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REPORT No. 118/19
PETITION 2282-12
REPORT ON ADMISSIBILITY

JOSE PADILLA AND ESTELA LEBRON
UNITED STATES OF AMERICA

Approved electronically by the Commission on June 10, 2019.

Cite as: IACHR, Report No. 118/19, Petition 2282-12. Admissibility. Jose Padilla and Estela Lebron. United States of America. June 10, 2019

I. INFORMATION ABOUT THE PETITION

Petitioner:	Estela Lebron ¹
Alleged victim:	Jose Padilla and Estela Lebron
Respondent State:	United States of America ²
Rights invoked:	Articles I (Right to life, liberty and personal security), II (Right to equality before law), III (Right to religious freedom and worship), V (Right to protection of honor, personal reputation, and private and family life), VI (Right to a family and to protection thereof), XVIII (Right to a fair trial), 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 ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	December 11, 2012
Additional information received at the stage of initial review:	March 1, 2013
Notification of the petition to the State:	March 28, 2016
State's first response:	August 4, 2016
Additional observations from the petitioner:	November 7, 2017

III. COMPETENCE

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 (ratification of the OAS Charter on June 19, 1951)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles I (Right to life, liberty and personal security), II (Right to equality before law), III (Right to religious freedom and worship), V (Right to protection of honor, personal reputation, and private and family life), VI (Right to a family and to protection thereof), XVIII (Right to a fair trial), XXV (Right of protection from arbitrary arrest), and XXVI (Right to due process of law) of the American Declaration.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in terms of section VI
Timeliness of the petition:	Yes, in terms of section VI

¹ American Civil Liberties Union (ACLU) and Yale Law School Lowenstein International Human Rights Clinic were appointed as counsel for petitioners.

² Hereinafter "United States", "the U.S." or "the State."

³ Hereinafter "American Declaration."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. This petition is brought against the United States by Estela Lebron (“the petitioner” or “Ms. Lebron”) on her own behalf and on behalf of her son, José Padilla (“Mr. Padilla”), for violating their rights guaranteed under the American Declaration. Broadly, the principal complaint of the petition alleges that Mr. Padilla was unlawfully detained, interrogated and tortured by agents of the State; ultimately on the ground that he was an “enemy combatant” – as declared by the President of the United States. The petition also alleges that consequently, the State violated the human rights of Estela Lebron – including her rights to family life, to be free from attacks against her family’s reputation, and to be free from cruel, inhuman and degrading treatment (CIDT). According to the petition, Ms. Lebron and Mr. Padilla repeatedly turned to U.S. courts to seek redress for the violations of their rights, but the courts never reached a final ruling on the legality of Mr. Padilla’s detention by the military. Further, no court ever ruled upon the lawfulness of the methods of confinement and interrogation used against him.

2. On May 8, 2002, agents from the U.S. Federal Bureau of Investigation (FBI) arrested and detained Mr. Padilla at Chicago O’Hare International Airport as he stepped off an airplane. The arrest was allegedly authorized pursuant to a witness warrant issued under the Material Witness Statute by the United States District Court for the Southern District of New York, in connection with an investigation into the terrorist attacks against the United States on September 11, 2001. Mr. Padilla is a U.S. citizen who lived in Egypt with his wife and two children while studying Islam and the Arabic language. After spending four years in the Middle East, he planned a trip in 2002 to visit his family members in the United States.

3. Following his arrest and detention in Chicago, the petition alleges that the FBI transported Mr. Padilla to New York City where he was held at a federal detention facility. According to the petition, on or about May 15, 2002, the federal district court assigned an attorney, Donna Newman, to represent Mr. Padilla. Ms. Newman filed motions to vacate the material witness warrant and to secure Mr. Padilla’s release on grounds that Mr. Padilla had not been charged with a crime and was being illegally detained. During Mr. Padilla’s detention in New York, the petitioner alleges that she was not allowed to see him.

