prosecutor-mcculloch-whitewashed-police-killing/>

<sup>18</sup> <http://www.newyorker.com/news/news-desk/use-grand-jury>

<sup>19</sup> See MEMORANDUM OF LAW IN SUPPORT OF AFFAINT MONTEGUE SIMMONS’ REQUEST FOR APPOINTMENT OF A SPECIAL PROSECUTOR TO INVESTIGATE WHETHER ST. LOUIS COUNTY PROSECUTING ATTORNEY ROBERT MCCULLOCH FAILED TO FULFILL HIS DUTIES OF OFFICE REGARDING HIS CONDUCT IN THE GRAND JURY PROCEEDINGS OF *STATE OF MISSOURI V. DARREN WILSON*, *State of Missouri ex inf. Montague Simmons, et al. v. Robert McCulloch*, St. Louis County Prosecuting Attorney, 15SL-CC00177, 7-16 (2015).

<sup>20</sup> See, e.g., Peter Holly, *Ferguson prosecutor says he knew some witnesses were ‘clearly not telling the truth.’ They testified anyway.*, WashingtonPost.com, <http://www.washingtonpost.com/news/post-nation/wp/2014/12/20/ferguson-prosecutor-says-he-knew-some-witnesses-were-clearly-not-telling-the-truth-they-testified-anyway/> (Dec. 20, 2014)

<sup>21</sup> See Grand Jury Testimony, Volume XV at 84–227

<sup>22</sup> See Grand Jury Testimony, Volume XIII at 115–37.

### **1.3. Failure to Cross- Examine Darren Wilson's Testimony**

Prosecutors did not challenge Officer Wilson's testimony even though it conflicted with his prior statements to law enforcement and the physical evidence.<sup>23</sup> Officer Wilson first told police investigators that he did not suspect Mr. Brown or his companion Dorion Johnson of having committed a crime when the physical altercation between him and Mr. Brown occurred. Yet in his unchallenged grand jury testimony, he testified that he did suspect the pair of having robbed a nearby convenience store when the altercation occurred. Officer Wilson also told his supervisor that Mr. Brown ran about 30 to 40 feet away from his vehicle before the fatal shooting occurred. Yet Mr. Brown's body was found over 100 feet from Officer Wilson's police vehicle, indicating that Officer Wilson pursued the fleeing Mr. Brown farther than he first stated to his supervisor.<sup>24</sup> Prosecutors similarly failed to challenge Wilson's testimony that he saw Mr. Brown move his right hand "under his shirt in his waistband" prior to firing the fatal shots, even though no forensic evidence showed smears or smudges around Mr. Brown's waistline that would indicate such a movement occurred, as Mr. Brown had been shot in his right hand moments earlier.

### **1.4. Use of Unconstitutional Missouri Use of Force Law**

Many around the country reacted with outrage upon learning that in the Mike Brown case, Prosecutor Robert McCullough's office used Missouri's anachronistic and unconstitutional use of force statute to give Darren Wilson an advantage in the grand jury process. The Missouri use of force statute would potentially give an officer the ability to use deadly force to subdue someone suspected of a nonviolent felony, for example killing someone who is suspected only of passing a bad check would be allowable under that statute.<sup>25</sup> The Attorney General of Missouri has acknowledged that the state's use of force statute does not comply with the Constitution as interpreted by the United States Supreme Court in *Tennessee v. Garner* in 1985.<sup>26</sup>

However, the prosecutors did not accurately explain to the grand jury on the record why the state law is unconstitutional and therefore no longer good law. Although prosecutors provided a new justification standard to the grand jury in written form upon conclusion of the presentation of evidence, the entire trial was conducted with jury members assuming that the unconstitutional state law was indeed the standard. Amazingly, other states around the nation also currently have use of force statutes that brazenly flout the rulings of the

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<sup>23</sup> Grand Jury Testimony, Volume V at 196–281

<sup>24</sup> See Shaun King, *Why exactly did the police lie for 108 days about how far Mike Brown ran from Darren Wilson?*, Daily Kos, <http://www.dailykos.com/story/2014/11/26/1347499/-Why-exactly-did-the-police-lie-for-108-days-about-how-far-Mike-Brown-ran-from-Darren-Wilson>.

<sup>25</sup> Commentary on Missouri's Use of Force Statute Goes Against Constitutional Rulings, St. Louis Public Radio, *available at*: <http://news.stlpublicradio.org/post/commentary-missouris-use-force-statute-goes-against-constitutional-rulings>

<sup>26</sup> Michael Brown Shooting, NBC News, *available at*: <http://www.nbcnews.com/storyline/michael-brown-shooting/missouri-attorney-general-wants-tougher-deadly-force-law-n261256>

United States Supreme Court and provide law enforcement unlawful protections for the use of force.

### **3. Failures of the United States Federal Government**

In response to widespread outrage over the clear failures of the State of Missouri to conduct an unbiased investigation and prosecution of Officer Wilson, the Department of Justice elected to conduct its own criminal investigation. Importantly, the federal investigation did not seek to determine whether Darren Wilson violated any Missouri laws—it did not seek to determine Wilson’s guilt for murder, manslaughter, or any other state crime. It sought to determine whether Wilson’s actions should be prosecuted under the federal civil rights statute, 18 U.S.C. §242, which prohibits uses of deadly force that are “objectively unreasonable,” as defined by the United States Supreme Court.

