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**REPORT No. 226/22**  
**PETITION 1274-14**  
REPORT ON ADMISSIBILITY

ISLAMIC SHURA COUNCIL FOR SOUTHERN CALIFORNIA AND OTHERS  
UNITED STATES OF AMERICA

Approved electronically by the Commission on August 27, 2022.

**Cite as:** IACHR, Report No. 226/22, Petition 1274-14. Admissibility. Islamic Shura Council for Southern California and others. United States of America. August 27, 2022.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioners:</b>	International Human Rights Clinic of the Loyola Law School and the American Civil Liberties Union of Southern California
<b>Alleged victims:</b>	The Islamic Shura Council of Southern California, the Council on American Islamic Relations of California ("CAIR"), the Islamic Center of San Gabriel Valley, the Islamic Center of Hawthorne, the West Coast Islamic Center, the Human Assistance and Development International, Inc., Dr. Muzammil Siddiqi, Shakeel Syed, Hussam Ayloush, Mohammed Abdul Aleem, and Rafe Husain
<b>Respondent State:</b>	United States of America <sup>1</sup>
<b>Rights invoked:</b>	Articles IV (right to freedom of investigation, opinion, expression, and dissemination), XVIII (right to a fair trial) of the American Declaration of the Rights and Duties of Man <sup>2</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	September 17, 2014
<b>Additional information received at the stage of initial review:</b>	October 16, 2019
<b>Notification of the petition to the State:</b>	October 23, 2019
<b>State's first response:</b>	June 16, 2020
<b>Additional observations from the petitioner:</b>	October 1, 2020
<b>Notification of the possible archiving of the petition:</b>	August 14, 2018
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	August 14, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes, in terms of Section VI
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	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**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles IV (right to freedom of investigation, opinion, expression, and dissemination), V (right to protection of honor, personal reputation, and private and family life) and XVIII (right to a fair trial) of the American Declaration

<sup>1</sup> Hereinafter "the United States", "the U.S.", "the Government" or "the State".

<sup>2</sup> Hereinafter "the American Declaration" or "the Declaration".

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in terms of Section VII
<b>Timeliness of the petition:</b>	Yes, in terms of Section VII

## V. ALLEGED FACTS

1. This petition principally concerns a complaint that the State deliberately lied about the content and scope of surveillance information collected about the alleged victims, in violation of their rights to information and right to fair trial.

2. The alleged victims are members of the Muslim-American community in Southern California, and more specifically, comprise six community organizations and five prominent community leaders. Specifically, these community organizations and individuals are: the Islamic Shura Council of Southern California<sup>4</sup>, the Council on American Islamic Relations of California<sup>5</sup> ("CAIR"), the Islamic Center of San Gabriel Valley<sup>6</sup>, the Islamic Center of Hawthorne<sup>7</sup>, the West Coast Islamic Center<sup>8</sup> and the Human Assistance and Development International, Inc<sup>9</sup>, Dr. Muzammil Siddiqi<sup>10</sup>, Shakeel Syed<sup>11</sup>, Hussam Ayloush<sup>12</sup>, Mohammed Abdul Aleem<sup>13</sup> and Rafe Husain<sup>14</sup>.

3. By way of context, the petition contends that since the (terrorist) events of September 9, 2001 ("9/11"), the State dramatically increased its domestic intelligence gathering efforts, with a particular focus on the activities of blameless Arab, Middle Eastern, Muslim, and South Asian individuals, and communities (hereinafter referred to as "AMEMSA" or "AMEMSA individuals and communities"). In this regard, the petitioners submit that the State's activities in this regard have been facilitated by the U.S. Patriot Act as well as reduced access to information by means of the Freedom of Information Act ("FOIA). In relation to the Patriot Act, the petitioners state that this federal law was passed on October 26, 2001, and that it allows federal agencies wide latitude in domestic intelligence gathering under several provisions. In this regard, the

<sup>4</sup> According to the petitioners, the Islamic Shura Council of Southern California ("Shura Council") is a federation of over 60 mosques and Muslim organizations in Southern California, representing over 500,000 area Muslims. Founded in 1995, the Shura Council is a tax-exempt non-profit organization headquartered in Anaheim, California and led by a Board of Directors.

<sup>5</sup> According to the petitioners, the Council on American Islamic Relations ("CAIR") is a non-profit, grassroots membership organization that was established to promote a positive image of Islam and Muslims in the United States. CAIR's Southern California chapter is based in Anaheim, California and its mission is to present Islamic perspectives on issues of importance to the American public and to empower Muslim communities through political and social activism.