4. According to the petition, on June 9, 2002, without any warning or explanation, U.S. government officials seized Mr. Padilla from the civilian jail where he was being held and transferred him to a military prison in Charleston, South Carolina. The petitioner alleges that the justification for this extrajudicial seizure was an order by President George W. Bush to Defense Secretary Donald Rumsfeld to detain Mr. Padilla as an “enemy combatant.”⁵ The petition alleges that Mr. Padilla was held in military custody for 43 months, from June 9, 2002 to January 5, 2006 without being charged with a crime. According to the petitioner, designating a U.S. civilian as an enemy combatant and subjecting him to indefinite military detention— was unprecedented and was made entirely within the executive branch. No judge reviewed the basis for the President’s order, Mr. Padilla and his counsel did not receive notice of the order, and no judicial hearing was held to authorize the action.

5. During his detention, the petitioner contends that (a) Mr. Padilla was held incommunicado for the first 21 months and was prohibited from having contact with his lawyers or family (with the exception of one letter to his mother); (b) throughout his detention, Mr. Padilla was subjected to a program of unlawful interrogation methods and conditions of confinement; and that as part of this program, Mr. Padilla was subjected to extreme isolation, sensory deprivation, sleep deprivation, and other forms of physical and psychological torture and abuse.⁶ Additionally, the petition alleges that Mr. Padilla was initially provided

⁵ According to the petitioner, the justification offered by the State for this course of action was that Mr. Padilla was engaged in terrorist activity in concert with Al Qaeda; that he had intelligence about personnel and activities of Al Qaeda, that, if communicated to the U.S., would aid U.S. efforts to prevent attacks by Al Qaeda on the United States; and that his detention was “necessary to prevent him from aiding Al Qaeda in its efforts to attack the United States or its armed forces, other governmental personnel, or citizens.

⁶ In this regard, the petition alleges that Mr. Padilla’s interrogators forced him into uncomfortable and painful stress positions, with his hand and feet shackled for hours at a time. The petition also alleges that interrogators threatened to kill Mr. Padilla or to render him to Guantanamo Bay or a foreign country where he would be subjected to further torture and even worse treatment. The petition also contends that Mr. Padilla was prohibited from having access to newspapers, radio, and television. According to the petition, Mr. Padilla has suffered—and continues to suffer from—both physical and psychological trauma as a result of his torture and cruel, inhuman,

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with a copy of the Koran, but that this was later confiscated. The petitioner alleges that Mr. Padilla was prevented from seeing sunlight for many months at a time, and was also deprived of access to a clock or a watch. Mr. Padilla was unable to tell what time it was for most of his captivity, and was thus unable to fulfill his religious obligation to pray five times at set hours of the day and night.⁷

6. The petitioner alleges that while Mr. Padilla was in military custody, she and her family were questioned by government officials and constantly harassed by the public and by members of the media. Journalists often followed and waited outside the homes of the petitioner, her elderly parents, and her children. The petitioner contends that Mr. Padilla's family suffered numerous health effects, both physical and psychological.

7. According to the petition, following his transfer into military custody, Mr. Padilla invoked or was otherwise involved in three sets of domestic legal proceedings: (a) habeas corpus proceedings; (b) civilian criminal proceedings; and (c) civil actions for damages.

Habeas corpus proceedings

8. The petition alleges that there were two separate habeas petitions filed on Mr. Padilla's behalf. The first one was filed on June 19, 2002 in the United States District Court for the Southern District of New York by Mr. Padilla's then-appointed counsel – Donna Newman. This habeas corpus petition sought Mr. Padilla's release on the ground that the government lacked the authority to designate and detain him as an "enemy combatant". According to the petition, the federal district court upheld the legality of Mr. Padilla's detention, but the Court of Appeals ordered that he be granted habeas relief in 2003 on the ground that the 1971 Non- Detention Act (NDA) states that, "no citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress". On the application of the United States, the Supreme Court, in 2004, subsequently overruled the Court of Appeals on jurisdictional and procedural grounds. According to the petition, the Supreme Court held the habeas petition (1) should have been filed in South Carolina, where Mr. Padilla was imprisoned, and not in New York, where he had been seized; and (2) named an improper respondent, because it named Defense Secretary Donald Rumsfeld, who had ordered Mr. Padilla's military seizure, rather than the warden of the military prison where he was confined.