#### **1.5. Failure of Federal Civil Rights Laws to provide any meaningful review**

Eric Holder, the Attorney General of the United States who oversaw the federal investigation of Michael Brown’s killing, stated in the aftermath of the investigation that the federal civil rights laws involved in the prosecution of police officers possible use of force involve meeting a standard of proof that is “too high.”<sup>27</sup> According to the Attorney General, “We do need to change the law. I do think the standard is too high.”<sup>28</sup>

To prove a violation of 18 U.S.C. §242, the government must prove beyond a reasonable doubts that (1) the defendant was acting under color of law, (2) that he deprived a victim of a right protected by the Constitution or laws of the United States, (3) that he acted willfully, (4) that the deprivation resulted in bodily injury and/or death.<sup>29</sup> The third element, willfulness, has been interpreted to effectively mean “specific intent.” In other words, there must be evidence to provide that the defendant officer intended to engage in unconstitutional conduct, and that he did so knowing that it is a wrongful act.

Commentators have long decried this standard; historically, “prosecutors could rarely prove to a jury that even a [Klu Klux] Klansman had lynched his victim for the purpose of depriving his victim of rights.”<sup>30</sup> For this reason, federal investigations as a rule fail to provide meaningful review.

#### **1.6. Failures in Department of Justice Criminal Investigation and Report**

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<sup>27</sup> Holder: Standard is Too High In Civil Rights Cases, Washington Examiner, available at: <http://www.washingtonexaminer.com/holder-standard-is-too-high-in-civil-rights-cases/article/2560811>

<sup>28</sup> *Id.*

<sup>29</sup> Department of Justice Report Regarding the Criminal Investigation into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson, at 9 (March 2015). Available at [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj\\_report\\_on\\_shooting\\_of\\_michael\\_brown\\_1.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf)

<sup>30</sup> Will Justice Department Charge Darren Wilson?, Slate, available at: [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2014/11/will\\_justice\\_department\\_charge\\_darren\\_wilson\\_supreme\\_court\\_gutted\\_civil.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2014/11/will_justice_department_charge_darren_wilson_supreme_court_gutted_civil.html)



The Department of Justice makes questionable conclusions of both a factual and legal nature in its report. In the investigation of Darren Wilson, federal investigators concluded “there was no credible evidence to refute Wilson’s stated subjective belief that he was acting in self-defense.”<sup>31</sup> Investigators, for example, dismiss witnesses such as witness 101 and 127, both of whom claim that Brown turned around with his hands raised in surrender, or that he never reached for his waistband. The investigation fails to consider the gaping wound left in Michael Brown’s hand from the initial gunshot he received in the car, and how no blood ultimately appeared on his pants near his waistband at all, as would be necessary if he did indeed reach for his waistband.

In addition, the Department of Justice makes questionable use of case law from the United States Court of Appeals. For example, it presents *Loch v. City of Litchfield* as a dispositive case on the question of whether Darren Wilson reasonably perceived a deadly threat against Brown even if his hands were empty and he had never reached into his waistband because of Brown’s actions in refusing to halt his forward movement towards Wilson. However, in *Loch* there was a gun on the scene thrown away by one of the suspects, and the person shot by the officer had a cell phone in his waist that the officer perceived as a mysterious black object, throwing into doubt the appropriateness of the analogy.<sup>32</sup>

#### **IV. ADMISSIBILITY**

This petition is admissible in its entirety under the Rules of Procedure<sup>33</sup> of the Inter-American Commission on Human Rights (hereinafter the “IACHR” or “the Commission”). In particular the Commission has jurisdiction *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci* to examine the petition. This petition also complies with the requirements of exhaustion of domestic remedies under rule 31.2. The Commission should therefore grant admissibility, and proceed to an examination on the merits.

##### **1. The Commission has Jurisdiction *Ratione Personae*, *Ratione Materiae*, *Ratione Temporis*, and *Ratione Loci* to Examine the Petition**

The Commission has jurisdiction *ratione personae* to consider this petition as the victims, Michael Brown, Jr. and Lesley McFadden are natural persons and American citizens who were born and lived their entire lives in the United States. As such they lived under the jurisdiction of the United States and their rights are protected under the American Declaration, the provisions of which the State is bound to respect.<sup>34</sup>

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<sup>31</sup> Department of Justice Report Regarding the Criminal Investigation into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson, at 12 (March 2015). Available at [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj\\_report\\_on\\_shooting\\_of\\_michael\\_brown\\_1.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf)

<sup>32</sup> *Loch v. City of Litchfield*, 689 F. 3d 961, 963 (8<sup>th</sup> Cir. 2012).

<sup>33</sup> Rules of Procedure of the Inter-American Commission on Human Rights

<sup>34</sup> *Lenahan v. United States*, Case 12.626, IACHR, Report No. 80/11 (2011), para. 37

The Commission is also competent *ratione materiae* to examine the petition, as petitioners are alleging violations of articles I, II, XVIII, XXV, and XXVI of the American Declaration on the Rights and Duties of Man.

The Commission is competent *ratione temporis* to examine the petition because the facts contained herein all occurred on or after June 19, 1951, the date which the United States' obligations under the American Declaration took effect.<sup>35</sup>

Finally, the Commission is competent *ratione loci*, as all facts contained in the petition occurred in the territory of the United States and while Michael Brown, Jr. and Lesley McFadden were under the jurisdiction of the State as described above.

