

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

**PETITION ALLEGING VIOLATIONS OF THE HUMAN RIGHTS OF LATINOS
BY THE UNITED STATES OF AMERICA**

I. PETITIONERS

1. LatinoJustice PRLDEF¹
99 Hudson Street, 14th Floor
New York, NY 10013
2. John Doe 1²
3. John Doe 2³

**II. NAME OF THE PERSON OR PERSONS AFFECTED BY THE HUMAN
RIGHTS VIOLATIONS**

John Doe 1
John Doe 2
Oswaldo Marcelo Lucero (Deceased)
Angel Loja
Hector Sierra
Luis Eduardo Martinez (Deceased)
Romel Sucuzhañay⁴
Jose Osvaldo Sucuzhañay (Deceased)
Other Unidentified or Unknown victims of hate crimes targeting Latinos and/or
undocumented immigrants

**III. OAS MEMBER STATE AGAINST WHICH THE COMPLAINT IS
BROUGHT**

United States

¹ LatinoJustice PRLDEF is one of the leading Latino civil rights organizations in the country, serving a pan-Latino constituency. Since 1972, we have been litigating precedent-setting impact cases that have profoundly improved the way Latinos are treated in our society.

² John Doe 1 wishes to proceed anonymously in this petition to ensure his safety and security.

³ John Doe 2 wishes to proceed anonymously in this petition to ensure his safety and security.

⁴ See, Robert McFadden, *Attack on Ecuadorean Brothers Investigated as Hate Crime*, N.Y. Times, December 8, 2008 available at <http://www.nytimes.com/2008/12/09/nyregion/09assault.html?ref=nyregion>.

IV. FACTS DENOUNCED

The United States is failing to meet its obligation to ensure the security of Latinos who are residing in the United States.⁵ Latinos are being targeted, attacked, brutalized and murdered because of their race and ethnicity, and increasingly because of their perceived immigration status in incidents with rising frequency and severity throughout the United States.⁶ The United States is doing nothing to prevent these attacks or to protect Latinos from these incidents of hate.⁷

The United States, through its actions and omissions, is encouraging a climate that fosters violence against Latinos. The State's aggressive immigration enforcement policies have stirred up anti-immigrant and anti-Latino sentiment. Its failure to protect Latinos is in direct violation of the United States' duties under the American Declaration of the Rights and Duties of Man. The United States is, thereby, violating Articles I (Right to Life, Liberty and Personal Security), II (Right to Equality before Law), V (Right to Protection of Honor, Personal Reputation, and Private and Family Life), XVII (Right to Recognition of Juridical Personality and Civil Rights), and XVIII (Right to Fair Trial).⁸

Petitioner LatinoJustice PRLDEF is a national civil rights organization whose purpose and mission is to promote the rights of Latinos in the United States. Through our work, we are called upon to respond to violent hate incidents against Latinos and immigrants with ever more frequency.

Petitioner John Doe 1 was walking home from work in Patchogue, New York, on or about July 14, 2008, when a group of ten or more white teenagers on bicycles brutally attacked him. He tried to run away, but the group surrounded him. They punched and kicked him in the face and his body repeatedly until he lost consciousness. They even struck him in the back with a bicycle. He was left bleeding profusely from his mouth and nose, his face was swollen, and he had bruises and marks on his back, shoulders and other parts of his body. While beating him, his attackers called him "beaner" – a pejorative term for Mexicans – and told him to "go home" and to "go back to where [he] came from." After the attack, he called 911. Although uniformed county police

⁵ "Every human being has the right to life, liberty and the security of his person." Organization of American States, American Declaration of the Rights and Duties of Man, Art. 1, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992) (Hereinafter "American Declaration").

⁶ Brentin Mock, *Immigration Backlash: Hate Crimes Against Latinos Flourish*, Intelligence Report (S. Poverty Law Ctr., Mont. Ala.), Winter 2007, available at <http://www.splcenter.org/intel/intelreport/article.jsp?aid=845> (Annexed as Attachment D).

⁷ While Petitioners recognize that the State sometimes undertakes prosecutions of perpetrators of hate crimes after they occur, Petitioners contend that the State is failing in its obligation to protect Latinos through affirmative actions to prevent such incidents before they occur. Moreover, it is petitioners' contention that undocumented persons who are victimized by these incidents are afraid to report incidents because the United States fails to assure them adequate protections or to ensure them equality before the law.

⁸ Each violation is more fully discussed in Section V. "Human Rights Violated" of this petition.

responded by interviewing him and documenting his injuries, they failed to follow up with him until *four months after his attack*, and only after a similar incident left another victim dead. *See Declaration by John Doe 1 (Attachment A).*

Petitioner John Doe 2 was the victim of three separate hate incidents in Patchogue, New York, over the past five years. During the first incident, he was riding his bicycle when a car passed him and someone in the car threw a glass beer bottle at him while yelling “fucking Spanish motherfucker.” The bottle hit his head and left a gash. On two other occasions, he was assaulted by teenagers who yelled anti-Latino slurs at him while attacking and attempting to rob him. John Doe 2 has not reported any of these incidents to the police, because of a prior intimidating experience with the local police department some months before. In that prior experience, John Doe 2 had witnessed an attack against another Latino, but an officer threatened to arrest John Doe 2 when he tried to intervene and explain what he had witnessed. John Doe 2 fears reporting anything to the police for fear of being asked about his immigration status. *See Declaration by John Doe 2 (Attachment B).*

Incidents like the ones experienced by John Doe 1 and John Doe 2 are unfortunately a common occurrence. Latinos are being brutally and senselessly attacked and in some instances killed. The United States’ aggressive immigration enforcement, including active use of local law enforcement officials in immigration enforcement, combined with anti-immigrant rhetoric at the national as well as the local level, has created a climate in which Latinos cannot seek effective protection from racial violence. Moreover, by failing to impose the controls on localities necessary to prevent hate crimes, the State has acted in a manner guaranteed to fuel an increase in crimes against Latinos.

A. Rising Incidence of Hate Crimes

According to the United States Federal Bureau of Investigation (FBI), Hispanics⁹ are the No. 1 victim of hate crimes motivated by ethnicity or national origin, representing 62.8 percent of the victims of such crimes.¹⁰ The FBI reports that attacks on Hispanics grew 40 percent from 2003 to 2007.¹¹ Instead of fulfilling its duty to protect, which is heightened given the dramatic increase in hate crimes against Latinos, the United States has done even less, as it has diverted its resources to immigration prosecution and enforcement efforts rather than instituting policies to ensure protection.

