ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
Appellee,	:	Case No. 1993-1245
v.	:	
JOSE TRINIDAD LOZA	:	**Death Penalty Case**
Appellant.	:	

JOSE TRINIDAD LOZA'S NOTICE THAT THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS HAS ISSUED PRECAUTIONARY MEASURES TO PRESERVE MR. LOZA'S LIFE WHILE IT REVIEWS THE MERITS OF HIS CLAIMS

MICHAEL T. GMOSER (0002132)
Butler County Prosecuting Attorney

LINA A. ALKAMHAWI (#0075462)
Assistant Prosecuting Attorney
Chief, Appellate Division

Government Services Center
315 High Street, 11th Floor
Hamilton, Ohio 45011
(513) 887-3474
(513) 785-5206– Fax
alkamhawiln@butlercountyohio.org

COUNSEL FOR APPELLEE

LAURENCE E. KOMP (#0060142)
Attorney at Law
P.O. BOX 1785
Manchester, MO 63011
(636) 207-7330
(636) 207-7351 (Fax)
lekomp@swbell.net

JAMES A. WILSON (#0030704)
Vorys, Sater, Seymour & Pease LLC
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216
(614) 464-5606
jawilson@vorys.com

COUNSEL FOR APPELLANT LOZA

FILED
AUG 14 2015
CLERK OF COURT
SUPREME COURT OF OHIO

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On July 10, 2015, the State of Ohio prematurely moved this Court to set an execution date in the above captioned matter.

On July 17, 2015, Mr. Loza filed a petition with the Inter-American Commission on Human Rights ("IACHR") in Washington, D.C., raising violations of the American Convention on the Rights and Duties of Man and seeking injunctive relief in the form of "precautionary measures." The jurisdiction of the IACHR could not be invoked until the complete exhaustion of usual and non-extraordinary state and federal remedies.

On July 20, 2015, Mr. Loza opposed the setting of the execution date and informed this Court of the newly pending action in front of the IACHR. A premise of part of this request is that Mr. Loza is a Mexican National that was sentenced to death by the State of Ohio, and in so doing, the State of Ohio failed to inform and thereby deprived Mr. Loza of the opportunity to seek the assistance of the Mexican Consulate.

On August 11, 2015, the IACHR unanimously issued provisional measures. Attachment A. In order to prevent its jurisdiction from being rendered moot the IACHR noted:

> Consequently, pursuant to Article 25(1) of its Rules of Procedure, the Commission hereby requests the United States take measures necessary to preserve the life and physical integrity of Mr. Jose Trinidad Loza Ventura until the IACHR has pronounced on his petition so as not to render ineffective the processing of his case before the Inter-American system.

Id. p. 1 par. 2; *see also* p. 4 par. 17.

This Court should honor the IACHR's precautionary measures to allow that body to consider the merits of Mr. Loza's Vienna Convention claim, which has never been reviewed by any state or federal court. *See* 7/20/15 Opposition to Set Execution Date pp. 6-7. At a very minimum, this Court should defer the setting of an execution date out of comity and respect for the IACHR, which is a respected international human rights body supported by the United States government. *Cf. Breard* v. *Greene,* 523 U.S. 371, 375 (1998) (per curiam) (we should give respectful consideration to the interpretation of an international treaty rendered by an international court with jurisdiction to interpret such"); *Medellin, v. Texas*, 552 U.S. 491, 513 n.9 (2008) (same). No rule or legislation *requires* the setting of an execution date for Mr. Loza. This Court retains the discretion to determine when it is appropriate to do so. Given the ongoing proceedings before the Inter-American Commission, the Commission's issuance of precautionary measures, and the Commission's ability to review the undisputed violation of Mr. Loza's rights under Article 36 of the Vienna Convention,[1] this Court should refrain from setting an execution date at this time.

[1] At a very minimum, the Commission's review of Mr. Loza's claim will be relevant to the Governor's consideration of Mr. Loza's clemency application in the future. If the Commission's proceedings are rendered moot by Mr. Loza's execution, the Governor will have no ability to consider the Commission's evaluation of the claim in deciding whether clemency is an appropriate remedy in this case.

Conclusion

For the foregoing and previously stated reasons, this Court should deny the State of Ohio's current request or should defer the setting of an execution date out of comity and respect for the IACHR.

Respectfully submitted,

By: Laurence E Komp by James S

LAURENCE E. KOMP (#0060142)
Attorney at Law
P.O. BOX 1785
Manchester, MO 63011
(636) 207-7330
(636) 207-7351 (Fax)
lekomp@swbell.net

JAMES A. WILSON (#0030704)
Vorys, Sater, Seymour & Pease LLC
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216
(614) 464-5606
jawilson@vorys.com

COUNSEL FOR APPELLANT LOZA

CERTIFICATE OF SERVICE

This is to certify that a fair and accurate copy of the foregoing **JOSE TRINIDAD LOZA'S NOTICE THAT THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS HAS ISSUED PRECAUTIONARY MEASURES TO PRESERVE MR. LOZA'S LIFE WHILE IT REVIEWS THE MERITS OF HIS CLAIMS NOTICE THAT THE INTERAMERICAN COURT OF HUMAN RIGHTS ISSUED PROVISIONAL MEASURES** was served upon the following by regular U.S. mail this 14th day of August, 2015, to: LINA A. ALKAMHAWI (#0075462), Assistant Prosecuting Attorney, Chief, Appellate Division, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011

JAMES A. WILSON (#0030704)
Vorys, Sater, Seymour & Pease LLC

Exhibit A

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 27/2015

PRECAUTIONARY MEASURE 304-15[1]
Matter José Trinidad Loza Ventura related to United States
August 11, 2015

INTRODUCTION

1. On July 17, 2015 the Inter-American Commission on Human Rights (hereinafter "Commission" or "IACHR") received a request for precautionary measures presented by Sandra Babcock, Laurence E. Komp and James A. Wilson in favor of José Trinidad Loza Ventura (hereinafter "the proposed beneficiary"), a Mexican national, sentenced to the death penalty in the state of Ohio in the United States. The request for precautionary measures is related to the individual petition P-1010-15, which alleges violations of Articles I (right to life), II (right to equality before the law), XVIII (right to fair trial), XXIV (right of petition), XXV (right of protection from arbitrary arrest,), and XXVI (right to due process of law), (of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration" or "the Declaration"). The applicants ask the Commission to require the United States of America (hereinafter "the State," "United States" or "U.S.") to stay the execution to ensure that the IACHR has an opportunity to decide on the merits of the petition and to avoid irreparable harm to the proposed beneficiary.

2. After analyzing the factual and legal arguments put forth by the applicants, the Commission considers that, if Mr. José Trinidad Loza Ventura is executed before it has an opportunity to examine the merits of this matter any eventual decision would be rendered moot in respect of the effectiveness of potential remedies resulting in irreparable harm. Consequently, pursuant to Article 25 (1) of its Rules of Procedure, the Commission hereby requests that the United States take the measures necessary to preserve the life and physical integrity of Mr. José Trinidad Loza Ventura until the IACHR has pronounced on his petition so as not to render ineffective the processing of his case before the Inter-American system.

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

3. According to the request filed by the applicants, the proposed beneficiary was arrested on January 16, 1991, when he was 18 years old, in Ohio and charged with the murder of his girlfriend's mother, as well as three of his girlfriend's siblings. They affirm that the detective of the case was the person who allegedly made the decision to seek the death penalty, a decision that, according to the applicants, is reserved for prosecuting attorneys. The applicants also contend that the confessions extracted from Mr. Loza were obtained through coercive interrogation. On October 31, 1991 the proposed beneficiary was convicted on four counts of murder, and on November 6, 1991 he was sentenced to death by lethal injection by the State of Ohio.

4. Throughout his pre-trial detention, capital murder trial and sentencing the applicants contend that the proposed beneficiary, a Mexican national, was never advised of his right to consular notification and

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

communication. In addition, they affirm that the consular officers only learned about Mr. Loza's detention when his post-conviction attorney sought their assistance in November of 1995. By the time they found out, Mr. Loza had allegedly given an "inculpatory statement, had been tried twice, his conviction and death sentence had been affirmed on appeal and his request for review by the United States Supreme Court had been denied." According to the applicants, the proposed beneficiary had filed a post-conviction petition for a writ of habeas corpus, "raising among other significant issues both the violation of his consular rights and the racial animus that infected his prosecution" which was denied.

5. On September 24, 1996, Mr. Loza allegedly appealed this denial to the State Court of Appeals which, on October 13, 1997, reportedly affirmed the denial. After the Ohio Supreme Court declined to review his petition, Mr. Loza reportedly filed a habeas corpus petition in the federal district court supported by an amicus brief filed by Mexico.

6. On March 31, 2010 the district court reportedly denied the petition without holding an evidentiary hearing. On September 2, 2014 the U.S. Sixth Circuit Court of Appeals affirmed the denial.