#### **4. Petitioners Have Met the Requirements for the Exhaustion of Domestic Remedies**

Pursuant to article 31 of the IACHR Rules of Procedure, individual petitions are admissible only where domestic remedies have been exhausted or where such remedies are unavailable as a matter of fact or law.<sup>36</sup>

As of November 24, 2014 when St. Louis County Prosecutor Robert McCulloch announced the grand jury's decision not to indict Ferguson police officer Darren Wilson, no other domestic remedy exists as a matter of fact or law for the family of Michael Brown to challenge the State's failure to effectively investigate or prosecute the myriad violations of Michael Brown's international protected rights.

On March 4, 2015 the United States Department of Justice announced it would not bring federal civil rights charges against Darren Wilson. While a federal prosecution for the could have fulfilled, at least in part, the State's duty to prosecute the violations of Michael Brown's internationally protected rights, it would not have provided redress for the failures of the grand jury investigation.

Both the St. Louis County Circuit Court and Missouri's Governor arguably possess the authority to order a special prosecutor to re-investigate and brings charges against officer Wilson, such remedies are at the complete discretion of the Court and Governor respectively, and thus do not constitute an available remedy for the purposes of the Commission's analysis under article 31.

Accordingly, no other remedy exists in fact or in law to address the violations alleged in this petition, and the Commission should find this case admissible and pursue to its consideration on the merits.

#### **5. Petition is Submitted in a Timely Manner**

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<sup>35</sup> *Lenahan*, para. 37

<sup>36</sup> Rules of Procedure of the Inter-American Commission on Human Rights, article 31

Article 32 (1) of the Rules of Procedure provide that in order for the Commission to admit a petition, generally the petition must be filed within six months from the date on which the party alleging violation of his rights was notified of a final judgment. This petition is, submitted on May 24, 2015, within six months of the grand jury's decision not to indict officer Wilson and within three months of the federal government's decision not to bring a federal prosecution. Accordingly, the petition is submitted in a timely manner in compliance with article 32.

## **6. Absence of Parallel Proceedings**

The subject matter of this petition has not been submitted to and is not currently pending before any other international proceeding or settlement procedure, and therefore complies with the requirement of non-duplication of proceedings under article 33 of the Rules of Procedure.

In sum and in light of the information above, this petition conforms to the admissibility requirements of the Commission.

## **V. VIOLATIONS OF THE AMERICAN DECLARATION**

### **1. Preliminary Considerations**

#### **1.1. Commission to interpret content of American Declaration in light of recent developments in international law**

When interpreting the American Declaration, the Inter-American Court of Human Rights (IACtHR) has found it necessary to take into account the entire legal system prevailing at the time of the interpretation, including in light of the "the Inter-American System today in light of the evolution it has undergone since the adoption of the Declaration."<sup>37</sup>

The Commission has likewise consistently adopted this principle in relation to its own interpretation of the American Declaration. For example, in the *Villareal* case, the Commission noted that:

in interpreting and applying the American Declaration, it is necessary to consider its provisions in the context of developments in the field of international human rights law since the Declaration was first composed and with due regard to other relevant rules of international law applicable to member states against which the complaints of violations of the Declaration are properly lodged. Developments in the corpus of international human rights law relevant in interpreting and applying the American Declaration

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<sup>37</sup> Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, Inter-Am. Ct. H.R. (ser. A) No. 10, para. 37 (July 14, 1989).

may in turn be drawn from the provisions of other prevailing international and regional human rights instruments.<sup>38</sup>

Consistent with this approach, the Commission has looked to numerous international and regional human rights treaties and instruments as well as decisions of international courts and other bodies to interpret rights protected under the American Declaration, and should do so in relation to the provisions of the Declaration invoked by the petitioners in this case.<sup>39</sup>

## **2. The State Failed to Prevent or Address the Systematic Pattern and Practice of Violations That Led to the Illegal Stop and Shooting Death of Michael Brown (Articles I and XXV)**

The illegal stop and shooting death of Michael Brown by officer Wilson occurred in the context of a systematic pattern and practice of abusive policing in Ferguson, Missouri and the United States as a whole. The failure of the State to prevent or address this systematic pattern and practice of violations – including among other things, the failure to bring its standards for the use of force by law enforcement in line with international standards, the failure to properly train law enforcement on racial bias, and the failure to address systematic abuses by the Ferguson Police Department – contributed to an environment in which officer Wilson felt justified in conducting an illegal stop of Michael Brown, using profane and confrontational approach that escalated the situation, and ultimately in using deadly force against Michael Brown, who was unarmed, on August 9, 2014.

Amidst this context, the Commission should find that the United States failed in its duty to guarantee and ensure the Michael Brown's right to life and human treatment under article I, and right to be free from arbitrary detention under article XXV.

### **2.1. Systematic Pattern and Practice of Racist Policing and Excessive Use of Force By Law Enforcement**

The killing of Michael Brown's is emblematic of lethal force being disproportionately used against young African-American men in the United States. In the years leading up to and the months following the shooting death of Michael Brown, the United States has faced a crisis

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<sup>38</sup> *Ramón Martínez Villareal v. United States*, Case 11.753, IACHR, Report No. 52/02, doc. 5 rev. 1 at 821, para. 60 (2002) (citing *Juan Raúl Garza v. United States*, Case 12.243, IACHR, Report No. 52/01, OEA/Ser.L/V/II.111, doc. 20 rev. at 1255, paras. 88-89 (2000)).