9. Mr. Padilla's attorneys subsequently filed a new habeas petition with the District Court in Charleston, South Carolina, where Mr. Padilla was being held in military custody. The District Court ruled in favour of Mr. Padilla, but in 2005, the Court of Appeals reversed the decision of the lower court, holding that the United States government could constitutionally detain Mr. Padilla on U.S. soil as an enemy combatant based on the government's claim that Mr. Padilla had carried arms for hostile forces on a foreign battlefield. The petitioner states that Mr. Padilla applied to the Supreme Court to review the decision of the Court of Appeals by the Supreme Court. The Supreme Court agreed to review the appellate court's decision to determine whether the government had sufficient authority to detain Mr. Padilla. However, while this application was pending, the petitioner asserts that the United States government filed criminal charges and transferred Mr. Padilla into civilian custody. According to the petition on April 3, 2006, the Supreme Court denied review (certiorari), finding the petition for review moot because Mr. Padilla had been released from

[... continuation]

and degrading treatment. The petition states that in February 2006, Mr. Padilla was diagnosed with post-traumatic stress disorder. This diagnosis was made by a Dr. Angela Hegarty as part of sworn statement made in the context of subsequent criminal proceedings against Mr. Padilla in the United States District Court for the Southern District of Florida. According to the petition, Dr. Hegarty also concluded that Mr. Padilla lacked the capacity to assist in his own defense and had a great deal of difficulty speaking about this case. Further, the petition states that Dr. Hegarty and his attorneys repeatedly tried to explain the importance of reviewing the evidence against him, but Mr. Padilla refused to read transcripts or listen to tapes of intercepted conversations; he pleaded with his attorneys not to "make him" look at or listen to the material.

⁷ According to the petition, Admiral Lowell Jacoby, the head of the Defense Intelligence Agency justified Mr. Padilla's detention in a declaration of January 9, 2003. The declaration admitted, among other things, that the express purpose of isolating and denying Mr. Padilla access to counsel, courts, and family was to render him completely psychologically dependent on his interrogators in order to extract intelligence from him.

military custody and thereby had received part of the relief sought in his habeas petition. The petitioner contends that as a result, the government never had to justify the legality of Mr. Padilla's detention to the Supreme Court or defend the factual basis for his detention before the federal court in South Carolina.

Civilian criminal proceedings

10. According to the petition, on January 5, 2006, the government indicted Mr. Padilla in the United States civilian criminal system and transferred him to the custody of a federal jail in Miami, Florida, to await trial before the United States District Court for the Southern District of Florida. The petition alleges that the new criminal indictment against Mr. Padilla focused on a series of acts in which he had allegedly participated from the late 1990s, none of which included the original allegations advanced by the United States to justify Mr. Padilla's detention by the military. According to the petition, on August 16, 2007, following a trial on the charges brought against him in the indictment, Mr. Padilla was convicted of one count of conspiracy to murder, kidnap, or maim persons overseas and two counts of providing material support to Al Qaeda. The petitioner alleges that at the trial, the judge refused to admit evidence of Mr. Padilla's alleged torture by U.S. officials. In this regard, Mr. Padilla filed a motion to dismiss the indictment against him based on "outrageous government conduct"; that is to say, the military detention of Mr. Padilla and the alleged torture and inhumane treatment that he suffered while in detention. This motion was dismissed by the trial court. The petitioner further alleges that two mental health experts, including Dr. Hegarty, testified that Mr. Padilla's treatment while in military custody had rendered him mentally unfit for trial and unable to participate fully in his own defense. According to the petition, Mr. Padilla is currently serving a sentence of 17 years at the Florence ADX facility in Colorado.

Civil actions for damages

11. According to the petition, given the absence of any criminal investigation conducted into Mr. Padilla's years of *incommunicado* detention and torture and abuse in military custody, the petitioner and Mr. Padilla sought relief in the U.S. civil system in two separate federal legal proceedings, naming a number of U.S. officials as defendants. The first suit was filed on February 9, 2007 in the District of South Carolina against former Defense Secretary Rumsfeld and other high-level U.S. government officials for denial of access to counsel, denial of access to court, unconstitutional conditions of confinement, unconstitutional interrogations, denial of freedom of religion, denial of right of information, denial of right to association, unconstitutional military detention, denial of right to be free from unreasonable seizures, and denial of due process.

12. Mr. Padilla also sought declarations that his designation and detention as an "enemy combatant" were unconstitutional and that the policies that led to his torture and inhumane treatment were unconstitutional. Mr. Padilla also sought an injunction against his return to military custody as an enemy combatant, and nominal monetary relief. In February 2011, the federal district court dismissed Mr. Padilla's claims on the basis that national security concerns constitute "special factors" that bar recovery, and qualified immunity protected the named defendants from civil liability. The Fourth Circuit Court of Appeals affirmed this decision on the basis that civil damages actions challenging the designation and mistreatment of persons and groups as national security threats are not reviewable by courts. It further held that that Mr. Padilla's claim for injunctive relief was moot due to Mr. Padilla's transfer to civilian custody. On April 23, 2012, Mr. Padilla sought review of the Fourth Circuit Court of Appeals decision by the U.S. Supreme Court. The Court, however, declined review (by way of certiorari), without comment, on June 11, 2012.

13. According to the petition on January 4, 2008, the petitioner and Mr. Padilla filed a similar suit in the District of California against former Justice Department official John Yoo, who authored the legal memoranda used by the Bush administration to justify its indefinite detention and torture of terrorism suspects, including Mr. Padilla. The petition states that this suit alleged violations of rights, including denial of access to counsel, denial of access to courts, unconstitutional conditions of confinement, unconstitutional interrogation, denial of freedom of religion, denial of the right to information, unconstitutional military detention, denial of the right to be free from unreasonable seizures, and denial of due process. The petition also states that the Ms. Lebron also brought a claim for denial of her right to association with her son.

14. The petition asserts that this suit was ultimately dismissed by the Court of Appeals.⁸ The petitioner states that Mr. Padilla's unlawful detention, torture and inhumane treatment occurred as part of a larger detention and interrogation regime instituted in response to terrorist acts. According to the petition, this regime was instituted following the attacks of September 11, 2001. The petition notes that the U.S. Congress passed the Authorization to Use Military Force (AUMF), authorizing the President "to use all necessary and appropriate force [...] in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." According to the petition, despite his criminal conviction, the United States has never rescinded Mr. Padilla's designation as an "enemy combatant". It also alleges that this program of arbitrary detention and torture has been largely limited to non-white, Muslim suspects, such as Mr. Padilla. According to the petition, the application of this program to Mr. Padilla violated his right to equality before the law as provided by Article II of the American Declaration.

15. Ultimately, the petitioner contends that the United States is responsible for multiple violations of Mr. Padilla's rights under the American Declaration. Firstly, by designating Mr. Padilla an enemy combatant and detaining him in military custody without charge for forty three months, the petitioner argues that the United States violated Mr. Padilla's rights under Articles I, XVIII, XXV, and XXVI. Secondly, the petitioner asserts that the interrogation techniques used against Mr. Padilla, together with his conditions of confinement violated his rights under Articles I, XXV, and XXVI. Thirdly, by blocking communication between Mr. Padilla and his mother and denying him the right to practice Islam (his chosen religion), the petitioner alleges that the United States violated his rights to familial relations under Articles V and VI and his right to religion under Article III. Fourthly, the petitioner alleges that the United States discriminated against Mr. Padilla—at least implicitly—based on his race and/or religion, and thus violated Mr. Padilla's rights to equality before the law protected under Article II. Finally, the petitioner contends that U.S. courts violated Mr. Padilla's right to a remedy for violation of these protected rights guaranteed under Article XVIII, through the refusal to consider the merits of civil suits brought by him and petitioner challenging Mr. Padilla's alleged arbitrary detention and torture.

