
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 14/2017**

Precautionary measure No. 241-17

Matter of Víctor Hugo Saldaño regarding the United States of America¹
May 26, 2017

I. INTRODUCTION

1. On March 23, 2017, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “Commission,” or “IACHR”) received a request for precautionary measures from Mr. Juan Carlos Vega and Mrs. Lidia Guerrero (hereinafter “the applicants”), urging the Commission to request the United States of America (hereinafter the “United States” or “the State”) to adopt the necessary measures to protect the rights of Mr. Víctor Hugo Saldaño (hereinafter “the proposed beneficiary”), an Argentine citizen who is currently on death row, having been sentenced to capital punishment for a murder that occurred in 1995.

2. Having analyzed the submissions of fact and law offered by the applicants, the Commission considers that the information presented shows, *prima facie*, that there is a serious and urgent risk of irreparable harm to Mr. Saldaño's rights to life and humane treatment, in accordance with Article 25 of its Rules of Procedure. In weighing those aspects, the Commission has taken into account the solitary confinement and detention conditions in which Mr. Saldaño has been held for more than 20 years on death row, and that the possible execution of the death penalty would irreparably harm his right to life, making it impossible for the State to comply with the recommendations issued by the Commission in its report 76/16.² Consequently, the Commission hereby requests that the United States (a) adopt the measures necessary to protect the life and personal integrity of Víctor Hugo Saldaño; (b) refrain from carrying out the death penalty on Víctor Hugo Saldaño; (c) ensure detention conditions consistent with international standards; (d) provide appropriate medical attention for his state of mental health; and (e) adopt the measures in question in consultation with the beneficiary and his representatives.

II. SUMMARY OF FACTS AND LEGAL ARGUMENTS SUBMITTED

A. Background

3. On June 23, 1998, the Inter-American Commission on Human Rights received a petition presented by Juan Carlos Vega, Lidia Guerrero, and other persons against the United States of America. The petition was filed in the name of Víctor Hugo Saldaño, who was tried and sentenced to death in the state of Texas, where he remains on death row awaiting a final decision in the criminal process against him. On March 13, 2000, along with opening the petition for processing, the Commission granted precautionary measures in favor of Víctor Saldaño and requested the United States to guarantee his life and personal integrity until it had an opportunity to analyze the petition.

¹ In accordance with Article 17(2) of the Rules of Procedure of the IACHR, Commissioner James Cavallaro, a United States citizen, did not participate in the discussion or decision on this precautionary measure.

² This report is available at IACHR, Report No. 5/17, Case 12. 254, Víctor Saldaño (United States), January 27, 2017, para. 259.

4. On December 10, 2016, in the framework of its 160th session, the Commission adopted its report on the merits 76/16 in relation to the petition, in which it concluded that the United States is responsible for violating Articles I (right to life, liberty, to personal security and integrity), II (right to equality before the law), XVIII (right to a fair trial), XXV (right to protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man to the detriment of Víctor Saldaño. In addition, the Commission declared that if Víctor Saldaño were to be executed, the State would also be responsible for a serious and irreparable violation of the fundamental right to life, protected by Article I of the American Declaration. In that report, the Commission issued recommendations to the United States;³ that report was later published together with the Commission's conclusions and final recommendations in report 24/17 of March 18, 2017.⁴

5. Subsequently, as part of its monitoring of compliance with the recommendations issued in the report on the merits 76/16, the Commission held a working meeting on March 17, 2017, with Mr. Saldaño's representatives and the State. Mr. Saldaño's representatives reported on the status of the extraordinary appeals on which decisions are still pending and requested that the State adopt specific measures to comply with the Commission's recommendations. The State also provided information on pending proceedings and indicated that Mr. Saldaño had not exhausted all available remedies and that he still had access to remedies to safeguard his rights. The State did not provide any information about the measures that it had adopted to comply with the Commission's recommendations.

6. On March 23, 2017, the Commission received a new request for precautionary measures (MC-241-17) from the applicants in which they indicated that the State had not complied with the recommendations made by the Commission and that Mr. Saldaño remained on death row, which, they argued, posed a serious risk to his human rights.