<sup>39</sup> See, e.g., Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, IACHR, OEA/Ser.L/V/II.106, doc. 40 rev., paras. 28, 159, 165 (Feb. 28, 2000) (referencing the U. N. Convention on the Rights of the Child to interpret Canada's responsibilities to asylum seekers under the American Declaration and the OAS Charter); *Maya Indigenous Community v. Belize*, Case 12.053, paras. 112-120, 163, 174 (referencing the American Convention, jurisprudence of the Inter-American Court, and the United Nations Convention on the Elimination of Racial Discrimination (CERD) to interpret the rights to property, equality before the law, and judicial protection for indigenous peoples contained in the American Declaration).

of racial profiling and excessive use of force by law enforcement against African Americans and other minorities.

The actions of the police department and the local prosecutor also come against the backdrop of deep racial divisions in the community and a history of racial bias in the Ferguson Police Department. While the population of Ferguson is 67% black, the police force is 94% white. An annual state report on racial profiling in Ferguson notes that last year, 86% of police stops and 92% of police searches were on black people.

## **2.2. States Have a Positive Duty to Ensure Rights Guaranteed by the American Declaration**

The Commission has consistently noted that the American Declaration imposes a positive obligation on States to ensure the rights therein. In *Lenahan*, the Commission specifically held:

As a source of legal obligation, States must implement the rights established in the American Declaration in practice within their jurisdiction. The Commission has indicated that the obligation to respect and ensure human rights is specifically set forth in certain provisions of the American Declaration. International instruments in general require State parties not only to respect the rights enumerated therein, but also to ensure that individuals within their jurisdictions also exercise those rights. The continuum of human rights obligations is not only negative in nature; it also requires positive action from States.

Accordingly, the Commission in its decisions has repeatedly interpreted the American Declaration as requiring States to adopt measures to give legal effect to the rights contained in the American Declaration,<sup>40</sup> requiring States to not only refrain from committing human rights violations contrary to the provisions of the American Declaration,<sup>41</sup> but also “to adopt affirmative measures to guarantee that the individuals subject to their jurisdiction can exercise and enjoy the rights contained in the American Declaration.”<sup>42</sup>

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<sup>40</sup> *Lenahan*; see also IACHR, Report N° 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, para. 162; IACHR Report N° 67/06, Case 12.476, *Oscar Elías Bicet et al.* (Cuba), October 21, 2006, paras. 227-231.

<sup>41</sup> *Lenahan*; see also, e.g., IACHR, Report 63/08, Case 12.534, *Andrea Mortlock* (United States), July 25, 2008, paras. 75-95; IACHR, Report 62/02, Case 12.285, *Michael Domingues* (United States), October 22, 2002, paras. 84-87.

<sup>42</sup> *Lenahan*, citing IACHR, Report N° 81/10, Case 12.562, *Wayne Smith, Hugo Armendariz, et al.* (United States), July 12, 2010 paras. 61-65; IACHR, Report N° 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, paras. 122-135, 162, and 193-196; IACHR, Report N° 75/02, Case 11.140, *Mary and Carrie Dann* (United States, December 27, 2002, paras. 124-145.

### **2.3. The United States Failed to Prevent or Address the Systematic Pattern and Practice of Violations That Led to the Illegal Stop and Shooting Death of Michael Brown in Violation of Articles I and XXV**

In the context of a systematic pattern and practice of violations by law enforcement against African Americans, the United States not only has an obligation to refrain from actions that violate the rights of individuals, but must also take affirmative measures to combat systemic violations that prevent the full enjoyment of rights. In this regard, the United States failed in its duty to ensure Michael Brown's full enjoyment of his rights to life, humane treatment, and freedom from arbitrary detention.

Among other things, because of the permissive actions of the State to allow the systematic pattern and practice of violations of law enforcement in Ferguson and throughout the United States, officer Wilson felt justified in engaging in a series of abusive tactics, including the use of his car as a weapon, profane language, a confrontational approach that immediately escalated the matter, and ultimately the use of deadly force against an unarmed Michael Brown.

On the day in question, the only weapon carried by officer Wilson, and thus the only weapon that could be used his self-defense, was the firearm that he ultimately used to kill an unarmed Michael Brown.

In fact, the legal framework in much of the United States permits law enforcement to use deadly force in violation of international standards. In response to the decision of the grand jury not to indict officer Wilson, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stressed that international law allows the use of lethal force only where it is absolutely necessary to protect life, and stated:

The laws of many of the States in the US are much more permissive, creating an atmosphere where there are not enough constraints on the use of force. A comprehensive review of the system is needed - the enabling laws, the kinds of weapons the police use, the training they receive, and the use of technology such as on-body cameras to ensure accountability.<sup>43</sup>

Ultimately, the wide variance between the domestic law authorizing the use of deadly force by law enforcement and the corresponding international obligations of the United States, along with other gaps in the legal framework, make it

### **3. The State Failed to Effectively Investigate and Prosecute Violations of Michael Brown's Rights to Life, Liberty and Personal Security, Right of Protection from Arbitrary Arrest, (Articles XVIII and XXVI read with Articles I and XXV)**

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<sup>43</sup> United Nations Office of the High Commissioner for Human Rights, "Legitimate concerns" over outcome of Michael Brown and Eric Garner cases – UN rights experts, *available at* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15384&LangID=E>

### **3.1. The American Declaration Imposes a Duty on States to Effectively Investigate and Prosecute Human Rights Violations**

#### **3.1.1. Article I of the American Declaration Protects the Right to Life**

Article I of the American Declaration provides that: “Every human being has the right to life, liberty and the security of his person.”

