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CASE 13.352

REPORT ON ADMISSIBILITY AND MERITS (PUBLICATION)

JURIJUS KADAMOVAS *ET AL.*
UNITED STATES OF AMERICA

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¹ Pursuant to Article 17.3 of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, resident in the United States, did not participate in the discussion or decision of this report.

I. INTRODUCTION

1. On September 21, 2011, the Inter-American Commission on Human Rights (the “Inter-American Commission”, “Commission” or “IACHR”) received a petition submitted by Robert L. Bolden a Canadian citizen, and Jurijus Kadamovas, a Lithuanian citizen (the “petitioners”),² on their behalf and the behalf of German Sinisterra and Arboleda Ortiz, citizens of Colombia; Iouri Mikhel, a citizen of Russia and Alejandro Umana, a citizen of El Salvador, alleging the international responsibility of the United States of America (the “State” or “the United States”) for the violation of their rights as federal prisoners.³

2. On October 18, 2016, the Commission notified the parties of the application of Article 36 (3) of its Rules of Procedure, since the petition falls within the criteria established in its Resolution 1/16, and placed itself at the disposition of the parties to reach a friendly settlement. The parties enjoyed the time periods provided for in the IACHR’s Rules to present additional observations on the merits. All the information received by the Commission was duly transmitted to the parties.

II. POSITIONS OF THE PARTIES

A. Petitioners

3. The petitioners claim the denial of their consular rights, under Article 36 of the Vienna Convention on Consular Relations (“Vienna Convention”), and allege discrimination based on nationality, inhumane prison conditions, and lack of medical attention. With regards to the latter, the petitioners allege that Jurijus Kadamovas has not received psychiatric or psychological support in spite of his requests; and that Robert L. Bolden is not receiving treatment for his type 1 diabetes.

4. The petitioners further assert a breach of the United States’ Constitution’s prohibition against cruel and inhumane punishment, as a result of humiliation endured under the tortuous conditions of confinement. They claim to have suffered and continue to suffer while remanded in the custody of the Bureau of Prisons on Federal Death Row in Terre Haute, Indiana (hereinafter BOP).

5. With regards to Mr. Kadamovas, it is explained that he is a native Russian speaker, who has struggled to learn English, and thereby has struggled to communicate and to assist his counsel. Moreover, that he has limited access to any material in his native language. According to the petitioners, the alleged victims’ rights under Article 36 of the Vienna Convention was violated, as the alleged victim was not notified of his right to contact the Lithuanian consulate upon his arrest nor was the consulate notified of his arrest. Additionally, Mr. Kadamovas claims that he would not have been convicted of the crimes charged if he was able to review his legal documents in his native language. It is alleged that because of this limitation, he was unable to point out discrepancies and factual errors in his discovery. Mr. Kadamovas explained that, at the time of his petition, the discovery and trial transcripts respective to his case remained without translation and that he continues with inadequate translation devices and assistance.

6. The petition asserts discrimination by the Bureau of prisons (“BOP”) as Mr. Kadamovas has not been afforded the opportunity to learn English by the Education Department as he claims the institution only provides materials for native Spanish speakers. Further, it is claimed that the Bureau has failed to safeguard Mr. Kadamovas’s materials, and even allowed a translation device to be stolen and broken by another inmate who, Mr. Kadamovas claims, had access to his confidential material in violation of his right to privacy and confidentiality with his attorney. Moreover, Mr. Kadamovas claims being wrongly placed on restricted general written correspondence by the BOP, whereby he was only able to receive mail from his attorney, embassy and immediate family.

² On February 27, 2012, the Death Penalty Litigation Clinic informed that they were representing Mr. Bolden. On August 6, 2012, attorney Margaret O’Donnell, informed that she was representing Mr. Kadamovas.

³ On December 27, 2011, the IACHR granted precautionary measures on behalf of Mr. Kadamovas, Mr. Bolden, Mr. Sinisterra, Mr. Ortiz, Mr. Bolden, Mr. Mikhel, and Mr. Umana pursuant to Article 25(1) of its Rules of Procedure and requested the United States to take the measures necessary to preserve the life and physical integrity of the alleged victims so as not to hinder the processing of their case before the Inter-American system.

7. The petitioners claim that Mr. Kadamovas continues to suffer the impact of long-term solitary confinement on his mental, physical and emotional health. He allegedly engaged in two hunger strikes to protest his confinement conditions. Petitioners claim that, on the first strike, he was injured when prematurely force-fed, a tactic petitioners believe was designed to force him to end the strike. They also claim that he was injured again during the second hunger strike when prison staff shoved him, hurt his leg and left shoulder in order to draw blood to monitor his health.

8. Regarding Mr. Bolden, it is claimed that he was not notified of his right to contact the Canadian consulate upon his arrest nor was the consulate notified of his arrest and detention until almost 8 years thereafter. He claims he was thereby denied consular assistance prior to, during his trial and during sentencing. The petition asserts that the Canadian consulate was notified of the case in 2010, when the attorneys preparing Mr. Bolden's habeas corpus proceedings investigated his case. The petition asserts that as a diabetic, diagnosed with Type I, insulin-dependent diabetes; Mr. Bolden requires insulin, regular blood sugar monitoring, regular exercise and a controlled diabetic diet to manage his disease.

9. The petition explains that upon Mr. Bolden's conviction, the court recommended the Bureau confine him in a medical facility to allow him to receive treatment for diabetes. It is claimed that the Bureau ignored the court's request and sent Mr. Bolden to Terre Haute where he claims officials act with indifference to his medical needs. Mr. Bolden claims that his life has been jeopardized by prolonged hyperglycemia leading to ketoacidosis and other episodes of hypoglycemia rendering him incoherent, unresponsive and comatose. Further, that the failure by the BOP interferes with his constitutional right to access the courts as he may require dialysis because of his creatinine levels increasing. Moreover, he affirms that with a shortened life expectancy, this shortens his opportunity to fully challenge his conviction; specifically because the debilitation he suffers renders him unable to focus on his case, as he focuses instead on his deteriorating health and prison neglect.

10. The legal representatives of Mr. Bolden explain that they encountered difficulties obtaining a complete copy of medical records from the BOP. Additionally, in preparation of Mr. Bolden's litigation process, the team requested and were denied subpoenas for the records. It is asserted that Mr. Bolden's recent A1C tests do not demonstrate good control of his diabetes. The petition highlights that the BOP observed that Mr. Bolden's sugar levels are not under control. Further, that the American Diabetes Association recommends that a diabetic maintain an A1C below 7, and that an A1C of 8.3 does not demonstrate good control. It is purported that reliance on the A1C tests only ignores the daily and hourly fluctuations in the blood glucose levels and that during the week of July 16, 2012, Mr. Bolden experienced three potentially fatal hypoglycemic episodes. It is claimed that the BOP does not maintain a separate diabetic menu, and despite having been offered a "heart healthy" diet, the diet is not a diabetic diet specifically and that Mr. Bolden, after some time refused this diet after the prison failed to provide meat with several meals.

