United States Department of State

United States Permanent Mission to the Organization of American States

Washington, D.C. 20520

November 30, 2021

Tania Reneaum Panszi
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
Washington, D.C. 20006

Re: Oswaldo Marcelo Lucero, et al., Case Number 13.735
Further Observations of the United States

Dear Executive Secretary Reneaum:

The United States Government has the honor of addressing the Inter-American Commission on Human Rights ("Commission") with regard to the above-referenced matter. The United States acknowledges receipt of the letter from your office dated May 18, 2020, and transmitted on June 10, 2020, in which your office forwarded Petitioners' observations on the merits in the above-referenced matter and asked for a U.S. response. Please find our response attached.

Please accept renewed assurances of my highest consideration.

Sincerely,

(Endorsed electronically)

Bradley Freden
Interim Permanent Representative

CASE NUMBER 13.735, OSWALDO MARCELO LUCERO, ET AL.
FURTHER OBSERVATIONS OF THE UNITED STATES

The Government of the United States provides the following further observations to the Inter-American Commission on Human Rights ("Commission") in its consideration of Petition No. P-1506-08 ("Petition"), filed on behalf of Oswaldo Marcelo Lucero and others ("Petitioners") on December 24, 2008, and forwarded by the Commission on July 2, 2014. Petitioners assert "violations"[1] of various human rights in the American Declaration of the Rights and Duties of Man ("American Declaration") by the United States—namely, the right to life, liberty, and personal security (Article I); the right to equality before the law (Article II); the right to protection of honor, personal reputation, and private and family life (Article V); the right to recognition of judicial personality and civil rights (Article XVII); and the right to judicial protection (Article XVIII).

Petitioners' claims are based on the following allegations in his petition. First, Petitioners assert that their right to life recognized in Article I of the American Declaration has been violated as a result of alleged discriminatory immigration policies and the United States' failure to prevent violence against Latinos. Second, Petitioners state that the United States violated their right to

[1] The United States has consistently maintained that the American Declaration is a nonbinding instrument and does not create legal rights or impose legal duties on member States of the Organization of American States ("OAS"). U.S. federal courts of appeals have independently held that the American Declaration is nonbinding and that the Commission's decisions do not bind the United States. *See, e.g.*, Mitchell v. United States, 971 F.3d 1081, 1084 (9th Cir. 2020); *accord, e.g.*, Garza v. Lapin 253 F.3d 918, 925 (7th Cir. 2001); Flores-Nova v. Attorney General of the United States, 652 F.3d 488, 493–94 (3rd Cir. 2011); In re Hicks, 375 F.3d 1237, 1241 n.2 (11th Cir. 2004). As explained by the U.S. Court of Appeals for the Seventh Circuit in Garza, "[n]othing in the OAS Charter suggests an intention that member states will be bound by the Commission's decisions before the American Convention [on Human Rights] goes into effect. To the contrary, the OAS Charter's reference to the Convention shows that the signatories to the Charter intended to leave for another day any agreement to create an international human rights organization with the power to bind members. The language of the Commission's statute similarly shows that the Commission does not have the power to bind member states." *Accord* Commission's Statute, art. 20 (setting forth recommendatory but not binding powers). As the American Declaration is a non-binding instrument and does not create legal rights or impose legal duties on member States of the OAS, the United States understands that a "violation" in this context means an allegation that a country has not lived up to its political commitment to uphold the American Declaration. The United States respects its political commitment to uphold the American Declaration. For a further discussion of the U.S. position regarding the nonbinding nature of the American Declaration, *see* Request for an Advisory Opinion Submitted by the Government of Colombia to the Inter-American Court of Human Rights Concerning the Normative Status of the American Declaration of the Rights and Duties of Man, Observations of the United States of America, 1988.

equality before the law, per Article II, in maintaining allegedly discriminatory law enforcement practices, including racially profiling persons of Latino descent. Third, Petitioners assert that the United States' alleged failure to prevent hate crimes against Latinos, in conjunction with the alleged law enforcement practice of racial profiling, violated their Article V right to honor, personal reputation and private and family life. Fourth, Petitioners state the United States' alleged denial of access to judicial or legal remedies to Latino persons violates their Article XVII protection for judicial recognition of civil rights. Lastly, Petitioners assert that the United States violated Article XVIII, the right to judicial protection, in failing to immunize victims and witnesses of crimes from prosecution, which discourages Latino immigrants from reporting crimes for fear of disclosing their immigration status.

On June 10, 2020, the Commission transmitted Petitioners' "observations on the merits" (hereinafter, "Additional Observations") which purports to amend the Petition by adding additional claims based entirely on facts subsequent to those upon which claims in the Petition are based. Although these additional claims are out of order for the reasons discussed more fully below, Petitioners assert additional violations of rights under Articles I, II, V, XVII, and XVIII, on the basis of allegations of a renewed anti-immigrant climate, discriminatory law enforcement practices, and failure to protect persons of Latino descent.

For the reasons discussed below, the United States respectfully requests that the Commission declare the Petition and "Additional Observations" inadmissible under Articles 31 and Article 34 of its Rules of Procedure ("Rules") for failure to state facts that tend to establish a violation of the rights in the American Declaration. Should the Commission nevertheless proceed with an examination of the merits, the United States also submits that the Petition and "Additional Observations" lack merit and should be dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

A. Facts Alleged in the Petition

The Petition generally alleges that the United States, through federal policies and the actions and omissions of government officials, has fostered an atmosphere hostile to persons of Latino descent that results in crimes being committed against them by private individuals. It also

alleges that the United States has failed to protect Petitioners, and Latinos in general, from such acts of violence.

Petitioners are several individually listed named and unnamed persons of Latino descent, along with "Other Unidentified or Unknown victims of hate crimes." According to the Petition, John Doe 1 was attacked by a group of teenagers and subjected to ethnic slurs while he was walking home in Patchogue, New York. John Doe 2 was riding his bicycle in Patchogue when a passenger in a car threw a glass beer bottle at him while yelling obscenities; and on two other occasions, teenagers assaulted John Doe 2 while trying to rob him. The Petition states that Oswaldo Marcelo Lucero was assaulted and killed by seven young men in Patchogue who were allegedly looking for persons of Latino descent to assault. Angel Loja was with Mr. Lucero but survived. Hector Sierra was allegedly pursued by the same group of men in Patchogue but was able to escape. According to the Petition, Luis Eduardo Ramírez (also listed in the Petition as Luis Eduardo Martínez) was beaten to death by a group of teenagers in Shenandoah, Pennsylvania, who shouted, "You tell all your Mexican friends to get out of town."[2]

In addition to alleging U.S. responsibility for these crimes, Petitioners allege more generally that the United States has created a climate that fosters violence against Latinos in three principal ways. First, Petitioners claim that the delegation of certain immigration officer functions to state and local governments through agreements under Section 287(g) of the Immigration and Nationality Act ("287(g) agreements") has resulted in racial profiling and discrimination by U.S. state and local officials; and that immigration enforcement practices have created a climate of fear that dissuades victims from reporting crimes. Second, Petitioners claim the United States has enforced its immigration laws in a hostile and excessively forceful manner. Third, Petitioners claim that federal agencies and officials have used hostile rhetoric toward immigrants and Latinos, further fostering a hostile environment.

B. Post-2008 Factual Allegations

[2] Petition at 5. Brothers Romel Sucuzhañay and José Osvaldo Sucuzhañay, immigrants from Ecuador, are also listed as Petitioners, but the Petition alleges no facts specific to them. Media reports indicate that they were attacked in Brooklyn, New York, by men shouting anti-gay and anti-Latino slurs, and that José Sucuzhañay was killed.

Petitioners advance new claims in their "Additional Observations" that were not included in the Petition. Petitioners allege that, since their initial Petition, the United States has reinstated federal policies and government practices that fostered an atmosphere hostile to persons of Latino descent, resulting in crimes being committed against them by private individuals. Petitioners further claim that the United States has failed to protect the Petitioners, and Latino persons in general, from such acts of violence and that the highest levels of government have encouraged such acts.

Petitioners, including "Other Unidentified or Unknown victims of hate crimes," seek to show a pattern of increasing hate crimes in the United States by detailing select instances of hate crimes and violence against Latino persons committed by private actors. The "Additional Observations" allege, for example, that in August 2019 a domestic terrorist opened fire at a Wal-Mart store in El Paso, Texas, killing twenty-two Latino persons."[3] The gunman admitted to targeting persons of Mexican descent.[4] Petitioners further allege that an unnamed man was arrested in Seattle, Washington for threatening to kill a Latina woman as part of a "racial war."[5] These instances, among others, Petitioners claim demonstrate a culture of hostility towards Latino persons and immigrants as a result of the United States' alleged failure to protect persons of Latino descent.