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.”<sup>44</sup> The importance of the right to life is reflected in its incorporation into every key international human rights instrument<sup>45</sup> and status under customary international law.<sup>46</sup>

#### **3.1.2. Article I of the American Declaration Prohibits Torture and CIDT**

The Commission has interpreted Article I of the Declaration to include equivalent protections in Article 5 of the Convention,<sup>47</sup> which guarantees the right of everyone to respect for their “physical, mental, and moral integrity,” and to be free from “torture or to cruel, inhuman, or degrading punishment or treatment.”<sup>48</sup> Article XXV additionally grants the right to “humane treatment” to individuals in custody, and Article XXVI also prohibits “cruel, infamous or unusual punishment.” Reading Articles I, XXV, and XXVI together, the Commission has stated that the Declaration’s right to humane treatment encompasses three broad categories of prohibited treatment: “(1) torture; (2) other cruel, inhumane, or degrading treatment or punishment; (3) other prerequisites for respect for physical, mental and moral integrity, including certain regulations governing the means and objectives of detention or punishment.”<sup>49</sup>

The Convention Against Torture defines torture as “Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . for any reason based on discrimination of any kind” by a public official.<sup>50</sup>

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<sup>44</sup> IACHR, Report 97/03, Case 11.193, *Gary T. Graham (Shaka Sankofa) v. United States*, December 29, 2003, para. 26; IACHR, Report 62/02, Case 12.285, *Michael Domingues (United States)*, October 22, 2002, para. 38.

<sup>45</sup> See, 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.

<sup>46</sup> IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others (Mexico)*, March 9, 2007, paras. 251-252; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paras. 195-197; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, paras. 102-106; IACHR, *Report on the Rights of Women in Haiti to be Free from Violence and Discrimination*, OEA/Ser.L/V/II, Doc. 64, March 10, 2009, para. 90.

<sup>47</sup> Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., para. 155 (2002)

<sup>48</sup> American Convention art. 5

<sup>49</sup> Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., para. 150 (2002)

<sup>50</sup> CAT, Art. 1.

### **3.1.3. The American Declaration Prohibits Arbitrary Detention and Illegal Stops by Law Enforcement**

The prohibition of arbitrary detention is implicitly guaranteed by a number of separate Articles that establish fundamental rights to liberty and to due process. Articles I and XXV provide that everyone has a right to personal liberty, that “no person may be deprived of liberty except by preexisting law.” Article XVIII provides that every person has the right to a “simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights,” and Article XXVI ensures that such hearings are impartial and that pending trial and conviction, defendants are to be presumed innocent until proven guilty.<sup>129</sup>

Notably, in assessing whether detention is arbitrary the Commission first considers whether domestic law authorizes detention.<sup>51</sup> The Commission has found that detention that is not authorized under domestic law constitutes arbitrary detention that violates Article 7 of the American Convention.<sup>52</sup> The Commission has applied this same standard in assessing whether detention violates Article XXV of the American Declaration.<sup>53</sup>

In the present case office Wilson – without giving any lawful reason or explanation – unjustifiably and unreasonably stopped and detained Michael Brown when he used his vehicle to block and halt his progress in walking home. This action violated United States Constitutional protections against unlawful stops by law enforcement, and was typical of the pattern and practice of abusive police tactics pervasive in the Ferguson Police Department.

### **3.1.4. Duty to Effectively Investigate and Prosecute Imposed by Articles XVIII and XXVI of the American Declaration**

The Commission has held that the rights contained in the American Declaration are implicated when a State fails to prevent, prosecute and sanction violations of these rights.<sup>54</sup> In *Velasquez-Rodriguez* the Inter-American Court held that States “must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.”<sup>55</sup> The Court went on to specify that States are:

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<sup>51</sup> Jailton Neri Da Fonseca v. Brazil, Case 11.634, Inter-Am. Comm’n H.R., Report No. 33/04, para. 54 (2004).

<sup>52</sup> See, e.g., *Maritza Urrutia v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, para. 67-70 (Nov. 27, 2003) (relying on Guatemala’s domestic law providing that no person may be deprived of personal freedom absent judicial order or being caught “flagrante delicto” to find Maritz Urrutia’s warrantless arrest while walking down the street to qualify as arbitrary and extrajudicial detention).

<sup>53</sup> *Oscar Elias Biscet et al. v. Cuba*, Case 12.476, Inter-Am. Comm’n H.R., Report No. 67/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1, para. 143 (2007) (determining that Cuba’s arrest of journalists and activists without an order from a competent judicial authority to have been arbitrary).

<sup>54</sup> *Lenahan*, para. 119, See also, Report Nº 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), Annual Report of the IACHR 2001, paras. 3, 37-44.

<sup>55</sup> *Velasquez Rodriguez Case*, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), para. 166.



“obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.”<sup>56</sup>

In the *Bulacio* case, the Court went further to clarify that States must “refrain from... enacting provisions to exclude liability, as well as measures, aimed at preventing criminal prosecution or at voiding the effects of a conviction,”<sup>57</sup> and illustrating that the Inter-American system explicitly privileges the rights of the victim to have a trial.