<sup>6</sup> According to the petitioners, the Islamic Center of San Gabriel Valley, also known as Masjid Quba, having started as a small group of Muslim families that gathered for prayer, has transformed into a full mosque, elementary and middle school, and community center through the financial support of the Muslim community in San Gabriel Valley.

<sup>7</sup> According to the petitioners, the Islamic Center of Hawthorne is a mosque located in Hawthorne, California that serves the religious needs of the Muslim communities of Hawthorne, Lawndale, Torrance, Inglewood and surrounding areas. It provides an elementary and middle school for Muslims in the Hawthorne area of Los Angeles. It engages in various community cultural activities and events.

<sup>8</sup> According to the petitioners, West Coast Islamic Society, also known as Masjid Al Ansar, is a mosque and community center that aims to fulfill the aspirations of the Muslims in Anaheim, Garden Grove, Cypress, Fullerton and surrounding areas in Southern California. It strives to become an integral part of the American pluralistic religious landscape and contribute to the cultural, social, economic, and religious enrichment of the community. It provides prayer services, community cultural and religious events, and educational events for children and adolescents. It also has on site pre-school, kindergarten, elementary and secondary schools.

<sup>9</sup> Human Assistance & Development International Inc. (HADI) is a non-profit organization committed to building bridges globally through humanitarian and educational projects. HADI seeks to demonstrate the importance of core Islamic values and teachings for fostering a more peaceful and prosperous world, in collaboration with partners from many faiths and backgrounds.

<sup>10</sup> According to the petitioners, Dr. Siddiqi is an Imam at the Islamic Society of Orange County as well as an academic.

<sup>11</sup> According to the petitioners, Shakeel Syed has served as the executive director of the Islamic Shura Council of Southern California since 2005 and is an activist for social justice issues in Southern California.

<sup>12</sup> According to the petitioners, Hussam Ayloush is the executive director of the Council on American Islamic Relations, Southern California since 1998.

<sup>13</sup> According to the petitioners, Mohammed Abdul Aleem is a co-founder and Chief Executive Officer of IslamiCity, a website advancing information, fostering community and educating people about Islam.

<sup>14</sup> According to the petitioners, Rafe Husain is a former President and member of the Board of Directors of the Islamic Society of Corona-Norco, a mosque located in Corona, California that serves the religious needs of the Muslim communities in Corona and Norco.

petitioners also state that the Patriot Act also allows law enforcement agencies to use surveillance techniques that previously would not have been authorized in the absence of greater evidence of criminal activity.

4. With respect to the FOIA, the petitioners submit that this a federal law that went into effect as of 1967, allowing for disclosure of information held by the U.S. executive branch, unless subject to certain exceptions. The petitioners further indicate although the U.S. Constitution does not contain a general right to access information in the government's possession that the FOIA was established as a safeguard against government abuses by providing an avenue for government transparency. However, the petitioners submit that the FOIA has become increasingly ineffective as a mechanism to ensure government transparency because of the expanded agency use of various exceptions and reluctance by the U.S. Congress and judiciary to challenge federal agencies' representations. The petitioners notes that this pattern has become particularly pronounced since the events of 9/11. In this regard, the petitioners submit that since 9/11, a plethora of information has come to light indicating that the State's surveillance efforts have targeted and continue to target individuals not engaged in criminal conduct, or individuals for whom there has been absolutely no reasonable suspicion of participation in criminal conduct, and that the criteria for surveillance have often been based on race, ethnicity, national origin, or religion. The petitioners emphasize that the targeting of, and racial profiling of AMEMSA individuals and communities has increased exponentially.

5. The petitioners state that individuals, community groups, and civil society have attempted to seek out information on and expose these discriminatory practices through FOIA, but with limited or no success. In this regard, the responses to FOIA requests continued to be delayed, sometimes by a span of years or decades, and in recent years, there has been an increase in both length of delay as well as the percentage of denials of expedited requests. In addition, federal agencies have often responded to FOIA requests by producing documents that are heavily or even entirely redacted. Meanwhile, U.S. agencies have increasingly relied on exceptions to deny FOIA requests or provide responses that refuse to confirm or deny the existence of a document.