11. It is argued that although the BOP asserts that the poor glucose control is Mr. Bolden's fault because he purchases snacks, this is an integral part of his diabetes management, as the snacks provide something to eat if his blood sugar drops between meals. The petition asserts that Mr. Bolden did not see a physician from November 4, 2011 to May 15, 2012. Moreover, that in retaliation for Mr. Bolden's complaints against the prison, the BOP is maliciously interfering with the ability to utilize the internal administrative remedy process and has begun denying administrative remedy appeals to Mr. Bolden on technicalities such as lack of copies when copying is within the control of BOP staff to provide to prisoners; and refusing to provide Mr. Bolden with receipts documenting when denials were delivered for the purpose of curing procedural defects from the dates of denials.

12. Lastly, the petitioners claim that limited access to the other inmates listed in the petition prohibits detailed discussion of the violations in respect to them.

B. State

13. The State refutes the claims made by the petition, specifically asserting that Mr. Kadamovas receives monthly visits from the psychologist, with no known significant history of mental health treatment or concerns,

and has been presented as relatively stable. It is also asserted that Mr. Kadamovas also receives additional psychological visits from the BOP psychologist upon request or referral by staff.

14. With regard to Mr. Bolden, the State asserts that he has received extensive care for his diabetic condition, further that his recent checks reveal good control of his diabetes. Additionally, that he is approved to receive a diabetic diet, but has chosen not to participate. The State explains that Mr. Bolden had not always complied with diet recommendations and has had occurrences of low blood sugar. The State asserts that staff monitor his condition and remain available to assist him in controlling his blood sugar better. Moreover, that Mr. Bolden receives at minimum, quarterly consultations with a physician at a Chronic Clinic; and that a nurse visits his housing unit daily for rounds, to distribute medications, to make any medical concerns known to physicians, and request a visit with either the physician or Mid-level professional.

15. The State emphasizes that claims concerning consular notification do not raise a violation of a human right enshrined in any international instrument to which the state is a party or has endorsed and claims that Article 20 of the Commission’s statute and Articles 23 and 27 of the rules preclude their consideration by the Commission.

16. The United States claims that the matter is inadmissible under Articles 28, 31, and 34 of the Rules of Procedure. The State argues that if the claims within the petition are to be considered, they should be dismissed for failing to meet the threshold under Article 28 and if they meet the threshold, that they are inadmissible under Article 34(a) for failing to state facts that tend to establish a violation of the American Declaration. Further that the petition is inadmissible under the exhaustion of domestic remedies requirement in Article 31, as Mr. Kadamovas’s appeal from his criminal conviction is pending in the United States Court of Appeal for the ninth circuit and he had two pending civil claims related to prison conditions before the U.S. District court for the southern district of Indiana.

17. The State similarly asserts that Mr. Bolden has failed to demonstrate the admissibility of his claims. Specifically, the State explains that, at the time of the petition, Mr. Bolden had filed numerous civil lawsuits related to allegations of inadequate medical care and nutrition, inadequate access to the law library, computer services and to legal services; and that he continued to litigate at least one of the lawsuits in the District Court for the Southern District of Indiana, alleging the BOP had denied him medical treatment required under the constitution. Given that Mr. Bolden continues to exhaust remedies and because additional domestic remedies remain available for him to pursue, the state alleges that he has not fulfilled Article 31 of the procedure rules.

18. With regards to the alleged victims of Mr. Sinisterra, Mr. Ortiz, Mr. Mikhel and Mr. Umana, the State claims the petition has failed to reach the threshold requirements of Article 28 of the rules of procedure. Further, that the absence of any facts related to those petitioners makes any claims in respect to them inadmissible under Article 34(a) even if they met the threshold.

19. The state submits that the Commission does not have authority to request or require that the United States adopts precautionary measures and construes the request as a non-binding recommendation. The State respectfully declines the recommendation and requests that the Commission withdraw the recommendation. The state highlights the lack of information and claims that the petitioners are not in imminent danger of irreparable harm as none are scheduled to be executed, and some are still pursuing domestic remedies. Further, the State reports that the Department of Justice is continuing to review the federal execution protocol used by the Federal Bureau of Prisons as well as policy issues related to the death penalty, and no executions will occur during the pendency of that review.

III. ADMISSIBILITY

A. Competence, duplication of procedures and international *res judicata*

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes

Competence <i>Ratione materiae</i>:	Yes, American Declaration of the Rights and Duties of Man (ratification of the OAS Charter on June 19, 1951)
Duplication of procedures and international <i>res judicata</i>:	No

20. The IACHR notes the State's position that the Commission does not have competence to review claims arising under the Vienna Convention. As it will be addressed below, while the Commission has no jurisdiction to find a violation of such provisions, it may consider them for the purpose of evaluating the State's compliance with a foreign national's due process rights under the American Declaration.

B. Exhaustion of domestic remedies and timeliness of the petition

21. According to the information available, and as established in the facts described below, Mr. Kadamovas and Mr. Bolden have availed themselves to the judicial appeal process for their convictions and sentences, and the BOP's administrative remedy process, which is the primary procedural step in seeking relief with regards to prison conditions within the Federal system of the United States.

22. Mr. Bolden's conviction and sentence were affirmed on appeal in 2008 and his petition for writ of certiorari denied in 2009. He then filed a motion for post-conviction relief under 28 U.S.C. § 2253 which was denied by the U.S. Court of Appeals for the Eighth Circuit in 2016. The court also denied a certificate of appealability. Mr. Kadamovas's and Mr. Mikhel's convictions and sentences were also appealed and, on January 10, 2018, the District Court's judgment was affirmed. On January 14, 2019 they filed a petition for a writ of certiorari and a motion for leave to proceed, but on October 7, 2019 the petition was denied.

23. With regard to the other alleged victims, according to the information available, Mr. Mikhel was sentenced to death in a joint trial with Mr. Kadamovas, and remedies were also filed jointly. Mr. Umana was sentenced to death on April 28, 2010, and the Court of Appeals for the Fourth Circuit affirmed the conviction and sentence. On June 22, 2015, the U.S. Supreme Court denied his petition for certiorari. Mr. Ortiz and Mr. Sinistera were sentenced to death in a joint trial in May 2000. Mr. Ortiz's sentence was later commuted to life imprisonment by the President of the United States. Mr. Sinistera died in prison in March 2013.

24. The IACHR notes that the State alleges that Mr. Kadamovas and Mr. Bolden have not exhausted domestic remedies as they have civil claims pending before domestic courts. The rule requiring the exhaustion of domestic remedies does not mean that alleged victims have to exhaust every remedy available. In this regard, the Commission has repeatedly held that "the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means."⁴ Therefore, if the alleged victim raised the issue by any lawful and appropriate alternative under the domestic juridical system and the State had the opportunity to remedy the matter within its jurisdiction, the purpose of the international rule has thus been served.⁵

25. Based on the above factors, the Inter-American Commission concludes that the alleged victims properly exhausted domestic remedies available within the domestic legal system and, therefore, that their claims before the Commission are not barred from consideration by the requirement of exhaustion of domestic remedies under Article 31(1) of its Rules of Procedure.