In *Lenahan* the Commission clarified that:

Investigations must be serious, prompt, thorough, and impartial, and must be conducted in accordance with international standards in this area. In addition, the IACHR has established that the State must show that the investigation was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth.<sup>58</sup>

Under the International Covenant on Civil and Political Rights (ICCPR) the United Nations Human Rights Committee also requires States to investigate and prosecute violations. In particular the Human Rights Committee has held that claims of violations of the right to life, torture, and inhumane treatment “must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”<sup>59</sup> The Committee is plain in requiring a complete judicial remedy in these contexts, insisting that the State “prosecute criminally, try and punish those held responsible for such violations.”<sup>60</sup> Furthermore, according to the UNHRC, “this duty applies a fortiori in cases in which the perpetrators of such violations have been identified.”<sup>61</sup>

Article 12 of the Convention Against Torture requires States to “ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.” In particular, the UN Committee Against Torture has held that:

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<sup>56</sup> *Velasquez Rodriguez Case*, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), para. 176.

<sup>57</sup> See Gutierrez-Soler, 2005 Inter-Am. Ct. H.R. (Ser. C) No. 132, 97(proving that states must not exonerate those responsible, plead a statute of limitations bar, or permit any measure delaying prosecution or conviction).

<sup>58</sup> *Lenahan*, para. 181 (internal citations omitted)

<sup>59</sup> *Rodriguez v. Uruguay*, U.N. GAOR, Hum. Rts. Comm., 51st Sess., para. 12.3, U.N. Doc. CCPR/C/5 IID/322/1988 (1994).

<sup>60</sup> *Bautista de Arellana v. Colombia*, Communication No. 503/1993, U.N. GAOR, Hum. Rts. Comm., 55th Sess, para. 8.6, U.N. Doc. CCPR/C/55/D/1993 (1995).

<sup>61</sup> *Ibid.*

“[t]he protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment.... States Parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals . . . .”<sup>62</sup>

In its recent Concluding Observations on the combined third to fifth periodic reports of the United States, the Committee Against Torture “deep concern at the frequent and recurrent shootings or fatal pursuits by the police of unarmed black individuals” and indicated that the United States should “(b) prosecute persons suspected of torture or ill-treatment and, if found guilty, ensure that they are punished according to the gravity of their acts; (c) provide effective remedies and rehabilitation to the victims[.]”<sup>63</sup> This echoed a similar charge by the Committee to the United States in 2006 to “ensure that reports of brutality and ill-treatment of members of vulnerable groups by its law-enforcement personnel are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.”<sup>64</sup>

Even in the European system, where the duty to prosecute is arguably more lenient than the Inter-American system, the European Court has stated that the criminal prosecution is required in cases of grave facts, such as suspicious death or where ill-treatment allegedly committed by the state apparatus.<sup>65</sup> And where “an individual raises an arguable claim that he or she has been seriously ill-treated by the police” the Convention requires that there “should be an effective official investigation... capable of leading to the identification and punishment of those responsible.”<sup>66</sup>

In the present case, the American Declaration, in concert with the range of the United States’ international legal obligations and comparative law make clear the duty to effectively investigate and prosecute the violations Michael Brown’s rights.

### **3.2. Grand Jury Proceeding Violated the State’s Duty to Conduct an Effective Investigation**

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<sup>62</sup> CAT, General Comment 2, Implementation of Article 2 by States Parties, UN Doc CAT/C/GC/2/CRP.1/Rev.4 (2007), para 21

<sup>63</sup> United Nations Committee Against Torture, CAT/C/USA/CO/3-5, Concluding Observations on the combined third to fifth periodic reports of the United States of America, December 19, 2014, para. 26, *available at* [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f3-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f3-5&Lang=en)

<sup>64</sup> United Nations Committee Against Torture, CAT/C/USA/CO/2, Conclusions and Recommendations, July 25, 2006, *available at* <http://www.ushrnetwork.org/sites/ushrnetwork.org/files/catrecommendations2006.pdf>

<sup>65</sup> *Menesheva v. Russia*, App. No. 59261/00, 44 Eur. H.R. Rep. 56, at 1174-1176 (2007) (judgment Mar. 9, 2006) (ruling that Russia violated Article 13 of the European Convention by failing to effectively investigate the victim’s allegations of illtreatment, and requiring these investigations to be “independent, impartial and subject to public scrutiny” and that they be completed expeditiously and competently).

<sup>66</sup> *Ibid.*

As described above the Prosecutor's approach to the grand jury process was flawed, biased, and from the very beginning violated the State's duty to effectively investigate and prosecute the violations of Michael Brown's rights.

The prosecutor instructed the grand jury that the proceedings in Michael Brown's case would be "different from a lot of the other cases you've heard, that you've heard during your term."<sup>67</sup> By doing so, he all but admitted that he would be using the grand jury process to establish officer Wilson's innocence, instead defending justice in light of the violations of Michael Brown's rights. By their nature grand juries are not equipped to adjudicate guilt or innocence, unlike a trial subjected to the adversarial process. As one legal commentator put it:

[The Prosecutor] turned it over to the grand jury, a rarity itself, and then used the investigation as a document dump, an approach that is virtually without precedent in the law of Missouri or anywhere else... In any event, reserving this kind of special treatment for white police officers charged with killing black suspects cannot be an appropriate resolution.<sup>68</sup>

Throughout the process prosecutors vouched for the police to the grand jury, linking the credibility of their office to the credibility of the police, and providing preferential treatment for perpetrator as if Michael Brown was the defendant.

The Prosecutor knowingly called a witness to testify over two days

### **3.3. State's Failure in its Duty to Prosecute**

By failing in its duty to effectively investigate the violations of Michael Brown's rights, the State has also failed in its duty to prosecute those responsible, namely officer Wilson.