B. Víctor Hugo Saldaño's death sentence and his situation on death row

7. When he was 24 years old, Víctor Saldaño, an Argentinian citizen, was in the United States. Following the kidnapping and murder of Mr. Paul King in November 1995, in Plano, Texas, Víctor Saldaño was arrested along with one other person and subjected to judicial proceedings for those offenses. Mr. Saldaño was found guilty of the crime of homicide and sentenced to death; he has been in solitary confinement on death row for more than 20 years. In the course of Mr. Saldaño's trial, his mental health was extensively discussed, particularly its worsening as a result of the circumstances of his incarceration.

³ Specifically that it:

1. Grant Víctor Saldaño effective relief, including the review of his trial and sentence in accordance with the right to equality before the law and the guarantees of fair trial and due process set forth in Articles II, XVIII and XXVI of the American Declaration. Taking into account the conclusions of the IACHR on the time Víctor Saldaño has been held on death row, the Commission recommends that his sentence be commuted, that he be transferred out of death row, that the State ensure that his conditions of detention are compatible with his human dignity and that due attention be given to his mental health.

2 Review its laws, procedures, and practices to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, II, XVIII, XV and XXVI thereof;

3. Ensure that the legal counsel provided by the State in death penalty cases is effective and adequately trained to serve in death penalty cases;

4. Given the violations of the American Declaration established in the present case and in others involving application of the death penalty, the Inter-American Commission also recommends to the United States that it adopt a moratorium on executions of persons sentenced to death.

See IACHR, Report No. 5/17, Case 12. 254, Víctor Saldaño (United States), January 27, 2017, para. 259.

⁴ IACHR, Report No. 5/17, Case 12. 254, Víctor Saldaño (United States), January 27, 2017.

8. What follows is a recapitulation of Mr. Saldaño's trial process based on the legal framework confirmed by the Commission in its report on the merits 5/17.⁵

9. The trial of Mr. Saldaño before the 199th District Court of the Judicial District of Collin County, Texas began on July 8, 1996. On July 11, 1996, the jury found Víctor Saldaño guilty of murder. A proceeding for deciding on the applicable punishment was then initiated, which was based, among other aspects, on whether it was probable, beyond a reasonable doubt, that Victor Saldaño would commit criminal acts of violence that would constitute a continuing threat to society.

10. As part of that determination, the jury heard statements from mental health experts, who gave their opinions on that probability. At this stage, information was received about various psychiatric tests conducted on Mr. Saldaño, including one from an expert appointed to conduct a psychiatric examination, who found that he had an intelligence quotient of 76, "below average." In the context of the jury's determination, the prosecution presented information about Victor Saldaño's race and nationality to the jury as relevant aspects on the probability of commission of future acts of violence.

11. On August 15, 1996, the 199th District Court of the Judicial District of Collin County, Texas found Víctor Saldaño guilty of the crime of murder committed on November 20, 1995 and imposed the death penalty.

12. On September 15, 1999, the Court of Criminal Appeals of Texas confirmed the conviction. In September 2004, following a federal habeas corpus application that alleged various violations of due process, the death sentence was set aside due to the presentation of Victor Saldaño's race and nationality as aspects relevant to the probability of commission of future acts of violence and a new proceeding was initiated to determine the sentence. By then, Victor Saldaño had already spent more than eight years on death row.

13. The new proceeding to determine the punishment to be imposed on Mr. Saldaño began before the same 199th District Court of the Judicial District of Collin County. Throughout that second trial, the prosecution and Mr. Saldaño's defense counsel argued that Victor Saldaño was not able to defend himself or to provide information for his defense. The defense also argued that Mr. Saldaño's behavior and mental health deterioration was the result of the 8 years he had spent on death row, from the first to the second trial, given that he spent 24 hours a day in his cell.

14. On November 18, 2004, after accepting the jury's decision, the 199th District Court handed down a judgment condemning Mr. Saldaño to the death penalty. An appeal against that decision was filed and denied and the imposition of the death penalty was upheld. Following a series of appeals, on June 6, 2007, the Court of Criminal Appeals of Texas confirmed the sentence.