7. The applicants contend that the proposed beneficiary has exhausted all available avenues of appeal, including appeals before state and federal courts. They indicate that on June 29, 2015 the U.S. Supreme Court denied a writ of certiorari filed by the proposed beneficiary where he argued that the Court should accept his case to resolve the question of whether the U.S. courts are empowered to provide judicial remedies for properly-preserved violations of Article 36 of the Vienna Convention on Consular Relations. Applicants state that "the prosecution of Mr. Loza was infused by racial animus and police misconduct" as well as a "failure to comply with consular notification and access requirements" rendering the trial unfair, and depriving a foreign defendant of his right to due process and imposing a death penalty that is "a violation of the right not to be arbitrarily deprived of one's life."

8. On July 10, 2015 the State reportedly filed a motion for the setting of his execution date. According to the applicants, the proposed beneficiary had until July 20, 2015 to file his opposition to the state's motion. However, the applicants contend that the executions are routinely approved, irrespective of the prisoner's opposing brief. In relation to this they highlight that the state of Ohio has allegedly put to death 38 prisoners in the past decade alone, including the execution of Dennis McGuire last year.[2]

9. The applicants affirm that there is no execution date set yet but they contend that "the Commission's precautionary measures are more likely to have their intended effect when issued prior to the actual setting of the execution date." They also affirm that the setting of the execution dates in Ohio is not always sequential and that, despite the fact that executions for this year have been stayed while Ohio officials obtain new supplies of lethal injection drugs and prepare a new execution protocol, seven prisoners have nonetheless been scheduled for execution in 2016. The applicants contend that "given the unpredictability of the date-setting process in Ohio, there is substantial likelihood that Mr. Loza could be executed before the State concerned could receive the Commission's final decision on his claims and, if necessary comply with any recommended remedial measures."

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[2] The applicants contend that, according to witnesses, Mr. McGuire "struggled, heaved, choked and gasped during the 25 minutes it took for him to die after he was injected with an experimental combination of ostensibly lethal drugs."

10. On July 24, 2015, the IACHR received a letter from the petitioners in which they asked that the request for precautionary measures also be registered as "a petition raising violations of the American Declaration on the Rights and Duties of Man."

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

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

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

a. "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American system;
b. "urgent situation" refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
c. "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

13. The present request for precautionary measures aims to protect the right to life and personal integrity of Mr. José Trinidad Loza Ventura, a Mexican national who has been on death row for nearly 24 years. The request for precautionary measures is related to the individual petition P-1010-15 in which the applicants allege violations of Articles I (right to life, liberty and personal security), II (right to equality before the law), XVIII (fair trial), XXIV (right of petition), XXV (right of protection from arbitrary arrest,), and XXVI (right to due process of law) of the American Declaration.

14. In the present situation, the requirement of gravity is met, in its precautionary and protective aspects; the rights involved include primarily the right to life under Article I of the American Declaration in relation to the risk resulting from the possible application of the death penalty in the state of Ohio, U.S. In this regard, it has been alleged that the criminal proceedings against Mr. José Trinidad Loza Ventura did not observe the rights protected under international human rights law, particularly the rights to life, fair trial and due process under Articles I, XVIII and XXVI of the American Declaration.

15. Regarding the requirement of urgency, the Commission notes that Mr. José Trinidad Loza Ventura could be executed in the near future. In that case, the Commission would be unable to complete an assessment of the allegations of violations of the American Declaration submitted in his petition prior to the execution of the warrant of execution. Consequently, the Commission deems the requirement of urgency satisfied as it pertains to a timely intervention, in relation to the immediacy of the threatened harm argued in the request for precautionary measures.

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

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

IV. DECISION

18. In view of the above-mentioned information, taking into account the human rights obligations of the United States as a member of the OAS, and as part of the Commission's function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter,[3] and in the case of Member States that have yet to ratify the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, the Commission considers that this matter meets prima facie the requirements of gravity, urgency and irreparability set forth in Article 25 of its Rules of Procedure. Consequently, the Commission hereby requests that the United States take the measures necessary to preserve the life and physical integrity of Mr. José Trinidad Loza Ventura until the IACHR decides on his petition so as not to render ineffective the proceedings of his case before the Inter-American system.

19. The Commission also requests that the Government of the United States provide information within a period of 15 days from the date that the present resolution is issued on the adoption of the precautionary measures required and provide updated information periodically.

20. The Commission wishes to point out that, in accordance with Article 25(8) of its Rules of Procedure, the granting of precautionary measures and their adoption by the State shall not constitute a prejudging of any violation of the rights protected in the American Declaration on the Rights and Duties of Man or any other applicable instrument.

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

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[3] Charter of the Organization of American States, Article 106, http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm

22. Approved on August 11, 2015 by: Rose-Marie Belle Antoine, President; Felipe Gonzalez, Rosa María Ortiz, Tracy Robinson, Paulo Vannuchi, members of the IACHR.

Elizabeth Abi-Mershed
Assistant Executive Secretary