Expressing concern of the grand jury's decision and "the apparent conflicting evidence that exists"<sup>69</sup> the United Nations Special Rapporteur on minority issues maintained that a "trial process would ensure that all the evidence is considered in detail and that justice can take its proper course"<sup>70</sup> and added that the decision leaves "many with legitimate concerns relating to a pattern of impunity when the victims of excessive use of force come from African-American or other minority communities."<sup>71</sup>

Despite the apparent attempts by the prosecutors to imbue the grand jury proceedings with the veneer of being a trial-like proceeding, they were far from the adversarial process and high standards required by a courtroom. As described above the prosecutors were

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<sup>67</sup> Case: State of Missouri v. Darren Wilson, Transcript of Grand Jury, August 20, 2014 *available at*: <http://graphics8.nytimes.com/newsgraphics/2014/11/24/ferguson-evidence/assets/gj-testimony/grand-jury-volume-01.pdf>

<sup>68</sup> *available at*: <http://www.newyorker.com/news/news-desk/use-grand-jury>

<sup>69</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15384&LangID=E>

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

overly sympathetic to the accused, and used leading questions to guide him to statements of exoneration, leaving Michael Brown, the victim, without an advocate of the State. Furthermore, the perpetrator was allowed to recount his version of the story without being subject to cross-examination, and witnesses known to be lying were permitted to testify. For precisely these reasons, international law mandates that those responsible for human rights violations be taken to trial and prosecuted.

#### **4. The State's Failures to Prevent and to Investigate and Prosecute Violations of Michael Brown's Rights Constitute Discrimination (Article II)**

Article II of the American Declaration provides that:

All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

The Commission has defined "racial profiling" as a "tactic [] adopted for supposed reasons of public safety and protection and is motivated by stereotypes based on race, color, ethnicity, language, descent, religion, nationality, place of birth, or a combination of these factors, rather than on objective suspicions, and it tends to single out individuals or groups in a discriminatory way based on the erroneous assumption that people with such characteristics are prone to engage in specific types of crimes."<sup>72</sup>

The Commission has also noted that individuals of African descent in the Americas, including the United States, have been affected by a "double victimization", as they have been "excluded from the protection of the State's security forces, and have also been a victim of violent acts, disproportionate use of force and lethal force, and police corruption, committed with total impunity."<sup>73</sup>

As has been demonstrated above, the systematic pattern and practice of violations of the rights of African Americans by police in Ferguson, and throughout the United States, amounts to a violation of the prohibition of discrimination in article II of the American Declaration. This discriminatory pattern and practice of violations resulted in the illegal stop and shooting death of Michael Brown.

Additionally and amidst this broader context, the failure of the State in its duty to effectively investigate and prosecute the violations of Michael Brown's rights must also be found to constitute a violation of non-discrimination.

In particular the UN Committee on the Elimination of Racial Discrimination has held that "when racial or ethnic discrimination does exist in the administration and functioning of

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<sup>72</sup> See, inter alia, IACHR, Report No. 26/09 (Admissibility and Merits), Case 12.440, Wallace de Almeida (Brazil), March 20 2009, para. 143.

<sup>73</sup> The Situation of People of African Descent in the Americas, IACHR, OEA/Ser.L/V/II. Doc. 62, 5 December 2011, para. 172

the system of justice, it constitutes a particularly serious violation of the rule of law, the principle of equality before the law, the principle of fair trial and the right to an independent and impartial tribunal, through its direct effect on persons belonging to groups which it is the very role of justice to protect.”<sup>74</sup>

Responding the lack of indictment by the grand jury in the present case ,the UN Special Rapporteur on contemporary forms of racism drew attention to continuing evidence of discriminatory practices including racial profiling by police officers targeting African Americans as specific challenges requiring urgent action, stating:

There are numerous complaints stating that African Americans are disproportionately affected by such practices of racial profiling and the use of disproportionate and often lethal force. African-Americans are 10 times more likely to be pulled over by police officers for minor traffic offences than white persons. Such practices must be eradicated.<sup>75</sup>

The United Nations High Commissioner for Human Rights added that he was “deeply concerned at the disproportionate number of young African Americans who die in encounters with police officers.... It is clear that, at least among some sectors of the population, there is a deep and festering lack of confidence in the fairness of the justice and law enforcement systems,” and went on to “urge the US authorities to conduct in-depth examinations into how race-related issues are affecting law enforcement and the administration of justice, both at the federal and state levels.”<sup>76</sup>

Similarly, the Head of the UN Working Group of Experts on People of African Descent stated that the Michael Brown case has added to the Working Group’s “existing concerns over the longstanding prevalence of racial discrimination faced by African-Americans, particularly in relation to access to justice and discriminatory police practices,” and went on to call “for finalization without undue delay of the on-going investigations into the cases, the delivery of justice and reparations for the victims concerned.”<sup>77</sup>

## **5. The State’s Failures to Prevent and to Investigate and Prosecute Violations of Michael Brown’s Rights Violate His Family’s Right to Personal Integrity (Article I)**

As stated above, the Commission has interpreted Article I of the Declaration to include equivalent protections in Article 5 of the Convention,<sup>78</sup> which guarantees the right of

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<sup>74</sup> CERD, General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system (2005), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7503&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7503&Lang=en)

<sup>75</sup> United Nations Office of the High Commissioner for Human Rights, “Legitimate concerns” over outcome of Michael Brown and Eric Garner cases – UN rights experts, *available at* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15384&LangID=E>

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., para. 155 (2002)

everyone to respect for their “physical, mental, and moral integrity,” and to be free from “torture or to cruel, inhuman, or degrading punishment or treatment.”<sup>79</sup> Article XXV additionally grants the right to “humane treatment” to individuals in custody, and Article XXVI also prohibits “cruel, infamous or unusual punishment.” Reading Articles I, XXV, and XXVI together, the Commission has stated that the Declaration’s right to humane treatment encompasses three broad categories of prohibited treatment: “(1) torture; (2) other cruel, inhumane, or degrading treatment or punishment; (3) other prerequisites for respect for physical, mental and moral integrity, including certain regulations governing the means and objectives of detention or punishment.”<sup>80</sup>

The Inter-American Court has consistently held that:

that the next of kin of the victims of human rights violations may also be victims. In this regard, the Court has considered that the right to mental and moral integrity of the next of kin of the victims has been violated owing to their suffering as a result of the specific circumstances of the violations perpetrated against their loved ones and the subsequent acts or omissions of the State authorities with regard to the events.<sup>81</sup>

The Honorable Court has also held that the failure of the public authorities to fully investigate human rights violations and punish those responsible creates a feeling of insecurity and helplessness for the family of the victim.<sup>82</sup> The Court has also found “the absence of effective recourses is an additional source of suffering and anguish for the victims and their next of kin.”<sup>83</sup>

In line with the jurisprudence of the Inter-American system the rights of Lesley McFadden and her family have been violated with respect to the failure of the State to effectively investigate and prosecute the shooting death of her son, Michael Brown. On top of the suffering that any mother would feel, the case of Michael Brown been subject to an innumerable amount of domestic and international attention. The Prosecutor

Additionally following the killing of Michael Brown, his body was left uncovered in the middle of the street that runs through the Canfield Green Apartments—a densely populated apartment complex—for over four hours. This treatment of his body, grotesquely mutilated by the six to eight bullets, and left bleeding in the street in plain

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<sup>79</sup> American Convention art. 5

<sup>80</sup> Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., para. 150 (2002)

<sup>81</sup> Inter-American Court, *Caso de la Masacre de Pueblo Bello Vs. Colombia*, Sentencia de 31 de enero de 2006, para. 154; Inter-American Court, *Caso Gómez Palomino Vs. Perú*, Sentencia de 22 de noviembre de 2005, para. 60; Inter-American Court, *Caso de la “Masacre de Mapiripán” Vs. Colombia*, Sentencia de 15 de septiembre de 2005, para. 144 y 146; y Inter-American Court, *Caso de las Hermanas Serrano Cruz Vs. El Salvador*, Fondo y Reparaciones, Sentencia de 1 de marzo de 2005, para. 113 y 114 (emphasis added).

<sup>82</sup> Inter-American Court, *Caso Villagrán Morales y otros*, para. 173.

<sup>83</sup> *Caso de la Masacre de Pueblo Bello Vs. Colombia*, para. 158; *Caso de la “Masacre de Mapiripán” Vs. Colombia*, *supra*, párr. 145; Corte IDH, *Caso de la Comunidad Moiwana Vs. Suriname*, Sentencia de 15 de junio de 2005, párr. 94; *Caso Hermanas Serrano Cruz Vs. El Salvador*, Fondo y Reparaciones, *supra*, párrs. 113-115; y Corte IDH, *Caso de Valle Jaramillo v. Colombia*, Sentencia de 27 noviembre de 2008.

view, traumatized countless neighbors as well as Ms. McFadden. Upon coming to the scene of the crime, Michael Brown's family found their young son's remains quickly decomposing on the hot summer street.

Given the history of racial tensions in the city of Ferguson, this particularly disrespectful treatment of Brown's body and callous disregard for the trauma it could cause Ferguson residents repeated and reinforced the longstanding degrading treatment of black racial minorities by an overwhelmingly white police force. Not only did the abandonment of the body convey to residents that the police officer regarded the black youth as less than human, but it also illustrated the officer's brazen confidence that he would not be punished for such unwarranted violence. One local leader noted that this action was a message from the police that "we can do this to you any day, any time, in broad daylight, and there's nothing you can do about it." A local we can resident shared her belief that this was done to "set an example" and that "they shot a black man, and they left his body in the street to let you all know this could be you."

## **VI. CONCLUSION AND PETITION**

The facts stated herein establish that the United States of America violated Michael Brown, Jr.'s rights under articles I, II, XVIII, XXV, and XXVI and Lesley McFadden's rights under article I under the American Declaration. Thus, petitioners respectfully requests that the Inter-American Commission on Human Rights:

1. Declare this petition admissible;
2. Investigate, with hearings and witnesses as necessary, the facts alleged in this petition;
3. Declare that the United States of America is responsible for violating Michael Brown, Jr.'s and Lesley McFadden's rights under the American Declaration of the Rights and Duties of Man as demonstrated herein;
4. Request that the competent authorities in the United States immediately appoint a Special Prosecutor to carry out an independent and effective investigation into the shooting death of Michael Brown, Jr. and bring charges to prosecute those responsible in a court of law;
5. Request the United States implement guarantees of non-repetition, such as:
  - Convene a national commission to examine police tactics nationwide, including the use of excessive or unnecessary force, the militarization of local police forces, racial profiling, and the policing of protests;
  - Comply with requirements to collect and publish statistics about police shootings and racial profiling;
  - Clearly define racial profiling under domestic law;

- Ensure every citizen has a private right of action in matters of excessive use of force and racial profiling by law enforcement; and
6. Enact such other remedies as this Commission considers adequate and effective to redress the violations alleged in this Petition.

Dated: May 24, 2015  
Respectfully Submitted,

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