26. The petition before the IACHR was presented on September 21, 2011. The United States Supreme Court denied the writ of certiorari in 2009 for Mr. Bolden and October 7, 2019, for Mr. Kadamovas and Mr. Mikhel. The matters brought by Mr. Kadamovas and Mr. Bolden before the Commission are within various civil suits on prison conditions and treatment. With regard to the other alleged victims, on June 22, 2015, the U.S. Supreme Court denied Mr. Umana's petition for certiorari; on January 18, 2017, Mr. Ortiz's sentence was commuted to

⁴ IACHR, Report No. 54/14, Petition 684-14. Admissibility. Russel Bucklew and Charles Warner. United States. July 21, 2014, para. 28.

⁵ IACHR, Report No. 54/14, Petition 684-14. Admissibility. Russel Bucklew and Charles Warner. United States. July 21, 2014, para. 28.

life imprisonment; and Mr. Sinisterra died in prison in March 2013. The Commission therefore concludes that the requirement specified in Article 32(1) of its Rules of Procedure has been met.

C. Colorable claim

27. The Commission considers that, if proven, the facts alleged would tend to establish violations of the rights set forth in Articles I, XI, XVIII, XXV and XXVI of the American Declaration, to the detriment of Mr. Kadamovas and Mr. Bolden.

28. With regard to Mr. Sinisterra, Mr. Ortiz, Mr. Mikhel and Mr. Umana, the Commission lacks information about their claims. Therefore, given this absence of factual information, the Commission declares the petition inadmissible based on Article 34(a) of its Rules with regard to the four aforementioned alleged victims.

IV. FINDINGS OF FACT

A. Facts of the case

29. According to the information available within the appeal to the United States Court of Appeal for the Ninth Circuit, 2018⁶, between late 2001 and early 2002, Mr. Kadamovas and Mr. Mikhel abducted, held hostage and killed five people, dumping each victim's body in the New Melones Reservoir outside Yosemite National Park. After a five-month trial, a jury convicted the two men of various federal crimes including multiple counts of hostage taking resulting in death. Both men lived in Los Angeles, California at the time of the events. It is provided that both men were assisted at various times by conspirators Petro Krylov, Ainar Altmanis, Aleksejus Markovskis, and Natalya Solovyeva; who all pleaded guilty and testified for the government. Mr. Krylov was tried and convicted in a separate trial.

30. The murders for which the men were convicted of, were those of Meyer Muscatel, Rita Pekler, Alexander Umansky, Nick Kharabaze and George Safiev. All recorded deaths were following attempts at financial gain from the victims. Regarding Meyer Muscatel, Mr. Kadamovas and Mr. Mikhel injected him with Dimedrol, a sedative, and using a plastic bag and force, suffocated him to death. Thereafter they dumped his body in the New Melones Reservoir. Rita Pekler was injected with Dimedrol, strangled and thrown off the Parrots Ferry Bridge. Alexander Umansky was strangled with a rope and then thrown into the New Melones Reservoir. Nick Kharabaze and George Safiev were strangled and thrown into the New Melones Reservoir.

31. According to the information available within the appeal to the United States Court of Appeal for the Ninth Circuit, 2009⁷, Dominick Price testified that, on the morning of October 7, 2002, Bolden asked Price to help rob a Bank of America branch because Bolden needed \$2,000 to avoid being evicted from his home. As the two "cased" the bank, Bolden told a hesitant Price his plan: Bolden would brandish his handgun and disarm the guard outside the bank, then Bolden and Price would take the guard into the bank as a hostage, demand money, and drive away in Bolden's car. The two men purchased nylon stocking caps, and Bolden recruited a third man, Corteze Edwards, to assist in the robbery.

32. Early that afternoon, the trio dressed in dark clothing and drove to a parking lot near the bank. Price and Edwards wore masks. Bolden did not. When bank guard Ley walked out of the bank, Bolden approached on foot, with Price and Edwards fifteen-to-twenty feet behind. Price testified that Bolden stopped a short distance from Ley and pointed his handgun at the guard. After a brief dialog, Ley reached for the gun, and they struggled. Bolden regained control of the gun and shot Ley in the jaw. As Ley fell, Bolden took a step back and fired another shot into Ley's head. Ley died from the second wound later that afternoon. The three robbers ran off, shedding clothing as they ran. Many bystanders witnessed the shooting. One saw Bolden drive away, and he was arrested that evening.

⁶ United States of America v Mikhel and Kadamovas, No. 07-99008 and No. 07-99009. United States Court of Appeals for the Ninth Circuit, argued and submitted January 10, 2018 and filed May 9, 2018. Submitted as attachment with communication filed by petitioners on July 27, 2008.

⁷ United States of America v Robert L. Bolden, No. 06-3264, United States Court of Appeals for the Eighth Circuit, submitted June 9, 2008 and filed November 4, 2008.

B. Trial and death sentence

33. According to the information available, a grand jury indicted Mr. Kadamovas on conspiracy to take hostages resulting in death, hostage-taking resulting in death, conspiracy to launder monetary instruments, conspiracy to escape from custody and criminal forfeiture. The guilt phase of the trial began in July 2006, and spanned five months. Mr. Kadamovas was found guilty on January 17, 2007 and on February 13, 2007 a jury sentenced Mr. Kadamovas to death.⁸

34. Mr. Bolden, was charged with conspiring to commit armed robbery, and in so doing, killing a security guard attempting to rob a bank and in so doing, killing a security guard; using and carrying a firearm during and in relation to the attempted bank robbery, and in doing so committing murder; and being a convicted felon in possession of a firearm. On May 23, 2006 a jury found Mr. Bolden guilty of all four charges and sentenced him to death. The judgment was affirmed on appeal in 2008 and his petition for certiorari was denied in 2009.⁹

35. Mr. Mikhel, in a joint trial with Mr. Kadamovas, was also sentenced to death on February 13, 2007 after being convicted of murders in a kidnapping for ransom scheme. As regards the trial process, Sonia E. Chahin,¹⁰ state appointed counsel for Mr. Kadamovas, admits to having insufficient time to prepare for the complexity and magnitude of his case given the volume of reading material and the various languages the evidence existed in.

36. Mr. Umana was sentenced to death on April 28, 2010. According to publicly available information, the Court of Appeals for the Fourth Circuit affirmed the conviction and sentence and on June 22, 2015, the U.S. Supreme Court denied a petition for certiorari.¹¹ Mr. Ortiz was sentenced to death in May 2000. According to publicly available information, on December 14, 2007, the district court denied a motion for post-conviction relief. The U.S. Court of Appeals for the Eighth Circuit later vacated this denial and remanded for reconsideration on December 19, 2011.¹² The death sentence was commuted to life imprisonment without parole on January 18, 2017, after a clemency petition to the US President based on his intellectual impairment, his right under the Vienna Convention having been violated, him being an accomplice who was not in the room at the time of the murder and him having been denied effective assistance of counsel. Mr. Sinisterra, in joint trial with Mr. Ortiz, was similarly sentenced to death and died in prison in March 2013.

C. Appeals and other remedies

37. Mr. Kadamovas and Mr. Mikhel appealed their convictions and sentences,¹³ claiming errors in both guilt and penalty phases of trial. Regarding the alleged denial of computer access by Mr. Kadamovas, the court found no such pattern of denial as a detailed declaration of the BOP's supervisory attorney attested that Mr. Kadamovas had regular computer access but was often not using it; further that prison records evidenced approval of various requests to use his computer, along with isolated incidents of denial consistent with the Government's stipulation terms of providing that access subject to the safety, security, management and operational needs. Regarding the claim of prosecutorial misconduct, the court reasoned that the prosecution should not have made a comparison of life in prison to the victim's death in order to argue that prison life was less dire than as presented by the Defendants (that prison life was already harsh as to be sufficient punishment).

⁸ United States of America v Mikhel and Kadamovas, No. 07-99008 and No. 07-99009, United States Court of Appeals for the Ninth Circuit, argued and submitted January 10, 2018 and filed May 9, 2018.

⁹ Bolden v. United States, 171 F. Supp. 3d 891, 899 (E.D. Mo. 2016).

¹⁰ State appointed counsel for Mr. Kadamovas, from November 28, 2005 after the application to be relieved as counsel by Marcia Brewer. Exhibit 10, submitted with petitioners' communication on March 7, 2019.

¹¹ Umaña v. U.S. 229 F.Supp.3d 388 (2017). Available at: <https://www.leagle.com/decision/infdco20170127r69>; and Umana v. United States, Petition for certiorari denied on June 22, 2015. Available at: <https://www.scotusblog.com/case-files/cases/umana-v-united-states/>

¹² Arboleda A. Ortiz, v. United States of America. United States Court of Appeals for the Eighth Circuit. December 19, 2011. Available at: <https://www.govinfo.gov/content/pkg/USCOURTS-ca8-08-01749/pdf/USCOURTS-ca8-08-01749-0.pdf>

¹³ United States of America v Mikhel and Kadamovas, No. 07-99008 and No. 07-99009, United States Court of Appeals for the Ninth Circuit, argued and submitted January 10, 2018 and filed May 9, 2018.

38. The court recognized that the comparison was not necessary to rebut the defendant's arguments and appears to have been calculated to unnecessarily inflame the passions of the jury. However, the court concluded that the statements made by the prosecution did not so affect the jury's ability to consider the totality of the evidence fairly that it tainted the verdict and deprive the defendants of a fair trial. Additionally, the appeal contested that the non-statutory aggravating factor of future dangerousness violated due process and intruded on the jury's fact-finding role. Although the factor was limited to future dangerousness in federal prison, this took into consideration prospect of continuing pattern of violence, escape risk and institutional misconduct, and lack of remorse. The court concluded that any error in that regard was harmless and reasoned according to precedent¹⁴ that an error in jury instruction or verdict form is harmless if it is "clear beyond reasonable doubt that a rational jury" would have reached the same decision absent the error. The Court of Appeal affirmed the District Court's rulings on conviction and sentence.

39. According to information provided by the petitioners, not contested by the State, Mr. Kadamovas filed a civil lawsuit "challenging the prison's handling and mishandling of his legal materials and the failure to allow him to work on his case in his native language." This lawsuit came to a conclusion on October 2, 2017, when the United States Supreme Court declined to consider the petition.¹⁵

40. On September 19, 2018, a pardon application on behalf of Mr. Kadamovas was submitted to President the US President.¹⁶ There is no information on the file about the outcome of this petition.

41. On January 14, 2019, Mr. Kadamovas filed a petition for a writ of certiorari and motion for leave to proceed, and on October 7, 2019, the petition was denied.¹⁷ Mr. Kadamovas has also sought relief through administrative requests and appeals on the issues of limited communication, solitary confinement and access to information.

42. Mr. Bolden appealed the District Court's judgement, claiming that the trial court committed reversible errors prior to and during trial. The issues raised entailed a Batson challenge and a challenge of the aggravating factors presented. Regarding the Batson challenge, Mr. Bolden alleged that the prosecution used a peremptory challenge to strike a prospective juror, considered African American, solely based on race. The prosecution had expressed concern that the prospective juror may give more weight than was warranted to her legal training and thereby might affect the deliberation process. The court considered the prosecution's reasoning to be race-neutral. Mr. Bolden challenged the two aggravating factors of pecuniary gain and his past conviction for two felony drug offences; which the Court did not concede to finding that the jury was properly instructed on the law. Mr. Bolden's conviction and sentence were affirmed on appeal in 2008¹⁸ and his petition for writ of certiorari denied in 2009.¹⁹

43. Mr. Bolden then filed a motion for post-conviction relief under 28 U.S.C. § 2253. In this motion, he claimed, *inter alia*, that the government did not give him notice of any rights he had under the Vienna Convention, nor did it notify the Canadian Consulate of the criminal proceedings against him. The U.S. Court of Appeals for the Eighth Circuit ruled that this claim was procedurally barred because Mr. Bolden failed to present it on direct appeal. It further found that Mr. Bolden could not establish cause for the default and therefore could not establish that he was prejudiced. In this regard, the court concluded that Mr. Bolden failed to show that the alleged Convention violations affected his conviction and sentence. The motion was denied in 2016 and the court did not issue a certificate of appealability.²⁰

44. As an additional remedy, Mr. Bolden's legal representatives, through letters to the BOP, requested medical records and brought to the attention of the BOP officials the need for better monitoring of Mr. Bolden's medical

¹⁴ United States v Anchrum, 590 F. 3d 795, 801 (9th Circuit 2009).

¹⁵ Letter dated October 4, 2017, from Margareth H. O'Donnell, Esq. to the Ministry of Justice of the Republic of Lithuania, submitted by the petitioners on March 12, 2019.

¹⁶ Petitioners' brief submitted on March 12, 2019.

¹⁷ Information available at the United States Supreme Court's website:

<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/18-7489.html>

¹⁸ United States v Bolden, 545 F. 3d 609 (8th Cir. 2008).

¹⁹ United States v Bolden, 558 U.S. 1077 (2009).

²⁰ Bolden v. United States, 171 F. Supp. 3d 891, 899 (E.D. Mo. 2016).

condition. The evidence before the Commission shows that Mr. Bolden had several abnormal glucose readings between 2010 and 2012 and that insulin dosage was adjusted on several occasions²¹.

V. ANALYSIS OF LAW

A. Preliminary considerations

45. Before embarking on its analysis of the merits in the case of Jurijus Kadamovas and Robert L. Bolden, the Inter-American Commission reiterates its previous rulings regarding the heightened scrutiny to be used in cases involving the death penalty. The right to life has received broad recognition as the supreme human right and as a *sine qua non* for the enjoyment of all other rights.

46. That gives rise to the particular importance of the IACHR's obligation to ensure that any denial of life that may arise from the enforcement of the death penalty strictly abides by the requirements set forth in the applicable instruments of the Inter-American human rights system, including the American Declaration. That heightened scrutiny is consistent with the restrictive approach adopted by other international human rights bodies in cases involving the imposition of the death penalty,²² and it has been set out and applied by the Inter-American Commission in previous capital cases brought before it.²³ As the Inter-American Commission has explained, this standard of review is the necessary consequence of the specific penalty at issue and the right to a fair trial and all attendant due process guarantees, among others.²⁴ In the words of the Commission:

due in part to its irrevocable and irreversible nature, the death penalty is a form of punishment that differs in substance as well as in degree in comparison with other means of punishment, and therefore, warrants a particularly stringent need for reliability in determining whether a person is responsible for a crime that carries a penalty of death.²⁵

47. The Inter-American Commission will therefore review the petitioner's allegations in the present case with a heightened level of scrutiny, to ensure in particular that the rights to life, not to receive cruel, infamous or unusual punishment, to due process, and to a fair trial as prescribed under the American Declaration, have been respected by the State. With regard to the legal status of the American Declaration, the IACHR reiterates that:²⁶

[t]he American Declaration is, for the Member States not parties to the American Convention, the source of international obligations related to the OAS Charter. The Charter of the Organization gave the IACHR the principal function of promoting the observance and protection of human rights in the Member States. Article 106 of the OAS Charter does not, however, list or define those rights. The General Assembly of the OAS at its Ninth Regular Period of Sessions, held in La Paz, Bolivia, in October 1979, agreed that those rights are those enunciated and defined in the American Declaration. Therefore, the American Declaration crystallizes the fundamental principles recognized by the American States. The OAS General Assembly has also repeatedly recognized that the American Declaration is a source of international obligations for the member states of the OAS.

48. Finally, the Commission recalls that its review does not consist of determining that the death penalty in and of itself violates the American Declaration. What this section addresses is the standard of review of the

²¹ See, Bureau of Prisons, Health Services, Blood Glucose Record, Patient Education Assessment & Topic, Health Services, Clinical Encounter.

²² See, for example: I/A Court H. R., Advisory Opinion OC-16/99 (October 1, 1999), The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, para. 136; United Nations Human Rights Committee, *Baboheram-Adhin et al. v. Suriname*, Communications Nos. 148-154/1983, adopted on April 4, 1985, para. 14.3; Report of the United Nations Special Rapporteur on Extrajudicial Executions, Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1994/82, Question of the Violation of Human Rights and Fundamental Freedoms in any part of the World, with particular reference to Colonial and Other Dependent Countries and Territories, UN Doc.E/CN.4/1995/61 (December 14, 1994), para. 378.

²³ IACHR, Report No. 57/96, *Andrews, United States*, IACHR Annual Report 1997, para. 170-171; Report No. 38/00 *Baptiste, Grenada*, IACHR Annual Report 1999, paras. 64-66; Report No. 41/00, *McKenzie et al., Jamaica*, IACHR Annual Report 1999, paras. 169-171.

²⁴ IACHR, *The death penalty in the Inter-American System of Human Rights: From restrictions to abolition*, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, para. 41.

²⁵ IACHR, Report No. 78/07, Case 12,265, *Merits (Publication)*, Chad Roger Goodman, The Bahamas, October 15, 2007, para. 34.

²⁶ IACHR, Report No. 44/14, Case 12,873, *Report on Merits (Publication)*, Edgar Tamayo Arias, United States, July 17, 2014, para. 214.

alleged human rights violations in the context of criminal proceedings in a case involving the application of the death penalty.

B. Right to a fair trial,²⁷ right of petition,²⁸ and right to due process of law²⁹

1. Right to information on consular assistance

49. The Commission has determined in previous cases that it is necessary and appropriate to consider the extent to which a state party has given effect to the requirements of Article 36 of the Vienna Convention for the purpose of evaluating that state's compliance with a foreign national's due process rights under Articles XVIII and XXVI of the American Declaration. Therefore, it does consider compliance with Article 36 of the Vienna Convention when interpreting and applying the provisions of the American Declaration to a foreign national who has been arrested, committed to trial or to custody pending trial, or is detained in any other manner by that state.³⁰

50. In its Advisory Opinion OC-16/99, the Inter-American Court established that sub-paragraphs (b) and (c) of Article 36(1) of the Vienna Convention "recognize, *inter alia*, a detained foreign national's right to be advised, without delay, that he has:

- a) the right to request and obtain from the competent authorities of the host State that they inform the appropriate consular post that he has been arrested, committed to prison, placed in preventive custody or otherwise detained, and
- b) the right to address a communication to the appropriate consular post, which is to be forwarded "without delay."³¹

51. The significance of the right to information on consular assistance is also reflected in practice guidelines such as those adopted by the American Bar Association, a national organization for the legal profession in the United States, concerning the due process rights of foreign nationals in capital proceedings. The ABA has indicated in its Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases that:³²

[u]nless predecessor counsel has already done so, counsel representing a foreign national should: 1. immediately advise the client of his or her right to communicate with the relevant consular office; and 2. obtain the consent of the client to contact the consular office. After obtaining consent, counsel should immediately contact the client's consular office and inform it of the client's detention or arrest [...]

52. In the present case, the Commission notes that Mr. Kadamovas is a national of Lithuania and Mr. Bolden is a national of Canada. Both assert that they were not informed of their right to information on consular assistance when arrested or subsequent thereto in the case of Mr. Bolden.

²⁷ Article XVIII of the American Declaration establishes: Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

²⁸ Article XXIV of the American Declaration establishes: Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

²⁹ Article XXVI of the American Declaration establishes: Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

³⁰ IACHR, Report No. 90/09, Case 12.644, Admissibility and Merits (Publication), Medellín, Ramírez Cardenas and Leal García, United States, August 7, 2009, paras 124-132. See also, IACHR, Report No. 91/05 (Javier Suarez Medina), United States, Annual Report of the IACHR 2005; Report No. 1/05 (Roberto Moreno Ramos), United States, Annual Report of the IACHR 2005; and Report 52/02, Case 11.753 (Ramón Martínez Villarreal), United States, Annual Report of the IACHR 2002.

³¹ I/A Court H.R., The Right to Information on Consular Assistance in the Framework of the Guarantees of the due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No.16, para. 81.

³² American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised Edition) (February 2003), Guideline 10.6B "Additional Obligations of Counsel Representing a Foreign National."

53. Mr. Kadamovas was arrested in March 2002.³³ According to a letter from the Ministry of Foreign Affairs of the Republic of Lithuania dated November 14, 2016, since 2003 the Lithuanian Embassy in the United States had been in constant communication with Mr. Kadamovas, his lawyers and Non-Governmental Organizations involved in the case. Moreover, Mr. Kadamovas has indicated that his trial counsel travelled to Lithuania before his trial. Therefore, the available information shows that Mr. Kadamovas had access to consular authorities a year after his arrest.

54. With regard to Mr. Bolden, the Commission notes that the state appointed counsel failed to inform Mr. Bolden, during trial and on appeal, of his right to information on consular assistance. Also, according to the facts established in this report, this claim was brought by Mr. Bolden in a post-conviction motion but the court considered that he failed to show that the lack of information on consular assistance affected his conviction and sentence.

55. The State has not disputed the petitioners' contentions in this regard save for the allegation that claims concerning information on consular assistance do not raise a violation of a human right. Accordingly, based upon the information and arguments presented, the Commission concludes that the alleged victims were not notified of their right to information on consular assistance at or subsequent to the time of his respective arrests.

56. Based upon the foregoing, the Commission concludes that the State's obligation under Article 36 of the Vienna Convention to inform Mr. Kadamovas (at the time of his arrest) and Mr. Bolden of their right to information on consular assistance constituted a fundamental component of the due process standards to which they are entitled under Article XVIII and XXVI of the Declaration, and that the State's failure to respect and ensure this obligation deprived the alleged victims of a criminal process that satisfied the minimum standards of due process and a fair trial required under Articles XVIII and XXVI of the Declaration.

2. Ineffective assistance of court-appointed counsel

57. Adequate legal representation is a fundamental component of the right to a fair trial. The IACHR has found that "[t]he right to due process and to a fair trial includes the right to adequate means for the preparation of a defense, assisted by adequate legal counsel."³⁴ According to the Commission, "[t]he State cannot be held responsible for all deficiencies in the conduct of State-funded defense counsel. National authorities are, however, required [...] to intervene if a failure by legal aid counsel to provide effective representation is manifest or sufficiently brought to their attention. Rigorous compliance with the defendant's right to competent counsel is compelled by the possibility of the application of the death penalty."³⁵

58. As previously mentioned, a failure by state-appointed counsel to inform Mr. Bolden of his right to consular notification is a breach of his right to due process and a fair trial. Also, counsel failed to present the claim regarding lack of consular notification on direct appeal. This had an impact on Mr. Bolden's post-conviction motion as the Eighth Circuit Court ruled that the claim was procedurally barred.

59. Additionally, the Commission notes that Sonia E. Chahin³⁶, state appointed counsel for Mr. Kadamovas, admits to having insufficient time to prepare for the complexity and magnitude of his case given the volume of reading material and the various languages the evidence existed in. Sonia Chahin explained that she was not aware of the quantity of non-documentary discovery materials which formed a large part of discovery and that approximately in March 15, 2006 was able to determine that the non-documentary discovery materials included: approx. 121 audiotapes, 139 CD Roms, 29 DVDs, 117 videotapes, and information seized from the hard drives of approx. 19 computers that were seized during the course of the investigation. A motion was filed

³³ The New York Times. 4 Immigrant Killings Linked to Russian Kidnapping Gang. March 23, 2002. Available at: <https://www.nytimes.com/2002/03/23/us/4-immigrant-killings-linked-to-russian-kidnapping-gang.html>

³⁴ IACHR, The death penalty in the Inter-American System of Human Rights: From restrictions to abolition, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, p. 123.

³⁵ IACHR, The death penalty in the Inter-American System of Human Rights: From restrictions to abolition, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, p. 123.

³⁶ State appointed counsel for Mr. Kadamovas, from November 28, 2005 after the application to be relieved as counsel by Marcia Brewer.

requesting continuance of 6 months, from scheduled commencement of July 11, 2006, until January 9, 2007 was made but was denied by the courts.

60. Considering that the fundamental due process and fair trial requirements for capital trials include the obligation to afford adequate legal representation, inclusive of the adequate time to prepare for trial, and that the failure to inform a client of his rights to various forms of assistance, specifically, to consular assistance when the client is a foreign national, would constitute inadequate representation. Based on the aforementioned considerations and on the information on record, the Commission concludes that the actions by the state appointed counsel constitute inadequate representation; and that the United States has violated Mr. Kadamovas's and Mr. Bolden's right to due process and to a fair trial under Articles XVIII and XXVI of the American Declaration.

3. Future dangerousness in the imposition of the death penalty

61. With regard to the assessment of future dangerousness in the imposition of a sentence, this Commission has noted that studies point to its lack of reliability.³⁷ The IACHR has stated that future dangerousness may prove problematic given its discretionary nature and the risk of considerations based on factors such as race:³⁸

[t]he element of future dangerousness accords the jury a high degree of discretionary authority to impose the harshest possible penalty and may prove problematic, given the likelihood that a future act will occur, exceeding the scope of the crime actually committed by the person in question. Accordingly, the Commission considers that, given that this is a matter of a criterion that depends on a subjective and speculative decision by the jury, the mere fact that it is required under internal law of the State of Texas constitutes a permanent risk that human rights violations could be committed against the person convicted and in consequence, that the death penalty could be imposed arbitrarily. [...]

62. The Inter-American Court has ruled that the consideration of future dangerousness constitutes an infringement of the principle of legality. The Court indicated that "it clearly constitutes an expression of the exercise of the State's *ius puniendi* on the basis of the personal characteristics of the person and not of the act committed, that is, it substitutes the criminal law of act or fact, characteristic of the criminal system of a democratic society, for the criminal law of the author, which opens the door to authoritarianism precisely in a matter in which the legal assets of the highest hierarchy are at stake."³⁹ The Court also pointed out that the assessment of dangerousness:⁴⁰

[...] implies the judge's appreciation of the probabilities that the accused will commit criminal acts in the future, that is, it adds to the indictment for the acts committed, the forecast of future act that will probably occur [...] In the end, the individual would be sanctioned - including the possibility of the application of the death penalty - not based on what he has done, but based on what he or she is. There is no need to ponder the implications, which are evident, of this return to the past, which is absolutely unacceptable from a human rights perspective.

63. Thus, determining a sentence on the subjective assessment of future dangerousness breaches the presumption of innocence as it equates to a presumption of guilt to future offenses that may never be committed, the penalty therefore would be generated to prevent such presumed acts as opposed to penalize the convict for his or her current actions⁴¹. Therefore, the element of future dangerousness accords the jury a high degree of discretionary authority to impose the harshest possible penalty and may prove problematic, given the likelihood that a future act will occur, exceeding the scope of the crime actually committed by the

³⁷ Deadly Speculation: Misleading Texas Capital Juries with False Predictions of Future Dangerousness 34 (2004) http://texasdefender.org/wp-content/uploads/TDS_Deadly-Speculation.pdf; Thomas J. Reidy, Jon R. Sorenson & Mark D. Cunningham, Probability of Criminal Acts of Violence: A Test of Jury Predictive Accuracy, 31 Behav. Sci. L. 286, 289 (2013).

³⁸ IACHR, Report No. 24/17, Case 12.254. Merits. Victor Saldaño. United States. March 18, 2017, para. 184.

³⁹ Corte IDH. Caso Fermín Ramírez vs. Guatemala. Fondo, Reparaciones y Costas. Sentencia de 20 de junio de 2005. Serie C No. 126, para. 94.

⁴⁰ Corte IDH. Caso Fermín Ramírez vs. Guatemala. Fondo, Reparaciones y Costas. Sentencia de 20 de junio de 2005. Serie C No. 126, para. 94.

⁴¹ IACHR, The Death Penalty in the Inter-American System of Human Rights: From restrictions to abolition, OEA/Ser. L/ V/II Doc. 681, December 31, 2011.

person in question. The Human Rights Committee of the International Covenant on Civil and Political Rights has reached similar conclusions.⁴²

64. The Commission deems it important to take into consideration the similar observations of (hereinafter "the Human Rights Committee"), to which the United States is party. It has pointed out that:

The concept of feared or predicted dangerousness to the community applicable in the case of past offenders is inherently problematic. It is essentially based on opinion as distinct from factual evidence... While Courts are free to accept or reject expert opinion and are required to consider all other available relevant evidence, the reality is that the Courts must make a finding of fact on the suspected future behavior of a past offender which may or may not materialize.

65. The Commission notes that, in Mr. Kadamovas's trial, the jury was instructed to consider his future dangerousness in federal prison, and in particular, the prospect of a continuing pattern of violence, escape risk and institutional misconduct, and lack of remorse. Accordingly, the Commission considers that, given that this is a matter of a criterion that depends on a subjective and speculative decision by the jury, the mere fact that it is required and was instructed to the jury, constitutes a violation of the rights established in Articles XVIII and XXVI of the American Declaration to the detriment of Mr. Kadamovas.

C. Right to humane treatment during custody,⁴³ right to health,⁴⁴ and not to receive cruel, infamous or unusual punishment

1. The deprivation of liberty on death row and the right of protection against cruel, infamous or unusual punishment

66. In both international human rights law and comparative law, the issue of long term deprivation of liberty on death row, known as the "death row phenomenon," has been developed for decades, in light of the prohibition of cruel, inhuman or degrading punishment in Constitutions and in multiple international treaties, including the American Declaration (Articles XXV and XXVI).⁴⁵ Based on those standards, in the case of Russell Bucklew the IACHR found that "the very fact of spending 20 years on death row is, by any account, excessive and inhuman."⁴⁶

67. Specifically regarding the matter of prolonged solitary confinement on death row, the Inter-American Commission has determined that deprivation of liberty under certain conditions on death row, including solitary confinement for four years, constituted inhuman treatment.⁴⁷

68. The UN Special Rapporteur on Torture has found that:

Individuals held in solitary confinement suffer extreme forms of sensory deprivation, anxiety and exclusion, clearly surpassing lawful conditions of deprivation of liberty. Solitary confinement, in combination with the foreknowledge of death and the uncertainty of whether or when an execution is to take place, contributes to the risk of serious and irreparable mental and physical harm and suffering to the inmate. Solitary confinement used

⁴² Human Rights Committee of the ICCPR. Robert John Fardon v. Australia, Communication No. 1629/2007, U.N. Doc. CCPR/C/98/D/1629/2007 (2010). Para. 7.4.

⁴³ Article I of the American Declaration establishes: Every human being has the right to life, liberty and the security of his person. Article XXV of the American Declaration provides: "[...] Every individual who has been deprived of his liberty has the right [...] to humane treatment during the time he is in custody."

⁴⁴ Article XI of the American Declaration establishes: "Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

⁴⁵ IACHR, Report No. 71/18, Case 12.958. Merits. Russell Bucklew. United States, May 10, 2018, paras. 86-90. In this report the Commission has cited a number of developments in the inter-American and other protections systems, including the regional and United Nations systems.

⁴⁶ IACHR, Report No. 71/18, Case 12.958. Merits. Russell Bucklew. United States, May 10, 2018, para. 83.

⁴⁷ IACHR, Report No. 24/17, Case 12.254. Merits. Victor Saldaño. United States. March 18, 2017, para. 246, citing IACHR, Report No. 58/02. Merits. Case 12.275. Denton Aitken. Jamaica. October 21, 2002, paras. 133 and 134.

on death row is by definition prolonged and indefinite and thus constitutes cruel, inhuman or degrading treatment or punishment or even torture.⁴⁸

69. As established in this report, Mr. Kadamovas has been deprived of his liberty on death row for 12 years and Mr. Bolden has been similarly deprived for 13 years. The Commission notes that the very fact of spending 12 and 13 years respectively on death row is, by any account, excessive and inhuman, and is aggravated by solitary confinement which is policy within the BOP for death row inmates, and the prolonged expectation that the death sentence could be executed. Consequently, the United States is responsible for violating, to the detriment of the alleged victims, the right to humane treatment, and not to receive cruel, infamous or unusual punishment established in Articles XXV and XXVI of the American Declaration.

2. Right to the preservation of health and to well being

70. The Inter-American Commission has established that the obligation to provide detainees with adequate medical care arises directly from the State's duty to ensure the humane treatment of such persons under the American Declaration.⁴⁹ In this respect, the IACHR has established that "the obligation of States to respect their physical integrity, not to use cruel or inhuman treatment, and to respect the inherent dignity of the human person, includes guaranteeing access to proper medical care."⁵⁰

71. Regarding the quality of medical care, according to Principle X of the IACHR's Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, "treatment shall be based on scientific principles and apply the best practices" and that "the provision of health services shall, in all circumstances, respect the following principles: medical confidentiality; patient autonomy; and informed consent to medical treatment within the physician-patient relationship."

72. According to the inter-American system, the State's duty to ensure prisoners' adequate medical care, however, "does not imply the existence of a duty to satisfy all wishes and preferences of a person deprived of liberty regarding medical assistance, but only those real needs consistent with the actual circumstances and condition of the detainee."⁵¹

73. The Commission notes the State responsibility in providing adequate medical care for Mr. Bolden, a prisoner with diabetes. The State, for its part, contests Mr. Bolden's allegations of lack of adequate medical care. The evidence before the Commission shows that Mr. Bolden had several abnormal glucose readings between 2010 and 2012 and that insulin dosage was adjusted on several occasions⁵². Further, there is no information or evidence before the Commission indicating that any of the principles established above (medical confidentiality; patient autonomy; and informed consent to medical treatment) have been infringed by the State. Therefore, the IACHR does not have sufficient elements to conclude that the United States is internationally responsible for the violation of Mr. Bolden's right to health based on lack of adequate medical care.

3. Forced feeding:

74. According to the available information, prison officials' attempted to force-feed Mr. Kadamovas. The Inter-American Commission has noted that hunger strikes are a well-known form of protest and that making a blanket determination that all the individuals on hunger strike have suicidal intentions and therefore must be force-fed is not in line with medical ethics requirements. In this regard, the Commission has sustained that the State "has an obligation to make an individualized assessment to determine whether the individual detainee actually possesses the capacity to make a judgment about the physical consequences of refusing food" and if

⁴⁸ United Nations. Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment. 9 August 2012. A/67/279. para 48.

⁴⁹ IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas. OEA/Ser.L/V/II. Doc. 64. December 31, 2011, para. 519.

⁵⁰ IACHR, Application to the I/A Court H.R. in the Case of Pedro Miguel Vera Vera, Case 11.535, Ecuador, February 24, 2010, para. 42.

⁵¹ I/A Court H.R., Case of Garcia-Asto and Ramirez-Rojas V. Peru. Judgment of November 25, 2005. Series C No. 137, para. 126.

⁵² See, Bureau of Prisons, Health Services, Blood Glucose Record, Patient Education Assessment & Topic, Health Services, Clinical Encounter.

“the individual understands those consequences, the right to refuse food should be respected both under medical ethics and international law.”⁵³

75. The IACHR has stressed that:⁵⁴

“according to the World Medical Assembly’s Declaration of Malta, in cases involving people on hunger strikes, the duty of medical personnel to act ethically and the principle of respect for individuals’ autonomy, among other principles, must be respected. Under these principles, it is unjustifiable to engage in forced feeding of individuals contrary to their informed and voluntary refusal of such a measure, moreover, hunger strikers should be protected from all forms of coercion, even more so when this is done through force and in some cases through physical violence. Health care personnel may not apply undue pressure of any sort on individuals who have opted for the extreme recourse of a hunger strike. It is also not acceptable to use threats of forced feeding or other types of physical or psychological coercion against individuals who have voluntarily decided to go on a hunger strike.”

76. There is no indication on the record that prison officials, before force-feeding Mr. Kadamovas, made an individualized assessment to determine whether he possessed the capacity to make a judgment about the physical consequences of refusing food. Considering that the present case concerns a person in the custody of the State and that a stricter scrutiny applies, the State has the burden of rebutting the claim made by the petitioners. Based on these circumstances, on the available information provided and on the above-mentioned standards, the Commission concludes that the lack of individualized assessment before force-feeding Mr. Kadamovas constitutes a violation of his right to humane treatment during custody, established in Article XXV of the American Declaration.

D. Right to life⁵⁵ and to protection against cruel, infamous or unusual punishment with respect to the eventual execution of Jurijus Kadamovas and Robert L. Bolden

77. As indicated above, the Inter-American Commission considers that it is incumbent upon the national courts, not the Commission, to interpret and apply national law. Nevertheless, the IACHR must ensure that any deprivation of life resulting from imposition of the death penalty complies with the requirements of the American Declaration.⁵⁶

78. Under these circumstances, the IACHR has maintained that executing a person, after proceedings that were conducted in violation of his rights, would be extremely grave and constitute a deliberate violation of the right to life established in Article I of the American Declaration.⁵⁷ Further, based on the conclusions regarding the deprivation of liberty on death row, the eventual execution of the alleged victims would constitute, by any account, a violation of the right to protection against cruel, infamous or unusual punishment. In light of the foregoing and taking into account the determinations made throughout this report, the IACHR concludes that the execution of Mr. Kadamovas and Mr. Bolden would constitute a serious violation of his right to life established in Articles I of the American Declaration.

VI. REPORT No. 10/20 AND INFORMATION ABOUT COMPLIANCE

79. On March 3, 2020, the Commission approved Report No. 10/20 on the merits of the instant case, which encompasses paragraphs 1 to 78 supra, and issued the following recommendations to the State:

1. Grant Jurijus Kadamovas and Robert Bolden effective relief, including the review of their trials and sentences in accordance with the guarantees of fair trial and due process set forth in Articles XVIII, and XXVI of the American Declaration, and the payment of pecuniary compensation. Taking into account the conclusions of the IACHR on the time the alleged victims have been held on death row, the Commission recommends that their sentences be commuted.

⁵³ IACHR. Towards the Closure of Guantanamo. OAS/Ser.L/V/II.Doc. 20/15. June 3, 2015, para 146.

⁵⁴ IACHR. Towards the Closure of Guantanamo, para 148.

⁵⁵ Article I of the American Declaration establishes: Every human being has the right to life, liberty and the security of his person.

⁵⁶ IACHR, Report No. 53/13, Case 12.864, Merits (Publication), Ivan Teleguz, United States, July 15, 2013, para. 129.

⁵⁷ IACHR, Report No. 11/15, Case 12.833, Merits (Publication), Félix Rocha Díaz, United States, March 23, 2015, para. 106.

2. Review its laws, procedures, and practices at the federal level to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII, XXV and XXVI thereof, and, in particular:
 - a. Ensure that every foreign national deprived of his or her liberty is informed, without delay and prior to his or her first statement, of the right to request that consular authorities be immediately notified of his or her arrest or detention; and
 - b. Ensure that court-appointed appellate counsel provides adequate legal representation in death penalty cases.
3. Ensure that an individual evaluation, in accordance with the principles established in this report, is conducted every time a person is on a hunger strike, to determine the appropriate action plan, respecting their right to autonomy.
4. Given the violations of the American Declaration the IACHR has established in the present case and in others involving application of the death penalty, the Inter-American Commission also recommends to the United States that it abolishes the federal death penalty.⁵⁸

80. On July 2, 2020 the IACHR transmitted the report to the State with a time period of two months to inform the Commission on the measures taken to comply with its recommendations. To date, the Commission has not received any response from the United States regarding report No. 10/20.

VII. ACTIONS SUBSEQUENT TO REPORT No. 330/21

81. On November 19, 2021, the Commission approved Final Merits Report No. 330/21, which encompasses paragraphs 1 to 80 *supra*, and issued its final conclusions and recommendations to the State. On December 1, 2021, the Commission transmitted the report to the State and the petitioners with a time period of three weeks to inform the Inter-American Commission on the measures taken to comply with its recommendations. To date, the IACHR has not received any response from the United States or the petitioners regarding Report No. 330/21.

VIII. FINAL CONCLUSIONS AND RECOMMENDATIONS

82. On the basis of determinations of fact and law, the Inter-American Commission concludes that the State is responsible for the violation of Articles I (life, liberty, and security), XVIII (fair trial), XXV (protection from arbitrary detention), and XXVI (due process) of the American Declaration.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THAT THE UNITED STATES OF AMERICA,

1. Grant Jurijus Kadamovas and Robert Bolden effective relief, including the review of their trials and sentences in accordance with the guarantees of fair trial and due process set forth in Articles XVIII, and XXVI of the American Declaration, and the payment of pecuniary compensation. Taking into account the conclusions of the IACHR on the time the alleged victims have been held on death row, the Commission recommends that their sentences be commuted.
2. Review its laws, procedures, and practices at the federal level to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII, XXV and XXVI thereof, and, in particular:

⁵⁸ See in this regard, IACHR, The death penalty in the Inter-American Human Rights System: From restrictions to abolition, OEA/Ser.L/V/II.Doc 68, December 31, 2011.

- a. Ensure that every foreign national deprived of his or her liberty is informed, without delay and prior to his or her first statement, of the right to request that consular authorities be immediately notified of his or her arrest or detention; and
 - b. Ensure that court-appointed appellate counsel provides adequate legal representation in death penalty cases.
3. Ensure that an individual evaluation, in accordance with the principles established in this report, is conducted every time a person is on a hunger strike, to determine the appropriate action plan, respecting their right to autonomy.
4. Given the violations of the American Declaration the IACHR has established in the present case and in others involving application of the death penalty, the Inter-American Commission also recommends to the United States that it abolishes the federal death penalty.⁵⁹

IX. PUBLICATION

83. In light of the above and in accordance with Article 47.3 of its Rules of Procedure, the IACHR decides to make this report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the United States with respect to the above recommendations until it determines there has been full compliance.

Approved by the Inter-American Commission on Human Rights on the 12th day of the month of May 2023. (Signed): Margarette May Macaulay, Chair; Esmeralda Arosemena de Troitiño, First Vice-Chair; Roberta Clarke, Second Vice-Chair; Joel Hernández García and Julissa Mantilla Falcón, members of the Commission.

⁵⁹ See in this regard, IACHR, The death penalty in the Inter-American Human Rights System: From restrictions to abolition, OEA/Ser.L/V/II.Doc 68, December 31, 2011.