

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 41/2022**

Precautionary Measure No. 30-21

Luis Robles Elizástegui regarding Cuba

August 9, 2022

Original: Spanish

I. INTRODUCTION

1. On January 15, 2021, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission” or “the IACHR”) received a request for precautionary measures filed by Prisoners Defenders (“the applicants”), urging the Commission to require that the State of Cuba (“the State” or “Cuba”) adopt the necessary measures to protect the rights to life, personal integrity and health of Luis Robles Elizástegui. According to the request, the proposed beneficiary is at risk in the context of his deprivation of liberty since December 2020, considering his detention conditions and the lack of medical care.

2. The IACHR requested additional information from the applicants on February 4, 2021. The applicants submitted additional information on February 5 and March 9, 2021. The Commission requested information from the State and the applicants on April 5, 2021, and received a response from the applicants on April 15, 2021. The Commission requested updated information from the applicants on July 20, 2022, and received the requested information on July 27, 2022. To date, the State of Cuba has not submitted any information, and the granted deadlines have since expired.

3. Upon analyzing the submissions of fact and law provided by the applicants within the context they take place, the Commission considers that the information presented shows *prima facie* that the proposed beneficiary is in a serious and urgent situation, given that his rights to life, personal integrity, and health are at risk of irreparable harm. Accordingly, the Commission requests that Cuba: a) adopt the necessary measures to protect the rights to life, personal integrity, and health of Luis Robles Elizástegui; b) ensure that the detention conditions of the proposed beneficiary are compatible with the applicable international standards on the matter. In particular, among other measures: (i) provide medical care according to what is prescribed by the medical specialists, (ii) allow regular visits by family members and legal representatives, (iii) assess, in the light of the conditions of detention and health of the proposed beneficiary, the application of any alternative measure to deprivation of liberty, and (iv) take action in the face of threats, harassment, intimidation or acts of violence against the proposed beneficiary for denouncing his current situation; c) consult and agree upon the measures with the beneficiary and his representatives; and d) report on the actions taken in order to investigate the alleged facts that gave rise to the adoption of this precautionary measure, so as to prevent them from reoccurring.

II. SUMMARY OF FACTS AND ARGUMENTS PROVIDED BY THE APPLICANTS

A. Information provided by the applicants

4. According to the request, the proposed beneficiary was detained on December 4, 2020, on the public highway, while displaying a sign indicating “Freedom, no more repression” (“*Libertad, no + repression*”). He was demonstrating peacefully, individually, and without political ties, in relation to acts of repression of protests that had been carried out in previous days by the San Isidro Movement (MSI). At

the time of his detention, the State security officers allegedly used violence and did not inform him of the reasons for his detention, despite the verbal defense of the population present at the scene.

5. The applicants stated that the investigation was initiated by the State Security Operations and Criminal Investigation Body, Villa Marista Unit (Havana), against the proposed beneficiary for the alleged crime of “other acts against State Security,” in which pre-trial detention was ordered for up to six months, in addition to the payment of a fine worth 1,000 Cuban pesos. The applicants also stated that, subsequently, a trial was initiated in which he was allegedly charged with the crimes of “enemy propaganda” and “disobedience.” In the days following his detention, State Security agents searched the home of the proposed beneficiary, without his presence, and reportedly found nothing. The request also questions the criminal proceedings in which the proposed beneficiary was involved.

6. On December 14, 2020, the proposed beneficiary’s brother filed a *habeas corpus* before the People’s Provincial Court of Havana. On December 16, 2020, the Third Criminal Chamber of the Provincial Court of Havana considered that the measures adopted were not unlawful. On December 24, 2020, a defenselessness plea was filed, taking into account that he was denied the hiring of lawyers from the National Organization of Collective Law Firms. On December 29, 2020, a state attorney finally accepted the proposed beneficiary’s case. On December 30, 2020, his lawyer filed a request for a change in the measure of pre-trial detention, which was allegedly denied. In this regard, it was indicated that the documents regarding the proceedings against the proposed beneficiary were not delivered to his relatives. In addition, according to his lawyer, State Security officers accuse the proposed beneficiary of an alleged “suspicious conversation” with a person abroad. However, the request indicates that no evidence of this was presented in the investigations conducted.