6. The petitioners further submit that, overall, there is little consequence to lack of compliance with the FOIA on the part of Government agencies, and the sanctioning scheme in place to support access to information under the FOIA is ineffective in addressing the U.S. Government's policy of excessive secrecy. If access to information is denied, the requesting party may appeal directly to the agency. If the appeal fails, the available remedy is to file suit in federal court to obtain an order enjoining the agency from withholding records and ordering production of the agency records in question. Additionally, the petitioners submit that even if a court does determine that a government agency acted in bad faith, effective judicial review of Government agencies is hobbled by a wholly inadequate framework of sanctions to hold Government agencies accountable. Furthermore, courts have proven reluctant to apply sanctions, instead deferring to Government representations not only regarding the initial question of whether documents should be disclosed under the FOIA, but also whether the Government itself engaged in conduct worthy of sanctions.

7. According to the petitioners, since September 11, 2001, hundreds of members of the Southern California AMEMSA communities have been visited for "interviews" at their homes and offices by the FBI. After much community outcry over this, the FBI implemented a new strategy for intelligence gathering: the Multi-Cultural Advisory Committee, a community outreach in which they wanted all AMEMSA community and civil rights groups to participate. Most organizations, including the alleged victims, did in fact participate, only to withdraw soon after, suspecting that the Multi-Cultural Advisory Committee was a mechanism for surveillance in and of itself, much as the FBI had instituted throughout the United States. In addition to the Multi-Cultural Advisory Committee mechanism, the petitioners claim that there were other incidents that led the alleged victims to conclude that the State was spying on them. In this regard, the petitioners cite two examples: (a) employees at CAIR noticed a surveillance camera outside of their offices; and (b) an FBI agent visited several friends of Shakeel Syed asking questions about him.

8. Based on this history the petitioners contend that the alleged victims came together to formally seek the information the FBI had gathered on the AMEMSA community in Southern California and to expose the invasive tactics used against the community.

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*Chronology of Domestic Remedies/ Proceedings*

9. The petitioners indicate that between 2006 and 2014, domestic remedies were invoked and exhausted on behalf of the alleged victims. The sequence of the domestic remedies invoked and exhausted are set out in the following paragraphs.

10. The petitioners indicate that the first step taken was a request to the Federal Bureau of Investigations (FBI) pursuant to the FOIA seeking “all records created since January 2001 concerning the agency’s surveillance, monitoring and investigations” of the alleged victims. According to the petitioners, this request was made on May 15, 2006. The petitioners state that on April 27, 2007, the FBI formally notified the alleged victims that there were no “responsive documents” (i.e., documents relevant to the FOIA request). Subsequently, on June 7, 2007, the alleged victims filed an administrative appeal to the Department of Justice, Office of Information and Privacy (“OIP”) questioning the State’s claim that it did not have any responsive documents. However, the petitioners indicate that later during that month, the FBI released three pages of documents to Hussam Ayloush and a one-page document to CAIR. However, the petitioners alleged that these four pages of documents were redacted, purportedly based on exemptions authorized by the FOIA.

11. Dissatisfied with the limited information provided by the State, the alleged victims then filed suit against the State on September 18, 2007, in the United States District Court (“the District Court”). The suit sought declaratory and injunctive relief, asserting that the FBI’s search of responsive records to the FOIA request was inadequate and untimely, in violation of the FOIA itself. While the suit was pending, the petitioners allege that on March 14, 2008, the FBI released an additional 120 pages of responsive documents. However, the petitioners contend that significant portion of these documents was redacted or withheld as “outside the scope” of the FOIA request, while some of the information was redacted pursuant to specific exemptions under FOIA.

12. According to the petitioners, the State on March 21, 2008, moved for summary judgment, asserting that its search for documents in response to the petitioners’ FOIA request was adequate and that it properly withheld documents under FOIA exemptions. In response, on November 26, 2008, the alleged victims filed a cross motion for summary judgment (in opposition to the State’s motion). The District Court heard oral arguments on the parties’ summary judgment motions on April 20, 2009, and subsequently ordered an *in camera* review of the documents produced to determine the propriety of the FBI’s “outside the scope” redactions. Pursuant to the District Court’s order, the State filed an *ex parte* and *in camera* submission on May 4, 2009. According to the petitioners, this submission by the State included a significant number of responsive documents, which had been intentionally withheld from the court in the name of national security. In the circumstances, the petitioners state that the District Court found, “[t]he Government’s *in camera* submission revealed a very disturbing issue: the Government had provided blatantly false and misleading information to the Court”.

13. Following two *in camera* hearings on May 14, 2009, and June 23, 2009, the District Court issued a sealed order on June 23, 2009, regarding the petitioners’ request under the FOIA and the State’s initial inadequate submission of misleading information to the District Court. According to the sealed order, the District Court emphasized that the Government cannot –under any circumstances– affirmatively mislead the Court. However, the District Court determined that the additional responsive documents that were located by the Government were properly withheld from alleged victims. The District Court ultimately ruled that the sealed order would be unsealed and made public on July 7, 2009, unless the United States Court of Appeals for the Ninth Circuit (“the Ninth Circuit”) directed otherwise.

14. The State subsequently filed a notice of appeal to the Ninth Circuit together with an application for an emergency stay of the sealed order pending appeal. The Ninth Circuit granted the stay on July 6, 2009. On March 30, 2011, the Ninth Circuit issued its decision on the appeal. The Ninth Circuit largely agreed with the District Court that the FOIA does not permit the State to withhold information from the courts. However, the Ninth Circuit held that the alleged victims were not permitted to see the sealed order in full, as it contained information that might legitimately be withheld from them under the FOIA. Accordingly, the Ninth Circuit vacated the sealed order and remanded the matter back to the District Court with instructions to revise the

sealed order to eliminate the information that could permissibly be withheld pursuant to the FOIA. On April 27, 2011, in compliance with the ruling of the Ninth Circuit, the District Court issued a revised order (that excluded the information that qualified to be withheld pursuant to the FOIA).

15. Following the District Court's revised order, on September 26, 2011, the alleged victims filed a motion for sanctions against the State in the District Court pursuant to the Federal Rules of Civil Procedure (Rule 11). The motion for sanctions was based on the State's prior submission of false information to the District Court granted the motion for sanctions on November 17, 2011, as a result of which the District Court awarded attorneys costs to the alleged victims in the sum of \$36,248. According to the record, the District Court entered a final judgment on January 30, 2012.

16. On September 27, 2012, the State appealed the District Court's sanctions award to the Ninth Circuit. A panel of the Ninth Circuit ultimately reversed the District Court's sanction award on July 31, 2013. The Ninth Circuit ruled that the State had already complied with the orders of the District Court to supply the previously omitted information; and that therefore, there was no basis for imposing sanctions. The alleged victims then petitioned the Ninth Circuit for reconsideration by the panel (that heard the appeal) or for an *en banc* hearing (by all the judges of the Ninth Circuit). By order of March 18, 2014, the Ninth Circuit denied the petition for a reconsideration by the panel or for an *en banc* rehearing. According to the petitioners, the Ninth Circuit also stated (without explanation) that "[f]urther petitions for rehearing and rehearing *en banc* shall not be entertained".

17. Given the decision of the Ninth Circuit, the petitioners submit that all domestic remedies (available as a matter of right) have now been exhausted. The petitioners add that there is no requirement to petition the U.S. Supreme Court (for certiorari) because (a) this would constitute an extraordinary remedy; and (b) review by the Supreme Court review is not a right in the U.S because the Supreme Court has complete discretion to decide which cases it considers on the merits.

18. With respect to issue of timeliness, the petitioners submit that the petition was submitted on September 17, 2014, within a period of six months following the March 18, 2014 decision of the Ninth Circuit. Accordingly, the petitioners submit that the petition is timely, in accordance with Article 32(1) of the IACHR's Rules of Procedure.

19. The petitioners generally reject the State's claim that the petition is inadmissible. With respect to the issue of exhaustion of domestic remedies, the petitioners note that State identifies two remedies that it deems should have been exhausted: (1) the Ninth Circuit, and (2) the U.S. Supreme Court. Generally, the petitioners contend that the only domestic remedies that need to be exhausted are those adequate and appropriate. With respect to the Ninth Circuit, the petitioners argue that this is not a remedy that should have been exhausted because it is not neither adequate nor appropriate for the issues in question in the petition. In this regard, the petitioners argue that the alleged violations (right to freedom of investigation, opinion, expression, and dissemination, and right to a fair trial) were caused by the State's deliberate mischaracterization of documents as non-responsive to the FOIA request, and by misleading the alleged victims and the District Court as to the content and scope of surveillance information it had gathered about the alleged victims. The petitioners argue that the Ninth Circuit would have been limited to asking the Government to disclose further information, but it could not remedy the violations of the rights of the alleged victims.

20. With respect to U.S Supreme Court, the petitioners argue that the jurisprudence of the Inter-American Commission, of the Inter-American Court, as well as of all other adjudicative and quasi-adjudicative human rights bodies, regional and global, consistently holds that extraordinary remedies, which might be available or not depending on whether the reviewer decides to grant it, do not need to be exhausted. The petitioners state that actual review by the U.S. Supreme Court is discretionary and only available in theory but not in practice for Petitioner's claims; and that further, in the U.S. legal system, there is no right of appeal to the Supreme Court. Accordingly, the petitioners conclude that the Supreme Court is an extraordinary remedy, which the alleged victims were not obliged to exhaust.

21. The petitioners reject the State's contention that the petition's claims are manifestly groundless and/or that they fail to establish any *prima facie* violations. With respect to Article IV of the Declaration, the petitioners insist that claim that the right protected therein, cannot be adequately fulfilled unless the right of access to information is recognized as well. With respect to Article XVIII of the Declaration, the petitioners argue that when the State lied and misled the alleged victims and the District Court, it compromised the adequacy and effectiveness of the judicial recourse being sought. Accordingly, the petitioners contend that if the State is allowed to lie in court with no consequence, there cannot be a fair trial.

22. The petitioners reject the State's contention that the Commission lacks *jurisdiction ratione personae* over the six organizations represented in the petition. The petitioners argue that the State has misinterpreted Article 23 of the Commission's Rules of Procedure. The petitioners make the following submissions in this regard. Firstly, the petitioners argue that the plain language of Article 23 does not distinguish between nongovernmental entities on the one hand, and person or groups of persons on the other, giving the latter standing and the former none. Further, the petitioners assert that Article 23 simply enumerates the three entities who can submit a petition to the Commission: i) a person; ii) a group of persons; iii) a nongovernmental entity legally recognized in one or more of the Member States of the OAS. For the petitioners, if Article 23 intended to exclude nongovernmental entities from bringing petitions on behalf of their members or third persons, it would have said so. Therefore, the State's interpretation of Article 23 does not support its claim that the Commission lacks competence *ratione personae* over the six organizations.

23. Secondly, the petitioners submit that all six organizations represented in the current petition are registered and/or incorporated in the State of California and/or the United States (for tax purposes); and thus are "legally recognized in one or more of the Member States of the OAS", to use the words of Article 23 of the Commission's Rules of Procedure.

24. Thirdly, the petitioners submit that the Commission has a well-developed and consistent jurisprudence on this issue and has previously accepted petitions brought by groups whose members were not individually named but rather identified by geographical, ethnic, language and other indicators. It has also accepted numerous petitions by groups of individuals that were not legally structured or "legally recognized", particularly indigenous communities where the community was the filing representative and/or the alleged victim, and where community members were not individually named but rather identified by geographical, ethnic, language and other indicators<sup>15</sup>. The petitioners also submit that the Commission has also recognized the violation of the rights of a religious "congregation" without requiring the naming of individual victims<sup>16</sup>.

25. Finally, the petitioners submit that, the Commission has jurisdiction *ratione personae* over the six named organizations because they are legal entities legally recognized in the United States that are: 1) composed of natural persons whose rights have been violated qua members of either a legal entity or of a non-legal ethnic community; and 2) have been targeted by the U.S. Government due to certain collective attributes (Islamic organizations), thereby necessitating remedies that cannot be accorded to a single member of the organization.

26. The petitioners reject the State's contention that the petition represents an effort to use the Commission as a fourth instance tribunal (to review claims already heard and rejected by U.S. courts). In this regard, the petitioners argue that the question is whether actions of the State, its courts and agencies suggest a violation of the American Declaration. The petitioners add that the question is larger in scope than a specific judgment of this or that U.S. court. Further, the petitioners contend that (a) the "fourth instance" question is not at issue here because they do not seek review of the judgments issued by the U.S. domestic courts; (b) the Commission is not being asked to interpret or apply domestic law; and (c) the factual allegations giving rise to the petition before the Commission include several administrative acts and judicial decisions that resulted in

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<sup>15</sup> The petitioners give as one example IACHR Report No. 9/13 Petition 1621-09, Admissibility, Maho Indigenous Community, Suriname, March 19, 2013.

<sup>16</sup> The petitioners refer to IACHR Case 2137, Jehovah's Witnesses v. Argentina, November 18, 1978.

the violation of rights under the American Declaration cumulatively; and that these alleged violations do not require interpretation of domestic law.

*State's response*

27. State rejects the petition as inadmissible on the following grounds: (a) failure to exhaust domestic remedies; (b) failure to state facts that establish a prima facie violation and further, the allegations are manifestly groundless; (c) the Commission lacks competence *ratione personae* in respect of some of the alleged victims; and (d) consideration of the petition would run afoul of the Commission's "fourth instance" doctrine.

28. With respect to the failure to exhaust domestic remedies, the State notes that there were two sets of domestic proceedings: (a) litigation to access information under FOIA; and (b) litigation pursuant to the Federal Rules of Civil Procedure (Rule 11) applying for sanctions for alleged misrepresentations to the court.

29. According to the State, the alleged victims challenged the Government's production of information under FOIA to the U.S. District Court for the Central District of California. The State indicated that this court ultimately concluded that, "Plaintiffs are not entitled to any further information regarding the Government's previous searches for documents, and the Government does not need to conduct any additional searches for responsive documents." The State argues that the alleged victims chose not to appeal this decision to the Ninth Circuit. Further, the State contends that the petitioners have provided no explanation for the decision not to appeal this determination by the district court and have failed to allege, much less demonstrate, the applicability of any exception to the Commission's exhaustion requirement with respect to the adequacy of information produced to petitioners by the United States under FOIA. The State concludes that to the extent that alleged victims complain that they have been deprived access to information, the Commission cannot entertain this claim because they plainly failed to exhaust their remedy in this regard.

30. With respect to the litigation seeking sanctions, the State notes that the district court initially granted the motion for sanctions; however, the Ninth Circuit reversed the district court's order granting the motion and vacated the accompanying order awarding fees. The State further observes that the alleged victims sought *en banc* review of the Ninth Circuit's reversal, which was denied. The State indicates that the alleged victims declined to seek review by the United States Supreme Court. According to the State, failure to seek Supreme Court review must result in a determination of inadmissibility before this Commission. In this regard, the State argues that the alleged victims had had a clear statutory right to file a petition with the United States Supreme Court seeking review; and that under U.S. law, Supreme Court review is not an "extraordinary" remedy, but an ordinary remedy.

31. As noted before, the State also contends that the petition is also inadmissible because it fails to state facts that tend to establish violations of Petitioners' rights (under Article 34(a) of the Commission's Rules of Procedure) and contains claims that are manifestly groundless (under Article 34(b) of the Commission's Rules of Procedure).

32. With respect to Article IV of the American Declaration, the State argues that the petitioners attempt to construe this provision to include a "right of access to information". However, the State contends that Article IV does not contemplate access to information—much less the disclosure of specific information at all. Accordingly, the State submits that the petition therefore overstates the reach of Article IV.

33. The State indicates that even if Article IV of the American Declaration contained a "right of access to information" —which it does not— FOIA would be consistent with such a right as a general matter and as applied in the instant case. The State observes that "it is well established" that the alleged victims received all the information to which they were entitled with respect to the relevant FOIA requests; and that moreover, they did not contest this determination by a U.S. district court. The State notes that the petitioners assert that the release of information was untimely and incomplete. For the State, this claim is baseless as the FBI's release of was consistent with U.S. law, a legal conclusion by the U.S. district court that alleged victims chose not to challenge. In summary, the State submits that the petitioners have failed to state facts that tend



to establish a violation of Article IV of the American Declaration under Article 34(a) of the Commission's Rules of Procedure. Further, the State argues that the claims under Article IV are also baseless, pursuant to Article 34 (b) of the Commission's Rules of Procedure. Accordingly, the State concludes that the petition is inadmissible under the provisions of both Article 34 (a) and (b).

34. Regarding the claims made under Article XVIII of the American Declaration, the State characterizes them as baseless. In this regard, the State contends that while the petitioners may have disagreed with the Government's application of the FOIA in this matter, but there are simply no facts to substantiate a claim that the alleged victims were denied their right to resort to the courts due to the pace of litigation.

35. Secondly, the State rejects the petitioners' claim that the judicial remedies provided in this matter were "ineffective," thereby constituting a denial of the right to access the courts within the meaning of Article XVIII. The State submits that the alleged victims were able to challenge the Government's production of information under FOIA in U.S. courts, and U.S. courts concluded that the Government was not required to produce any further information under that statute. Accordingly, the State concludes that this claim, too, is baseless, and ultimately inadmissible under the terms of Article 34 (a) and (b) of the Commission's Rules of Procedure. The State emphasizes that the Commission has reiterated that the fact that the outcome of a domestic proceeding] was unfavorable does not constitute a violation.

36. Regarding the issue of competence *ratione personae*, the State notes that six organizations (together with five individuals) named in the petition have alleged violations of their human rights. The State argues that abstract corporate entities such as non-governmental organizations are not the beneficiaries of human rights contemplated by the American Declaration. Accordingly, the State contends that, as such, alleged violations of "rights" of organizations are beyond the competence *ratione personae* of the Commission. In this regard, the State submits that the petition is therefore inadmissible insofar as it purports to represent six organizations as "victims" of human rights violations.

37. On the matter of the fourth instance doctrine, the State argues that the petition plainly constitutes an effort by petitioners to use the Commission as a "fourth instance" body to review claims already heard and rejected by U.S. courts. The State argues that the Commission has repeatedly stated that it may not serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction. The State further argues that with respect to domestic judicial proceeding relating to FOIA and the Rule 11 judicial sanctions (under the Federal Rules of Civil Procedure), the petitioners now seek to have the Commission sit in judgment as another layer of appeal and second-guessing the considered decisions of a state's domestic courts in weighing evidence and applying domestic law. The State further submits that its domestic law provided a basis to seek relief for claims of denial of access to information under the FOIA and, the U.S. courts ruled on these claims as well as their attempt to seek sanctions against the State. In this regard, the State notes that the central theory of the petitioners' claims in both fora is the same: that the State is responsible for a violation of the right of access to information and should be penalized. The State further contends that the bulk of the petitioners' submission to the Commission seeks to re-litigate the merits of the litigation over Rule 11 judicial sanctions. Instead of appealing the district court's finding that the FOIA production was appropriate or appealing the Ninth Circuit's determination that sanctions were not warranted in this case, the alleged victims chose instead to pursue an "appeal" internationally.

38. The State concludes that: (a) it is well established that the Commission cannot be used as a substitute for appeal in the U.S. judicial system; and (b) the Commission must consequently decline this invitation to sit as a court of fourth instance; and (c) acting to the contrary would have the Commission second-guessing the legal and factual determinations of U.S. courts, conducted in conformity with due process protections under U. S. law and fully consistent with U.S. commitments under the American Declaration.

## VI. ANALYSIS ON RATIONE PERSONAE

39. The State contends that the petition is inadmissible *ratione personae* with respect to the six organizations named in the petition (pursuant to Article 23 of the Commission's Rules of Procedure). The State

argues that “abstract corporate entities” such as non-governmental organizations are not the beneficiaries of human rights contemplated by the American Declaration. Accordingly, the State contends that, as such, alleged violations of “rights” of organizations are beyond the competence *ratione personae* of the Commission. On the other hand, the petitioners argue that (a) the State has misinterpreted Article 23 of the Commission’s Rules of Procedure; (b) the Commission has jurisdiction *ratione personae* over the six named organizations because they are legal entities legally recognized in the United States that are: 1) composed of natural persons whose rights have been violated qua members of either a legal entity or of a non-legal ethnic community; and 2) have been targeted by the U.S. Government due to certain collective attributes (Islamic organizations), thereby necessitating remedies that cannot be accorded to a single member of the organization.

40. Article 23 of the Commission’s Rules of Procedure provide that “Any person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons [...]” With reference to the equivalent provision in Article 44 of the American Convention on Human Rights, the Commission has consistently interpreted Article 44 to require that for a petition to be admissible that there must be concrete victims, who have been individualized and identified, or a group of specific and identified victims which is comprised of identifiable individuals.<sup>17</sup> Further, the IACHR recognizes that certain human rights violations, by their nature or circumstances, may affect a given individual or group of persons are identifiable according to specific criteria (such as ethnicity).<sup>18</sup> In the present petition, there are named individuals as well as nongovernmental entities (composed of individuals) that are identifiable according to the specific criterion of religion. The Commission does not accept that these nongovernmental entities are “abstract corporate entities”, but are indeed nongovernmental entities composed of specific, identifiable individuals. Accordingly, the Commission considers that it does have jurisdiction *ratione personae* with respect to the claims advanced on behalf of the named individuals as well as the individuals that comprised the nongovernmental entities.

## VII. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

41. The parties are at variance on the issue of exhaustion of domestic remedies. The State contends that domestic remedies were not exhausted whereas the petitioners contend that they were. Generally, the rule on the exhaustion of remedies provided by Article 31.1 of the Commission’s Rules of Procedure establishes that remedies generally available and appropriate in the domestic legal system must be pursued first. Such remedies must be secure enough; that is, accessible and effective in resolving the situation in question. The IACHR has established that the requirement to exhaust all domestic remedies does not necessarily mean that alleged victims are obligated to exhaust all remedies at their disposal. If an alleged victim pursued the matter through one of the valid and appropriate options in accordance with the domestic legal system, and the State had the opportunity to remedy the matter in its jurisdiction, the objective of international law has been achieved.

42. According to the record in this matter, the alleged victims initiated domestic proceedings with a request under the FOIA, which culminated in a final decision of the Ninth Circuit on March 18, 2014, when it denied the petition for a reconsideration by the panel or for an *en banc* rehearing. With respect to the issue of a possible appeal to the U.S. Supreme Court, the Commission has previously observed that this would constitute an extraordinary remedy, which the petitioners are not required to exhaust<sup>19</sup>. Accordingly, the Commission considers that that domestic remedies concerning the alleged victims were exhausted by the final decision of the Ninth Circuit of March 18, 2014.

<sup>17</sup> IACHR, Report No. 57/08, Petition 283-06. Inadmissibility. Mario Roberto Chang Bravo. Guatemala. July 24, 2008, para. 38.

<sup>18</sup> IACHR, Report No. 64/15, Petition 633-04 Admissibility. Mayan peoples and members of the Cristo Rey, Bullet Tree, San Ignacio, Santa Elena, and Santa Familia communities. Belize. October 27, 2015, para. 27.

<sup>19</sup> See for example IACHR Report No. 118/19, Petition 2282-12. Admissibility. Jose Padilla and Estela Lebron. United States of America. June 10, 2019, para. 29.

43. Having regard for the foregoing, the Commission finds that that the filing of the petition on September 17, 2014, was filed in a timely manner pursuant to Article 32.1 of the Commission's Rules of Procedure.

### **VIII. ANALYSIS OF COLORABLE CLAIM**

44. This petition alleges that, the State lied and misled the alleged victims and the District Court regarding as to the content and scope of surveillance information it had gathered about the alleged victims, thus resulting in the denial of the right to access Government-held information. The petitioners contend that this, in turn, led to inadequacy and ineffectiveness of the judicial remedies invoked by the alleged victims.

45. The State contends that the State argues that the petition plainly constitutes an effort by petitioners to use the Commission as a "fourth instance" body. The State argues that the Commission has repeatedly stated that it may not serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction. Accordingly, the State concludes that pursuant to the fourth instance doctrine, the petitioners' claims are manifestly groundless and therefore inadmissible.

46. The petitioners reject the State's contention that the petition represents an effort to use the Commission as a fourth instance tribunal. The petitioners argue –inter alia– that the withholding or redaction of information by the State during domestic proceedings not only misled the courts but compromised the petitioners' right to information and the right to fair trial/effective judicial recourse (pursuant to Articles IV and XVIII of the American Declaration).

47. The Commission acknowledges that it is not entitled that it is not entitled to review judgments issued by domestic courts acting within their jurisdiction and in accordance with due process of law and the judicial safeguards. However, the Commission reiterates that, under its mandate, it is competent to declare a petition admissible and rule on the merits of the case when the matter concerns domestic proceedings where any of the rights protected by the American Declaration might have been violated. In this matter, the Commission considers that allegations by the petitioners regarding the impact of the withholding and redaction of information during the domestic proceedings are not manifestly unfounded. Accordingly, the Commission considers that the petitioners' claims require a substantive study on the merits as the alleged facts, if corroborated could characterize violations of Articles IV (right to freedom of investigation, opinion, expression, and dissemination), V (right to protection of honor, personal reputation, and private and family life), and XVIII (right to a fair trial) of the American Declaration.

### **IX. DECISION**

1. To find the instant petition admissible in relation to Articles IV, V and XVIII of the American Declaration; and

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 27<sup>th</sup> day of the month of August, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarette May Macaulay, Second Vice President; Joel Hernández, and Roberta Clarke, Commissioners.