Petitioners allege more broadly that the United States has created a climate that fosters violence and discrimination against Latinos in various ways. First, Petitioners claim that the former Presidential Administration's alleged use of racist and xenophobic language against Latino persons has "perpetuate[d] a climate of fear and violence."[6] Second, Petitioners claim law enforcement practices target Latino immigrants through alleged racial profiling, excessive use of force, inhumane conditions in immigration detention facilities, and arrests and raids by U.S. Immigration and Customs Enforcement.[7] Third, Petitioners state that the 287(g) Jail Enforcement Model allows local police officers to check the immigration status of those who have been arrested, resulting in racial-profiling of Latino detainees and discouraging Latino persons from interacting

[3] Additional Observations at 6.
[4] *Id.* at 6.
[5] *Id.* at 6.
[6] *Id.* at 3.
[7] *Id.* at 9.

with law enforcement.[8] Fourth, Petitioners allege that the Department of Justice's policy positions of reviewing existing consent decrees,[9] and reallocating of resources and funding away from the Civil Rights Division,[10] decreased oversight of local law enforcement and prosecution of hate crimes.[11]

DISCUSSION

A. Petition Remains Inadmissible

The United States maintains its position that the Commission should declare the Petition inadmissible. For a petition to be admissible before the Commission, it must satisfy several procedural requirements under the Commission's Rules of Procedure ("Rules"). Among these, the Commission must have competence to consider the allegations in the petition; supervening information or evidence presented to the Commission must not reveal that the matter is inadmissible or out of order;[12] the facts alleged must, if true, "tend to establish a violation of the rights" set out in the American Declaration;[13] and the petitioners must show that they have pursued

[8] *Id.* at 14-15.
[9] *Id.* at 19.
[10] *Id.* at 33.
[11] The United States notes that the Attorney General rescinded the *Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Government Entities Memorandum*, dated November 7, 2018, and ordered that those changes become incorporated into the Justice Manual and the Code of Federal Regulations. *See* Memorandum from the Attorney General Re: Civil Settlement Agreements and Consent Decrees with State and Local Governmental Entities (Apr. 16, 2021), available at Civil Settlement Agreements and Consent Decrees with State and Local Governmental Entities (justice.gov). In addition, the Attorney General approved the recommendation of the Associate Attorney General concerning the use of monitors in civil settlement agreements and consent decrees. *See* Attorney General Merrick B. Garland Announces Results of Monitor Review | OPA | Department of Justice. Finally, DOJ requested funding for over 80 additional positions in the Civil Rights Division in the Fiscal Year 2022 Budget Request. *See* Reinvigorating Civil Rights Efforts FY 2022 Budget Request.
[12] Rules, art. 34(c).
[13] *Id*., art. 34(a). Article 34(a) of the Rules provides that "[t]he Commission shall declare any petition or case inadmissible when . . . it does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure . . . ." Article 27, in turn, directs the Commission to "consider petitions regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments . . . ." Article 20 of the Commission's Statute and Article 23 of the Rules identify the American Declaration as an "applicable instrument" with respect to nonparties to the American Convention. The United States is not a party to, nor has it endorsed, any of the other instruments listed in Article 23 of the Rules.

and exhausted the remedies of the domestic legal system "in accordance with the generally recognized principles of international law."[14] The Petition fails to meet these requirements.

The Petition is inadmissible under Articles 31 and 34 of the Rules. First, the Commission lacks competence *ratione personae* to consider the Petition because Petitioners fail to allege concrete violations of rights of specific individuals. Second, supervening information renders the Petition inadmissible, specifically the prosecution and conviction of private actors responsible for Petitioners' claims, reforms of the relevant local law enforcement departments, and changes in immigration policy. Third, the Petition does not state facts that tend to establish a violation of the rights of the American Declaration because Petitioners erroneously assert that commitments under the American Declaration extend to actions by private actors. Lastly, Petitioners fail to satisfy the requirement of exhaustion of domestic remedies in declining to pursue torts claims and civil actions, against federal, state, or local officials, including suits under 42 U.S.C. § 1983, as appropriate.

For the above reasons, the Petition remains inadmissible. The Commission should therefore decline to reach the merits of the matter.

B. Petitioners' New Claims in the "Additional Observations" are Out of Order

Petitioners now seeks to introduce new claims based on factual allegations not included in the Petition. In its letter dated February 1, 2019, the Commission requested that the Petitioners submit "additional observations on the merits of the case,"[15] but the Commission did not invite Petitioners to introduce entirely new claims. Petitioners cannot be permitted to introduce entirely new claims at the merits phase of this proceeding. Nothing in the Rules permits Petitioners, at this stage, to introduce new claims beyond those in the Petition, and Petitioners' new claims are plainly out of order under Article 34(b) of the Rules and, as such, inadmissible.

Moreover, allowing Petitioners to introduce new claims at this stage would be inequitable as the admissibility phase of this proceeding is closed.[16] Even if the Commission were inclined to entertain new factual claims, it would require a new petition with a separate admissibility phase

[14] Rules, art. 31; *accord* Statute of the Inter-American Commission on Human Rights, art. 20(c).
[15] Letter from the IACHR to Oswaldo Marcelo Lucero of February 1, 2019.
[16] *See* Commission's Report on Admissibility 192/18, p. 6.

that cannot be incorporated into the merits phase of the present matter. The United States acknowledges that the Commission has previously allowed the consideration of additional claims or factual allegations on the basis that the State was "on notice" of the new claims, and "had the opportunity to present observations on the admissibility of all the claims raised by petitioner."[17] This explanation is not compatible with the Commission's Statute or its Rules of Procedure. There is no basis in the Rules of Procedure for a Petitioner to add new claims to his or her Petition during the merits phase of a proceeding. Allowing Petitioners to expand the scope of the Petition by introducing new claims at the merits stage further undermines the Commission's procedures and challenges the integrity of the Commission. This is especially so, as here, where the admissibility phase of a matter is closed. Accordingly, the new claims presented in Petitioners' "Additional Observations" must be deemed out of order at this stage under Article 34(b) of the Rules. The United States therefore regards the scope of the Petition to remain limited to those claims raised in the Petition.

C. Certain claims are inadmissible because they are outside the Commission's competence *ratione materiae.*

Petitioners allege that the United States has "violated" certain specific rights recognized in the American Declaration. As noted in numerous prior submissions, the United States has undertaken a political commitment to uphold the American Declaration, a nonbinding instrument that does not itself create legal rights or impose legal obligations on member States of the Organization of American States (OAS).[18] Article 20 of the Statute of the Commission sets forth the Commission's powers that relate specifically to OAS member States that, like the United States, are not parties to the legally binding American Convention on Human Rights ("American Convention"), including to pay particular attention to observance of certain enumerated human rights set forth in the American Declaration (*i.e.*, the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration), to examine communications and make recommendations to the State, and to verify whether in such cases domestic legal procedures and remedies have been applied and exhausted. The Commission lacks competence to issue a decision

[17] *See* Rogovich v. United States, Case No. 13.394, Report No. 154/19, Report on Admissibility and Merits, Doc. OEA/Ser.L/V/II.173 Doc. 169 at para. 25 (Sept. 28, 2019).
[18] *Supra n.* 1.

vis-à-vis the United States on matters arising under other international human rights treaties, whether or not the United States is a party, or under customary international law.

Moreover, Article 20 of the Commission's Statute identifies the particular provisions of the American Declaration over which the Commission is empowered "to pay particular attention" vis-à-vis States not party to the American Convention. Article 20(a) enumerates these as "the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration." An interpretation of Article 20(a) that would not so limit the competence of the Commission with respect to the Declaration would render such language nugatory. Petitioners' claims under Articles V and XVII of Declaration thus fall beyond the *ratione materiae* competence of the Commission and must be dismissed pursuant to Article 20 of the Commission's Statute.

D. Admissibility of Petitioners' Observations on the Merits

The new claims in Petitioners' "Additional Observations" suffer from the same defects that render the claims contained in the original Petition inadmissible. Because these defects continue to render the claims in the Petition inadmissible, the United States reiterates that these defects also render Petitioners' new out-of-order claims inadmissible.

i. The Commission lacks competence *ratione personae* to consider the "Additional Observations"

The "Additional Observations" purport to be filed on behalf of "Other Unidentified or Unknown victims of hate crimes targeting Latinos and/or undocumented immigrants,"[19] and make myriad allegations of a generalized nature, not tied to any specific individual, except at particular points when used to illustrate the alleged negative effects of a particular alleged policy or practice, or to demonstrate an increased pattern of violence against Latino persons. The Petitioners argue their approach is necessitated by the "troubling rates of anti-Latino hate crimes in the U.S."[20]

The Commission has stated in a number of cases that it only has competence to entertain matters that allege "concrete violations of the rights of specific individuals, whether separately or as part of a group, in order that the Commission can determine the nature and extent of the State's

[19] Petition at 1.
[20] Additional Observations at 27.

responsibility for those violations . . . ."[21] In other words, the Commission's governing instruments "do not allow for an *actio popularis*."[22] The United States recalls that the Commission has already found that such claims fall beyond its competence in its 2018 Admissibility Report in this matter,[23] and this same reasoning applies with equal force to the new claims contained in the "Additional Observations."

Based on these principles, the Commission should not consider any allegations in the "Additional Observations" that do not relate to "concrete violations of the rights of specific individuals."[24] It must therefore dismiss the new claims in the "Additional Observations" with respect to the "Other Unidentified or Unknown victims," and it cannot consider the many generalized allegations in the "Additional Observations" that are not tied to a specific, listed Petitioner. This includes everything in Sections II and III of the "Additional Observations," including the illustrative examples of particular alleged incidents, as none of the individuals identified in the examples is a Petitioner.

Moreover, while Article 28(2) of the Rules gives petitioners the option of withholding their identity from the respondent State, with respect to John Doe 1 and 2, who were subsequently identified by the Commission in its Admissibility Report,[25] it is unclear on what basis this information was initially withheld from the United States. Because this information was not initially transmitted to the State, the United States was not in a position address the admissibility of these claims, as noted in the 2015 response by the United States. Revealing the identities of these Petitioners to the State in the course of finding their claims to be admissible, and requesting the United States to now address those claims on their merits, rendered the United States unable to address their inadmissibility during the admissibility phase of this matter.

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[21] Sanchez et al. v. United States ("Operation Gatekeeper"), Petition No. 65/99, Report No. 104/05, Inadmissibility Decision ("*Operation Gatekeeper* Inadmissibility Decision"), Oct. 27, 2005, ¶ 51; *accord, e.g.*, Undocumented Migrant, Legal Resident, and U.S. Citizen Victims of Anti-Immigrant Vigilantes v. United States, Case No. 12.720, Report No. 78/08, Admissibility Decision ("*Vigilantes* Admissibility Decision"), Aug. 5, 2009, ¶¶ 41-44 (dismissing claims relating to unidentified group of alleged victims of anti-immigrant violence for lack of competence *ratione personae*).