7. The proposed beneficiary is being held in the *Combinado del Este* prison, Havana, a maximum security prison, with highly dangerous inmates, where he reportedly faces high risk to his integrity. Regarding his conditions of detention, the applicants indicated that, since his detention in December 2020, family visits have not been allowed. The only brief visit the proposed beneficiary received was from his lawyer in June 2022. He was also reportedly allowed to make a telephone call to his sister two months after his detention, under the supervision of prison authorities. Subsequently, he was purportedly allowed to make phone calls on some occasions, however, always under the supervision of prison authorities.

8. The proposed beneficiary has denounced in phone calls his conditions of detention to a journalist, reporting that he is being provoked and subjected to violence constantly. In that sense, the mother of the proposed beneficiary was able to talk to him on the phone in March 2021, and the proposed beneficiary confirmed that he was “going through horrible moments in prison.” The prison authorities reportedly threatened to suspend his access to the telephone if he continued to file complaints. The applicants alleged that the proposed beneficiary had been subjected to “subhuman conditions” of detention, including beatings and solitary confinement, suffering constant discrimination. It was indicated that the authorities had instigated dangerous common prisoners to attack the proposed beneficiary, because of his alleged status as a “political prisoner.”

9. The proposed beneficiary suffers from chronic gastritis and therefore he needs specific medications, which have been allegedly denied by the authorities. Such authorities also reportedly denied that his relatives could hand over such medications to the proposed beneficiary. On February 12, 2021, when the proposed beneficiary requested his medications, he was allegedly told that “they would not give them to him so that he could end up dying there.” As a form of protest, the proposed beneficiary put a pullover in which he wrote “Freedom for Cuba” and “Down with the Dictatorship.” After this, an officer (*Mayor*), known as “El Chino,” allegedly beat him, while the Head of Internal Order, known as Lieutenant “Chiqui,” stripped him with the help of some prisoners. Later that same day, approximately every two

hours he was moved to another cell and displayed naked. In addition to his clothes, they took away all his belongings and his mattress. Hence, he slept naked on the floor for two nights, despite the low temperatures. Subsequently, on March 3, 2021, the proposed beneficiary was transferred to the first floor of the prison, where the most dangerous prisoners were held. On that same day, he was also reportedly informed that the officer “El Chino” had ordered some prisoners on this floor to “beat” him up again the day this officer is on duty.”

10. After having again received negative responses to his requests for access to medication, the proposed beneficiary began a hunger strike on February 12 until February 16, 2022. On that day, the proposed beneficiary was allegedly placed in a punishment cell, which the applicants described as a torture measure. In that connection, his brother lodged a complaint with the office for attention to relatives in the prison, which was unsuccessful. Furthermore, the applicants state that the mother and brother of the proposed beneficiary have suffered workplace harassment by State Security agents in their work as a result of the situation of the proposed beneficiary. Even his brother was allegedly dismissed at the end of January 2021.

11. Finally, on March 28, 2022, the People’s Provincial Court of Havana sentenced the proposed beneficiary to five years of imprisonment for the crimes of “enemy propaganda” and “disobedience.” An appeal was lodged against the judgement, which was dismissed.

B. Response from the State

12. On April 5, 2021, the IACHR requested information from the State regarding the proposed beneficiary’s situation. To date, the State has not sent a response and the granted deadlines have expired.

ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY, AND IRREPARABLE HARM

13. The precautionary measures mechanism is part of the Commission’s function of overseeing compliance with human rights obligations, as established in Article 106 of the Charter of the Organization of American States. These general oversight functions are established in Article 18(b) of the Statute of the IACHR, while the precautionary measures mechanism is described in Article 25 of the Commission’s Rules of Procedure. In accordance with that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm.

14. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have repeatedly established that precautionary and provisional measures have a dual nature, protective and precautionary.¹ Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.² To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and the vulnerability to which the persons proposed as beneficiaries would be exposed if the measures are

¹ See in this regard: I/A Court H.R. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Case of Carpio Nicolle et al. v. Guatemala](#). Provisional Measures. Order of July 6, 2009, considerandum 16.

² See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. [Case of Bámaca Velásquez](#). Provisional Measures regarding Guatemala. Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional Measures regarding Mexico. Order of the Court of April 30, 2009, considerandum 5; I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish].

not adopted.³ Regarding their precautionary nature, these measures have the purpose of preserving legal situations while under the consideration of the IACHR. They aim to safeguard the rights at risk until the petition pending before the inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations.⁴ In the process of reaching a decision, according to Article 25(2) of its Rules of Procedure, the Commission considers that:

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

15. In analyzing these requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. The information provided should be assessed from a *prima facie* standard of review to determine whether a serious and urgent situation exists.⁵ Similarly, the Commission recalls that, by its own mandate, it is not called upon to make any determinations on any individual criminal liabilities for the facts alleged. Moreover, in this proceeding, it is not appropriate to rule on violations of rights enshrined in the American Convention or other applicable instruments.⁶ This is better suited to be addressed by the Petition and Case system. The following analysis relates exclusively to the requirements set forth in Article 25 of the Rules of Procedure, which can be resolved without making any determinations on the merits.⁷

16. In the particular case of the proposed beneficiary, and by way of context, the Commission notes that it has been alleged that his detention is related to demonstrations of support for the San Isidro

³ See in this regard: I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish]; I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 9; I/A Court H.R. [Matter of the Criminal Institute of Plácido de Sá Carvalho](#). Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6 [only in Spanish].

⁴ See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 7; I/A Court H.R. [Matter of “El Nacional” and “Así es la Noticia” newspapers](#). Provisional Measures regarding Venezuela. Order of the Court of November 25, 2008, considerandum 23; I/A Court H.R. [Matter of Luis Uzcátegui](#). Provisional Measures regarding Venezuela. Order of the Court of January 27, 2009, considerandum 19.

⁵ See in this regard: I/A Court H.R. [Matter of Members of the Miskitu Indigenous Peoples of the North Caribbean Coast regarding Nicaragua](#). Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018, considerandum 13 [only in Spanish]; I/A Court H.R. [Matter of Children Deprived of Liberty in the “Complexo do Tatuapé” of the Fundação CASA](#). Request for extension of provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006, considerandum 23.

⁶ IACHR. [Resolution 2/2015](#). Precautionary Measure No. 455-13. [Matter of Nestora Salgado](#) regarding Mexico. January 28, 2015, para. 14; IACHR. [Resolution 37/2021](#). Precautionary Measure No. 96-21. [Gustavo Adolfo Mendoza Beteta and family](#) regarding Nicaragua. April 30, 2021, para. 33.

⁷ In this regard, the Court has indicated that “[it] cannot, in a provisional measure, consider the merits of any arguments pertaining to issues other than those which relate strictly to the extreme gravity and urgency and the necessity to avoid irreparable damage to persons.” See in this regard: I/A Court H.R. [Matter of James et al. regarding Trinidad and Tobago](#). Provisional Measures. Order of the Inter-American Court of Human Rights of August 29, 1998, considerandum 6; I/A Court H.R. [Case of Barrios Family v. Venezuela](#). Provisional Measures. Order of the Inter-American Court of Human Rights of April 22, 2021, considerandum 2 [only in Spanish].