16. The petitioner also contends that the treatment of Mr. Padilla by the United States also resulted in separate violations of her rights, including her right to family life guaranteed by Article VI, her right to be free from attacks against her family's reputation under Article V, and her right to be free from cruel, inhuman and degrading treatment (CIDT) protected under Article I of the American Declaration.

17. The State challenges the admissibility of the petition on a number of grounds, including (a) lack of jurisdictional competence on the part of the Commission; (b) the fourth instance formula; (c) failure to pursue and exhaust domestic remedies; and (d) failure to state facts that tend to establish a violation of the American Declaration.

18. In relation to the first ground, the State contends that the IACHR lacks competence to issue binding decisions vis-à-vis the US on matters arising under the American Declaration. Secondly, the State asserts that the IACHR has no jurisdiction over matters governed by the law of war. In this regard, the State argues that the Mr. Padilla was designated as an enemy combatant in the armed conflict against al-Qaida, the Taliban, and associated forces based on an order from the President of the United States, using his authority under the AUMF and consistent with the law of war. According to the State, Mr. Padilla's detention in military custody was authorized consistent with and its legality is governed by the law of war, which permits States to engage in the capture and detention of enemy combatants until the end of active hostilities.

19. In regard to the fourth instance formula, the State submits that Mr. Padilla pursued a number of remedies to challenge both the legality and conditions of his detention in military custody. These include

⁸ The Court ruled that qualified immunity protected Mr. Yoo because he did not reasonably understand at the time he authored the memoranda that his actions violated "clearly established law" prohibiting the torture and indefinite detention of a U.S. citizen. According to the petition, the Ninth Circuit Court of Appeals issued its decision following the Supreme Court's denial of certiorari of the Fourth Circuit's decision, the petitioner and Mr. Padilla elected not to seek Supreme Court review of that decision.

(a) habeas corpus proceedings; (b) two civil suits; and (c) criminal proceedings before the U.S. District Court for the Southern District of Florida. Broadly, the State contends that review by the Commission of any of these domestic proceedings would constitute the exercise of fourth instance jurisdiction.

20. As it relates to the habeas corpus proceedings, the State asserts that the Fourth Circuit Court of Appeals determined that Mr. Padilla's detention in military custody was lawful; and that following this, the US Supreme Court denied certiorari for Mr. Padilla's habeas claim. As it relates to the civil litigation, the State alleges that Mr. Padilla filed two civil suits in separate federal district courts seeking a civil damages remedy for his detention in military custody and the conditions of that detention. According to the State, each of these cases was considered and dismissed by the highest domestic court of appeals with jurisdiction over the claims—the Ninth Circuit Court of Appeals and the Fourth Circuit Court of Appeals, respectively.

21. In regard to the criminal proceedings against Mr. Padilla, the State asserts that he had the opportunity to raise claims concerning the conditions of his detention in military custody. The State contends that Mr. Padilla initially applied to the trial court to drop the criminal charges against him because of his treatment by the U.S. government while he was in military custody. This application was refused by the trial court, a decision that was upheld by the U.S. Court of Appeals for the Eleventh Circuit. During the sentencing phase and re-sentencing phases of criminal prosecution, the State asserts that Mr. Padilla's attorneys presented arguments concerning allegations of harsh treatment during his detention in military custody. According to the State, these allegations were taken into account by the U.S. District Court for the Southern District of Florida when it originally sentenced Mr. Padilla to 17 years and four months in prison. The State indicates that based on federal sentencing guidelines, Mr. Padilla's sentence represented a reduction of 12 years and 8 months. Mr. Padilla's sentence was later found by the U.S. Court of Appeals for the Eleventh Circuit to be unjustifiably low and his case was remanded to the district court for resentencing. According to the State, the district court once again took the conditions of Mr. Padilla's detention in military custody into consideration in re-sentencing, setting the sentence at 21 years rather than the U.S. government's recommended 30 years. Ultimately, the State contends that the Commission is precluded from second-guessing the factual and legal determinations of U.S. courts in multiple jurisdictions merely because the Petitioners disagree with them.

22. The State argues that the petitioner and Mr. Padilla have failed to exhaust domestic remedies pursuant to Article 31 of the Commission's Rules of Procedure. In this respect, the State submits that Mr. Padilla and Ms. Lebron could have pursued administrative claims for personal injuries arising out of Mr. Padilla's detention in military custody and his treatment there under the Military Claims Act (MCA). According to the State, the Military Claims Act ("MCA") (10 U.S.C. § 2733) provides that the military "may settle, and pay in an amount not more than \$100,000, a claim against the United States for ... personal injury ... caused by a civilian officer or employee ... or a member of the ... Navy ... acting within the scope of his employment, or otherwise incident to noncombat activities of that department." Accordingly, the State contends that the petition is inadmissible for failure to exhaust this remedy.

23. The State contends that the Commission should find Ms. Lebron's claim under Article V of the American Declaration to be inadmissible for failing to state facts that tend to establish violation (as prescribed by Article 34 (a) of the Commission's Rules of Procedure. The State notes that Ms. Lebron claims that her right to be free from abusive attacks upon reputation and family life has been violated because Mr. Padilla was "brand[ed] ... publicly as a terrorist," and because he and Ms. Lebron and their family suffered reputational damage as a result. State argues that there is no allegation in the Petition that the U.S. government "abusively" attacked Mr. Padilla's or Ms. Lebron's reputation. The State contends that Mr. Padilla was, in fact, arrested in connection with a terrorism-related investigation and was ultimately charged with and convicted of terrorism-related offenses. Further, that the mere fact that the public was aware, through reporting by a free and independent media, of factual information about these public legal proceedings is not sufficient to state a claim regarding Article V.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

24. The petition contends that all available, appropriate and effective domestic remedies have been exhausted. The petition further asserts that domestic remedies that do not have a reasonable prospect of success or are incapable of providing redress for the violations alleged need not be exhausted for the claims to be admissible. With reference to the lawsuits that were dismissed by the Fourth and Ninth Circuit Courts of Appeals, the petitioner contends that "extraordinary remedies" such as a writ of certiorari before the U.S. Supreme Court, need not be pursued to satisfy the exhaustion rule. The petition acknowledges that in relation to the decision by the Fourth Circuit Court of Appeals, a writ of certiorari was pursued before the Supreme Court, which, in June 2012, declined to adjudicate it. However, in relation to the decision by the Ninth Circuit Courts of Appeals, the petitioner and Mr. Padilla opted not to seek Supreme Court review (by way of certiorari). According to the petition, this review constitutes an "extraordinary remedy" which need not be pursued or exhausted in order to comply with the exhaustion rule.

25. In considering the issue of exhaustion of domestic remedies, the Commission proposes to address the State's challenge on the admissibility of the petition; in particular, the State's claim that (a) the American Declaration does not create legally binding obligations and that the Commission lacks competence to determine violations of the Declaration (against the State); (b) the law of war applies to the designation and detention of Mr. Padilla as an "enemy combatant" and that the IACHR has no jurisdiction over matters governed by law of war; and (c) Mr. Padilla failed to pursue and exhaust available domestic administrative remedies, that is to say, a claim under the Military Claims Act for compensation for personal injuries.

26. According to the long-standing practice and jurisprudence of the Inter-American human rights system, the American Declaration of the Rights and Duties of Man is a source of international obligations for the United States and for the other member states of the OAS that are not parties to the American Convention on Human Rights. It is understood that these obligations derive from the commitments assumed by the member states in the area of human rights in the OAS Charter, that the member states agreed to be contained and defined in the American Declaration, and from the customary legal nature of the rights protected in the basic provisions of the Declaration, for which the Commission is empowered by Articles 18 and 20 of its Statute to receive and evaluate allegations of noncompliance with these commitments by the States. Therefore, it is pertinent to characterize the non-compliance by a member state of the guarantees of the rights enshrined in the American Declaration as a violation of the obligations imposed on it by international human rights law, with which the Commission rejects the State's assertion that the American Declaration does not create legal obligations for the OAS member states.

27. The Commission has previously stated that with all international obligations, a State's human rights obligations are superior to the requirements of its domestic law and must be performed in good faith. Accordingly, states cannot invoke their contrary domestic law as an excuse for non-compliance with international law. It is also well recognized that the international human rights commitments of states apply at all times, whether in situations of peace or situations of war. This precept flows from the jurisprudence of this Commission and other pertinent international authorities as well as the terms of human rights instruments themselves.⁹ Accordingly, the Commission rejects the State's claim that the law of war displaces the Commission's jurisdiction in this matter.

28. As regards the administrative remedy to which the State refers, the IACHR has established in similar cases that the contentious-administrative jurisdiction is exclusively a mechanism for supervising the administrative activity of the State aimed at securing compensation for damages caused by abuse of

⁹ See IACHR Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr 22 October 2002, para. 42.

authority. In general, this proceeding does not constitute an adequate mechanism, on its own, for making reparation in cases of human rights violations, thus it need not be exhausted in a case such as this.¹⁰

29. The Commission observes that the petitioner exercised the legal remedies available and considered suitable, which included habeas corpus proceedings and two civil actions. The final decision was issued by the Supreme Court on June 11, 2012, which declined to hear a writ of certiorari brought against the decision of the Fourth Circuit Court of Appeals. The Commission has previously observed that "the requirement of the exhaustion of domestic remedies does not mean that the alleged victims must exhaust all the remedies available to them," which implies that extraordinary remedies do not need to be exhausted. Accordingly, in relation to the decision by the Ninth Circuit Courts of Appeals, the Commission considers that the alleged victims were not obliged to bring a writ of certiorari (an extraordinary remedy) in order to fulfil the requirements of Article 31.1 of the Commission's Rules of Procedure. The Commission therefore considers that the final judicial decision was issued on June 11, 2012 and that the petition to the IACHR was submitted on December 11, 2012. Accordingly, the Commission deems that the petition was submitted within the six-month deadline prescribed by Article 32.1 of the Commission's Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

30. In the present case, the petition alleges that the State is responsible for violations of Articles I, II, III, V, VI, XVIII, XXV, and XXVI of the American Declaration, fundamentally on the basis of (a) arbitrary imprisonment of Mr. Padilla as an "enemy combatant" without charge (b); the acts of physical and psychological torture and cruel, inhuman, and degrading treatment he has allegedly suffered while in detention; (c) deprivation of the right to familial relations and to be free from attacks against the family's reputation; (d) denying him the right to practice Islam; (e) discrimination based on race and religion (f) inhumane, cruel and degrading treatment to the detriment of his family; and (g) lack of adequate and effective judicial remedies for the violations he has allegedly suffered.

31. Based on the foregoing, the Commission considers that the facts alleged in this case, if corroborated, could tend to establish a violations of I, II, III, V, VI, XVIII, XXV, and XXVI of the American Declaration.

32. Regarding the State's fourth instance claims, the Commission notes that by admitting this petition it does not intend to supplant the competence of the domestic judicial authorities. Instead, at the merits stage of this petition, it will analyze whether the domestic judicial proceedings complied with the guarantees of due process and the right to a fair trial and offered the alleged victims due guarantees of access to justice in accordance with the terms of the American Declaration.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, II, III, V, VI, XVIII, XXV, and XXVI of the American Declaration;

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 10th day of the month of June, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margaret May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.

¹⁰ See for example IACHR REPORT N° 05/03 Petition 0519/2001, Admissibility, Jesús María Valle Jaramillo COLOMBIA, February 20, 2003, para. 29; IACHR REPORT No. 76/18 Petition 1453-08 Admissibility Yaneth Valderrama And Family, COLOMBIA, 21 June 2018, para.12.