[22] *Operation Gatekeeper* Inadmissibility Decision, *supra* note 21, ¶ 51. *Accord* International Abductions, Petition No. 11.082, Report No. 100/14, Nov. 7, 2014, Report on Inadmissibility, ¶ 27.

[23] Lucero et al., Petition 1506-08, Admissibility Report, Report No. 192/18, para. 21 (Dec. 31, 2018).

[24] *Operation Gatekeeper* Inadmissibility Decision, *supra* note 21, ¶ 51.

[25] Lucero et al., Petition 1506-08, Admissibility Report, Report No. 192/18, para. 21 (Dec. 31, 2018).

In sum, the new claims in the "Additional Observations," as with those in the Petition, are beyond the *ratione personae* competence of the Commission.

ii. The "Additional Observations" Submission is inadmissible because it does not state facts that tend to establish a violation of the rights in the American Declaration

The Commission should also declare the claims in the "Additional Observations" inadmissible under Article 34(a) of the Rules because the facts stated in the "Additional Observations" do not tend to establish a violation of the rights in the American Declaration. The thrust of Petitioners' argument is that the United States is responsible under the Declaration for acts allegedly committed by private parties against Latinos because it has failed in its obligation to "protect and fulfill human rights obligations in securing the safety of all citizens,"[26] a purported commitment which Petitioners claim extends to protection from non-state actors.[27] However, under international law private conduct is not attributable to the State outside of narrow exceptions not relevant here.[28] The American Declaration contains no language indicating its commitments extend generally to private, non-governmental acts, and no such commitment can be inferred. The United States thus may not be found to have failed to honor a commitment under the American Declaration for the conduct of private individuals acting with no complicity or involvement of the government. The alleged incidents complained of contained in the Petition cannot be attributed to the United States under international law and cannot constitute violations by the United States of its commitments under the American Declaration.

Petitioners again attempt to bypass this basic tenet of international human rights law using the same theory as in the Petition, arguing that the United States has incurred responsibility under the Declaration for a failure to comply with a "positive obligation . . . to prevent human rights violations" by private parties[29]—that is, an "obligation of due diligence."[30] But Petitioners do not, and cannot, cite to any provision of the Declaration that imposes on States an affirmative duty to prevent the commission of crimes or civil wrongs by private parties, even where these acts may

[26] Additional Observations at 2.
[27] *Id.* at 1.
[28] *See, e.g.*, International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), A/56/10, Ch. II, Commentary, para. 3 ("the conduct of private persons is not as such attributable to the State.").
[29] Petition at 16.
[30] *Id.* at 6.

undermine an individual's enjoyment of the rights in the Declaration. The States that drafted and adopted the Declaration had no intention to create a commitment that would be so open-ended and impossible to effectively implement. Then as now, despite the best efforts of hard-working law enforcement officials, private individuals commit countless crimes every year in this Hemisphere.

The absence of any such language in the American Declaration is all the more notable when contrasted with other international instruments which specifically do impose obligations upon States Parties to prevent, in certain circumstances, particular types of conduct by private parties or non-State actors. For instance, both the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD") and the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") contain provisions that impose obligations upon States Parties, in the specific context of preventing discrimination, respectively, "by any persons, group or organization"[31] and "by any person, organization or enterprise."[32]

Petitioners attempt to fill this void by urging the Commission to apply principles expounded in two cases of the Inter-American Court of Human Rights ("Inter-American Court") interpreting provisions of the American Convention, *Velásquez Rodríguez* and *Ximenes Lopes*. The United States has not accepted the jurisdiction of the Inter-American Court, nor is it a State Party to the American Convention. Accordingly, the jurisprudence of the Inter-American Court interpreting the American Convention does not govern U.S. commitments under the American Declaration.

Yet even if the United States were a State Party to the American Convention or this jurisprudence were somehow relevant to U.S. commitments under the Declaration, these cases—

[31] Convention on the Elimination of All Forms of Racial Discrimination art. 2(1)(d), *entered into force* Jan. 4, 1969, 660 U.N.T.S. 195 (U.S. ratification Nov. 20, 1994) (providing that States Parties undertake to "prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization."). Additionally, it should be noted that the United States has taken a reservation to the CERD precisely because of the broad reach of the aforementioned provision and the possibility that it could require the United States to regulate private conduct beyond that mandated by the Constitution and laws of the United States. *See* UNITED STATES, INITIAL REPORT OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 55 (2000), *available at*: http://www.state.gov/www/global/human_rights/cerd_report/cerd_report.pdf.

[32] Convention on the Elimination of All Form of Discrimination Against Women art. 2(e), *entered into force* Sept. 3, 1981, 1249 U.N.T.S. 13 (providing that States Parties undertake "[t]o take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise."). The United States is a signatory to CEDAW but has not ratified it.

which involved massacres, disappearances, and murders committed by paramilitary or related personnel to which the State contributed—are wholly distinguishable from the facts alleged in the Petition. In *Velásquez Rodríguez*, the Inter-American Court found that there was a systematic "practice of disappearances carried out or tolerated by [government] officials," that "Manfredo Velásquez disappeared at the hands of or with the acquiescence of those officials within the framework of that practice," and that the government "failed to guarantee the human rights affected by that practice."[33] In light of those egregious facts, the Inter-American Court held that in certain circumstances, "[a]n 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 person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of *the lack of due diligence* to prevent the violation or to respond to it as required by the Convention."[34]

The Inter-American Court did not state that such international responsibility arises any time a State fails to prevent a crime committed by a private party. Rather, the Court emphasized, "[w]hat is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible."[35] The Court then articulated a standard of reasonableness to govern a State's obligation to prevent human rights abuses and to investigate such abuses, prosecute the perpetrators, and provide compensation to the victims.[36]

In applying this interpretation to the egregious facts of that case, the Inter-American Court found Honduras responsible under the American Convention for the involuntary disappearance of Mr. Velásquez because the "evidence show[ed] a complete inability of the procedures of the State of Honduras, which were theoretically adequate, to carry out an investigation into the disappearance . . . ."[37] The Inter-American Court noted the failure of the Executive Branch to carry out a serious investigation to establish the fate of Mr. Velásquez.[38] The Inter-American

[33] Velásquez Rodríguez Case, Judgment of July 29, 1988, ¶ 148, Inter-Am. Ct. H.R. (Ser. C) No. 4 (1988).
[34] *Id.* ¶ 172 (emphasis added).
[35] *Id.* at ¶173.
[36] *Id*. at ¶174.
[37] *Id.* at ¶178.
[38] *Id.* ¶¶ 179, 180.

Court found that the disappearance of Mr. Velásquez was carried out by "agents who acted under cover of public authority" but that even if that had not been proven, "the failure of the State apparatus to act, which is clearly proven" amounted to a violation by Honduras under the Convention.[39]

The crimes and other acts alleged in the "Additional Observations," while appalling, are materially dissimilar from those in in *Velásquez Rodríguez*. Notably, unlike the widespread and systematic abuses carried out or tolerated by government officials or their agents in *Velásquez Rodríguez*, the acts alleged in the Petition and the "Additional Observations" were committed by private persons, acting on their own initiative, and not under "cover of public authority." Furthermore, Petitioners have presented no evidence to indicate that U.S. authorities at any level of government supported or acquiesced in the acts, or that they deliberately failed to investigate them. Quite the contrary, as explained above, in all of the named Petitioners' cases federal or state authorities investigated the crimes and brought the perpetrators swiftly to justice. Federal authorities also sought and secured significant reforms of local law enforcement departments, and implemented significant changes to immigration policies, discussed below. Thus, even if the due diligence standard articulated by the Inter-American Court applied in the circumstances, the United States undoubtedly has discharged its duties consistent with that standard.

Petitioners also invoke *Ximenes Lopes v. Brazil*, but that case, too, is inapposite.[40] There, a petitioner brought a claim on behalf of her mentally ill brother, who died under the care of a private hospital engaged by Brazil to provide psychiatric care as a public health care unit.[41] The Inter-American Court found that there was an atmosphere of violence and brutality at the facility,[42] and that the petitioner's brother, Mr. Ximenes Lopes, died in violent circumstances.[43] In that case, Brazil took partial responsibility for the violations because the facility was acting on behalf of the State, providing health care to vulnerable persons.[44]

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[39] *Id.* ¶182.
[40] Ximenes Lopes v. Brazil, Judgment of July 4, 2006, ¶¶ 124-25, Inter-Am. Ct. H.R. (Ser. C) No. 149 (2006) ("*Ximenes Lopes* Judgment").
[41] *Id.* ¶¶ 5, 112(55).
[42] *Id.* ¶ 112(56).
[43] *Id.* ¶121.
[44] *Id.* ¶122.

Petitioners erroneously rely on expansive language in *Ximenes Lopes* to invoke broad duties of States to protect individuals from private wrongs committed by non-State actors.[45] This language, however, rests explicitly on supposed affirmative obligations imposed on States Parties to the American Convention, which does not govern U.S. commitments under the Declaration. Extending the Inter-American Court's interpretation of the American Convention in *Ximenes Lopes* to this case would seriously undermine the process of international lawmaking, by which sovereign states voluntarily undertake specified legal obligations and commitments. Furthermore, the *Ximenes Lopes* case is factually distinguishable from the allegations contained in the Petition and "Additional Observations" because the "private actors" in that case were, for all intents and purposes, the agents of the State. They were working under contract with the State to provide public health services. In this case, there is no suggestion that the perpetrators of alleged abuses were agents of the federal government or a state or local government.

In sum, neither the Petition nor the "Additional Observations" states facts that tend to establish a violation of the American Declaration because the Declaration does not impose upon the United States a duty to prevent private violence, especially not under the circumstances alleged in the Petition or "Additional Observations." The facts do not tend to establish any violation of rights in the Declaration and the Commission should therefore find the new claims in the "Additional Observations" inadmissible.