15. Following that decision, in October 2009, Mr. Saldaño's defense filed a petition for federal habeas corpus relief, arguing, *inter alia*, (i) that due process had been violated by going forward with a judicial proceeding for which Víctor Saldaño was incompetent; (ii) that the new sentencing trial for Víctor Saldaño and his possible execution were unconstitutional due to his mental health; (iii) that Víctor Saldaño's mental health deteriorated as from the time of his transfer to death row in the *Polunsky Unit* in early 2000; (iv) that he had been depicted by the prosecution as a future danger to society based

See IACHR, Report No. 5/17, Case 12. 254, Víctor Saldaño (United States), January 27, 2017, para. 259.

⁵ IACHR, Report No. 5/17, Case 12. 254, Víctor Saldaño (United States), January 27, 2017, para. 259.

on the testimony of prison guards which concerned his bad conduct subsequent to the deterioration in his mental health on death row; and (v) that the Criminal Justice Department of Texas had hospitalized Víctor Saldaño in the Jester IV Psychological Unit various times, and at the time of the response he had again been hospitalized.

16. On July 18, 2016, the United States District Court for the Eastern District of Texas denied the habeas corpus petition, confirming the death penalty imposed. The aforementioned decision establishes that it is not subject to appeal. However, on August 10, 2016, Víctor Saldaño's defense filed a request for amendment of the decision of July 18, 2016 and for reconsideration of the non-appealable nature of the decision.

17. According to available information, Mr. Saldaño was hospitalized in the psychiatric hospital of the Texas penitentiary system at least four times: from March 20 to August 3, 2001; from May 18 to August 17, 2006; from September 25, 2007 to January 4, 2008; and from January 8 to April 22, 2009. Mr. Saldaño has been under psychological treatment for prolonged periods of time.

18. In addition, Mr. Saldaño has been in prolonged solitary confinement on death row for more than 20 years. Currently Mr. Saldaño is on death row at the Polunsky Unit, Texas. In that unit, solitary confinement conditions are severe: 23 hours a day locked up in a cell and one hour a day of individual recreation with absolutely no group contact. In addition to those general conditions, there are three degrees of custody that entail additional restrictions, one of which relates to visits. For at least several periods, Víctor Saldaño has been held under Level 3, the one with the most stringent restrictions.

III. ANALYSIS ON THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABLE HARM

19. The precautionary measures mechanism is part of the Commission's function of overseeing member state compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general oversight functions are set forth in Article 41(b) of the American Convention on Human Rights and in Article 18(b) of the IACHR's Statute; the precautionary measures mechanism is described in Article 25 of the Commission's Rules of Procedure. According to that Article, the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

20. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter the "Inter-American Court" or "I/A Court H.R.") have consistently held that precautionary and provisional measures have a dual nature: precautionary and protective. Regarding their protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR. Their precautionary nature aims at preserving those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the ordered reparations. As such, for the purposes of making a decision, and in accordance with Article 25(2) of its Rules of Procedure, the Commission considers that:

- a. "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American system;

- b. “urgent situation” refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

21. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the determination of whether a serious and urgent situation exists relies on a *prima facie* assessment based on the information provided.

22. Article 25.1 of the Rules of Procedure of the IACHR provides that precautionary measures, “whether related to a petition or not, shall concern serious and urgent situations presenting a risk of irreparable harm to persons or to the subject matter of a pending petition or case before the organs of the Inter-American system.”

23. The Commission notes that the purpose of the present request for precautionary measures (MC-241-17) is to obtain a pronouncement on the risk to Victor Hugo Saldaño's rights.⁶

24. The Commission considers that the requirement of seriousness is met by virtue of the severe impact on Mr. Saldaño's rights to life and humane treatment caused by the time that he has spent on death row and the possible enforcement of the death penalty, rendering compliance with the recommendations made by the Commission in its report 76/16 impossible.

25. In that regard, the Commission notes that, to this day, Mr. Saldaño remains on death row at the Polunsky Unit, Texas. Thus, he has been held in solitary confinement for more than 20 years, awaiting execution.

26. Regarding the way in which solitary confinement on death row impacts the rights to life and humane treatment, the United Nations Special Rapporteur on torture, Juan E. Mendez, has mentioned that:

Individuals held in solitary confinement suffer extreme forms of sensory deprivation, anxiety and exclusion, clearly surpassing lawful conditions of deprivation of liberty. Solitary confinement, in combination with the foreknowledge of death and the uncertainty of whether or when an execution is to take place, contributes to the risk of serious and irreparable mental and physical harm and suffering to the inmate. Solitary confinement used on death row is by definition prolonged and indefinite and thus constitutes cruel, inhuman or degrading treatment or punishment or even torture.⁷

27. The so-called “death row phenomenon” is widely known for the impact that it has on the rights of persons deprived of their liberty. In that connection, in *Soering v. United Kingdom*, the European Court

⁶ Although the Commission’s monitoring of the case concerns the State's compliance with the recommendations contained in the report on merits (as a result of the human rights violations declared in said report on the merits) and with the precautionary measure in effect since 2000, the Commission finds that this new request for precautionary measures refers to the situation of risk surrounding his rights at the present time and the irreparable nature of the harm that could be caused.

⁷ United Nations, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 9 August 2012, A/67/279, para. 48.

found that the “death row phenomenon” is characterized by a prolonged period of detention while awaiting execution, during which prisoners suffer severe mental anxiety in addition to other circumstances.⁸

28. Specifically, with regard to the impact the solitary confinement and prolonged stay on death row for Mr. Saldaño, in its report on the merits 76/16, the Commission identified the various aspects that were presented in the proceedings concerning his competency to stand trial based on his mental capacity and, in particular, the possible deterioration of his mental health as a result of the circumstances of his incarceration. Thus, for example, the Commission has been informed that (i) during the first trial information was received about various psychiatric tests conducted on Mr. Saldaño, including from an expert appointed to conduct a psychiatric examination, who found that he had an intelligence quotient of 76, so that he was a “borderline” case; (ii) the defense asked that the death penalty not be imposed, given that Mr. Saldaño’s emotional and cognitive deterioration was the result of the years he had spent on death row; and (iii) in the federal habeas corpus application filed in October 2009, the defense again referred to the deterioration in his mental health condition following his transfer to death row in the Polunsky Unit. It has also been brought to the Commission’s attention that Mr. Saldaño has been hospitalized at the Jester IV Unit, a psychiatric facility, on multiple occasions.

29. The information in the Commission’s possession suggests that the same risk factors that allegedly caused his mental health to deteriorate persist to this day. Specifically, prolonged solitary confinement with severe restrictions, the practical impossibility of contact with others and, coupled with that, the harm to mental health as a result of being held for more than 20 years on death row, circumstances similar to those that have been confirmed by other international human rights agencies as a form of torture or cruel, inhuman, or degrading treatment (see paragraphs 22 and 23 above).

30. Furthermore, Mr. Saldaño continues to be deprived of liberty in virtually constant solitary confinement with severe restrictions, compounded by the anxiety caused by the uncertainty of his situation. The Commission has already considered this factual framework in its report on the merits, leading it to find that “[a]ll these factors, taken together, demonstrate the extreme severity of the consequences suffered by Mr. Saldaño on death row to the present, which, in addition to being inhuman, cruel, unusual, and infamous, constitute a form of torture.”⁹

31. Finally, in relation to Mr. Saldaño’s particular circumstances, the Commission has considered the seriousness of the situation taking into account the impact of his time spent on death row and of the potential execution of the death penalty on his right to life, making it impossible for the State to comply with the recommendations set forth in the Commission’s report on merits 76/16, which recommended, among other things, that the State grant him “effective relief, including the review of his trial and sentence in accordance with the right to equality before the law and the guarantees of fair trial and due process.” Carrying out a death sentence in such circumstances would not only cause irreparable harm to the person but would also deny his right to petition the inter-American human rights system and to obtain an effective result, which would run counter to the fundamental human rights obligations of an OAS member state under the Charter of the Organization and the instruments deriving from it.¹⁰

⁸ See, IACHR, *The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition*, OEA/Ser.L/V/II. Doc. 68, December 31, 2011, p. 200. Available at: <http://www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf>

⁹ IACHR, Report No. 5/17, Case 12. 254, Víctor Saldaño (United States), January 27, 2017, para. 251.

¹⁰ See IACHR, Report No. 5/17, Case 12. 254, Víctor Saldaño (United States), January 27, 2017, para. 270. Also: IACHR, Report No. 81/11, Case 12.776, Merits, Jeffrey Timothy Landrigan, United States, July 21, 2011, para. 66; Report No. 52/01, Case No. 12.243, Juan Raúl Garza, United

32. Regarding the requirement of urgency, the Commission considers that it is met, to the extent that the risk to Mr. Saldaño's rights to life and humane treatment requires immediate measures against the severe solitary confinement conditions in which he is being held on death row and the possible execution of the death penalty in the near future.

33. Regarding the requirement of irreparable harm, the Commission deems it met, to the extent that the possibility of restrictions to the rights to life and humane treatment constitutes the utmost risk of irreparable harm.

34. The Commission wishes to recall that pursuant to Article 25(5) of its Rules of Procedure “[p]rior to the adoption of precautionary measures, the Commission shall request relevant information [from] the State concerned, except where the immediacy of the threatened harm admits of no delay.” In the present matter, the Commission considers it unnecessary to request additional information from the United States, since the State is well aware of Mr. Saldaño's situation from the precautionary measures in effect since 2000, the monitoring of the recommendations contained in the merits report 76/16, and the most recent working meeting held in March 2017. Furthermore, the Commission is not aware of any information regarding measures intended to redress Mr. Saldaño's situation.

IV. BENEFICIARIES

35. The Commission considers the beneficiary of the present precautionary measures to be Víctor Hugo Saldaño, who is duly identified in the framework of this proceeding.

V. DECISION

36. In view of the foregoing, the IACHR considers that *prima facie* this matter meets the requirements of gravity, urgency and irreparability set forth in Article 25 of its Rules of Procedure. Consequently, the Commission hereby requests that the United States (a) adopt the measures necessary to protect the life and personal integrity of Víctor Hugo Saldaño; (b) refrain from carrying out the death penalty on Víctor Hugo Saldaño; (c) ensure detention conditions consistent with international standards; (d) provide appropriate medical attention for his state of mental health; and (e) adopt the measures in question in consultation with the beneficiary and his representatives.

37. The Commission also requests that the Government provide information within a period of 20 days from the date that the present resolution is issued on the adoption of the precautionary measures indicated and provide updated information periodically.

38. The Commission notes that these precautionary measures take into account the context set out in merits report 76/16, in which it determined that the State is responsible for the violations established against the rights of victor Saldaño. The foregoing notwithstanding, the precautionary measures mechanism is a separate procedure governed by Article 25 of the Commission's Rules of Procedure.

States, Annual Report of the IACHR 2000, para. 117; IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Doc. OEA/Ser.L/V/II.11doc.21 rev. (April 6, 2001), para. 71 and 72. See also: International Court of Justice, *Case re. the Vienna Convention on Consular Relations (Germany v. United States of America)*, Request for the Indication of Provisional Measures, Order of March 3, 1999, General List, No. 104, para. 22-28; United Nations Human Rights Committee, *Dante Piandiong et al. v. Philippines*, Communication No. 869/1999, UN Doc. CCPR/C/70/D/869.

Therefore, the granting and adoption of precautionary measures do not constitute a decision on the merits of this matter, but have as its objective the protection of the rights that are at risk.

39. The Commission requests that the Executive Secretariat of the Inter-American Commission notify the United States and the applicants of the present resolution.

40. Approved on May 26, 2017, by: Francisco Eguiguren Praeli, President; Margarete May Macaulay, First Vice-President; Esmeralda Arosemena de Troitiño, Second Vice-President; José de Jesús Orozco Henríquez; Paulo Vannuchi; Luis Ernesto Vargas Silva, members of the IACHR.

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