Movement (MSI) at the end of 2020. In this regard, the Commission recalls that, on November 28, 2020, it rejected the violent break-in at the MSI premises.⁸ On that occasion, the IACHR indicated the following:

“The Commission expresses its concern at the repressive acts against the San Isidro Movement and its members, which can be framed in the accentuated intolerance in relation to artistic manifestations that could question the political system or the ruling regime. In these terms, it requests the Cuban State to investigate the events that occurred, to determine and punish those responsible, and to order the suspension of all acts of harassment, surveillance, and wiretapping against the members of the San Isidro Movement, to restore their premises and account for the situation of the goods taken during the operation.”⁹

17. On November 5, 2021, the Commission again expressed concern about the intensification of repression and other human rights violations since the July 2021 protests in Cuba.¹⁰ On that occasion, the Commission was informed that civil society organizations expressed concern about the incommunicado detention or restrictions of communications to dissident leaders deprived of their liberty, such as Luis Manuel Otero Alcántara, a member of the San Isidro Movement.¹¹ The Commission also recalls that, at the beginning of 2021, precautionary measures were granted in favor of various members of the San Isidro Movement after identifying a situation placing them at risk under the terms of Article 25 of the IACHR Rules of Procedure.¹² Such precautionary measures remain in force to date.

18. The Commission recalls that in its 2021 Annual Report it included Cuba’s situation within Chapter IV.B. On that occasion, the Commission recalled the consequences of the protests of July 11, 2021, in Cuba, which have given rise to exacerbation of repression of dissidents in the country and serious violations of human rights.¹³ During these demonstrations, the IACHR received information regarding dozens of people who were injured as a result of the disproportionate use of force by the police, as well as threats, harassment and stigmatization directed at demonstrators.¹⁴ The IACHR was informed of allegations of hundreds of arbitrary detentions and other violations of due process guarantees, ill-treatment, and deplorable detention conditions. In addition, a reinforced practice of surveillance and monitoring of the homes of activists was also reported.¹⁵ In addition, civil society organizations denounced that, regarding the people who participated in the protests, legal proceedings that tend to criminalize them have been filed.¹⁶

⁸ IACHR. [The IACHR rejects the arbitrary operation against the San Isidro movement in Cuba and reiterates its international human rights obligations](#), November 28, 2020.

⁹ IACHR. [The IACHR rejects the arbitrary operation against the San Isidro movement in Cuba and reiterates its international human rights obligations](#), November 28, 2020.

¹⁰ IACHR. [The IACHR expresses concern about the intensification of repression and other human rights violations since the July protests in Cuba](#), November 5, 2021.

¹¹ IACHR. [The IACHR expresses concern about the intensification of repression and other human rights violations since the July protests in Cuba](#), November 5, 2021.

¹² IACHR. [The IACHR grants precautionary measures in favor of 20 identified members of the San Isidro Movement \(MSI\) with respect to Cuba](#), February 12, 2021; and IACHR. [The IACHR decides to extend precautionary measures in favor of two people associated with the San Isidro Movement in Cuba](#), March 30, 2021.

¹³ IACHR. [Annual report of the Inter-American Commission on Human Rights 2021](#). OAS/Ser.L/V/II.doc 64 rev. 1, May 26, 2022, Chapter IV.b Cuba, para. 4.

¹⁴ IACHR. [Annual report of the Inter-American Commission on Human Rights 2021](#). OAS/Ser.L/V/II.doc 64 rev. 1, May 26, 2022, Chapter IV.b Cuba, para. 35.

¹⁵ IACHR. [Annual report of the Inter-American Commission on Human Rights 2021](#). OAS/Ser.L/V/II.doc 64 rev. 1, May 26, 2022, Chapter IV.b Cuba, para. 37.

¹⁶ IACHR. [Annual report of the Inter-American Commission on Human Rights 2021](#). OAS/Ser.L/V/II.doc 64 rev. 1, May 26, 2022, Chapter IV.b Cuba, para. 39.