As a final note on Article 34(a), should the Commission find, notwithstanding the arguments above, that it has competence *ratione personae* to examine the generalized allegations in the Petition not tied to a specific Petitioner, it should reject the arguments concerning the use of anti-immigrant and anti-Latino rhetoric. Petitioners cite "anti-immigrant and anti-Latino language by national officials" as somehow engaging U.S. commitments under the American Declaration, pointing to a U.S. congressman's distasteful campaign advertisement from 2007 as evidence.[46] Yet even assuming an individual politician's speeches could possibly implicate commitments of the United States under the American Declaration, the Commission will also recall that the Declaration protects, in Article III, freedom of expression and dissemination of ideas, including,

[45] *See* Petition at 16 (citing *Ximenes Lopes* Judgment, *supra* note 42, ¶ 85, for the proposition that a State has an affirmative obligation to project their efforts to guarantee human rights beyond state actors).
[46] *See* Petition at 13.

as the Commission has explained, offensive, or unpleasant expression.[47] Therefore, to the extent the Petitioners are arguing that the United States should bear responsibility for past statements of federal, state, or local officials that may have been unfavorable or unwelcoming to Latinos or to immigrants, those arguments must be rejected because such expression, however objectionable, not only does not violate the American Declaration, but is indeed protected by it.

iii. The "Additional Observations" Submission is inadmissible because the Petitioners have not satisfied the requirement of exhaustion of domestic remedies

The Commission should also declare the Additional Observations inadmissible because the Petitioners have not satisfied their duty to demonstrate that they have "invoked and exhausted" domestic remedies under Article 20(c) of the Commission's Statute and Article 31 of the Rules. While the Statute and Rules require the Commission to examine the full array of domestic remedies that may address the Petitioners' claims, the Additional Observations contain no details on any Petitioner's attempts to invoke or exhaust domestic remedies. Petitioners merely aver, in the initial Petition, that any such attempt would be futile because they cannot sue the federal government under one statute—42 U.S.C. § 1983—and so they should be excused from not attempting to pursue any domestic remedies, even against state and local officials. Yet as the Commission has noted, the burden is on the petitioner to "resort to and exhaust domestic remedies to resolve the alleged violations,"[48] and "[m]ere doubt as to the prospect of success in going to court is not sufficient to exempt a petitioner from exhausting domestic remedies."[49]

Petitioners paint far too narrow a picture of the remedies available in the U.S. legal system for the types of wrongs they allege. The U.S. domestic legal system provides several avenues for

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[47] *See, e.g.*, Granier et al. v. Venezuela, Case No. 12.828, Report No. 112/12, Merits, Nov. 9, 2012, ¶ 164 (explaining that freedom of expression is guaranteed for "ideas and information that offend, shock, disturb, are disagreeable, or upset the State or any sector of the population"); Annual Report of the Inter-American Commission on Human Rights 2010, Report of the Office of the Special Rapporteur for Freedom of Expression, Mar. 4, 2011, OEA/Ser.L/V/II, Doc. 5, ¶ 384 (citing repeated statements of this principle by the Commission and the Inter-American Court of Human Rights).

[48] Vera Mejías v. Chile, Petition No. 157-06, Report No. 11/13, Inadmissibility Decision, Mar. 20, 2013 ("*Vera* Inadmissibility Decision"), ¶ 25; *accord* Move Organization v. United States, Case No. 10.865, Report No. 19/92, Inadmissibility Decision, Oct. 1, 1992 ("*Move Organization* Inadmissibility Decision"), Analysis § (b)(2) ("[T]he remedies acquired, whether they be of a criminal, civil, labor, fiscal, or other nature . . . must have been invoked and exhausted as provided [in] the Commission's Regulations.").

[49] *Operation Gatekeeper* Inadmissibility Decision, *supra* note 21, ¶ 67.

redress that serve to prevent human rights abuses, hold human rights abusers accountable, and provide relief to victims. As further discussed below, available remedies can include, *inter alia*: (1) criminal punishment of the individuals responsible for abuses against the victim; (2) relief aimed at improving an institution or system, such as a state or local law enforcement agency; and (3) individual civil relief, including monetary damages for the victims. The Commission curiously dismisses such remedies because they are not "'appropriate' for redressing the alleged violation" of rights implicated by Petitioners' claims.[50] Even if the Commission believes that private acts of violence at issue are somehow a result of "systemic" discrimination against Latino persons by the State—a causal connection that has not been substantiated by Petitioners or the Commission and which the United States rejects—that belief does not somehow render the remedies available to Petitioners "inappropriate" to remedy the rights allegedly implicated by private acts of violence.

With respect to *criminal punishment*, the Commission has broadly construed "remedy" to include both civil remedies and remedies of a criminal nature,[51] and has acknowledged that the primary method for redress in some cases is a "criminal domestic remedy."[52] Subsequent to the filing of the Petition, the named Petitioners received an effective criminal domestic remedy: authorities conducted an investigation, located and arrested the perpetrators, put them on trial, and secured convictions and substantial prison sentences. Inherent in the requirement of exhaustion is the incontrovertible principle that if a petitioner has received an effective remedy in the domestic system, then his or her claim is not admissible before an international forum.[53] The Commission has repeatedly found that, where a petitioner's claims have been addressed at the domestic level, the Commission does not consider *prima facie* that such claims constitute a potential violation of a right.[54] Moreover, the criminal remedies realized in Petitioners' cases plainly refute the premise

[50] Lucero et al., Petition 1506-08, Admissibility Report, Report No. 192/18, para. 18 (Dec. 31, 2018).
[51] *See, e.g.*, *Move Organization* Inadmissibility Decision, *supra* note 50, Analysis § (b)(2).
[52] *Vigilantes* Admissibility Decision, *supra* note 20, ¶ 56.
[53] *See, e.g.*, *Id.* ¶ 60 & Decision ¶ 4 (declaring case inadmissible with respect to petitioners who obtained access to an effective remedy in the domestic system).
[54] *See, e.g.*, Carlos Luciano Martins v. Argentina, Report No. 1/19, Petition 325-07, para. 17 (Jan. 3, 2019) ("the Commission observes that the petitioner had different procedural opportunities to file for remedies both at the investigation and initial stages of the criminal proceeding, which were all solved by the appropriate instances, and that the domestic courts granted Mr. Martins the suspension of the trial on condition that he complies with certain community services, which was fulfilled. As a result, he obtained the stay and termination of the criminal action, as well as the archiving of the case. Taking into consideration the procedural actions took by Mr. Martins, which led to his release, the Commission does not consider *prima facie* that it constitutes a potential violation of a right granted by the American

of the Petition and the Additional Observations that the private acts of violence in question were in any way condoned by the United States. In sum, because justice was manifestly done in the named Petitioners' cases, the Commission should find their claims inadmissible.

With respect to the unnamed Petitioners and subsequent generalized allegations of violence against Latino persons, the Commission should, consistent with its own precedent, also find their claims inadmissible for failure to exhaust because the Petitioners provide no evidence whatsoever that the incident in question "was reported to the proper authorities to adequately put them on notice to conduct a criminal investigation."[55]

With respect to *relief aimed at improving an institution or system*, DOJ opened more than 25 pattern and practice investigations of law enforcement agencies in the intervening years, and is currently enforcing approximately 18 landmark agreements with state or local law enforcement agencies. It also seeks to identify and address potential policing issues before they become systemic problems.

With respect to *individual civil relief*, the Commission has found claims inadmissible under Article 31 of the Rules because the petitioner was pursuing a private lawsuit against his or her alleged perpetrator.[56] Here, Petitioners provide no explanation of whether they attempted to pursue the ample opportunities they have under state law to bring a civil tort suit against those private actors they claim are responsible for their injuries. In the U.S. system, tort suits are the principal way for private individuals to secure monetary damages or other redress for wrongs committed by other private individuals.

Finally, potential bases for civil suits against government authorities for credible, verifiable, and substantiated human rights violations and abuses include: the federal civil rights statute, 42 U.S.C. § 1983; the Federal Tort Claims Act, 22 U.S.C. § 2671 et seq.; and provisions of the U.S. Constitution, pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

Convention."); Vincente Rodolfo Walde Jauregui v. Peru, Report No. 189/18, Petition 359-07, para. 20 (Dec. 26, 2018) ("Likewise, the IACHR observes that, in this case, in spite of the impossibility of appealing the CNM's decisions, the alleged victim was able to review the resolutions which removed him from office by judicial means on the basis of jurisprudence from the Constitutional Court. This review resulted in the annulment of these resolutions and the alleged victim has been reinstated in his position. Therefore, the IACHR considers that these allegations do not tend to characterize a violation of the rights protected by Articles 8 and 25 of the American Convention.").

[55] *Vigilantes* Admissibility Decision, *supra* note 21, at Appendix No. 1 p. 19.

[56] *See, e.g.*, *id.* at Appendix No. 1 p. 20.

Official actions may also be challenged through judicial procedures in state courts and under state law, based on statutory or constitutional provisions; and participants in conspiracies to deny civil rights may be liable for civil damages under 42 U.S.C. § 1985. Despite their duty to do so, Petitioners make no showing in the Petition that they pursued any civil suit under § 1983 against any state or local governments or officials—those whose alleged acts and omissions constitute the bulk of the alleged misconduct described in the Petition—and do not explain how such an attempt would be futile; nor do they cite any attempt at all to pursue civil suits under other statutes against federal, state, or local governmental authorities.