9 The word Latino and Hispanic are used interchangeably in this petition.

10 U.S. DEP’T OF JUSTICE, F.B.I., UNIFORM CRIME REPORT, HATE CRIME STATISTICS, 2006, 3 (2007), available at <http://www.fbi.gov/ucr/hc2006/victims.html>. (In 2006, 62.8 percent of 1,305 victims of hate crimes motivated by the offender’s bias toward a particular ethnicity/national origin were targeted because of an anti-Hispanic bias); *See also, Anti-Latino Hate Crimes Rise for Fourth Year in a Row*, Intelligence Report (S. Poverty Law Ctr., Mont. Ala.), Winter 2008, *see attached, also available at* <http://www.splcenter.org/blog/2008/10/29/anti-latino-hate-crimes-rise-for-fourth-year/> (Annexed as Attachment E).

11 Sumathi Reddy, *FBI Finds Attacks Against Latinos on Rise*, NEWSDAY, Nov. 23, 2008, available at <http://www.newsday.com/about/ny-lihate2412199891nov23,0,3336318.story>.

On November 8, 2008, Oswaldo Marcelo Lucero was assaulted, stabbed and killed by a group of seven young men motivated by racial bias in Patchogue, New York. The group of teenagers was reportedly driving around the streets of Suffolk County looking for "beaners" to assault.¹² Angel Loja, another victim of the same incident and a friend who was with Mr. Lucero during the attack, survived.¹³ According to the Suffolk County District Attorney, the group of assailants had repeatedly engaged in similar activities in the past. Members of the same group regularly targeted and attempted to assault other Latinos:

Hours before Lucero's death, Marlon Garcia, 28, of Patchogue was allegedly shot with a BB gun in front of his home by two of the teens accused in the assault - Nicholas Hausch and Jordan Dasch, both 17. Garcia, a construction worker, was unharmed.

"It was not unusual for these young people to go out and look for Latinos," said Suffolk District Attorney Thomas Spota. "Most of the defendants charged have admitted that not only did they commit this crime, they committed other attacks targeting Hispanics."

Hours after Garcia was struck, the teens drove around Medford looking for Hispanic people, a practice they allegedly called "beaner jumping," prosecutors said. Then they headed to Patchogue, where they set upon 55-year-old Hector Sierra.

He escaped into a nearby home, but Lucero and a friend were ambushed soon after.¹⁴

The fact that Latinos are targeted for such attacks in a county which advertises and promotes its cooperation with immigration enforcement is not coincidence.

In Suffolk County, the number of undocumented immigrants referred to federal authorities has surged, from 44 people in 2004, when the county executive, Steve Levy, took office, to 2,289 last year, Mr. Levy said. Police officers ask those they arrest about their immigration status and refer undocumented individuals to federal authorities.

"Many local governments take the point of view that they don't want to ask that question," Mr. Levy said. "I think it's ridiculous for localities to call themselves sanctuaries." He called the notion that some people would stop cooperating with the police "silly." ¹⁵

Petitioners contend that such policies of local cooperation embolden those that would want to cause harm to immigrants and Latinos, and is evidenced by the number of incidents which are now being reported by those who have been afraid to report these crimes to police, as well as the County Police Department's instructions to officers – suggesting there is an urgent problem. See County of Suffolk, Police Department

12 Cara Buckley, *Teenagers' Violent 'Sport' Led to Killing on Long Island, Officials Say*, N.Y. TIMES, Nov. 21, 2008, at A26, available at <http://www.nytimes.com/2008/11/21/nyregion/21immigrant.html?hp>.

13 Erik German, *Teen Pleads Not Guilty in Marcelo Lucero Slaying*, NEWSDAY, Nov. 24, 2008, available at <http://www.newsday.com/news/local/suffolk/ny-lihate1125,0,5656856.story>.

14 Henrick Karolyszyn & Carrie Melago, *Murder Rap Added in L.I. Hate Crime*, N.Y. DAILY NEWS, Nov. 21, 2008, available at http://www.nydailynews.com/news/ny_crime/2008/11/20/2008-11-20_murder_rap_added_in_li_hate_crime.html.

15 Kareem Fahim, *Should Immigration Be a Police Issue?*, NEW YORK TIMES, April 29, 2007 NYT, available at <http://www.nytimes.com/2007/04/29/nyregion/nyregionspecial2/29MORRISR.html?ref=nyregionspecial2>.

Memoranda (Attachment C). It is clear from these memoranda that in some instances local police have reported crime victims to U.S. Immigration and Customs Enforcement.

In Shenandoah, Pennsylvania, on July 14, 2008, Luis Eduardo Ramirez was brutally murdered because he was Latino. Luis Ramirez was beaten to death by a group of teenagers. A witness at the scene said the assailants shouted, “You tell all your Mexican friends to get out of town.”¹⁶ After his death, his fiancé said that Mr. Ramirez and others had been subject to race-based harassment in their town, “constantly yelled at ... as they walked down the street.”¹⁷

Not coincidentally, Shenandoah is one of many communities throughout the country that has discussed the adoption of local ordinances to address immigration matters. These ordinances have attempted to authorize localities to enforce immigration. “[T]he town of Hazleton, about 20 miles from Shenandoah, enacted an ordinance that sought to discourage people from hiring or renting to illegal immigrants.... Shenandoah, whose Hispanic population has grown to about 10 percent, from 2.8 percent in 2000, considered a similar ordinance but held off after Hazleton was sued.”¹⁸ These ordinances and the debates surrounding them have stoked anti-immigrant and anti-Latino sentiment. Further, local law enforcement apparently have a policy of questioning Latinos who seek their assistance about immigration status.¹⁹

Because of the pervasiveness of the problem, it is impossible to name all of the victims of the human rights violations complained of in this petition.

B. The United States’ failure to protect Latinos

The United States is failing to protect its Latino residents from these heinous acts although it has an obligation to ensure the safety of all those who reside within its borders. This obligation extends to protection from non-state actors, especially when the State has created the atmosphere in which private citizens believe that certain persons are not entitled to the basic elements of fair treatment.²⁰ Petitioners seek redress for human

¹⁶ Leslie Richardson and Dustin Pagonis, ‘How is That not a Racial Issue?’: Shenandoah residents react to Homicide, REPUBLICAN HERALD.COM, July 17, 2008, available at http://www.republicanherald.com/articles/2008/07/17/news/local_news/pr_republican.20080717.a.pg1.pr17homicide_s1.1815854_top2.txt.

¹⁷ Id.

¹⁸ Sean D. Hamill, *Mexican’s Death Bares a Town’s Ethnic Tension*, NEW YORK TIMES, Aug. 5, 2008, available at <http://www.nytimes.com/2008/08/05/us/05attack.html>.

¹⁹ Nicole Dobo, *Both Sides of Issue Gather Downtown*, The Times-Tribune, March 13, 2007 (“[Jose Arias] Maravilla was ordered out of the United States after being turned in to federal immigration officials by police.... He was seeking help for a broken-down car when he was arrested.”).

²⁰ *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, (Sept. 17, 2003) ¶¶ 147-148.

147. The obligation to respect and guarantee the human rights of third parties is also based on the fact that it is the State that determines the laws that regulate the relations between individuals and, thus, private law; hence, it must also ensure that human rights are respected in these private relationships between third parties; to the contrary, the State may be responsible for the violation of those rights.

rights violations caused by the United States' utter lack of protection of Latinos from hate crimes and hate incidents and their subsequent condonation of such egregious conduct.

As recognized in the American Declaration of the Rights and Duties of Man, "the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality."²¹ The United States has explicitly and implicitly encouraged the dehumanization and the degradation of the rights of its migrant and Latino residents by creating an environment where violations of human rights by private actors are unhindered. It has therefore failed in its obligation of due diligence to protect.²²

In recent years, the United States has aggressively and indiscriminately stepped up its enforcement efforts to find and deport persons that are present in its borders without lawful status. It has abandoned its duty to protect and has instead aggressively worked against protecting Latinos by fostering an environment for their abuse. While in and of itself permissible, the policy of aggressive immigration enforcement by the United States has been undertaken with little regard for the human rights of undocumented immigrants and has had a disparate impact on Latinos. As a direct consequence of such policies, Latinos as a whole suffer the brunt of enforcement efforts, often being mistakenly targeted as undocumented persons.²³ These policies have served to degrade the rights of all Latino residents, regardless of their immigration status. These efforts have also served to further encourage private actors to commit hate crimes against Latinos.

Through its aggressive immigration enforcement policies, the United States has created an atmosphere in which people are perceived as not being equal before the law, in direct violation of international instruments. "While States may distinguish between a migrant's rights and those of a national as regard to ownership of the political process, and may also control the entry and departure into their territory of undocumented migrants, they may only do so if the mechanisms employed guarantee due process and respect for human dignity."²⁴ These policies and the treatment of its residents by the

148. The State is obliged to respect and ensure the labor human rights of all workers irrespective of their status as nationals or aliens, and not to tolerate those situations of discrimination that prejudice the latter in the employment relationships established between individuals (employer-worker). The State should not allow private employers to violate the rights of workers, or the contractual relationship to violate minimum international standards.

²¹ American Declaration, art. 31.

²² "...An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the persons responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of a lack of due diligence to prevent the violation or to respond to it" *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 172 (Sept. 17, 2003).

²³ See, e.g., Nina Bernstein, *U.S. Raid on an Immigrant Household Deepens Anger and Mistrust*, N.Y. TIMES, Apr. 10, 2008, available at <http://www.nytimes.com/2007/04/10/nyregion/10suffolk.html>.

²⁴ Beth Lyon and Sarah Paoletti, *Inter-American Developments on Globalization's Refugees: New Rights for Migrant Workers and Their Families*, 3 EUROPEAN YEAR BOOK OF MINORITY RIGHTS 63, 78 (2004) quoting *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 119 (Sept. 17, 2003).

State is directly linked to how the general public perceive migrant and Latino residents, and significantly influences how those predisposed to commit violent or acts of bias perceive their victims. If the United States violates the human rights it is supposed to uphold, it is implicitly approving the violation of those rights by others.

There are countless ways in which the United States, through its own actions, contributes to the growing anti-immigrant and anti-Latino atmosphere. While this petition does not seek remedial actions for all of these acts (as many of these actions are being challenged in domestic courts), and while this petition will not go into all of the State's actions that promote such an atmosphere, it will highlight a few of these actions by the State which are particularly egregious and which encourage the specific violation complained of through this petition and for which petitioners seek a remedy – the failure to provide security.

1. Delegation of Immigration Authority to Localities

Of particular concern is the delegation of immigration authority to local governments. When the United States enlists local law enforcement to identify undesirable persons in the community for expulsion, it sends a message that those who would target Latinos and cause them harm are serving the public good.

Among the various ways the United States delegates immigration authority to localities, the United States has a policy of engaging in what is termed “287(g) agreements” with local law enforcement authorities.²⁵ These agreements are meant to promote local enforcement of immigration matters. However, these agreements create the unfortunate consequences of promoting race profiling and discrimination by state actors,²⁶ as well as hate and violence against immigrants and Latinos by private actors.²⁷ Furthermore,

²⁵ According to the United States Immigration and Customs Enforcement (ICE), federal legislation, known as “The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), effective September 30, 1996, added Section 287(g), performance of immigration officer functions by state officers and employees, to the Immigration and Nationality Act (INA). This authorizes the secretary of the U.S. Department of Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions, pursuant to a Memorandum of Agreement (MOA), provided that the local law enforcement officers receive appropriate training and function under the supervision of sworn U.S. Immigration and Customs Enforcement (ICE) officers.” UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE), *Delegation of Immigration Authority Section 287(g): Immigration and Nationality Act*, Aug. 18, 2008, available at http://www.ice.gov/partners/287g/Section287_g.htm.

²⁶ See generally, Mark Hugo Lopez and Susan Minushkin, *2008 National Survey of Latinos: Hispanics See their Situation in the United States Deteriorating*, PEW HISPANIC CENTER (2008) (Nearly one in ten Hispanic adults – native born U.S. and immigrants alike – report that in the past year the police and other authorities have stopped them and asked them about their immigration status.), available at <http://pewhispanic.org/reports/report.php?ReportID=93> (Annexed as Attachment J).

²⁷ “Research has established that racial profiling indeed takes place when state and local law officers undertake immigration enforcement. The evidence has emerged even before 287(g)'s express authorization for local immigration enforcement, as state and local law enforcement officers have been permitted to inquire about an immigrant's status when conducting their normal duties as an incidental role to the officers' general crime control authority. Even absent a 287(g) agreement, when state or local officers detain an immigrant suspect for a local violation, the officer may inquire into the suspect's immigration status

287(g) agreements are being entered into with localities that are experiencing dramatic increases in their Latino population.²⁸ When the United States delegates its immigration authority through these agreements, or by other informal means, it must be done in a way that ensures that immigrants and Latinos are not foreclosed from seeking assistance from law enforcement, which is a right recognized by most international instruments.²⁹

The policy of engaging local law enforcement for carrying out immigration matters raises a number of issues, as the inquiry into immigration status becomes the focus rather than the protection of a vulnerable population.

(a) Lack of Access to Law Enforcement

Principally, when the United States seeks local cooperation with federal immigration officials in enforcing immigration laws, the consequence has been that undocumented immigrants who are victims of crimes have lost access to law enforcement. “Research has shown that immigrants are more likely to be victimized than other members of the general population” and undocumented “immigrants are often afraid to report crime to local authorities, making them easy targets for those with criminal intentions.”³⁰ Countless stories of persons afraid to turn to authorities or of persons turning to

through a query to the Law Enforcement Support Center (‘LESC’). The ICE representative fielding the query may then place a detainer on the suspect to keep him or her in custody until the immigrant’s status can be determined. Indirect state and local immigration enforcement by means of an immigration detainer has been controversial. Allegations have surfaced regarding abuses such as ‘state detentions premised on immigrant status alone and custodial arrests for traffic violations or similar offenses as pretexts for verifying an individual’s status with immigration authorities.’ In fact, ‘[p]ast allegations of abuse at times have led to states and localities entering into consent decrees that strictly limit their role in the enforcement of immigration law.’” Jason G. Idilbi, *Local Enforcement of Federal Immigration Law: Should North Carolina Communities Implement 287(g) Authority?*, 86 N.C. L. Rev. 1710, 1717 (2008) (citations omitted).

²⁸ Compare UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE), *Delegation of Immigration Authority Section 287(g): Immigration and Nationality Act*, Aug. 18, 2008, available at http://www.ice.gov/partners/287g/Section287_g.htm, and population statistics at US Census Bureau, Fact Finder Page, available at http://factfinder.census.gov/home/saff/main.html?_lang=en.

²⁹ Charter of the Organization of American States, art. 3(1) and art. 17, 119 U.N.T.S. 3, entered into force December 13, 1951; amended by Protocol of Buenos Aires, 721 U.N.T.S. 324, O.A.S. Treaty Series, No. 1-A, entered into force Feb. 27, 1970; amended by Protocol of Cartagena, O.A.S. Treaty Series, No. 66, 25 I.L.M. 527, entered into force Nov. 16, 1988; amended by Protocol of Washington, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), 33 I.L.M. 1005, entered into force Sept. 25, 1997; amended by Protocol of Managua, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), 33 I.L.M. 1009, entered into force January 29, 1996; Organization of American States, American Convention on Human Rights, art. 24, Nov. 22, 1969, O.A.S.T.S. No.36, 1144 U.N.T.S. 123, art. 24; International Covenant on Civil and Political Rights, art. 2, 5, 26, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976; Universal Declaration of Human Rights, art. 2(1), G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec. 12, 1948).

³⁰ INT’L ASS’N OF CHIEFS OF POLICE, PROJECT RESPONSE, POLICE CHIEFS GUIDE TO IMMIGRATION ISSUES, 11 (2007), available at <http://www.theiacp.org/documents/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf>;

authorities only to be asked about their immigration status are documented in news articles throughout the country.³¹ The following is just one such example:

Emelina Ramirez called police to tell them her roommates were attacking her, punching and kicking her in the stomach. When the police arrived, they handcuffed her, took her to jail and ran her fingerprints through a federal database. She is now in an Alabama cell awaiting deportation.

In the last month, Ramirez's story has spread beyond the Latino community in Carrollton, the small rural town west of Atlanta where she lived, and across Georgia, which has just enacted one of the nation's toughest laws against illegal immigration. It is a story that, for many undocumented immigrants, has one moral: Do not trust the police.³²

This problem – the fear of undocumented immigrants to report crimes to police – was further illuminated after the hate incident in which Mr. Lucero was killed. Apparently, many in his community had been targeted and attacked, but were too afraid to report these incidents. After Mr. Lucero's death and after receiving assurances that they would not be harmed,

[m]ore than 20 people came out of the shadows to a Patchogue church ... to tell Suffolk police and federal officials they had been beaten, threatened or attacked with beer bottles in recent years because they are Hispanic.³³

As recognized by the chiefs of police across the country, "[a]ssistance and cooperation from immigrant communities is especially important when an immigrant, whether documented or undocumented, is the victim of or witness of a crime. These persons must be encouraged to file reports and come forward with information. Their cooperation is needed to prevent and solve crimes and maintain public order, safety, and security in the whole community."³⁴

³¹ Daniel González, *Deportation-wary Migrants Targets of Crime: Criminals Counting on Fear of Police, Experts Say*, Oct. 29, 2008 ARIZ. REPUBLIC, Oct. 29, 2008, available at <http://www.azcentral.com/arizonarepublic/news/articles/2008/10/29/20081029victimized1029.html>; Fernando Quintero, *Immigrants 'Afraid' to Report Crimes: New Laws Make Many Reluctant to Call Authorities*, ROCKY MOUNTAIN NEWS, Sept. 2, 2006, available at <http://www.mopdenver.org/Downloads/RMN%20Immigrants&Crime%209-2-06.doc>; *Cero Tolerancia Para el Odio*, EL DIARIO NY, October 29, 2008, available at <http://www.impre.com/eldiariiony/opinion/2008/10/29/cero-tolerancia-para-el-odio-89870-1.html>; Amanda Keim, *Battered Immigrants Fear Police as Much as Husbands*, L.A. TIMES, Oct. 16, 2005, at A-18, available at <http://articles.latimes.com/2005/oct/16/news/adna-battered16>; *Reporting Crime a Catch-22 for Illegal Immigrants*, WRAL.COM, Sept. 22, 2008, available at <http://www.wral.com/news/local/story/3587531/>; Gabriele Ayala, Opinion, *Community Forum: Many Undocumented Fear Reporting Crimes*, Oct. 16, 2008, available at <http://www.fremonttribune.com/articles/2008/10/16/opinion/editorial/doc48f70df3390a8691579973.txt>.

³² Jenny Jarvier, *Citizenship Checks Strain Trust in Police - A Georgia law puts illegal immigrants at risk as victims of crime and racial profiling, Latino activists say*, LOS ANGELES TIMES, July 29, 2007, available at <http://articles.latimes.com/2007/jul/29/nation/na-deport29>.

³³ Dave Marcus, *Hate Victims Speak Out in Patchogue*, NEWSDAY, Dec. 4, 2008, available at <http://www.newsday.com/news/local/suffolk/ny-lifear045951639dec04,0,5113033.story>.

³⁴ MAJOR CITIES CHIEFS ("M.C.C."), M.C.C. IMMIGRATION COMMITTEE RECOMMENDATIONS: FOR ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES: ADOPTED BY MAJOR CITIES CHIEFS

(b) Complexity of Accomplishing Both Immigration and Law Enforcement Effectively

More fundamentally, carrying out the added mission of immigration enforcement through these 287(g) and other agreements, in a manner that is within the confines of the law and respecting civil and human rights, creates difficulties for local law enforcement. “Local and state law enforcement officers called upon to enforce immigration law face a very complex task. Immigration law is very detailed and complex, with both criminal and civil sanctions, and with one’s immigration status not always being easily ascertained.”³⁵ Instead of adding law enforcement officers to combat the rising incidence of hate crimes against Latinos, those enforcement officers are given additional and complex tasks that dilute their effectiveness in protecting Latinos.

(c) Mistaking Latino Residents for Undocumented Immigrants

Another consequence of local immigration enforcement is that Latinos are increasingly being misperceived as lacking lawful resident status by local enforcement officials. This misperception promotes racial profiling.³⁶ The United States’ statutory policy of using 287(g) agreements to engage local governments and law enforcement officials in the enforcement of immigration laws has contributed to these misperceptions. These agreements permit the deputization of officials, untrained in the intricacies of immigration law, and enlists them in the State’s campaign to rid the country of undocumented immigrants.³⁷ Local officials, through this program, ask stopped or detained individuals about their immigration status as part of their enforcement policy when these individuals are perceived to be undocumented. This policy is rarely limited

JUNE 2006, 5 (2006), available at http://www.houstontx.gov/police/pdfs/mcc_position.pdf (Annexed as Attachment I)..

³⁵ See INT’L ASS’N OF CHIEFS OF POLICE, PROJECT RESPONSE, POLICE CHIEFS GUIDE TO IMMIGRATION ISSUES, 43 (2007), available at <http://www.theiacp.org/documents/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf> (Annexed as Attachment H).

³⁶ “In many communities, enforcing immigration laws has complicated the relationship between local police departments and their residents. Local police, particularly within the last twenty years, have increasingly employed community policing, problem-oriented policing, and other approaches that rely on community cooperation to reduce crime. For local police working in jurisdictions with sizeable immigrant communities, enforcing immigration laws (or even being identified with that enforcement) risks cutting off that community cooperation. The concern, expressed by both police officers and immigrant advocacy groups, is that immigrants will not report crimes or assist with criminal investigations, because they do not want to risk deportation, for themselves or undocumented family members.” Huyen Pham, *Problems Facing the First Generation of Local Immigration Laws*, 36 Hofstra L. Rev. 1303, 1308-09 (2008).

³⁷ “Two models of section 287(g) agreements have developed thus far: the ‘officer model’ and the ‘jail model.’ The flexibility in section 287(g) permits the different operational variations. Some agreements, e.g., those adopted by the states of Florida and Alabama, constitute the officer model, whereby field duty law enforcement officers incorporate their immigration enforcement as part of the performance of their normal field duties....By contrast, under the jail model, which is currently the predominant model among local agencies, immigration enforcement authority is limited to correctional officers in the jails.” Jason G. Idilbi, *Local Enforcement of Federal Immigration Law: Should North Carolina Communities Implement 287(g) Authority?*, 86 N.C. L. Rev. 1710, 1717 (2008).

to asking felony suspects about their immigration status. Typically, law enforcement officers inquire about immigration status during routine traffic stops and other mundane encounters.³⁸

In practice this means that Latinos are more frequently questioned about their status even when there is no legitimate reason to do so. This has a disparate impact on Latinos, who are increasingly subjected to questioning about their status, particularly in those localities that have these agreements in place, because enforcement officers suspect Latinos more than others to be without status.³⁹

(d) Creating a Divide in the Community

Even law enforcement officials have recognized that the local enforcement of immigration matters would have a number of negative consequences, including a rise in crimes against undocumented persons and a divide between the immigrant community and police. They point out that “such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes.” Not coincidentally, since the institution of the 287(g) program,⁴⁰

the number of extremist groups has increased by 40%, according to the Southern Poverty Law Center, which closely tracks the groups' activities. In the past two years, the growth has been largely driven by the emergence of about 144 ‘nativist’ groups that oppose immigration....Charles Frahm, FBI deputy assistant director for counterterrorism, said there is increasing concern that the most radical elements of the anti-immigration wing may be ‘susceptible’ to recruitment by white supremacists and other groups inclined

³⁸ See, e.g., STATE OF NEW JERSEY, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LAW AND PUBLIC SAFETY, LAW ENFORCEMENT DIRECTIVE NO. 2007-3 (2007), available at <http://www.nj.gov/oag/newsreleases07/ag-le-directive-2007-3.pdf>.

³⁹ Deborah Hirsch, *Illegal Immigrants Fear Police-reporting Policy*, COURIER-POST, Nov. 30, 2008, available at <http://www.courierpostonline.com/article/20081130/NEWS01/811300361/1006>. (“A little over a year after state Attorney General Anne Milgram directed law enforcement agencies to check the immigration status of serious criminals they arrest, the number of referrals to federal immigration officials has more than doubled. Nearly 3,000 inmates, almost nine times as many as last year, have been flagged with detainers, which allow the federal government to hold them for possible deportation after they finish serving time for criminal convictions. About 4,500, almost three times as many as last year, have been charged with immigration violations. ‘This is trying to enforce immigration law through a back door,’ said Tatiana Durbak, an immigration lawyer in Trenton. ‘Immigration law is civil law. That’s not in the jurisdiction of the police.’ But neither immigration officials nor the state have a breakdown of which offenses brought about the referrals. Without that data, it’s difficult to figure out whether police are violating the spirit of the directive.”)

⁴⁰ “Though initially unused for the several years following authorization in 1996, there was ‘new urgency’ to enter into 287(g) agreements following the September 11, 2001 terrorist attacks, and the Attorney General encouraged 287(g) agreements to assist the country in its counter-terrorism efforts. Starting with the State of Florida, the first jurisdiction to enter into an agreement with ICE in August 2002, other state and local governments have followed suit, tailoring the agreements to suit their local needs. The movement is rapidly gaining momentum: only one agreement was entered into in both 2002 and 2003; two and four agreements in 2005 and 2006, respectively; twenty-six agreements in 2007; and twenty agreements in 2008 as of July 2, 2008.” Jason G. Idilbi, *Local Enforcement of Federal Immigration Law: Should North Carolina Communities Implement 287(g) Authority?*, 86 N.C. L. Rev. 1710, 1716 (2008).

toward violence. Police departments across the country also are uneasy as political divisions regarding immigration enforcement have raised local tensions.”⁴¹

In sum, the safety and security of Latinos is being sacrificed, as is the safety and security of all members of society, through these local immigration enforcement programs.

2. Hostile Enforcement of Immigration Laws

The United States’ increasing hostility toward undocumented immigrants has become a norm in society. Through the use of aggressive operations, the federal agency in charge of apprehending persons present in the country without lawful immigration status (which is considered a civil violation under U.S. law), is using the level of force traditionally reserved for apprehending persons who have committed criminal violations.⁴²

The manner in which these operations are conducted – including worksite raids, home raids, and random stops on buses and trains – are of separate and specific concern, as this also contributes to the perception that it is acceptable to target undocumented persons. Furthermore, Latinos are adversely and disparately impacted by these hostile policies.⁴³

As more people are apprehended through these operations, the only thing more shocking than the level of humiliation to which they are subjected is the utter lack of fair process they are afforded. In a recent raid in Iowa, a witness described the manner in which persons were apprehended in one of these worksite immigration raids:

Driven single-file in groups of 10, shackled at the wrists, waist and ankles, chains dragging as they shuffled through, the slaughterhouse workers were brought in for arraignment, sat and listened through headsets to the interpreted initial appearance, before marching out again to be bused to different county jails, only to make room for the next row of 10.⁴⁴

⁴¹ Kevin Johnson, *Feds Watching Anti-Immigrant Extremists*, USA TODAY, May 20, 2007, available at http://www.usatoday.com/news/washington/2007-05-20-anti-immigration-extremists_N.htm.

⁴² Editorial, *The Shame of Postville, Iowa*, N.Y. TIMES, July 13, 2008, available at http://www.nytimes.com/2008/07/13/opinion/13sun2.html?_r=1&scp=1&sq=shame%20of%20postville%20Iowa&st=cse&oref=slogin; Damien Cave and Yolanne Almanzar, *Tactics Used in U.S. Raids Draw Claims of Brutality*, N.Y. TIMES, Dec. 10, 2008, at A28, available at <http://www.nytimes.com/2008/12/10/us/10florida.html>; Julia Preston, *Lawsuit Challenges Immigration Raids in New Jersey*, N.Y. TIMES, Apr. 4, 2008, available at <http://www.nytimes.com/2008/04/04/us/04immig.html>.

⁴³ “[T]he vast majority ... of Hispanics in the United States are lawful immigrants or citizens... U.S. citizens or lawful permanent residents bear the brunt of race-based immigration enforcement.... Given the millions of Latinos residing lawfully in the United States, ‘Hispanic appearance’ holds little probative value in determining whether a person lacks proper immigration documentation. In Equal Protection terms, the classification is over-inclusive with respect to the ostensible goal of identifying undocumented persons.” Kevin R. Johnson, *The Case Against Race Profiling in Immigration Enforcement*, 78 Wash. U. L.Q. 675, 677, 708, 710, 713 (2000).

⁴⁴ Erik Camayd-Freixas, *Interpreting After the Largest ICE Raid in US History: A Personal Account*, N.Y. TIMES, July 13, 2008, at 2, available at <http://graphics8.nytimes.com/packages/pdf/national/20080711IMMIG.pdf>.

The persons detained in Iowa were prosecuted criminally, and unlike other criminal defendants, were represented in groups and forced to plead before immigration judges in civil proceedings that did not ensure their full due process rights. When the United States is treating immigrants with such blatant disregard of their human rights, it sends a clear signal to those who are already prone to targeting immigrants.

3. The Use of Anti-Immigrant and Anti-Latino Rhetoric

The anti-immigrant rhetoric used by federal government agencies and the nation's highest officials also demonizes and dehumanizes the Latino community. The press releases issued by the United States Immigration and Customs Enforcement ("ICE") often tout the number of undocumented persons apprehended, often aggregating the numbers of their criminal targets and the number of people that were picked up who were merely collateral arrests, encouraging the criminalization and vilification of undocumented persons who have not and did not commit any crimes.⁴⁵ ICE also uses names like "Operation Community Shield" and "Operation Return to Sender" to describe its operations, implying that immigrants, even if just rhetorically, are on the one hand, a threat to a community, and, on the other, no more than mail to be discarded.

Equally troublesome is the use of anti-immigrant and anti-Latino language by national officials. In advertisements during his electoral campaign, one U.S. Congressman played on the fears of Americans by demonizing the immigrant community.

In one ad, as images of murdered bodies and tattooed Latino gang members flash across the screen, a narrator stated, "Mothers killed, children executed, the tactics of vicious Central American gangs now on U.S. soil." Text then appeared on the screen which said, "Pushing Drugs. Raping Kids. Destroying Lives. The Consequence of Open Borders."⁴⁶

The rhetoric which regularly comes from government officials is fueling the increasing violence against Latinos. It is well recognized that as the debate about immigration has intensified at the national level, "extremists have become increasingly emboldened by, and fixated on, the controversy over immigration policy, encouraging their supporters to capitalize on the issue by encouraging anti-immigrant activism, and even violence against all Hispanics."⁴⁷

C. The United States has a Duty to Act to Prevent Hate Crimes and to Abstain from Contributing to an Atmosphere of Violence

⁴⁵ See, e.g., News Release, ICE, ICE Fugitive Operations Teams Nab 104 Illegal Aliens Following a Five-Day Targeted Enforcement Action in the Carolinas and Georgia (Nov. 25, 2008), *available at* <http://www.ice.gov/pi/nr/0811/081125charlotte.htm>.

⁴⁶ ANTI-DEFAMATION LEAGUE, *Immigrants Targeted: Extremist Rhetoric Moves Into the Mainstream*, 26 (2008), *available at* http://www.adl.org/civil_rights/anti_immigrant/ (Annexed as Attachment G).

⁴⁷ ANTI-DEFAMATION LEAGUE, *Extremists Declare 'Open Season' on Immigrants: Hispanics Target of Incitement and Violence* (2006), *available at* http://www.adl.org/main_Extremism/immigration_extremists.htm?Multi_page_sections=sHeading_1 (Annexed as Attachment F).

The United States creates, encourages, and even promotes a climate of fear, whereby Latinos, particularly those that are undocumented, cannot and do not feel as if they have the right to turn to law enforcement officials for fear of reprisal against them or because of fear of being questioned about their immigration status. The troubling effect has been the creation of an underclass in society. “The silence of undocumented immigrants is the catastrophic silence of people taught by legislative harassment and relentless stereotyping to live mute and afraid.”⁴⁸

Persons who are predisposed to committing acts of violence believe it is acceptable to target populations they perceive “illegal,” particularly when the State is also engaging in discriminatory actions against immigrants.⁴⁹ By creating a climate in which some people are treated as having no legal rights, the State implicitly condones the idea that it is fair game to target Latinos through violence and intimidation.

The United States has a duty to act to prevent these rising trends of violence. It is obligated to do what it can to prevent hate crimes. It has not done so. It has failed to invest adequate resources to prevent these crimes and instead has engaged in national policies that implicitly and explicitly encourage these crimes by dehumanizing immigrants and degrading the rights of all Latinos. Under circumstances in which the State itself has encouraged the forces of violence and intimidation against a vulnerable population, its obligation to protect that population is particularly manifest.

In conclusion, the United States has a duty to act to prevent hate crimes, to abstain from contributing to an atmosphere of violence, and to protect those who are the victims of both.

D. Available Evidence

Attachment A: Declaration by John Doe 1, petitioner.

Attachment B: Declaration by John Doe 2, petitioner.

Attachment C: County of Suffolk, Police Department Memoranda.

⁴⁸ Editorial, *A Catastrophic Silence*, N.Y. TIMES, November 26, 2008, at A32, available at <http://www.nytimes.com/2008/11/26/opinion/26wed1.html?scp=1&sq=a%20catastrophic%20silence&st=se>.

⁴⁹ “Not surprisingly, white supremacists have not limited their actions to hateful or even violent rhetoric. The past several years have seen a growing number of violent assaults and attacks by white supremacists against legal and illegal Hispanic immigrants, as well as Hispanic American citizens. The crimes have ranged from vicious vandalism to brutal assaults and murders. In most cases, the perpetrators did not even know the victims, but targeted them solely because of their appearance.” ANTI-DEFAMATION LEAGUE, *Extremists Declare 'Open Season' on Immigrants: Hispanics Target of Incitement and Violence* (2006), available at http://www.adl.org/main_Extremism/immigration_extremists.htm?Multi_page_sections=sHeading_4 (Annexed as Attachment F).

Attachment D: Brentin Mock, *Immigration Backlash: Hate Crimes Against Latinos Flourish*, Intelligence Report (S. Poverty Law Ctr., Mont. Ala.), Winter 2007.

Attachment E: *Anti-Latino Hate Crimes Rise for Fourth Year in a Row*, Intelligence Report (S. Poverty Law Ctr., Mont. Ala.), Winter 2008.

Attachment F: ANTI-DEFAMATION LEAGUE, *Extremists Declare 'Open Season' on Immigrants: Hispanics Target of Incitement and Violence* (2006).

Attachment G: ANTI-DEFAMATION LEAGUE, *Immigrants Targeted: Extremist Rhetoric Moves Into the Mainstream* (2008).

Attachment H: INT'L ASS'N OF CHIEFS OF POLICE, PROJECT RESPONSE, POLICE CHIEFS GUIDE TO IMMIGRATION ISSUES (2007).

Attachment I: MAJOR CITIES CHIEFS ("M.C.C."), M.C.C. IMMIGRATION COMMITTEE RECOMMENDATIONS: FOR ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES: ADOPTED BY MAJOR CITIES CHIEFS JUNE 2006 (2006).

Attachment J: Mark Hugo Lopez and Susan Minushkin, *2008 National Survey of Latinos: Hispanics See their Situation in the United States Deteriorating*, PEW HISPANIC CENTER (2008)

Attachment K: UN Special Rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, A/HRC/7/12/Add.2, 5 March 2008.

Attachment L: Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, September 17, 2003, Inter-Am. Ct. H.R. (Ser. A) No. 18 (2003).

Further evidence to be submitted, when available.

E. Authorities Responsible for the Facts Denounced

The United States Government, the United States Department of Justice and the United States Department of Homeland Security.

V. HUMAN RIGHTS VIOLATED

The United States has violated Articles I, II, V, IX and XVII of the American Declaration of the Rights and Duties of Man.

While the United States is not a party to the Inter-American Convention on Human Rights, duties and obligations nevertheless emerge as a member of the Organization of American States and through the American Declaration on the Rights and Duties of Man. The Inter-American Court of Human Rights has explained, "the international obligation of the United States of America, as a member of the Organization of American States,

under the jurisdiction of the Inter-American Commission on Human Rights (IACHR) is governed by the Charter of OAS (Bogotá, 1948) as amended by the Protocol of Buenos Aires on February 27, 1967, ratified by the United States on April 23, 1968. As a consequence of articles 3j, 16, 51e, 112 and 150 of [the OAS Charter,] the provisions of other instruments and resolutions of the OAS on human rights, acquired binding force...[including the] American Declaration of the Rights and Duties of Man.”⁵⁰ Therefore, the American Declaration is binding on the United States.

Article I – Right to Life, Liberty and Personal Security

Article I states that “Every human being has the right to life liberty and the security of his person.” The State has failed to provide adequate protection of these rights, thereby endangering the life liberty and security of its Latino residents, including undocumented immigrants, from those predisposed to committing acts of hate.

The American Declaration imposes a duty on State Parties to adopt measures to respect and ensure the full and free enjoyment of human rights guaranteed therein. Where violations of those rights occur and the State has failed to adequately protect those rights, States may be liable for failure to ensure and protect those rights.

The Inter-American Court has long recognized that the State has an obligation “to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”⁵¹ The Court, through its decision in *Velásquez-Rodríguez* established the principle for a general positive obligation by states to prevent human rights violations.⁵² The Court also held that a state must take reasonable steps to prevent human rights violations and that this obligation not only extends to acts by agents of the state, but to private actors as well.

The *erga omnes* obligations of States to respect and ensure the norms of protection, and to guarantee the effectiveness of the rights, project their effect beyond the relationship between its agents and the persons subject to its jurisdiction, since they exist in the affirmative obligation of the State to adopt the measures necessary to ensure the effective protection of human rights in interpersonal relations.⁵³

This principle is well recognized by other human rights systems and is also recognized as an obligation by the International Covenant on Civil and Political Rights. This obligation is triggered when a violation of an individual’s rights “has occurred with the support or

⁵⁰ *Baby Boy Opinion*, Case 2141, Inter-Am. C.H.R. 25, OEA.Ser.L/V/II.54, doc. 9, rev.1 (1981) ¶¶15-16; *See also James Terry Roach and Jay Pinkerton v. United States*, Case 9647, Inter-Am. C.H.R., Res. 3.87, 147 OEA/Ser.L/VII/71, doc. 9, rev. 1 (1987); *Haitian Centre for Human Rights et al. v. United States*, Case 10.675, Inter-Am. C.H.R., Report No. 51/96OEA/Ser.L/VII.95, doc. 7, rev. at 550 (1997).

⁵¹ *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Inter-Am. Ct. H.R. (Ser. C) No. 4 (1988) ¶ 68.

⁵² *Id.* ¶ 174.

⁵³ *Damião Ximenes Lopes v. Brazil*, Case 12.237, Inter-Am Ct. H.R., Report No. 38/02, doc. 5, rev. 1 (2002).

acquiescence of the government, *or when the State has allowed the act to take place without taking measures to prevent it or to punish those responsible.*”(emphasis added.)⁵⁴ The United States has been derelict in preventing the acts denounced in this petition, and thus has violated Article I.

Article II – Right to Equality before Law

Article II states 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.”⁵⁵ The Inter-American Court has found that this principle extends to all individuals within the territory of a State, regardless of their immigration status.⁵⁶ The United States is violating this right, because it deprives immigrants and Latinos from equal and due process protections.

The State engages in violations of this Article when its state agents, both at the local and national level, discriminate or racially profile between Latino and non-Latino members of society. The State fails in this obligation when it deprives undocumented persons access to protections that they are entitled, such as access to protection from law enforcement officials or the ability to report crimes committed against them without intimidation. The Court has found that:

States must abstain from carrying out any action that, in any way, directly or indirectly, is aimed at creating situations of *de jure* or *de facto* discrimination. This translates, for example, into the prohibition to [...] encourage acts or practices of their officials, in implementation or interpretation of the law that discriminate against a specific group of persons because of their race [etc.]. In addition, States are obliged to take affirmative action to reverse or change discriminatory situations that exist in their society to the detriment of a specific group of persons.

I/A Court H.R., OC-18/03, Juridical Situation and Right of Undocumented Migrants (17 September 2003), para. 103, 104. The State is not treating Latinos and undocumented immigrants equally before the law, as they are being allowed without encumbrance to be victimized and targeted through hate crimes.

Article V – Right to Protection of honor, personal reputation, and private and family life

Article V states that “Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.” The

⁵⁴ *Id.* at ¶ 173.

⁵⁵ The Court has also found that “the fundamental principle of equality and non-discrimination [prescribed in Article II of the American Declaration], given its imperative character, gives rise to *erga omnes* obligations of protection that bind all states and generates effects to third parties, including private persons.” *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 173(5) (Sept. 17, 2003).

⁵⁶ *Id.* at ¶ 118.

United States fails to uphold this right as it pertains to Latinos and immigrants each time an individual is discriminated on the basis of race, ethnicity, or immigration status, both actual and perceived by State or private actors. The hate crimes described above and the United States' abject failure to protect Latinos and immigrants from such crimes violates Article V. Further, the fact that the U.S. does not protect Latinos and immigrants from immigration prosecution when they report a crime denies them Article XVII's protection of basic civil rights.

Article XVII – Right to Recognition of Juridical Personality and Civil Rights

Article XVII states that "Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights." The United States fails to uphold this right as it pertains to Latinos and immigrants each time an individual is denied access to juridical or legal mechanisms to vindicate their human and civil rights.

Article XVIII – Right to Judicial Protection

Article XVIII states that "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights." The Inter-American Commission has interpreted this right as requiring states to "provide effective judicial remedies," which sometimes involves "tak[ing] affirmative steps to ensure that the remedies provided by the state through its courts are truly effective." *Maya Indigenous Community of the Toledo District v. Belize*, Case 12.053, Report No. 40/04, Inter-Am. C.H.R., OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 727 (2004). The United States fails to uphold this right as it pertains to Latinos and immigrants as they are discouraged from reporting crimes for fear of disclosing their immigration status. The U.S. fails to immunize victims and witnesses from prosecution, if and when they report crimes in violation of Article XVIII.

VI. LEGAL REMEDIES SOUGHT TO REDRESS THE CONSEQUENCES OF THE FACTS DENOUNCED

A. Investigation and Recommendations by the Commission

Petitioners respectfully request:

- (1) the Commission investigate incidents in which Latinos have been victims of hate crimes in the United States;
- (2) the Commission recommend such remedies to the United States that it considers adequate to prevent ongoing violations, including but not limited to –
 - a. Amending federal laws and policies to protect Latino residents from hate crimes;
 - b. Limiting inquiries by local enforcement officials into the immigration status of those who have not been convicted of felonies (i.e. not inquiring for minor

offenses, such as traffic violations), or recommending other limitations which would allow all persons to enjoy equal access to law enforcement;

c. Instituting a national policy whereby local law enforcement officials cannot inquire into the immigration status of victims of crime;

d. Instituting a national policy whereby local law enforcement officials cannot inquire into the immigration status of witnesses;

e. Creating, enforcing, and publicizing of anti-immigrant discrimination/hate crimes laws. The United States should take specific actions and/or mandate localities do so to stem the tide of hate crimes against Latinos;

f. Training local police in hate crime investigations, creation of hotlines, language access or implementing other mechanisms recommended by the Commission;

g. Prohibiting local governments from passing or implementing anti-immigrant laws (relating to housing, employment, or other matters);

h. Clarifying and publicizing the protections that are available or should be available to undocumented immigrants.

B. Declaratory Relief

Petitioners respectfully request that the Commission make factual findings so as to identify the extent of the problem complained of herein. Petitioners ask that the Commission declare that the United States has violated its obligations under the American Declaration.

C. There are No Remedies at Law and Any Attempts to pursue Legal Remedies in Domestic Courts are Futile

Because there is no domestic legal basis upon which petitioners can sue the United States for affirmative protection from hate crimes, there are no available remedies that can be exhausted in the domestic courts. The United States domestic legal system does not impose affirmative obligations to protect persons from hate crimes upon the State. The mechanism normally used for civil rights violations is through 42 U.S.C. Section 1983.⁵⁷ However that remedy is inapplicable to the violations complained of in this petition because that statute is not applicable against the federal government. Since the right to

⁵⁷ “Every person who, under color of any statute, ordinance, regulation, custom, or usage, *of any State or Territory or the District of Columbia*, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities *secured by the Constitution and laws*, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.” 42 U.S.C. §1983 (emphasis added).

security of the person is not a right guaranteed by the United States Constitution and since persons cannot bring claims against the federal government on that basis, 1983 is not available to the petitioners. Nor do any other civil rights remedies apply to the violations complained of in this petition. The United States does not have any national laws upon which the petitioners can rely in domestic courts.

Article 31(1) of the Commission's Rules of Procedure requires that "the remedies of the domestic legal system have been pursued and exhausted in accordance with generally recognized principles of international law" before a complaint will be admissible before the Commission. There are, however, several exceptions to this rule.

At least one of three conditions must be met, pursuant to Article 31(2), for a petition to qualify for an exception to this rule:

- a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b) the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

Petitioners assert that provisions 31(2)(a) and (b) would apply to this petition. Moreover, in accordance with "generally recognized principles of international law," the exhaustion requirement does not "apply to situations where domestic remedies cannot be exhausted because they are not available either as a matter of law or as a matter of fact."⁵⁸

D. Petitioners Request a Hearing where Further Evidence can be submitted

Petitioners request an oral hearing of this Petition before the Commission.⁵⁹

Signature:



Cesar A. Perales
President and General Counsel
LatinoJustice PRLDEF
99 Hudson Street, 14th Floor
New York, NY 10013

Date: December 18, 2008

⁵⁸ *Exceptions to the Exhaustion of Domestic Remedies (Art. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights)*, Advisory Opinion OC-11/90, Inter-Am. Ct. H.R. (Ser. A.) No. 11, ¶ 17 (Aug. 10, 1990) (analyzing the analogous provisions of the American Convention on Human Rights).

⁵⁹ The claim contained in this petition has not been filed with the United Nations Human Rights Committee or any other international organization.