19. The Commission also notes that, in September 2021, the UN Working Group on Arbitrary Detention, at its 91st session, adopted communication No. 41/2021, concerning Luis Robles Elizástegui and another in Cuba. The Working Group stated that Mr. Luis Robles' detention was arbitrary. In this regard, it took into consideration the conditions under which the detention took place, for example, the absence of an arrest warrant; it verified the absence of a legitimate reason to justify his detention; and it observed a series of violations of his judicial guarantees. The Working Group considered that, taking into account the circumstances of the case, the State of Cuba should release Mr. Luis Robles immediately.¹⁷ The Commission recalls that the precautionary measures mechanism carries out its analysis exclusively in relation to the procedural requirements of Article 25. In this regard, the Working Group's pronouncement constitutes an additional element of context or an important indicator to be taken into account in the analysis of the requirement of seriousness. The Commission has upheld this understanding in other matters.¹⁸

20. In view of the allegations raised in the request for precautionary measures, the Commission understands that the request is part of the Cuban context that the IACHR has been following in the framework of its monitoring powers. In particular, the Commission notes that the events alleged in the request are related to the situation of the San Isidro Movement (*Movimiento San Isidro*) in a context of repression of protest in the country.

21. Taking into account the detailed context related to this request, the Commission proceeds to analyze the procedural requirements with respect to Mr. Luis Robles Elizástegui. At the time of analyzing these requirements, the Commission also notes that the proposed beneficiary is deprived of his liberty with a criminal conviction according to the judgment of March 28, 2022.

22. In this regard, the Commission recalls that, in relation to persons deprived of liberty in general, the State is in a special position of guarantor, inasmuch as the prison authorities exercise a strong control or command over the persons subject to their custody.¹⁹ This is due to the unique relationship and interaction of subordination between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate their rights and obligations, and by the very circumstances of imprisonment, where prisoners are prevented from satisfying on their own a series of basic needs that are essential for the development of a dignified life.²⁰ More specifically, the Commission recalls that, based on the principle of non-discrimination, the Inter-American Court has indicated that this duty implies the State's obligation to guarantee their physical and mental health, specifically through the provision of a regular medical review and, when required, of adequate, timely and, where appropriate, specialized medical treatment according to the special needs of care required by the persons detained in question.²¹

¹⁷ UN. Human Rights Council. Working Group on Arbitrary Detention. Opinion no. 41/2021, regarding Denis Solís Gonzáles and Luis Robles Elizástegui (Cuba). November 4, 2021.

¹⁸ IACHR. Matter of Facundo José Astudillo Castro regarding Argentina. August 1, 2020. Precautionary Measure No. 681-20. Resolution 43/2020, para. 25; IACHR. Matter of Santiago Maldonado regarding Argentina. August 22, 2017. Precautionary Measure No. 564-17. Resolution 32/2017, para. 15.

¹⁹ See in this regard: I/A Court H.R. Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits, and Reparations. Judgment of May 14, 2013. Series C No. 260, para. 188; 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. 49.

²⁰ IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas. OEA/Ser.L/V/II., Doc. 64, December 31, 2011, paras. 49-50.

²¹ I/A Court H.R. Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary Exception, Fund, Reparations, and Costs. Judgment of February 29, 2016. Series C No. 312, para. 171.

23. With regard to the requirement of *seriousness*, the Commission considers that it has been met. At the time of reaching this determination, the Commission notes that the proposed beneficiary has been deprived of liberty since December 2020. In the context of his detention conditions, the Commission takes into account the following elements:

- i. The proposed beneficiary has been held in prison since December 4, 2020, and the use of violence has been alleged (see *supra* para. 4);
- ii. Since his detention in December 2020, the proposed beneficiary has reportedly not been able to receive visits from his relatives. The only brief visit he received was from his lawyer in June 2022 (see *supra* para. 7);
- iii. After his detention, the proposed beneficiary was only able to communicate by phone with his sister two months later. Subsequently, during his detention, he has been allowed to make phone calls on limited occasions and always under the supervision of prison authorities (see *supra* para. 7);
- iv. By telephone, the proposed beneficiary has reported to a journalist that he has been constantly subjected to violence in prison, and has told his mother that he is “going through horrible moments in prison” (see *supra* para. 8);
- v. The prison authorities have reportedly threatened to suspend telephone access in case of complaints about his conditions of detention (see *supra* para. 8);
- vi. Between December 4, 2020, and December 28, 2020, the proposed beneficiary was not allegedly allowed access to a lawyer he trusts for his defense (see *supra* para. 6);
- vii. The proposed beneficiary reportedly suffers from chronic gastritis and needs medications. Notwithstanding, the authorities reportedly rejected his requests for medicines, as well as did not allow his relatives to deliver his medications (see *supra* para. 9);
- viii. The applicants allege that the proposed beneficiary was subjected to “inhumane conditions” of detention, including beatings and solitary confinement, suffering constant discrimination, in addition to the fact that the authorities have instigated dangerous common prisoners to attack the proposed beneficiary (see *supra* para. 8);
- ix. On February 12, 2021, when the proposed beneficiary requested his medications, they allegedly replied that “they would not give them to him so that he could just die there.” Due to his protests, two state agents allegedly beat and stripped the proposed beneficiary, exposing him naked in prison. In addition, they took away all his belongings and his mattress. Hence, he slept naked on the floor for two nights, despite the low temperatures. Since then, the applicants have indicated that the proposed beneficiary has not received medical attention, which was alleged again in 2022 (see *supra* para. 9);
- x. On March 3, 2021, he was transferred to an area where the most dangerous prisoners are purportedly held, and was informed that a State agent had ordered some prisoners on his floor to “beat him again the day this officer is on duty” (see *supra* para. 9);
- xi. In February 2022, the proposed beneficiary was taken to a punishment cell (see *supra* para. 10).

24. In analyzing the matter at hand, the Commission notes that the proposed beneficiary, after one year and eight months deprived of liberty, has not received visits from relatives and that telephone contact with his relatives is limited and supervised by prison authorities. In this regard, the available information reveals that there are difficulties for family members to have contact with the proposed beneficiary, due to the restriction of visits and the threats he has purportedly suffered when complaining about his conditions of detention by telephone. Similarly, the Commission stresses the seriousness of the allegations presented regarding ill-treatment and acts of threats and violence by State agents in the context of his deprivation of liberty, in particular, the beatings by prison officers on February 12, 2021; the incitement to other prisoners to attack the proposed beneficiary on March 3, 2021; as well as the transfer to a “punishment cell” on February 16, 2022.

25. Additionally, regarding his health situation, the Commission notes that, despite suffering from chronic gastritis, the proposed beneficiary has not received adequate medication for this disease to date, considering that he does not have access to medication and the prison authorities have not allowed him to receive them through his family members. In this regard, it should be noted that on February 12, 2021, prison authorities reportedly answered about his medications indicating that “they would not give them to him so that he could just die there.” The Commission does not have any evidence to suggest that the proposed beneficiary has actually received the corresponding medical care.

26. In addition to the above, the Commission observes that the applicants’ allegations are consistent with the information that has been received as part of the country’s monitoring. In this regard, in 2020, concerning information was received on deplorable conditions of detention of persons deprived of liberty in Cuba, such as prison overcrowding; insufficient medicines, food, and drinking water; inadequate hygiene and sanitation; poor medical assistance; and wide margin of discretion available to its agents in guaranteeing order within prisons.²² Consequently, in February 2022, the IACHR expressed concern about the people detained as a result of their participation in the protests of July 2021 in Cuba. They remain in detention with high levels of overcrowding, lack of access to drinking water and adequate food, negligent medical care, and under the use of isolation measures.²³

27. Due to the above, the Commission considers that the proposed beneficiary, deprived of liberty since December 2020 after his demonstration in public, is in severe conditions of detention in the *Combinado del Este* prison and has not received access to the medications necessary for his chronic illness to date, after one year and eight months of detention. The Commission also considers that the family members did not have access to the proposed beneficiary and that contact with him is limited to supervised telephone calls, which makes it difficult to access information on his actual conditions of detention and health. This is even more relevant considering that the situation placing him at risk has been attributed to State agents.