The United States independently learned that subsequent to the filing of the Petition, Petitioner Lucero's estate pursued a 42 U.S.C. § 1983 action in federal court against various local governments, entities, and officials, including Suffolk County, the Suffolk County police, individual officers, and the Village of Patchogue. It appears the estate failed to properly serve Suffolk County and did not meet the substantive standard for relief for a suit alleging governmental responsibility for private harm.[57] It is unknown to the United States what other civil relief Lucero's estate may have sought or received, such as a settlement with any of the governmental entities. To the extent that Petitioner pursued such remedies but failed to exhaust them through non-compliance with applicable procedural rules, the relevant claim should be found inadmissible for failure to exhaust domestic remedies.[58]

In this matter, opportunities to pursue effective remedies have been provided to Petitioners and Petitioners have failed to demonstrate that they have exhausted all other available domestic remedies.[59] As such, the Commission should find that the Petitioners have not satisfied the

[57] *See* Almonte v. Suffolk County, 531 F. App'x 107 (2d Cir. 2013), *aff'g* 2012 WL 2357369 (E.D.N.Y. June 11, 2012) (dismissing case for failure to effectuate service of process); Almonte v. Suffolk County, 2011 WL 5245260 (E.D.N.Y. Nov. 2, 2011).

[58] *See, e.g.*, Mustafa Ozsusamlar, Petition 888-11, Report on Inadmissibility, Report No. 263/20, para. 18 (Sept. 23, 2020) ("The Commission recalls that petitioners must exhaust domestic remedies in accordance with domestic procedural legislation. The Commission cannot regard the petitioner as having duly complied with the requirement of prior exhaustion of domestic remedies if said recourse has been rejected on reasonable, not arbitrary, procedural grounds. It does not appear that the petitioner tried to correct the situation, and, accordingly, the Commission cannot conclude that the domestic remedies were exhausted.")

[59] *See, e.g.*, *Vera* Inadmissibility Decision, *supra* note 48, ¶ 22–27 (dismissing petition where petitioner had remedies available to him but failed to pursue them, and had not shown that he would have been impeded from doing so had he tried); Páez García v. Venezuela, Petition No. 670-01, Report No. 13/13, Inadmissibility Decision, Mar. 20, 2013 ¶ 33–34 (declaring petition inadmissible for failure to exhaust

requirement of exhaustion under Article 20(c) of the Statute and Article 31 of the Rules and must, in line with precedent,[60] deem Petitioners' claims, including claims presented for the first time in the "Additional Observations," inadmissible and close this matter.

E. Merits

For the reasons set forth above, the Commission should not reach the merits of the Petition, or new claims in the Additional Observations, because they are inadmissible in their entirety. Should the Commission nevertheless find the new claims in the Additional Observations admissible, the United States urges it to find the claims in the Petition and Additional Observations meritless. Contrary to the Petitioners' assertions, the United States has implemented both systemic and individualized measures to protect and ensure, to the extent feasible, the safety of all its citizens. Further, the actions taken by the United States demonstrate a commitment to addressing racially-motivated violence, harassment, and discrimination. In January 2021, the Biden Administration announced via executive order a whole-of-government agenda to pursue a comprehensive approach to advancing equity for all, including Black, Latino, Asian-Americans and Pacific Islanders, and other persons of color; members of religious minorities; persons with disabilities; LGBTQI+ communities; persons who live in rural areas; and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.[61]

i. Prosecutions of perpetrators in the named Petitioners' cases

Petitioners claim that they were victimized by private parties and then denied justice by U.S. federal, state, and local authorities for crimes committed in 2008; and that they were prejudiced by a lack of access to law enforcement. Petitioners even appear to suggest that U.S. officials have condoned hate crimes against Latinos.[62] These claims have no basis in fact. As noted above, in each of the named Petitioners' cases, federal or state authorities investigated the

where petitioner failed to request a payment awarded to him or enforcement of the court ruling that awarded the payment, and as such had failed to pursue the available domestic remedies).

[60] *See, e.g.*, Guimarães v. Brazil, Petition No. 1242-07, Report No. 60/13, Inadmissibility Decision, July 16, 2013 ¶¶ 18-19; Cherokee Nation v. United States, Case No. 11.071, Report No. 6/97, Inadmissibility Decision, Mar. 12, 1997, ¶ 41 (finding petition inadmissible because "[t]here are still available, domestic remedies in the United States to be invoked and exhausted" and accordingly closing the case).

[61] Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

[62] Petition at 6.

incident, located the perpetrators, and brought them swiftly to justice. With respect to Mr. Lucero, Mr. Loja, and Mr. Sierra, one of the members of the gang that pursued them was convicted of first-degree manslaughter as a hate crime under New York state law and sentenced to 25 years in prison.[63] The other co-assailants were also convicted of crimes and sentenced to prison.[64]

A federal jury found two of Mr. Ramírez's attackers guilty of a criminal violation of the Fair Housing Act, which criminalizes conduct that intimidates or injures an individual considering occupying a dwelling in a given neighborhood because of his or her race or national origin, and found one of the attackers guilty of other crimes. The court sentenced each of these men to nine years in prison; their convictions and sentences were affirmed on appeal, and the U.S. Supreme Court declined to review the case, leaving the convictions and sentences intact.[65] In a separate trial, a different federal jury convicted the Shenandoah police chief and a police lieutenant of falsifying documents and making false statements, respectively, in relation to attempts to impede the federal investigation into Ramírez's death. The court sentenced them respectively to 13 months and three months in prison; their convictions and sentences were affirmed on appeal and the U.S. Supreme Court declined review.[66]

With respect to the previously unidentified Petitioner John Doe 1, the United States has taken action to redress the harm suffered by the Petitioner. John Doe 1, identified as Carlos Orellana, was attacked in July 2008 by a group of teenagers who yelled racial epithets and beat

[63] People v. Conroy, 958 N.Y.S.2d 224 (N.Y. App. Div. 2013) (affirming Jeffrey Conroy's convictions and sentences for crimes committed during three separate attacks upon Hispanic men on November 3 and 8, 2008, including the attack on Petitioner Lucero); Manny Fernandez, *L.I. Man Gets 25-Year Term in Killing of Immigrant*, N.Y. TIMES, May 26, 2010.

[64] *See* Naimah Jabali-Nash, *Four New York Teens Sentenced in 2008 Hate Crime*, CBS News, (Aug. 26, 2010), http://www.cbsnews.com/news/four-new-york-teens-sentenced-in-2008-hate-crime/; Sam Lewis, *Patchogue Plus Three: A Look Back at Fatal Hate Crime*, METROFOCUS (Sept. 21, 2011), http://www.thirteen.org/metrofocus/2011/09/patchogue-plus-three-a-look-back-at-a-fatal-hate-crime/.

[65] United States v. Piekarsky, 687 F.3d 134, 140, 149–50 (3d Cir. 2012), *cert. denied*, Donchak v. United States, 133 S. Ct. 373 (2012), *and cert. denied*, Piekarsky v. United States, 133 S. Ct. 549 (2012).

[66] United States v. Moyer, 674 F. 3d 192, 202, 215 (3d Cir. 2012), *cert. denied*, Moyer v. United States, 133 S. Ct. 165 (2012), *and cert. denied*, Nestor v. United States, 133 S. Ct. 979 (2013). Although charged with third-degree murder, ethnic intimidation, and related charges, a Pennsylvania state jury acquitted Brandon Piekarsky and Derrick Donchak on May 1, 2009, of all charges of violence except simple assault, a second-degree misdemeanor. Donchak was also convicted of corrupting the morals of a minor, a misdemeanor of the first degree, and a summary offense of providing alcohol to minors. On June 17, 2009, Piekarsky was sentenced to six to 23 months' incarceration on the simple assault charge. Donchak was sentenced to six to 20 months' incarceration for the simple assault, 12 months' probation for the corruption of minors charges, and nine months' incarceration for the providing alcohol charges.

him. Mr. Orellana called the police who subsequently showed him mugshots of suspects in the investigation. Ultimately, Mr. Orellana's attackers were charged and convicted for the assault and are currently serving prison sentences of 25 and 7 years.[67]

Moreover, should the Commission choose despite its lack of competence *ratione personae* to examine the Petition as it relates to the Sucuzhañay brothers, it should be aware that one of their assailants was convicted of murder and assault as hate crimes under New York state law and sentenced to 37 years to life in prison, while the other attacker was convicted of manslaughter and assault and also sentenced to 37 years (reduced by the appellate court to 29 years).[68]

As noted above, the Commission has repeatedly found that, where a petitioner's claims have been addressed at the domestic level, the Commission does not consider *prima facie* that such claims constitute a potential violation of a right.[69] To the extent that the Commission considers that U.S. commitments under the American Declaration are implicated by the claims of named Petitioners in this matter, where the private actors responsible for the conduct in question have been brought to justice, there can be no finding of a violation of an international commitment by the United States.

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[67] The United States notes that it does not have enough information about the incidents alleged by John Doe 2 to determine whether action has been taken to redress the harm.

[68] James Barron & Andrew Boryga, *Ecuadorean Immigrant's Killers Get Long Sentences*, N.Y. TIMES, (Aug. 5, 2010), http://cityroom.blogs.nytimes.com/2010/08/05/killer-of-ecuadorean-immigrant-gets-37-to-life/?_r=0; People v. Scott, 25 N.Y.3d 1107 (2015) (affirming Appellate Division's order reducing Scott's prison sentence for attempted assault from 12 years to four years, but otherwise affirming the convictions and the manslaughter sentence of 25 years, for a total sentence of 29 years).

[69] *See, e.g.*, Carlos Luciano Martins v. Argentina, Report No. 1/19, Petition 325-07, para. 17 (Jan. 3, 2019) ("the Commission observes that the petitioner had different procedural opportunities to file for remedies both at the investigation and initial stages of the criminal proceeding, which were all solved by the appropriate instances, and that the domestic courts granted Mr. Martins the suspension of the trial on condition that he complies with certain community services, which was fulfilled. As a result, he obtained the stay and termination of the criminal action, as well as the archiving of the case. Taking into consideration the procedural actions took by Mr. Martins, which led to his release, the Commission does not consider *prima facie* that it constitutes a potential violation of a right granted by the American Convention."); Vincente Rodolfo Walde Jauregui v. Peru, Report No. 189/18, Petition 359-07, para. 20 (Dec. 26, 2018) ("Likewise, the IACHR observes that, in this case, in spite of the impossibility of appealing the CNM's decisions, the alleged victim was able to review the resolutions which removed him from office by judicial means on the basis of jurisprudence from the Constitutional Court. This review resulted in the annulment of these resolutions and the alleged victim has been reinstated in his position. Therefore, the IACHR considers that these allegations do not tend to characterize a violation of the rights protected by Articles 8 and 25 of the American Convention.").

ii. New hate crimes training for Suffolk County police

The Petition specifically faults police in Patchogue, New York, for allegedly failing to take timely action in response to the attack on John Doe 1, and for an allegedly intimidating experience suffered by John Doe 2.[70] In 2009, the U.S. Department of Justice ("DOJ") Civil Rights Division and the U.S. Attorney's Office for the Eastern District of New York (collectively "United States") initiated a joint investigation of the Suffolk County Police Department ("SCPD"). The SCPD's jurisdiction includes Patchogue, where the attacks on Petitioners Lucero, Loja, Sierra, and John Doe 1 and 2 occurred. The investigation, conducted pursuant to the Violent Crime Control and Law Enforcement Act of 1994 and the Omnibus Crime Control and Safe Streets Act of 1968, focused on discriminatory policing allegations, including claims that the SCPD discouraged Latino victims from filing complaints and cooperating with the police and failed to investigate crimes and hate-crime incidents involving Latinos.

On January 13, 2014, the United States announced an agreement whereby the SCPD committed, among other things, to ensure that all officers received hate crime training and to strengthen SCPD outreach efforts in Latino communities.[71] A December 2019 compliance report noted DOJ's continued efforts in monitoring SCPD's compliance with respect to the 2014 agreement, which include reviewing comprehensive documents and materials provided by SCPD, including copies of internal affairs investigations, a sample of entries in SCPD's community relations daily activity reporting system, and documentation regarding hate crimes and language assistance; meeting with SCPD officials, SCPD command staff, supervisors, SCPD officers, and members of specialized units, including the Hate Crimes Unit, the Internal Affairs Bureau, and the Community Response Bureau; touring precincts and participated in ride-alongs with on-duty officers; attending training courses; meeting with advocates; and soliciting the views of the Suffolk County community, including the Latino community. These and similar efforts in light of the pandemic are ongoing.

With respect to the Shenandoah, Pennsylvania, Police Department, three of the Police Department's seven officers were prosecuted on federal charges and, as discussed above, the police

[70] Petition at 3.

[71] Agreement Between the United States Department of Justice and Suffolk County Police Department (Jan. 13, 2014), *available at* http://www.justice.gov/crt/about/spl/documents/suffolk_agreement_1-13-14.pdf.

chief and a lieutenant were convicted and imprisoned. Shenandoah subsequently hired a new police chief. Given that the Commission's competence under its Statute is "to make recommendations . . . when it finds this appropriate, in order to bring about more effective observance of fundamental human rights," the Commission should take into consideration these measures taken by the State to address the complaints raised in the petition before deciding to make recommendations in this matter.[72]

iii. Increased support for state and federal prosecutions of hate crimes; increased efforts to prevent domestic violent extremism ("DVE")

More broadly, eliminating hate crimes and bias-motivated violence from our communities and our country is one of the Administration's and DOJ's highest priorities. Within days of taking office, President Biden issued the "Presidential Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States." The Memorandum directed the Attorney General to explore opportunities to support, consistent with the applicable law, the efforts of State and local agencies, to prevent discrimination, bullying, harassment, and hate crimes against Asian Americans and Pacific Islanders individuals, and expand collection of data and public reporting regarding hate incidents against such individuals.[73]

a. DOJ efforts to combat hate crimes and hate incidents

DOJ has mounted a robust, multi-pronged effort to combat the recent rise in hate violence and xenophobia.[74] The Attorney General's first directive to DOJ was a 30-day expedited internal

[72] IACHR Statute, Art. 20(b).

[73] See Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States, available at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-condemning-and-combating-racism-xenophobia-and-intolerance-against-asian-americans-and-pacific-islanders-in-the-united-states/.

[74] In response to Petitioners' specific allegations in the "Additional Observations" that DOJ's policy positions concerning consent decrees and resource allocation within the Department decreased oversight of local law enforcement and prosecution of hate crimes, the United States highlights several recent actions. First, the Attorney General rescinded the *Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Government Entities Memorandum*, dated November 7, 2018, and ordered that those changes become incorporated into the Justice Manual and the Code of Federal Regulations. *See* Memorandum from the Attorney General Re: Civil Settlement Agreements and Consent Decrees with State and Local Governmental Entities (Apr. 16, 2021), *available at* Civil Settlement Agreements and Consent Decrees with State and Local Governmental Entities (justice.gov).

review to determine how DOJ could deploy all the tools at its disposal to counter the recent rise in hate crimes and hate incidents. On May 27, 2021, the Attorney General issued a comprehensive memorandum on improving DOJ's efforts to combat hate crimes and hate incidents.[75] DOJ is aggressively working to implement the review team's recommendations and to increase resources to combat hate crimes through federal law enforcement action and adequate training, support, and outreach to state and local partners. To lead these efforts, the Attorney General appointed a Hate Crimes Coordinator to centralize the efforts of DOJ attorneys, law enforcement partners, community organizations, and other stakeholders. The Attorney General also designated an official in DOJ's Civil Rights Division to expedite the review of hate incidents to determine whether they violate federal criminal laws. The Federal Bureau of Investigation ("FBI") plays a central role in these efforts. On October 1, 2021, the FBI elevated hate crimes and criminal official misconduct violations to its highest-level national threat priority, which will increase the resources for hate crimes prevention and investigations and make hate crimes a focus for all 56 of the Bureau's field offices.[76]

DOJ, through the U.S. Attorney's Offices and DOJ's Civil Rights Division, consistently prosecutes hate crimes. The federal government aggressively prosecutes hate crimes committed because of the victim's race or national origin. Since January 2017, DOJ has charged more than 125 defendants alleged to have been involved in committing bias-motivated crimes and has obtained convictions of more than 95 defendants involved in committing bias-motivated crimes. For example, on September 17, 2021, John Earnest pleaded guilty in federal court to a 113-count indictment for the religiously and racially-motivated murder of one person and the attempted murder of 53 other persons after he drove to the Chabad of Poway synagogue, entered the building armed with a loaded assault rifle and in possession of additional ammunition, and opened fire on those gathered for religious worship; he will be sentenced at a later date. Also in September 2021,

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Second, the Attorney General approved the recommendation of the Associate Attorney General concerning the use of monitors in civil settlement agreements and consent decrees. *See* Attorney General Merrick B. Garland Announces Results of Monitor Review | OPA | Department of Justice. Third, DOJ requested increased funding for the Civil Rights Division in the Fiscal Year 2022 Budget Request. *See* Reinvigorating Civil Rights Efforts FY 2022 Budget Request.

[75] See Memorandum from the Attorney General Re: Improving the Department's Efforts to Combat Hate Crimes and Hate Incidents (May 27, 2021) available at Improving The Department's Efforts to Combat Hate Crimes and Hate Incidents (justice.gov)

[76] See Attorney General Garland Issues Statement on 2020 FBI Hate Crimes in the United States Statistics (justice.gov)

Nolan Strauss was sentenced to 16 years' imprisonment after pleading guilty to a federal hate crime for stabbing a Black man twice in the neck while the man was sitting in a restaurant; Strauss, who did not know the victim, announced at the scene that wanted to kill the man because he was Black. In June 2019, James Fields was sentenced to life in prison after pleading guilty to 29 violations of the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009 ("Shepard-Byrd Act") for driving his car into a crowd of counter-protesters at the 2017 Unite the Right Rally in Charlottesville, Virginia, killing one woman and injuring over 30 peaceful protesters. On February 19, 2020, a federal jury convicted Alan Covington on three hate-crime charges for attacking and injuring three men with a metal pole because he believed the men were Mexican. In November 2020, Holden Matthews was sentenced to over 25 years' imprisonment for intentionally setting fire to three African-American Baptist churches in Louisiana because of the religious character of those buildings. Matthews was also ordered to pay over $2.5 million restitution. Also in November 2020, Stuart Rollins was sentenced for violating the housing rights of a Hispanic family following his repeated threats to burn down their home while they were inside and his assertions that the family did not belong in the neighborhood and should "go back to Mexico."[77]

b. DOJ collaboration with state and local law enforcement partners

Like other crimes, the vast majority of hate crimes in the United States are investigated under state law and prosecuted by local, state, and tribal law enforcement authorities. At the state level, many states have incorporated hate crimes provisions into their penal codes, including New York and Pennsylvania, the two states where the crimes against the named Petitioners occurred.[78]

[77] The United States additionally notes the swift, decisive action the United States has taken to bring the perpetrators to justice and to condemn racially-motivated violence in two recent instances of racially-motivated violence cited by Petitioners in their Additional Observations. *See* Additional Observations at 6. First, the perpetrator of the El Paso Walmart shooting was indicted by a grand jury on capital murder and hate crime charges. The perpetrator faces both state charges, and federal charges prosecuted by the U.S. Attorney's Office for the Western District of Texas and the Civil Rights Division. DOJ further condemned the shooting, calling it an act of domestic terrorism. Second, the man arrested in Seattle who threatened to kill a Latina woman in order to stoke racial resentment was promptly arrested by the FBI. He subsequently pleaded guilty and was sentenced to serve a five-year prison sentence.

[78] *See* N.Y. PENAL LAW § 485.05 (McKinney 2010) ("A person commits a hate crime when he or she commits a specified offense and . . . intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding the race, color, [or] national origin . . . of a person."); 18 PA. CONS. STAT. § 2710 (2003) ("A person commits the offense of ethnic intimidation if, with malicious intention toward the race, color,

Accordingly, in addition to prosecuting hate crimes under federal law, DOJ collaborates with its state and local law enforcement partners to address hate crimes more broadly.

For example, a number of U.S. Attorney's Offices participate with their federal, state, local, and tribal law enforcement counterparts in task forces that address hate crime. The Attorney General has directed all U.S. Attorney's Offices to examine the feasibility of creating alliances against hate in their districts. In addition to prosecutors from the U.S. Attorney's Offices, these alliances could include representatives from state and local law enforcement agencies and personnel from local FBI field offices.[79]

DOJ also provides training and technical assistance to its state and local partners. The Shepard-Byrd Act, 18 U.S.C. § 249, enacted in 2009, authorized funding and technical assistance to state, local, and tribal jurisdictions to help them more effectively investigate and prosecute hate crimes. Since June 2021, the FBI has held four regional civil rights conferences with more than 10 law enforcement agencies in Denver, Louisville, San Francisco, and Philadelphia, with additional conferences scheduled before the end of the year. These conferences help local police agencies better understand federal civil rights and hate crimes laws; encourage reporting; strengthen relationships between law enforcement and local civil rights organizations; and build trust within the diverse communities they serve. The FBI also launched a National Anti-hate Crimes Campaign involving all 56 FBI field offices to encourage reporting. The campaign includes outdoor advertising, billboards, and radio streaming in addition to social media. Congress also has given DOJ new authority in this area. The COVID-19 Hate Crimes Act, enacted in May 2021, gives DOJ a range of additional tools to further support these efforts. For example, the statute requires DOJ to make grants to states to create state-run hate crime reporting hotlines.

c. Increased efforts to prevent DVE

DOJ and the U.S. Department of Homeland Security ("DHS") also work together to prevent violence and threats meant to intimidate or coerce populations, including on the basis of

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religion or national origin of another individual or group of individuals, he commits an offense . . . ."). See also Laws and Policies | HATECRIMES | Department of Justice (listing the federal bias categories included by state laws).

[79] See Memorandum from the Attorney General Re: Improving the Department's Efforts to Combat Hate Crimes and Hate Incidents (May 27, 2021) available at Improving The Department's Efforts to Combat Hate Crimes and Hate Incidents (justice.gov)

their race, religion, ethnicity and other protected categories, or influence the policy of a government by intimidation or coercion. DOJ has recognized the threat of DVE and prioritized efforts to combat both hate crimes and domestic terrorism. By way of example, DOJ is working to encourage increased coordination and information-sharing between its components that address hate crimes and acts of DVE. The Civil Rights, National Security, and Criminal Divisions all work to coordinate with each other, as well as with U.S. Attorney's Offices, the FBI, and other partners to investigate, prevent, and prosecute criminal offenses that could constitute hate crimes or acts of DVE. In April 2019, the FBI created the Domestic Terrorism-Hate Crimes Fusion Cell, which is designed to facilitate coordination within the FBI as well as between agents and prosecutors and specifically focuses on incidents and investigations that could constitute hate crimes and/or acts of domestic terrorism.

Additionally, on April 26, 2021, DHS updated the National Terrorism Advisory System ("NTAS") Bulletin, first issued on January 27, 2021, which describes the heightened threat environment and notes some ideologically-motivated violent extremists with objections to the exercise of governmental authority and the presidential transition, as well as other perceived grievances fueled by false narratives, could continue to mobilize to incite or commit violence. The NTAS Bulletin notes that long-standing racial and ethnic tension—including opposition to immigration—has driven DVE attacks, including a 2019 shooting in El Paso, Texas that killed 23 people. The federal government is conducting a review of our existing counter terrorism posture to address these threats. DHS is augmenting intelligence analysis and information sharing capabilities, particularly in collaboration with state and local partners, and focusing on the full spectrum of the domestic terrorism threat landscape. DHS is also working with nongovernment partners to identify and mitigate violent extremist content online and building greater public awareness and resilience to disinformation. The newly-established DHS Center for Prevention Programs and Partnerships, which provides financial, educational, and technical assistance to state and local partners to build local prevention frameworks, will improve DHS's ability to combat terrorism and targeted violence, consistent with privacy protections, civil rights and civil liberties, and other applicable laws.

iv. Changes to immigration policy, including regarding 287(g) agreements

Petitioners aver that U.S. immigration policies "have served to degrade the rights of all

Latino residents, regardless of their immigration status," and "[t]hese efforts have . . . served to further encourage private actors to commit hate crimes against Latinos."[80] They complain specifically about 287(g) agreements, by which U.S. Immigration and Customs Enforcement ("ICE"), a DHS component, enters into partnership with state and local law enforcement agencies that are willing to assist ICE in its immigration enforcement efforts against those individuals determined to be a priority for removal to their countries of nationality. The 287(g) Program is voluntary and requires a memorandum of agreement with a state or local law enforcement agency. Petitioners complain that the "the delegation of immigration authority to local governments" under 287(g) agreements is "[o]f particular concern" because it "sends a message that those who would target Latinos and cause them harm are serving the public good."[81]

As a general matter, the United States is committed to ensuring that all persons in the United States, regardless of immigration status, receive the protections to which they are entitled under the Constitution and laws of the United States, as well as applicable protections pursuant to international obligations and commitments. The United States is also committed to enforcing its immigration laws, as it is entitled to do under international law and under the American Declaration.

In the time that has elapsed since Petitioners filed their claim in 2008, there have been significant changes in U.S. immigration policies and practices, many of which have been the subject of other proceedings before the Commission.

a. DHS efforts to address allegations of racial profiling

With regard to alleged profiling in DHS activities, DHS policy prohibits racial profiling across all DHS law enforcement, investigation, and screening activities. DHS also adheres, where applicable, to DOJ's 2014 *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity.* Pursuant to recent executive orders issued in January 2021 on advancing racial equity and combating racial discrimination, DHS established an Equity Task Force to ensure that the principles of racial equity are implemented throughout DHS's policies, programs, and activities.

[80] Petition at 6.
[81] *Id.* at 7.

DHS also investigates allegations of racial profiling and/or discrimination. The DHS Office for Civil Rights and Civil Liberties (CRCL) reviews and investigates civil rights and civil liberties complaints filed by the public or reported by reputable news organizations regarding DHS policies and activities and involving a range of alleged civil rights and civil liberties abuses, including discrimination on the basis of race and ethnicity as well as discrimination or inappropriate questioning related to entry into the United States. For example, DHS CRCL has opened 251 complaints alleging discrimination and/or profiling since January 1, 2013.

b. Revisions to civil immigration enforcement policies

DHS has taken further actions pursuant to President Biden's January 2021 executive order requiring revisions to civil immigration enforcement policies and priorities, including issuing guidance requiring DHS components to develop recommendations to address aspects of immigration enforcement, including policies regarding governing the exercise of prosecutorial discretion and the interaction with state and local law enforcement.

On September 30, 2021, the DHS Secretary issued a memorandum entitled Guidelines for the Enforcement of Civil Immigration Law ("Guidelines") on DHS's civil immigration enforcement and removal priorities, which prioritizes the removal of non-citizens who are a threat to: (1) national security; (2) public safety; and (3) border security. These priorities apply to all civil immigration and enforcement removal decisions including decisions on arrests, detainers, removal proceedings, and the execution of removal orders. The Guidelines require DHS personnel to review cases on an individualized basis, in accordance with the law, and to use the agency's limited resources to enforce U.S. immigration laws effectively and justly.

c. 287(g) Programs

As part of the DHS commitment to improving policies and operations, ICE is currently reviewing its 287(g) Programs. Prior to this review, ICE decided in December 2012 not to renew its 287(g) Task Force Model agreements, under which participating state and local law enforcement officers had exercised their delegated immigration enforcement authority. As a result, all 24 287(g) Task Force Model programs expired on December 31, 2012. Of particular importance here, there were never any Task Force Model agreements with any state or local agency in the two jurisdictions specifically named in the Petition: Suffolk County, New York, and

Shenandoah, Pennsylvania. In 2018, the DHS Office of the Inspector General ("OIG") examined ICE oversight and management of the 287(g) program. Upon review, DHS OIG recommended that ICE address issues with 287(g) program staffing, improve the timeliness of IT equipment delivery to law enforcement agencies, and assess program participant training. Based on the resulting audit recommendations, ICE Enforcement and Removal Operations ("ERO") developed a mechanism to track and measure performance of all 287(g) law enforcement partners annually. In addition, ICE ERO also developed a staffing and resource tool to assist the program in utilizing program resources more strategically and effectively.

The 287(g) Program enhances the safety and security of communities by partnering with state and local law enforcement agencies ("LEAs") to identify and remove criminal noncitizens. A joint Memorandum of Agreement ("MOA") sets forth the scope and duration of delegated authority, training requirements, as well as the terms of ICE supervision. The MOA also requires the partnering LEAs to follow DHS and ICE policies when its state or local designated officers perform delegated immigration enforcement functions. The state or local entity only receives certain delegated authority for immigration enforcement within their facilities.

The 287(g) program currently utilizes the Jail Enforcement Model ("JEM") and the Warrant Service Officer ("WSO") model. Under the JEM, ICE delegates to state or local law enforcement officers the authority to identify and process for removal, under ICE supervision, priority non-citizens who have been arrested and booked into their agencies' jails or correctional facilities. Following training and certification by ICE, these officers may perform the initial interviewing functions that would otherwise be carried out by ICE personnel. Beyond that point, individuals placed into immigration proceedings as a result of a 287(g) encounter follow the same path as other individuals placed into proceedings by ICE enforcement personnel. ICE assumes custody of the non-citizen for purposes of removal only after that individual has been released from the state or local law enforcement's custody. ICE has 287(g) agreements with 72 law enforcement agencies in 21 states, all under the JEM Program. As with the Task Force Model, none of these JEM agreements has ever included the state or local agencies in Suffolk County, New York, or Shenandoah, Pennsylvania.

Under the recently developed and more narrowly scoped WSO program, nominated state or local law enforcement officers are trained, certified, and authorized by ICE with the limited

delegated authority to only serve and execute administrative warrants at ICE's direction, against designated non-citizens who are arrested and booked into their state or local jail facilities. ICE ERO is required to provide continuous oversight of the partnering agencies. As a result of the limited authority delegated to WSOs, ERO is currently developing, in lieu of ICE OPR's inspections of partnering JEM agencies on a biannual basis, an internal oversight mechanism for the WSO model to be conducted at regular intervals. This continuous, documented oversight review process will ensure compliance with ICE policies, procedures, and directives as it relates to the WSO model.

Petitioners argue that U.S. immigration policies are "undertaken with little regard for the human rights of undocumented immigrants . . . ."[82] As evidenced by recent executive actions, the Biden administration is committed to an orderly, humane, and safe immigration process that respects the rights of all noncitizens. As ICE continues to focus its resources on key priorities, ICE, and DHS more broadly, are required to ensure that all enforcement efforts, including the 287(g) program include critical protections for civil rights and civil liberties. For example:

- Immigration enforcement authority is delegated under the 287(g) Program only after the participating officer completes extensive ICE-led training, which encompasses DOJ's 2014 Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity. Moreover, all officers operating pursuant to the 287(g) Program perform immigration enforcement functions under ICE supervision.
- ICE OPR conducts a comprehensive inspection of the 287(g) JEM Program at least every two years. During its inspections, OPR considers the 287(g) Programs' compliance with civil rights and civil liberties protections, and researches the programs before inspection to determine whether complaints have been lodged against officers or the program itself. Such complaints or allegations assist OPR in focusing its inspections. As mentioned previously, ICE is also developing an internal oversight mechanism for the WSO model to be conducted at regular intervals.
- The current 287(g) memoranda of agreement with state and local LEAs each contain a section on "Civil Rights Standards." This section expressly provides that the participating

[82] *Id*. at 6.

agency personnel are bound by all federal civil rights laws, regulations, and guidance relating to nondiscrimination.

Because the 287(g) Program only utilizes the JEM and WSO Models, state and local 287(g) designated officers may only exercise delegated authority towards non-citizens who have been criminally arrested and booked into their agency's jail or correctional facility. The 287(g) Program acts as a force multiplier for ICE, only operating under defined delegated immigration enforcement authority and under direct ICE supervision. The JEM program identifies and processes for removal proceedings only noncitizens who have been arrested for a criminal violation and booked into the respective state or local jail facilities. The 287(g) WSO program only serves and executes administrative warrants at the direction of ICE, on designated noncitizens booked into the respective state or local jail facilities for criminal offenses at the time of their release to ICE custody. Non-citizens who are not arrested for a crime are outside the scope of the 287(g) Program. Furthermore, non-citizens who interact with government agencies or the judicial system in non-criminal matters are likewise outside the scope of the 287(g) Program. As noted above, the 287(g) Program seeks to identify and process for removal only those noncitizens who are arrested for a criminal offense and are booked into jail, with a substantial emphasis on those who fall within DHS enforcement priorities.

v. Revamped use of force policies

Petitioners also charge that U.S. immigration officials use a level of force "traditionally reserved for apprehending persons who have committed criminal violations."[83] This contention is incorrect. DHS enforces strict standards of conduct that apply to all of its employees, whether they are on- or off-duty; investigates deaths resulting from use of force; and follows up on civil liberties-related complaints. DHS' Department-wide policy on the use of force, issued in September 2018, articulates standards and guidelines related to the use of force by DHS law enforcement officers and agents and affirms the duty of all DHS employees to report improper uses of force.

U.S. Customs and Border Protection ("CBP"), a component of DHS, has made many updates to its use of force policies over the past decade. First, CBP has made its use of force

[83] Petition at 12.

handbook and a Police Executive Research Forum report on CBP use of force available on its public website. Additionally, in 2010, CBP created its Use of Force Reporting System, which electronically tracks all reportable uses of force by agents and officers.[84] In 2014, DHS established the CBP Integrity Advisory Panel as a subcommittee of the Homeland Security Advisory Council, tasked with benchmarking CBP's progress in response to CBP use of force reviews and a DHS OIG report, as well as identifying best practices from federal, state, local, and tribal law enforcement on integrity incident prevention and transparency pertaining to incident response and discipline. Also in 2014, CBP issued a new CBP Use of Force Policy, Guidelines, and Procedures Handbook, designed to provide enforcement personnel with a single use of force reference, incorporating best practices and recommendations from use of force reviews conducted by CBP and the Police Executive Research Forum during 2012 and 2013.[85] Finally, in 2021, CBP issued a new Use of Force Policy, and Use of Force Administrative Guidelines and Procedures Handbook. The new Policy and Handbook continue CBP's commitment to law enforcement best practices through consistency with the DHS Policy on the Use of Force, incorporating agency-wide training standards, de-escalation, a duty to intervene and report improper use of force, and a prohibition on choke holds and neck restraints.

Moreover, CBP has also worked to make its investigative process more transparent and accountable. In 2014 CBP created a response plan to investigate, monitor, and report use of force incidents involving a CBP officer or agent. As part of that response plan, a CBP cross-component Use of Force Incident Team was created to respond to use of force incidents that result in serious physical injury or death. In addition, a National Use of Force Review Board ("NUFRB") and Local Use of Force Review Board ("LUFRB") were created to review all use of force incidents that occur in CBP. The NUFRB is an interagency review board that is comprised of senior officials from across CBP, as well as officials from the DHS Office for Civil Rights and Civil Liberties, ICE,

[84] CBP later expanded the system, to capture additional metrics and to help provide a better understanding of when, how, and why officers and agents use force. That system, now called the Enforcement Action Statistical Analysis and Reporting System, captures uses of force, pursuits, and assaults against law enforcement personnel into a single comprehensive database.

[85] In addition to updating the use of force policy, CBP reviewed and redesigned its basic training curriculum, reviewed and redesigned its advanced training for use of force instructors, installed border fence training venues, and purchased use of force simulator systems designed to provide officers and agents with a more realistic job-specific training experience. CBP also established a Law Enforcement Safety and Compliance Directorate ("LESC") to optimize the safety, readiness, accountability, and operational performance of CBP law enforcement personnel. The LESC develops use of force policy, maintains appropriate controls and standards, and supplies the highest quality use of force education and training, weapons, and other officer-safety equipment.

and DOJ. The NUFRB reviews use of force incidents involving the use of deadly force, or those that result in serious bodily harm or death. The NUFRB conducts an objective review of each incident to determine if the use of force was consistent with CBP policy, identify any potential misconduct, and to assess any issues involving training, tactics, equipment or policy. As of January 2020, there have been 18 meetings of the NUFRB that have reviewed 60 significant incidents. All other incidents (involving the reportable use of less-lethal force) are reviewed by LUFRBs, established in regional locations across the country. Every law enforcement agency, including the CBP, is part of the ongoing national discussion about how, when, where, and why officers and agents should use force.

Accountability and remedies for excessive use of force may be addressed through DHS's OIG, which receives information about all allegations of misconduct, including excessive use of force, involving DHS employees, contractors, and programs. Inspector General investigations may result in criminal prosecutions, fines, civil monetary penalties, administrative sanctions, and personnel actions. The Inspector General also maintains a 24-hour complaint hotline for this purpose. DHS also investigates complaints from the public alleging violations of civil rights or civil liberties by its personnel, programs, or activities.

vi. Other material changes to immigration policies and messaging

DHS has made many other material changes to its immigration enforcement program, including issuing the Guidelines for the Enforcement of Civil Immigration Law (Sept. 30, 2021), discussed above. For instance, in 2009, ICE announced a revised, comprehensive and targeted worksite enforcement strategy to promote national security, protect critical infrastructure, and target employers who knowingly violate employment laws or engage in abuse or exploitation of workers, rather than relying upon large enforcement actions targeting undocumented workers. ICE examines evidence of mistreatment of workers, and evidence of trafficking, smuggling, harboring, visa fraud, and other criminal conduct. During the past several years, the number of criminal arrests of managerial employees has increased while arrests of non-managerial employees have fallen, and fines imposed on employers have increased dramatically, reflecting ICE's increased focus on pursuing the most serious intentional criminal conduct by employers.

* * *

For the above reasons, the Commission should find the claims raised in the Petition, and analogous claims in the Additional Observations, meritless. The United States has lived up to its commitments under the American Declaration, including under Articles I, II, V, IX, and XVII of the American Declaration. The United States has demonstrated a commitment to the safety of all its citizens, irrespective of race or immigration status. The actions of the United States—including prosecuting perpetrators of hate crimes, reforming national immigration policy, and training state and local law enforcement—reflect a concerted effort to counter discrimination, harassment, or other forms of hostility towards persons of Latino descent or immigrants.

CONCLUSION

For the reasons discussed above—as well as those presented in the September 2015, submission of the United States in this matter—the Petition remains inadmissible under Articles 31 and 34 of the Rules. First, the Petitioners failed to exhaust domestic remedies available in the United States, as required by Article 20(c) of the Statute and Article 31 of the Rules. Second, the Petition fails under Article 34(a) to state facts that tend to establish violations of rights set forth in the American Declaration; it is manifestly groundless under Article 34(b). The new claims advanced in the Additional Observations are out of order and inadmissible for analogous reasons. Therefore, the Commission should declare the Petition and Additional Observations inadmissible and, in line with its own precedent, close this matter. Should the Commission nevertheless declare the new claims in the Additional Observations admissible and proceed to examine its merits, the United States urges the Commission to find the Petition and Additional Observations to be without merit and deny Petitioner's request for relief.