28. After requesting information from the State under Article 25 of the Rules of Procedure, the Commission regrets Cuba’s lack of response. Therefore, the Commission does not have information to verify that the alleged situations that place the proposed beneficiary at risk have been mitigated or that measures have been taken to safeguard his rights. In this sense, the Commission does not have elements that distort the applicants’ allegations, which are also consistent with the information received from the thematic and country monitoring. The Commission again regrets the lack of response from the State, which prevents it from knowing its position on this matter. On the contrary, as narrated by the applicants,

²² IACHR. [Human Rights Situation in Cuba](#). OEA/Ser.L/V/II., Doc. 2, February 3, 2020, par. 373

²³ IACHR. [IACHR expresses concern about people who continue to be detained and prosecuted for participating in protests in Cuba](#). February 16, 2022.

the situation described placing the proposed beneficiary at risk comes from the action of agents of the State, which places the proposed beneficiary, who is in the custody of such agents, in a situation of vulnerability.

29. Given the above, the Commission considers, from the applicable *prima facie* standard, that it is sufficiently proven that the rights to life, personal integrity, and health of Luis Robles Elizástegui are at serious risk.

30. With regard to the *urgency* requirement, the Commission considers that it has been met, insofar as the proposed beneficiary continues to be deprived of his liberty in the aforementioned circumstances, and may become subject to further infringements of his rights, thus requiring immediate action. This is particularly relevant considering that there are allegations of acts of violence and threats by State authorities in the context of his deprivation of liberty, and the lack of medicines necessary for the health condition of the proposed beneficiary. In addition, the Commission does not have specific or sufficient information from the State to assess the actions that are being taken to address the alleged risk that the proposed beneficiary faces.

31. Regarding the requirement of *irreparable harm*, the Commission considers that it has been met, insofar as the potential impact on the rights to life, personal integrity, and health, by their very nature, constitutes the maximum situation of irreparability.

V. BENEFICIARY

32. The Commission declares Luis Robles Elizástegui as the beneficiary of these precautionary measures, who is duly identified in these proceedings.

VI. DECISION

33. The Inter-American Commission considers that this matter meets, *prima facie*, the requirements of seriousness, urgency, and irreparable harm set forth in Article 25 of its Rules of Procedure. Consequently, it requests that Cuba:

- a) adopt the necessary measures to protect the rights to life, personal integrity, and health of Luis Robles Elizástegui;
- b) ensure that the detention conditions of the proposed beneficiary are compatible with the applicable international standards on the matter. In particular, among other measures: (i) provide medical care according to what is prescribed by the medical specialists, (ii) allow regular visits by family members and legal representatives, (iii) assess, in the light of the conditions of detention and health of the proposed beneficiary, the application of any alternative measure to deprivation of liberty, and (iv) take action in the face of threats, harassment, intimidation or acts of violence against the proposed beneficiary for denouncing his current situation;
- c) consult and agree upon the measures with the beneficiary and his representatives; and
- d) report on the actions taken in order to investigate the alleged facts that gave rise to the adoption of this precautionary measure, so as to prevent them from reoccurring.

34. The Commission also requests that the State of Cuba report, within 15 days as from the day after this resolution, on the adoption of the required precautionary measures and to update that information periodically.

35. The Commission emphasizes that, in accordance with Article 25(8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment on any violation of the rights protected under the applicable instruments.

36. The Commission instructs its Executive Secretariat to notify the State of Cuba and the applicants of this Resolution.

37. Approved on August 9, 2022, Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice-President; Margarete May Macaulay, Second Vice-President; Roberta Clarke; and Carlos Bernal Pulido, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary