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CASE 12.832

REPORT ON THE MERITS (PUBLICATION)

GREGORY THOMPSON
UNITED STATES OF AMERICA

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I. INTRODUCTION

1. On March 9, 2004, the Inter-American Commission on Human Rights (hereinafter the “Commission”) received a petition¹ from Michael J. Passino and Marjorie Bristol of the *Tennessee Justice Center* (hereinafter, “the petitioners”) against the Government of the United States of America (hereinafter the “State” or “United States”). The petition was presented on behalf of Gregory Thompson (hereinafter, “Mr. Thompson”), who was sentenced to death on August 22, 1985, and subsequently died of natural causes in Tennessee State prison on November 27, 2014.

2. The Commission approved its admissibility report No. 132/11 on October 19, 2011,² and by note of November 10, 2011, notified the report to the parties, placing itself at their disposition to reach a friendly settlement. The parties were allocated the time periods provided for in the IACHR’s Rules of Procedure to present additional observations on the merits of the case. All of the information received by the IACHR was duly transmitted to the parties.

II. POSITIONS OF THE PARTIES

A. Petitioners

3. According to the petition, Mr. Thompson, an African-American man diagnosed with several psychotic disorders and who suffered from active delusions even while on medication, was convicted for murder and sentenced to death. Petitioners allege that, in Mr. Thompson’s mind, he and his co-defendant, a teenage white female, were on the run from the Ku Klux Klan the day of the murder.

4. The petitioners’ main claim is the initial disregard by state attorneys and inconsistent judicial treatment of the alleged mental incapacity of Mr. Thompson, who they claim had been diagnosed with bipolar affective disorder, schizo-affective disorder, and schizophrenia. They point out that this severe mental illness has been documented by professionals of the state over nearly a twenty year period. The petitioners contend that the state of Tennessee violated Mr. Thompson’s due process rights by withholding information from the courts and the defense about the existence and severity of his mental illness and that the alleged victim’s trial counsel did not provide effective representation. Further, that executing someone who is mentally incompetent is inconsistent with due process and with the prohibition against cruel, infamous, and unusual punishment.

5. Specifically, the petitioners argue that the prosecutor misled the jury during the court proceeding by failing to disclose available evidence concerning Mr. Thompson’s mental incapacity. It is maintained that the records at the State’s disposal would have described a significant history of psychosis and the need for multiple medications. The petitioners assert that during the state post-conviction proceedings, the prosecutors repeatedly claimed that the alleged victim was not suffering from any mental illness whatsoever and that he was competent to be executed. This, notwithstanding prison records showing that state-employed professionals had diagnosed Mr. Thompson with schizophrenia, visual and auditory hallucinations, and paranoia and that he had been treated with psychotropic medications and psychotherapy. It is added that not only did the prosecutors fail to provide this information to the defense as required by law, they also presented false or misleading information to the court regarding the alleged victim’s mental health. Finally, they claim that this conduct violated Mr. Thompson’s right to a fair and comprehensive review of his conviction.

6. In relation to the alleged inefficacy of trial counsel, the petitioners assert that the attorneys that represented the alleged victim during the trial had never litigated a death penalty case before. They add that the attorneys lacked the necessary expertise to identify an appropriate mental health professional to evaluate Mr. Thompson. Instead of a psychiatrist, they chose an industrial psychologist who performed vocational evaluations and testified at trial that the alleged victim could perform a job in prison. The petitioners point out that industrial psychologists are not trained to determine whether a person’s mental illness affects his or her

¹ On March 31, 2004, the IACHR granted precautionary measures on behalf of Gregory Thompson pursuant to Article 25(1) of its Rules of Procedure and requested the United States to take the measures necessary to preserve his life and physical integrity so as not to hinder the processing of his case before the Inter-American system.

² IACHR Report No. 132/11. Petition P-194-04. Admissibility. Gregory Thompson. United States. October 19, 2011.

ability to understand legal proceedings or the impact of that illness on the commission of the crime. The petitioners assert that state appointed counsel's failure to request appropriate expert evidence on psychological health of Mr. Thompson resulted in an omission of findings of actual mental health problems that were discovered by Brad Fisher ("Fisher"), Ph. D a licensed clinical psychologist and Dr. James Merikangas ("Merikangas"), a psychiatrist and neurologist. The petitioners conclude that because the attorneys did not know how to identify an appropriate expert in the case, the jury was denied the opportunity to hear convincing evidence about the severity of the alleged victim's mental illness.

7. The petitioners also assert that Mr. Thompson did not receive an impartial trial by a jury of his peers when the State improperly excluded a juror based on race and made improper race-based comments during the trial which biased the trial and rendered it fundamentally unfair.

8. Based on the foregoing, the petitioners claim that the state of Tennessee and the United States violated the rights enshrined in Articles I, XVIII, and XXVI of the American Declaration to the detriment of Mr. Thompson.

B. State

9. The State argues that Mr. Thompson's competency to be executed had been reviewed and upheld by state and federal courts and most importantly, remained under review at the time of the filing of the petition. It also asserts that the extensive legal file at the state and federal levels shows that Mr. Thompson's right to due process had been respected.

10. The State provides that, after a series of appeals during post-conviction, in June 2004 the U.S. Sixth Circuit Court of Appeals found that the Tennessee Supreme Court had misapplied the law with regards to the question of whether or not Mr. Thompson was competent for execution, and remanded the case to the federal court for a new evidentiary hearing on Mr. Thompson's mental state at the time the crime was committed and to address the ineffective assistance of counsel claims. On remand, the U.S. District Court for the Eastern District of Tennessee rejected all four claims on ineffective assistance of counsel and stayed the competency hearing until all appeals were completed.

11. In its observations on the merits the United States noted that Mr. Thompson was still exercising his substantial rights and that, if he did not succeed in challenging his conviction and sentencing on the ground of ineffective assistance of counsel, the federal district court would then take up the claim of mental incompetence under the standard announced by the Supreme Court in *Panetti*. Therefore, the State asked the Commission to suspend its consideration of the merits of the case unless and until the petitioners demonstrate that Mr. Thompson has exhausted all domestic remedies.

12. Finally, the State also argues that the Commission lacks the authority to request precautionary measures of States that have not ratified the American Convention, essentially because the provision governing such measures is contained in the Commissions' Rules rather than in its Statute.

III. FINDINGS OF FACT

13. In application of Article 43(1) of its Rules of Procedure, the IACHR will examine the arguments and evidence provided by the petitioners and the State. Likewise, the Commission will take into account publicly available information that may be relevant to the analysis and decision of the instant case.

A. Factual background

14. On December 29, 1984, Mr. Thompson and Joanne McNamara, a juvenile female, traveled by bus from Marietta, Georgia, to Shelbyville in Bedford County, Tennessee. On the afternoon of January 1, 1985, Brenda Lane, made several purchases at Walmart, and did not arrive home as expected. Shortly after midnight her yellow Chevrolet was reported on fire near an apartment building in Marietta, Georgia. Mr. Thompson and Ms. McNamara were arrested by Cobb County authorities in connection with this investigation on the night of January 2, 1985. A traffic ticket in Mr. Thompson's jacket showed he had been cited for speeding, while driving

Mrs. Lane's vehicle. A Wal-Mart receipt and several items in the vehicle indicated a purchase at that store at 5:51pm, January 1, 1985. A button found in the car matched those on Mr. Thompson's clothing.³

15. A few hours later, while in custody Mr. Thompson gave a statement admitting that he had abducted a woman at knifepoint from the Wal-Mart location in Shelbyville, forced her to drive him and his companion to a remote location outside Manchester, Tennessee, where he stabbed her to death. On January 3, 1985, a team of searchers following Mr. Thompson's directions found Brenda Lane's body at the place indicated in his statement.⁴

B. Trial, death sentence and direct appeal

16. According to the Supreme Court of Tennessee, Mr. Thompson's defense presented no proof in the conviction phase of trial. At the sentencing hearing the prosecution relied on its proof at the conviction phase. Mr. Thompson "presented several witnesses who presented an unchallenged picture of him as a non-violent, cooperative, responsible young person through his school years, until he joined the Navy, and rather ambiguous behavior during his military service." Dr. George Copple, a clinical psychologist who had interviewed and tested Mr. Thompson, testified about his personality and capabilities for employment in prison. In Dr. Copple's opinion, "Mr. Thompson had a strong need for nurturance (to meet the needs of other persons). This protective attitude toward Mc.Namara, plus a feeling that his options were limited had played a part in the killing. To this expert Defendant seemed remorseful, was not a 'con artist' or malingerer, and did not have an adult anti-social personality."⁵

17. In rebuttal of Dr. Copple's testimony, the prosecution presented the deposition of Dr. Robert Glenn Watson, a clinical psychologist at the Middle Tennessee Mental Health Institute (MTMHI), who had participated in a staff evaluation of Mr. Thompson shortly after his arrest. In his opinion, Mr. Thompson exhibited an adult anti-social behavior, was not remorseful and showed little or no emotion about the crime; further that during the period of evaluation, Mr. Thompson appeared to 'malinge' schizophrenia, claimed to hear voices, and falsely claimed he was unable to read and write although he had attended college level courses in Hawaii and been a B student in high school.⁶

18. On August 22, 1985, a Coffee County Circuit Court jury in Tennessee sentenced Mr. Thompson to death after finding him guilty of first-degree murder of Brenda Lane. In imposing the death penalty, the jury found three aggravating circumstances; that the murder was especially heinous, atrocious or cruel in that it involved torture or depravity of mind; the defendant committed the murder for the purpose of avoiding or preventing his lawful arrest and prosecution; and the murder was committed while the defendant was engaged in committing robbery or kidnapping.

19. On direct appeal, issues on the effective assistance of counsel, the composition and selection of the jury, the admissibility of evidence, and the constitutionality of the statute and jury instructions under which Mr. Thompson was sentenced, were presented. Mr. Thompson claimed his attorneys were disqualified by a conflict of interest; as both trial court appointed counsel quickly moved to withdraw. Mr. John W. Rollins withdrew as he was the Coffee County Attorney, and Mr. H. Thomas Parsons withdrew as he was representing the Coffee County Sheriff in an unrelated civil matter in federal district court. Mr. Doyle Richardson was substituted as Co-counsel and moved to have Mr. Parsons re-appointed asserting the conflict had been resolved by settlement of the civil suit. The court reasoned the conflict claimed was only potential and quite remote; and it was resolved before trial. Further, that no prejudice was apparent from counsel's lack of experience in capital cases or from Mr. Rollins non-participation or from inadequate compensation.⁷

20. The motion to quash the indictment on grounds that the jury was not impaneled, and its foreman appointed according to the Tennessee Criminal code, was denied as in the absence of corruption, fraud, bias,

³ State v Thompson, 768 S.W.2d 239 (1989).

⁴ State v Thompson, 768 S.W.2d 239 (1989).

⁵ State v Thompson, 768 S.W.2d 239 (1989).

⁶ State v Thompson, 768 S.W.2d 239 (1989).

⁷ State v Thompson, 768 S.W.2d 239 (1989).

disqualification, or other illegality infecting the grand jury, an irregularity in its selection did not invalidate its acts. The court explained that the statute relied on “is plainly a directive to order the administrative duties of the judges within their judicial districts” and “is for the benefit of the public at large not a particular accused.”⁸ The court did not find the representation either unfair or unreasonable, and that the use of a voter registration list was not a “political test”, and there was no data to show it was an inadequate or discriminatory source of names of potential jurors. The court found that any error in not excusing jurors was harmless because the jurors were not forced upon the defendant, and that Mr. Thompson showed no denial of equal protection in the State’s peremptory challenge of the single black person called for examination in the *voir dire*. Moreover, the court found that the only evidence of discrimination was the challenge of the only black person seated which the court did not decide on as it deemed the State provided a satisfactory explanation.⁹

21. The court reasoned the record was sufficient to establish that the murder was committed to prevent the lawful apprehension of the defendant and his companion. Similarly, that the proof established an especially cruel murder involving torture or depravity of mind, considering the distance the victim was driven, was stabbed multiple times, and the statement that the defendant drove over the victim presumably to ensure her death, indicated a “callous disregard for life”, contradicting evidence that he felt remorse.¹⁰

22. The court provided in brief that the Tennessee capital sentencing procedure is not unconstitutional and the State is properly permitted final argument; and jury qualified on capital sentencing issues is not incompetent to determine the guilt or innocence of the accused. The court found that the sentence of death was not imposed in an arbitrary fashion; that the evidence supports the jury’s findings of three statutory aggravating circumstances; and that the evidence supports the jury’s finding of the absence of any mitigating circumstances sufficiently substantial to outweigh the aggravating circumstances found.¹¹ The Supreme Court of Tennessee affirmed Mr. Thompson’s conviction and sentence.

23. The United States Supreme Court denied Mr. Thompson’s petition for a writ of certiorari in 1990.¹²

C. Petition for post-conviction relief

24. On October 16, 1990, defense counsel filed Mr. Thompson’s original petition for post-conviction relief in the Coffee County Criminal Court, claiming, *inter alia*, ineffective assistance of trial counsel. He alleged that trial counsel failed to: (1) adequately investigate Thompson’s background and personal and medical history for the existence of mitigating evidence; (2) request and obtain expert and investigative assistance regarding Mr. Thompson’s head injuries or to obtain adequate expert assistance regarding his competency at the time he made incriminating statements to the police; (3) failure to cross-examine numerous witnesses at trial and to challenge the prosecutor’s implication to the jury during closing arguments that Mr. Thompson was required to present a defense; (4) request additional time to prepare witnesses, such as Arlene Cajulao, during the penalty phase of the trial; (5) adequately investigate Mr. Thompson’s military career, therefore improperly raising the issue of his good character and opening the door for the prosecution to admit damaging information about him.¹³

25. On February 1, 1991, post-conviction counsel filed a motion for funds to hire a licensed psychologist or psychiatrist and an investigator to assist in the preparation of the case for post-conviction relief. Counsel submitted the affidavit of Dr. Gillian Blair, a licensed psychologist who stated that Mr. Thompson was in need of a full psychological evaluation. After reviewing Mr. Thompson’s post-incarceration medical records, she stated that, if Mr. Thompson was found to be suffering from neurological or psychological impairment, it would be likely that some degree of such impairment would have existed at the time of the offense and would have

⁸ State v Thompson, 768 S.W.2d 239 (1989).

⁹ State v Thompson, 768 S.W.2d 239 (1989).

¹⁰ State v Thompson, 768 S.W.2d 239 (1989).

¹¹ State v Thompson, 768 S.W.2d 239 (1989).

¹² Thompson v Tennessee, 497 U.S. 1031 (1990), as quoted in Gregory Thompson v State of Tennessee, No. MI987-00067-SC-DPE-DD, April 8, 2004.

¹³ Thompson v. Bell. 315 F.3d 566 (2003).

been a significant factor in determining whether or not he was able to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law when he committed the homicide.

26. The state trial court conducted an evidentiary hearing on March 27 and 29, 1995. Both of Mr. Thompson's trial counsel testified. Defense attorney Parsons testified that he knew about the head injuries, he also acknowledged that trial counsel attempted to, but did not obtain, all of Mr. Thompson's medical records. He indicated that trial counsel did not present evidence at trial of Mr. Thompson's head injuries because they would have to have some expert proof and they did try to have him tested through the State. Parsons denied that trial counsel failed to pursue the head injury theory, although he conceded that they may have not pursued it enough. Co-counsel Richardson testified that Mr. Thompson told counsel about his head injuries and that they followed up on that by hiring Dr. Copple, a clinical psychologist, who gave him a battery of tests. He acknowledged that the team at MTMHI found no evidence of organicity, but added that they wanted a psychiatrist of their own but were not successful in trying to hire a psychiatrist. Co-counsel Richardson stated: "[w]e went with one strategy and probably if we had to do it over again, would go with the other strategy because that one didn't work." He further stated that they could have probably found a psychiatrist to say Mr. Thompson had brain damage.

27. Dr. Gillian Blair testified that, based on the review of Mr. Thompson's medical record, she formed the following opinion:¹⁴

[...] since 1985, Mr. Thompson had shown a deteriorating mental status. He had become psychotic. He had been treated with anti-psychotic medication at that time. He was treated with Haldol, Cogentin, and Lithium, and three different treating psychiatrists at that time: Dr. Dyer [sic], Dr. Deal, and Dr. Humble had all over the years from 1985 to 1990 had diagnosed him as either having bipolar disorder or a schizo affective disorder or schizophrenia. They described his agitated behavior. They described his hostility. They described his inappropriate affect, his experience of auditory hallucinations, his delusions, his paranoia, his thoughts of persecution. He had attempted suicide on a couple of occasions. He had set fire to his cell burning both his hands and his face. They had certainly — two of those psychiatrists and maybe all three of them had considered the possibility that he was malingering, that he was faking mental illness and throughout their Riverbend records, it was clear that those psychiatrists had discounted the possibility of malingering because they didn't feel that it accounted for all of the psychotic symptoms they saw in him. When asked what other facts would be necessary for her to develop an opinion as to Thompson's condition at the time of the offense, Blair stated that the most important thing that would be necessary would be a full history and full medical records of Mr. Thompson prior to the commission of the offense. She added: From the records I was able to review, it was clear that the social history was very sketchy in terms of his remote history, his childhood and his upbringing, and also family history of mental illness. There seemed to be a [sic] strong evidence to suggest that there was mental illness in his family, probably in his father who committed suicide and was known to be extremely violent and possibly in his mother but none of those records were available. She therefore stated that she did not have an opinion about Thompson's diagnostic status in 1985.

28. On May 15, 1995, the post-conviction court denied Thompson's claim, including his ineffective assistance of counsel claim and his request for funding to hire an expert. The court found:¹⁵

1. Defense counsel made an adequate investigation of their client's background and prior medical history. Present counsel presented no proof of mental problems on the part of Mr. Thompson that would have been a defense to the charge, or that would constitute a shield against execution.
2. Counsel did not seek expert and investigative assistance regarding alleged head injuries to Mr. Thompson during his youth, or to testify as to his incompetency at the time of his confession, because the facts and circumstances did not indicate the necessity for such action.
3. Counsel did not fail to present an adequate defense at trial. The facts simply left them with no effective defense.

29. Mr. Thompson appealed to the Tennessee Criminal Court of Appeals. He alleged that his trial attorneys were ineffective for failing to (1) interview witnesses who could have aided in his defense, especially during the penalty phase, (2) adequately investigate his prior head injuries, and (3) adequately prepare the defense witnesses. The Tennessee Criminal Court of Appeals affirmed.¹⁶

¹⁴Thompson v. Bell, 315 F.3d 566 (2003).

¹⁵Thompson v. Bell, 315 F.3d 566 (2003).

¹⁶Thompson v. State, 958 S.W.2d 156 (Tenn.Crim.App.1997).

30. The court concluded that Mr. Thompson failed to demonstrate any psychological impairment that may have existed which would have constituted mitigating evidence or that his alleged head injuries had any effect upon his mental stability at the time of the murder. As for Mr. Thompson's claim that trial counsel were ineffective for failing to interview witnesses to show that his head injuries might have contributed to his commission of the crime, including among others, his step-father, attorney in the military, and the mother of his co-defendant, the court found that he was unable to show prejudice because none of the witnesses testified at the post-conviction hearing. Regarding the failure to investigate alleged head injuries, the Tennessee Court of Criminal Appeals held:¹⁷

Having determined there is a duty to investigate whether any psychological impairments might qualify as mitigating evidence, we nonetheless conclude that the petitioner has failed to demonstrate any prejudice from the failure of trial counsel to further investigate the head injuries. The petitioner has failed to establish that the head injuries had any effect upon his mental stability at the time of the murder. Further, he has failed to establish that any type of psychological impairment in general may have existed which would have been mitigating evidence. Because Dr. Blair declined to give an opinion on these important issues, the evidence does not preponderate against the trial court's finding that the defense attorneys were not ineffective. The decision not to further pursue the head injuries in the penalty phase of the trial also qualified as a reasonable strategy. Trial counsel's decision to emphasize the petitioner's positive qualities rather than to suggest brain damage, while unsuccessful, was based upon adequate investigation. [T]he fact that a particular strategy or tactic failed or even hurt the defense does not, alone, support a claim of ineffective assistance. Deference must be given to an informed trial strategy [...] Because two experts did not detect brain damage, counsel cannot be faulted for discarding a strategy that could not be supported by a medical opinion.

31. The Tennessee Court of Criminal Appeals further rejected Mr. Thompson's claim that trial counsel did not properly prepare defense witnesses to testify, particularly, Arlene Cajulao, thereby permitting the state to inquire about his negative military history. The court found:

At the post-conviction hearing, Attorney Parsons recalled wishing that he had more time to meet with the witness. He testified that his strategy at trial was to humanize the petitioner by calling sympathetic witnesses. He was aware of the state's opportunity to rebut any positive testimony about the petitioner and conceded that his only other option would have been to present no mitigating evidence at all. Attorney Richardson testified that [t]here were certain witnesses that we had to face a problem of them bringing up the problems that he had in the Navy. He realized that the cross-examination of Ms. Cajulao might be risky but didn't realize we would have it to the extent that it ended up we had [...] In our view, defense counsel's awareness of the possible dangers inherent in the cross-examination and their decision to present her positive testimony anyway was a classic tactical decision. Because the strategy was based upon adequate preparation, this court must not second guess [...] Moreover, there is nothing in the record to suggest that additional preparation time with the witness could have prevented the state from effectively cross-examining her. If Ms. Cajulao were to testify at all to the petitioner's prior military background, the state would be entitled to rebut that testimony. In summary, we cannot hold that the evidence preponderated against the finding of the trial court that trial counsel had performed effectively.

32. Lastly, the Tennessee Court of Criminal Appeals rejected Mr. Thompson's ineffective assistance of counsel based on the claim that trial counsel opened the door to damaging evidence at the penalty phase. Mr. Thompson had complained that the state was allowed to present damaging evidence in rebuttal through Dr. Watson because trial counsel asked Dr. Copple about his good qualities. The Tennessee Court of Appeals reasoned:¹⁸

Attorney Richardson admitted, I frankly did not know that ... the [s]tate could use information given by the defendant to a psychiatrist. Attorney Parsons testified that their strategy was to emphasize positive attributes of the petitioner and show the jury that he could lead a productive life in prison. Dr. Copple's testimony played a key role in this strategy. Although both trial attorneys apparently were surprised by the fact that the state could use the information acquired by MTMHI, Attorney Parsons did acknowledge that he knew that positive testimony by Dr. Copple would open the door for the state to present negative information. Again, the petitioner has failed to establish any prejudice by whatever deficiency there may have been in the performance of counsel. The evidence does not preponderate against the finding that the sentence would have been different if the attorneys had known the information collected by MTMHI would have been admissible. In our view, trial counsel had little choice other than to call Dr. Copple in an effort to establish adequate mitigating circumstances. Even if there had been proof

¹⁷ Thompson v. State, 958 S.W.2d 156 (Tenn.Crim.App.1997).

¹⁸ Thompson v. State, 958 S.W.2d 156 (Tenn.Crim.App.1997).

that trial counsel should have pursued a different strategy, there has been no indication that another strategy would have been more effective. Because the jury found three aggravators, we cannot conclude that the outcome would have been any different if the jury had not heard the evidence concerning the testing by MTMHI. If any witness testified to the petitioner's good character, the state would have been entitled to rebuttal. The only other option would have been to present no proof at all. As Attorney Richardson noted, the petitioner had a relatively productive background; the failure to present some evidence of his prior good behavior might have qualified as ineffective assistance.

33. The Tennessee Supreme Court denied Mr. Thompson's application for permission to appeal on October 20, 1997.¹⁹

D. Federal habeas corpus and incompetency petitions

34. In 1998, a petition for a writ of habeas corpus was filed; the District Court granted summary judgment to the State and dismissed the petition on February 17, 2000.²⁰ The Sixth Circuit United States Court of Appeal, in a split decision producing three different opinions, affirmed the dismissal of Mr. Thompson's petition on January 9, 2003. The United States Supreme Court denied Mr. Thompson's certiorari petition on December 1, 2003 and denied his petition for rehearing on January 20, 2004.²¹

35. On January 21, 2004, the State filed a motion requesting that the Tennessee Supreme Court schedule Mr. Thompson's execution.²² In response to this motion, on February 2, 2004, Mr. Thomson raised the issue of his competency to be executed and requested a hearing. On February 25, 2004, the Tennessee Supreme Court set an execution date of August 19, 2004, but remanded the issue of Mr. Thompson's competency to the trial court, the Coffee County Circuit Court, to determine whether Mr. Thompson had made a threshold showing sufficient to warrant an evidentiary hearing on the issue of his present competency to be executed.²³

36. Mr. Thompson requested an evidentiary hearing to determine his incompetency, and submitted with his motion his prison medical records, along with the reports of three mental health experts, John S. Rabun ("Dr. Rabun"), George W. Woods, Jr. ("Dr. Woods"), and Dr. Faye E. Sultan ("Dr. Sultan"). The medical records showed that Mr. Thompson had "engaged in self-destructive acts from the time his incarceration began, including swallowing poison, cutting his wrist and arms, and burning his hand and face."²⁴ The records showed that in 1989, prison doctors diagnosed Mr. Thompson on two different occasions as "schizophrenic, paranoid type" and as "having "bipolar affective disorder."²⁵ Further, the records showed that "in 1995, a prison doctor deemed Mr. Thompson a 'mental health emergency'; the "doctor's report noted that 'voluntary ... medication' had been 'ineffective[.]'"²⁶ Evidence was also presented that "in 2001, the state had petitioned a Tennessee court for the appointment of a conservator to make decisions on Mr. Thompson's behalf regarding his mental health and medical treatment."²⁷ One expert opined that Mr. Thompson has consistently been psychotic over the past 18 years, with symptoms of psychosis, and particularly that his delusions persisted in spite of antipsychotic medication.²⁸ These opinions stemmed from referenced factors suggestive of his lack of capacity, such as:

- a. a delusional belief about buried money and how it could be used as a "mitigator" to "prove" he could care for himself and would not "steal like a criminal."

¹⁹Thompson v. State, 958 S.W.2d 156 (Tenn.Crim.App.1997).

²⁰ State response submitted June 24, 2004.

²¹ Thompson v Bell Nos. 06-5744/5770, United States Court of Appeals for the Sixth Circuit, September 11, 2009, 'Background'; Thompson v. Bell, 373 F.3d 688, 692 (6th Cir. 2004).

²² Gregory Thompson v State of Tennessee, No. MI987-00067-SC-DPE-DD, April 8, 2004.

²³ Gregory Thompson v State of Tennessee, No. MI987-00067-SC-DPE-DD, April 8, 2004.

²⁴ Thompson v Bell Nos. 06-5744/5770, United States Court of Appeals for the Sixth Circuit, September 11, 2009, 'Thompson's Incompetency Petition'.

²⁵ Thompson v Bell Nos. 06-5744/5770, United States Court of Appeals for the Sixth Circuit, September 11, 2009, 'Thompson's Incompetency Petition'.

²⁶ Thompson v Bell Nos. 06-5744/5770, United States Court of Appeals for the Sixth Circuit, September 11, 2009, 'Thompson's Incompetency Petition'.

²⁷ Thompson v Bell Nos. 06-5744/5770, United States Court of Appeals for the Sixth Circuit, September 11, 2009, 'Thompson's Incompetency Petition'.

²⁸ Declaration of Michael B. First, clinical psychiatrist, licensed to practice in the State of New York.

- b. delusional statements about his naval career and how it is connected to his trial, which suggested that he lacked the capacity to appreciate why a jury of his peers sentenced him to death.
- c. delusional discussions about how the navy should be involved in his case and how obvious delusional evidence could aide him, suggested that he perceives that he could receive another trial for the instant matter; further his discussions suggested that he holds magical, near child-like reasoning about possible avenues of appeal in the present case.
- d. a delusional perception that he would not be executed, suggested that although he knew his sentence was death, he did not appreciate that the State of Tennessee could legally execute him; he therefore lacked the capacity to understand that his legal execution was approaching and lacked the capacity to prepare himself for his death with a rational frame of mind.
- e. Thompson's explanation for wanting the electric chair being: "I am used to being shocked, every time I touch my TV I get shocked..." suggested a lack of capacity to appreciate the finality of the execution process.
- f. Thompson's statement that he would be "discharged" from prison suggested that his mental disease had caused him to be unaware of the punishment he was scheduled to suffer.
- g. statements about being a "Klinton" and going to "Valhalla" suggested he lacked the capacity to rationally prepare himself for his own death.
- h. discussions about why the State of Tennessee could not execute him suggested that due to his mental disease, he lacked the capacity to rationally perceive the connection between his crime and the punishment imposed by the State.

37. On March 8, 2004, the trial court denied the incompetency petition without holding an evidentiary hearing, finding the requisite threshold had not been met as the three experts "demonstrate clearly that Mr. Thompson is presently aware that he is under a death sentence for the murder of Brenda Lane under the 'cognitive' standard established by the Supreme Court."²⁹

38. Mr. Thompson challenged the trial court's order denying a hearing on the issue of his competency to be executed. In this motion before the Tennessee Supreme Court he alleged that the trial court erred in concluding that he failed to make a threshold showing sufficient to warrant a hearing. Also, on April 2, 2004, Mr. Thompson filed a document entitled "Notice of the Inter-American Human Rights Commission of the Organization of American States Request of the United States to Take Precautionary Measures to Prevent the State of Tennessee from Carrying out the Execution of Gregory Thompson Presently Scheduled for August 19, 2004 and Request for Stay of Execution."³⁰

39. On May 12, 2004, the Tennessee Supreme Court affirmed the trial court's judgment. With regard to the precautionary measures granted by the IACHR, the court, citing *Garza*, 253 F.3d, ruled that "international agreements, even those benefitting private parties, do not create rights privately enforceable in domestic courts," that the American Declaration "creates no judicially cognizable rights for individuals" and "rather, it is an aspirational document, imposing no enforceable obligation on any member nation of the Organization of American States." The court further concluded that the Commission's Statute provides that the Commission's authority as to complaints against countries that have not ratified the American Convention on Human Rights is limited to making recommendations for what it might consider more effective observance of human rights. The court, based on a number of precedents,³¹ concluded that the request for precautionary measures "is simply a "request" which has no binding effect on either the United States government or [the Tennessee Supreme Court]" and denied Mr. Thompson's motion requesting a stay of execution to allow the Commission time to consider his petition.³²

²⁹ Thompson v Bell Nos. 06-5744/5770, United States Court of Appeals for the Sixth Circuit, September 11, 2009, 'Thompson's Incompetency Petition'.

³⁰ Thompson v State 134 S.W.3d 168, 179 (Tenn. 2004). Exhibit of petitioner's submission of May 20, 2004.

³¹ The Tennessee Supreme Court cited *Garza*, 253 F.3d; *Roach v. Aiken*, 781 F.2d 379; 380 (4th Cir. 1986), *Jamison v. Collins*, 100 F. Supp. 2d 647, 766 (S.D. Ohio 2000); *Philip R. Workman v. State*, No. M1999-1334-SC-DPE-PD, Order (Tenn. Filed Mar. 29, 2001); and *Workman v. Sundquist*, 135 F. Supp. 2d 871, 872 (M.D. Tenn 2001).

³² Thompson v State 134 S.W.3d 168, 179 (Tenn. 2004). Exhibit of petitioner's submission of May 20, 2004.

40. With regard to the competency petition, the Tennessee Supreme Court concluded, after a *de novo* review, that the trial court correctly held that Mr. Thompson failed to make a threshold showing sufficient to warrant a hearing on his competence for execution. Accordingly, the court held that “[t]he trial court did not err in concluding that Thompson failed to meet the threshold showing for an evidentiary hearing by establishing that there are genuine issues regarding his present competency to be executed.” It stated that a prisoner need only be aware of “the *fact* of his or her impending execution and the *reason* for it” to satisfy the competency required for execution of the death sentence”. The court reasoned that, although the reports indicated Mr. Thompson suffered from schizophrenia, chronic undifferentiated type, they did not indicate that he was unaware of his impending execution and the reason for it.³³

41. On June 14, 2004, Mr. Thompson filed a federal habeas corpus petition challenging the State court’s competency ruling and on June 21, 2004, the district court stayed Mr. Thompson’s execution pending the outcome of the petition.³⁴

42. In 2004 Judge Suhrheinrich, of the Sixth Circuit Court, conducted *sua sponte* a second, thorough review of the record and came to the conclusion that the facts as adduced in deposition testimony, not part of the district court record, supported the granting of the writ filed in 1998. The court concluded that, “upon reviewing the deposition of Dr. Faye Sultan, and investigating the procedural complications of this case, it is clear that this extremely probative testimony requires that we vacate the district court’s grant of summary judgment in favor of respondent.” Accordingly, the Sixth Circuit Court vacated the court’s decision and remanded the case for a full evidentiary hearing. Although appeal courts don’t include in the appellate record evidence that the district court did not consider, given Judge Suhrheinrich’s assessment, the Sixth Circuit Court believed it was appropriate to expand the record on appeal to consider Dr. Sultan’s deposition.³⁵

43. The habeas corpus proceeding concerning Mr. Thompson’s incompetency was stayed. On September 16, 2005, the district court lifted the stay of execution and the Tennessee Supreme Court set an execution date of February 7, 2006. On September 23, 2005, Mr. Thompson submitted a petition allegedly showing substantial change in his condition. However, on December 13, 2005, the Tennessee Supreme Court denied the petition, finding that no substantial change had occurred and did not address the additional Eight Amendment claim; which submitted that execution would be barred if Mr. Thompson’s competence for execution was based on his mental competence caused by medication he took involuntarily.

44. The habeas corpus petition challenging the competency ruling from June 14, 2004, before the district court resumed, but was dismissed on May 4, 2006, with a finding that the state court’s decision on Mr. Thompson’s present competency was neither contrary to nor an unreasonable application of clearly established federal law, nor an unreasonable determination of the facts. With respect to the Eighth Amendment claim, the district court determined the claim was in procedural default and time-barred, and that Mr. Thompson failed to state the claim. Mr. Thompson appealed with respect to the incompetency claim.

45. By a decision of September 11, 2009, the Court of Appeals decided that the Tennessee courts indeed unreasonably applied federal law clearly established and remanded the action to the district court to conduct Mr. Thompson’s incompetency hearing *de novo*.³⁶ The analysis took into account that the “Eight Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane;”³⁷ and for the purpose of execution a prisoner is insane if he/she is “unaware of the punishment they are about to suffer and why they are to suffer it.”³⁸

46. The Court of Appeals further ruled that the claim was not in procedural default as Mr. Thompson presented his petition to the Tennessee Supreme Court in his substantial change petition and was not time barred as the claim was made before the one year limitation period expired as it was introduced in his amended

³³ Thompson v State 134 S.W.3d 168, 179 (Tenn. 2004). Exhibit of petitioner’s submission of May 20, 2004.

³⁴ Thompson v Bell Nos. 06-5744/5770, United States Court of Appeals for the Sixth Circuit, September 11, 2009.

³⁵ Thompson v. Bell, 373 F.3d 688, 692 (6th Cir. 2004).

³⁶ Thompson v Bell Nos. 06-5744/5770, United States Court of Appeals for the Sixth Circuit, September 11, 2009.

³⁷ Ford v Wainwright, 477 U.S. 399, 409-10 (1986).

³⁸ Ford v Wainwright, 477 U.S. 399, 409-10 (1986).

federal habeas corpus petition on March 17, 2006. Regarding whether the Eight Amendment prohibited the execution of a prisoner rendered competent through forced administration of medication, the Court of Appeals held that the district court did not err in holding that Mr. Thompson failed to state a claim, this is because Mr. Thompson was not being forcibly medicated at the time and his circumstance was not applicable to the resolve of said claim.

47. The conclusion of the Court of Appeals however specified that the District Court would first rule on the merits of Mr. Thompson's remaining ineffective assistance claims, and would only address the incompetency question if it rejected the ineffective assistance claims on their merits. If it did reject the ineffective assistance claims, it must then conduct an evidentiary hearing to determine Mr. Thompson's competency for execution.³⁹ The petitioners note that the state of Tennessee appealed that decision to the United States Supreme Court and according to publicly available information, on October 4, 2010, the Supreme Court rejected the appeal.⁴⁰

48. On September 28, 2012, the United States District Court for the Eastern District of Tennessee denied all four claims on ineffective assistance of counsel without holding an evidentiary hearing.⁴¹ The four claims made were that: trial counsel did not confront and cross examine a psychiatric expert testifying for the government; trial counsel did not object to the prosecutor's improper references to Mr. Thompson's failure to testify or present a defense; trial counsel did not inform the court about prosecutor's racist remark in the presence of the jury; and trial counsel failed to present mitigating evidence during the sentencing phase to show he would not be disruptive in prison. In May 2013, the court denied Mr. Thompson's request to alter or amend its decision and denied him permission to appeal. On July 12, 2013, Mr. Thompson filed an application for a certificate of appealability in the Sixth Circuit Court of Appeals, requesting permission to appeal his case.⁴²

49. On June 6, 2014, the Sixth Circuit Court affirmed the District Court's rejection of the ineffective assistance of counsel claims.⁴³ Mr. Thompson's petition for a writ of certiorari to the United States Supreme Court, as a challenge to his conviction and sentence on the ground of ineffective assistance of counsel, was due December 5, 2014.⁴⁴

50. The District Court had stayed the competency hearing until all appeals were completed and an execution date set.⁴⁵ However, Gregory Thompson died of natural causes in Tennessee State prison on November 27, 2014.⁴⁶

IV. ANALYSIS OF LAW

A. Preliminary considerations

51. Before embarking on its analysis of the merits in the case of Mr. Thompson the Inter-American Commission considers it relevant to reiterate its previous rulings regarding the heightened scrutiny to be used in cases involving the death penalty. The right to life has received broad recognition as the supreme human right and as a *sine qua non* for the enjoyment of all other rights.

52. That gives rise to the particular importance of the IACHR's obligation to ensure that any deprivation of life may arise from the enforcement of the death penalty strictly abides by the requirements set forth in the applicable instruments of the Inter-American Human Rights System, including the American Declaration.⁴⁷ That "heightened scrutiny test is consistent with the restrictive approach adopted by other international

³⁹ Thompson v Bell Nos. 06-5744/5770, United States Court of Appeals for the Sixth Circuit, September 11, 2009.

⁴⁰ *Crime and Capital Punishment Forum*, available at <http://www.cncpunishment.com/forums/showthread.php?2461-Gregory-Thompson-Tennessee-Death-Row&s=c76f148ba695ead1c3caa06a548d9841>

⁴¹ Petitioners status update submitted February 25, 2014.

⁴² Petitioners status update submitted February 25, 2014.

⁴³ State response submitted December 5, 2014.

⁴⁴ State response submitted on December 5, 2014.

⁴⁵ State response submitted December 5, 2014.

⁴⁶ United States correspondence, dated July 22, 2015.

⁴⁷ See, in this respect, IACHR, The death penalty in the Inter-American System of Human Rights: From restrictions to abolition, OEA/Ser.L/V/II.Doc. 68, December 31, 2011.

human rights bodies in cases involving the imposition of the death penalty,⁴⁸ and it has been set out and applied by the Inter-American Commission in previous capital cases brought before it.⁴⁹

53. As the Inter-American Commission has explained, this standard of review is the necessary consequence of the specific penalty at issue and the right to a fair trial and all attendant due process guarantees:⁵⁰

due in part to its irrevocable and irreversible nature, the death penalty is a form of punishment that differs in substance as well as in degree in comparison with other means of punishment, and therefore warrants a particularly stringent need for reliability in determining whether a person is responsible for a crime that carries a penalty of death.⁵¹

54. The Inter-American Commission will therefore review the petitioner's allegations in the present case with a heightened level of scrutiny, to ensure in particular that the rights to life, the prohibition of cruel, infamous or unusual punishment, due process, and to a fair trial as prescribed under the American Declaration have been respected by the State. With regard to the legal status of the American Declaration, the IACHR reiterates that:

"[t]he American Declaration is, for the Member States not parties to the American Convention, the source of international obligations related to the OAS Charter. The Charter of the Organization gave the IACHR the principal function of promoting the observance and protection of human rights in the Member States. Article 106 of the OAS Charter does not, however, list or define those rights. The General Assembly of the OAS at its Ninth Regular Period of Sessions, held in La Paz, Bolivia, in October, 1979, agreed that those rights are those enunciated and defined in the American Declaration. Therefore, the American Declaration crystallizes the fundamental principles recognized by the American States. The OAS General Assembly has also repeatedly recognized that the American Declaration is a source of international obligations for the member states of the OAS.⁵²

B. Right to a fair trial⁵³ and to due process of law⁵⁴

1. General considerations on ineffective assistance of court-appointed counsel

55. Adequate legal representation is a fundamental component of the right to a fair trial. The IACHR has found that "[t]he right to due process and to a fair trial includes the right to adequate means for the preparation of a defense, assisted by adequate legal counsel."⁵⁵ According to the Commission, "[t]he State cannot be held responsible for all deficiencies in the conduct of State-funded defense counsel. National authorities are, however, required [...] to intervene if a failure by legal aid counsel to provide effective representation is

⁴⁸ See, for example: I/A Court H. R., Advisory Opinion OC-16/99 (October 1, 1999), *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, para. 136 (finding that "because execution of the death penalty is irreversible, the strictest and most rigorous enforcement of judicial guarantees is required of the State so that those guarantees are not violated and a human life is not arbitrarily taken as a result"); United Nations Human Rights Committee, *Baboheram-Adhin et al. v. Suriname*, Communications Nos. 148-154/1983, adopted on April 4, 1985, para. 14.3 (observing that "the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State"); *Report of the United Nations Special Rapporteur on Extrajudicial Executions*, Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1994/82, Question of the Violation of Human Rights and Fundamental Freedoms in any part of the World, with particular reference to Colonial and Other Dependent Countries and Territories, UN Doc.E/CN.4/1995/61 (December 14, 1994) ("the Ndiaye Report"), para. 378 (emphasizing that in capital cases, it is the application of the standards of fair trial to each and every case that needs to be ensured and, in case of indications to the contrary, verified, in accordance with the obligation under international law to conduct exhaustive and impartial investigations into all allegations of violation of the right to life).

⁴⁹ IACHR, Report No. 11/15, Case 12.833, Merits (Publication), Felix Rocha Diaz, United States, March 23, 2015, para. 54; Report No. 44/14, Case 12.873, Merits (Publication), Edgar Tamayo Arias, United States, July 17, 2014, para. 127; Report No. 57/96, Andrews, United States, IACHR Annual Report 1997, para. 170-171.

⁵⁰ IACHR, *The death penalty in the Inter-American System of Human Rights: From restrictions to abolition*, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, para. 41.

⁵¹ IACHR, Report No. 78/07, Case 12.265, Merits (Publication), Chad Roger Goodman, The Bahamas, October 15, 2007, para. 34.

⁵² IACHR, Report No. 44/14, Case 12,873, Report on Merits (Publication), Edgar Tamayo Arias, United States, July 17, 2014, para. 214.

⁵³ Article XVIII of the American Declaration provides: "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights."

⁵⁴ Article XXVI of the American Declaration provides: "Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment."

⁵⁵ IACHR, *The death penalty in the Inter-American System of Human Rights: From restrictions to abolition*, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, p. 123.

manifest or sufficiently brought to their attention. Rigorous compliance with the defendant's right to competent counsel is compelled by the possibility of the application of the death penalty."⁵⁶

56. The appointment of an attorney by the state does not, in and of itself, ensure effective assistance of counsel. At the same time, while the State is responsible for ensuring that such assistance is effective, it is not responsible for what may be understood as decisions of strategy or for every possible shortcoming. Rather, the Commission must evaluate whether the assistance of counsel was effective in the overall context of the process and taking into account the specific interests at stake.⁵⁷

57. The Commission has established that "the fundamental due process requirements for capital trials include the obligation to afford a defendant a full and fair opportunity to present mitigating evidence for consideration in determining whether the death penalty is the appropriate punishment in the circumstances of his or her case."⁵⁸ The Commission has also indicated that due process protections, under the Declaration:

guarantee an opportunity to make submissions and present evidence as to whether a death sentence may not be a permissible or appropriate punishment in the circumstances of the defendant's case, in light of such considerations as the offender's character and record, subjective factors that might have motivated his or her conduct, the design and manner of execution of the particular offense, and the possibility of reform and social readaptation of the offender.⁵⁹

58. It may be noted that the fundamental nature of this guarantee has been reflected in practice guidelines for lawyers. The American Bar Association has prepared and adopted guidelines and related commentaries that emphasize the importance of investigating and presenting mitigating evidence in death penalty cases.⁶⁰ According to these guidelines, the duty of counsel in the United States to investigate and present mitigating evidence is now well-established and "[b]ecause the sentencer in a capital case must consider in mitigation, anything in the life of the defendant which might militate against the appropriateness of the death penalty for the defendant," penalty phase preparation requires extensive and generally unparalleled investigation into personal and family history.⁶¹ The Guidelines also emphasize that the "mitigation investigation should begin as quickly as possible, because it may affect the investigation of first phase defenses (e.g., by suggesting additional areas for questioning police officers or other witnesses), decisions about the need for expert evaluations (including competency, mental retardation, or insanity), motion practice, and plea negotiations."⁶²

59. Further, according to the said guidelines, the defense team should consist of no fewer than two attorneys qualified in accordance with Guideline 5.1, an investigator, and a mitigation specialist. It should also contain at least one member qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments.⁶³

2. Analysis of the case

60. According to the information available and the record before the IACHR, Mr. Thompson was appointed two trial attorneys, Mr. Rollins and Mr. Parsons, who quickly moved to withdraw because of conflict of interest. Mr. Richardson was substituted as co-counsel and moved to have Mr. Parsons re-appointed. Also, according to the available information not controverted by the State, defense counsel had no prior experience in death penalty

⁵⁶ IACHR, *The death penalty in the Inter-American System of Human Rights: From restrictions to abolition*, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, p. 123.

⁵⁷ IACHR, Report No. 79/15, Case 12.994. Merits (Publication). Bernardo Aban Tercero. United States. October 28, 2015, para. 111.

⁵⁸ IACHR, Report No. 90/09, Case 12.644, Admissibility and Merits (Publication), Medellín, Ramírez Cárdenas and Leal García, United States, August 7, 2009, para. 134.

⁵⁹ IACHR, Report No. 90/09, Case 12.644, Admissibility and Merits (Publication), Medellín, Ramírez Cárdenas and Leal García, United States, August 7, 2009, para. 134.

⁶⁰ American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised editions) (February 2003), Guideline 10.7 – Investigation.

⁶¹ American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised editions) (February 2003), Guideline 10.7 – Investigation, at 82.

⁶² American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised editions) (February 2003), Guideline 10.7 – Investigation, at 83.

⁶³ American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised editions) (February 2003), Guideline 5.1.

cases. Once trial began, Mr. Thompson's defense presented no proof in the guilt phase. At the sentencing hearing, defense counsel presented several witnesses who offered an "unchallenged picture of Mr. Thompson as a non-violent, cooperative, responsible young person through his schools years, until he joined the Navy, and rather ambiguous behavior during his military service." Defense attorneys also presented the testimony of a clinical psychologist who testified about Mr. Thompson's personality and capabilities for employment in prison. Further, at the post-conviction evidentiary hearing, trial counsel conceded that they could have probably found a psychiatrist to say Mr. Thompson had brain damage.

61. Based on this information and on the above-mentioned standards, the Commission concludes that legal representation afforded to Mr. Thompson did not comport to the high quality standard required in capital cases. According to the ABA Guidelines, providing quality representation in capital cases requires counsel to undertake broad investigation and preparation. Counsel must promptly obtain the investigative resources necessary to prepare for both phases, including at minimum the assistance of a professional investigator and a mitigation specialist, as well as all professional expertise appropriate to the case.⁶⁴

62. In the instant case, trial counsel had never litigated a death penalty case before, presented no evidence at the guilt phase, and presented only positive character witnesses at the sentencing phase. In a capital case, the defendant's psychological and social history and his emotional and mental health are often of vital importance to the jury's decision at the punishment phase. In order to create a competent and reliable mental health evaluation consistent with prevailing standards of practice, counsel must compile extensive historical data, as well as obtain a thorough physical and neurological examination.⁶⁵

63. The Commission notes that, although one of the main issues at stake in Mr. Thompson's case was his mental health, the only health professional hired by trial counsel was a psychologist who performed vocational evaluations to establish if he could perform a job in prison. The petitioners highlighted that it was an industrial psychologist who performed the evaluation. This psychologist could not answer important questions on key issues relevant to Mr. Thompson's defense. Therefore, based on the above-mentioned standards, trial counsel failed to deploy all efforts in order to hire a psychiatrist to evaluate Mr. Thompson's alleged brain injuries and to obtain all professional expertise appropriate to the case, as required in capital cases.

64. Considering that the fundamental due process and fair trial requirements for capital trials include the obligation to afford adequate legal representation, and that the failure to adequately investigate would constitute inadequate representation, the Inter-American Commission concludes that the United States violated Mr. Thompson's right to due process and to a fair trial under Articles XVIII and XXVI of the American Declaration.

3. Prosecutorial misconduct

65. In previous cases, the Commission underscored the State's duty to disclose all exculpatory evidence in its possession as well as information favorable to the accused. In particular, in cases involving the death penalty, the State has an enhanced obligation to guarantee that no evidence favorable to the accused is withheld, as this could change the outcome of the trial and give rise to an arbitrary deprivation of life⁶⁶. Further, States have an obligation to survey all records and information in their possession concerning the mental health of a person accused of a capital offense.⁶⁷ Therefore, all exculpatory information in the prosecution's possession related to the mental health of the accused, should be disclosed.

66. The petitioners claim that the prosecutors in Mr. Thompson's trial withheld information from the courts and the defense about the existence and severity of his mental illness, and that they misled the jury by failing to disclose such available evidence.

⁶⁴ American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised editions) (February 2003), at 925.

⁶⁵ American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised editions) (February 2003), at 956.

⁶⁶ IACHR Report 53/13, case 12.864, *Ivan Teleguz v US*, July 15, 2013, para 98.

⁶⁷ IACHR, Report No. 44/14, Case 12,873. *Merits* (Publication). *Edgar Tamayo Arias. United States*, July 17, 2014, para. 165.

67. According to the findings of fact, at the sentencing phase the prosecutors presented the deposition of a clinical psychologist who had participated in a staff evaluation of Mr. Thompson shortly after his arrest, who opined that Mr. Thompson exhibited an adult anti-social behavior and that he appeared to ‘malingering’ schizophrenia. However, Mr. Thompson’s petition for post-conviction proceedings referenced evidence within State custody during trial, in particular his medical records while in prison. These records showed, *inter alia*, that Mr. Thomson was treated with anti-psychotic medication by three different psychiatrists, was diagnosed with several mental health conditions, and experienced auditory hallucinations, delusions and paranoia. Also, the three psychiatrists discounted the possibility of malingering. According to the available information, however, the prosecutors did not disclose these medical records during trial.

68. Based on the above considerations, the Inter-American Commission concludes that, by failing to disclose all evidence in its possession related to Mr. Thompson’s mental health, the United States violated Mr. Thompson’s right to due process and to a fair trial under Articles XVIII and XXVI of the American Declaration.

C. Right of protection against cruel, infamous or unusual punishment⁶⁸

1. General considerations on the right of every person with mental disabilities not to be subjected to the death penalty

69. The IACHR has established that, while the American Declaration does not expressly prohibit the imposition of the death penalty in the case of persons with mental and intellectual disabilities, such a practice is in violation of the rights and basic principles recognized in Articles I and XXVI of the American Declaration.⁶⁹ The IACHR has also ruled that:

States have a special duty to protect persons with mental and intellectual disabilities, a duty that is reinforced in the case of persons under State custody. Moreover, it is a principle of international law that persons with mental and intellectual disabilities, either at the time of the commission of the crime or during trial, cannot be sentenced to the death penalty. Likewise, international law also prohibits the execution of a person sentenced to death if that person has a mental or intellectual disability at the time of the execution.⁷⁰

70. Furthermore, because of its special duty to protect persons with mental disabilities, in death penalty cases the State has an obligation to have some procedures in place to identify those accused or convicted persons who have a mental disability. States also have an obligation to survey all records and information in their possession concerning the mental health of a person accused of a capital offense. The State must provide any indigent person with the means necessary to have an independent evaluation done of his or her mental health, which evaluation must be done in a timely manner.⁷¹

71. In a case involving Trinidad and Tobago, the Human Rights Committee held that the reading of a death warrant to a person with a mental disability, even if that person had been competent at the time of his or her conviction, is a violation of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁷² The United Nations “Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty” provide that a death sentence shall not be carried out on [...] “persons who have become insane.”⁷³ The United Nations Commission on Human Rights called upon all States that still have the death

⁶⁸ Article I of the American Declaration which provides: “Every human being has the right to life, liberty and security of his person; and Article XXVI of the American Declaration which provides: “Every person accused of an offense has the right [...] not to receive cruel, infamous or unusual punishment.”

⁶⁹ IACHR, Report No. 44/14, Case 12,873. Merits (Publication). Edgar Tamayo Arias. United States, July 17, 2014, para. 152.

⁷⁰ IACHR, Report No. 44/14, Case 12,873. Merits (Publication). Edgar Tamayo Arias. United States, July 17, 2014, para. 109.

⁷¹ ACHR, Report No. 52/13. Case 11.575, 12.333 and 12.341. Merits. Clarence Allen Lackey Et Al.; Miguel Ángel Flores, and James Wilson Chambers. United States of America. July 15, 2013.

⁷² Human Rights Committee, *Sahadath v. Trinidad and Tobago*, Communication No. 684/1996, April 2, 2002, CCPR/C/74/D/684/1996, para. 7.2.

⁷³ Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, E.S.C. res. 1984/50, annex, 1984 U.N. ESCOR Supp. (No. 1) at 33, U.N. Doc. E/1984/84 (1984).

penalty “[n]ot to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person.”⁷⁴

72. Also, the U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment indicated that international law considers the imposition and enforcement of the death penalty in the case of persons with mental disabilities as particularly cruel, inhuman and degrading, and in violation of Article 7 of the International Covenant on Civil and Political Rights and Articles 1 and 16 of the Convention against Torture.⁷⁵ Likewise, the U.N. Special Rapporteur on arbitrary executions stated that “[i]t is a violation of death penalty safeguards to impose capital punishment on individuals suffering from psychosocial disabilities.”⁷⁶

73. The European Union Policy on the death penalty and mental illness is set out fully in the European Union Council’s guidelines on the death penalty, in which the Council sets out minimum standards for those countries that retain the death penalty and specifically states within Section III, subsection (iv) that capital punishment “shall not be imposed on [...] persons suffering from any mental illness or having an intellectual disability.”⁷⁷

74. In *Atkins v. Virginia*,⁷⁸ the United States Supreme Court held that “executions of mentally retarded criminals are cruel and unusual punishments prohibited by the Eighth Amendment” of the U.S. Constitution. In its ruling, the Supreme Court traced the history of the concept of “excessive” sanctions and underscored the fact that the consensus today unquestionably reflects widespread judgment about the relative culpability of “mentally retarded offenders.”⁷⁹

2. Analysis of the case

75. According to the information available before the Commission, since the time of the murder in 1985, Mr. Thomson had shown a deteriorating mental health. Between 1985 and 1990, three different psychiatrists diagnosed him as either having bipolar disorder or a schizo affective disorder or schizophrenia. He had attempted suicide in a couple of occasions and set fire to his cell burning his hands and face. The psychiatrists discounted the possibility of malingering.

76. In 1991, during post-conviction, defense counsel submitted the affidavit of a licensed psychologist who, based on Mr. Thomson’s medical records, opined that he had shown a deteriorating mental status. The psychologist stated that Mr. Thomson was in need of a full psychological evaluation and defense counsel filed a motion for funds to hire a licensed psychologist or psychiatrist to assist in the preparation of the case for post-conviction relief. At the evidentiary hearing in 1995 the psychologist stated that she did not have an opinion about Mr. Thomson’s diagnostic at the time of the offense, and said she would need to have access to his full history and full medical records prior to the commission of the offense, as well as his family history of mental illness, which records were not available. The court denied the petition for post-conviction relief and the request for funding to hire an expert. The court ruled that “counsel presented no proof of mental problems on the part of Mr. Thomson that would have been a defense to the charge, or that would constitute a shield against execution.”

77. After Mr. Thomson’s first execution date was scheduled in 2004, defense counsel raised the issue of Mr. Thomson’s competency to be executed and requested a hearing. The Tennessee Supreme Court remanded the competency issue to the trial court to determine whether Mr. Thomson had made a threshold showing sufficient to warrant an evidentiary hearing. Defense counsel submitted Mr. Thomson’s medical records, along with the reports of three mental health experts. The records showed that he had engaged in self-destructive

⁷⁴ United Nations Commission on Human Rights, Promotion and Protection of Human Rights, The question of the death penalty, E/CN4/2005/L.77, April 14, 2005, paragraph 7(c).

⁷⁵ Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279, August 9, 2012, para. 58.

⁷⁶ Office of the High Commissioner for Human Rights, “Death row: U.N. expert urges U.S. authorities to stop execution of two persons with psychosocial disabilities”, July 17, 2012.

⁷⁷ European Union Guidelines on Death Penalty 2013; https://eeas.europa.eu/sites/eeas/files/guidelines_death_penalty_st08416_en.pdf

⁷⁸ *Atkins v. Virginia*, 536 U.S. 304 (2002).

⁷⁹ *Atkins v. Virginia*, 536 U.S. 304 (2002) at 311-317.

acts from the time his incarceration began, including swallowing poison and cutting his wrist and arms. They also showed that in 1995 Mr. Thompson was deemed a “mental health emergency” given that voluntary medication had not been effective, and in 2001 the state petitioned a Tennessee court for the appointment of a conservator to make decisions on Mr. Thompson’s behalf. Also, according to the experts, he had been consistently psychotic and his delusions persisted in spite of antipsychotic medication.

78. On March 8, 2004, the trial court denied the incompetency petition without holding an evidentiary hearing, finding the requisite threshold had not been met. The Tennessee Supreme Court affirmed the trial court’s decision reasoning that, although the reports indicated that Mr. Thompson suffered from chronic schizophrenia, they did not indicate that he was unaware of his impending execution and the reason for it.

79. In 2004 the Sixth Circuit Court vacated a District Court’s dismissal of a petition for a writ of habeas corpus and remanded the case for a full evidentiary hearing. According to the last information available, the District Court had stayed the competency hearing until all appeals on the ground of ineffective assistance of counsel were completed. However, Mr. Thompson died of natural causes before that.

80. The Commission therefore notes that, at the time of Mr. Thompson’s death, the courts had not yet reached a final determination concerning Mr. Thompson’s competency to be executed. The Commission also notes that the trial court, in its decision denying post-conviction relief, ruled that counsel did not “present proof of mental problems on the part of Mr. Thompson.” However, at the same time, the court denied counsel’s request for funding that would have allowed them to hire an expert in order to present such evidence. Further, on March 8, 2004, the trial court denied the incompetency petition without holding an evidentiary hearing concluding that defense counsel failed to make a threshold showing sufficient to warrant a hearing. Defense counsel, however, had submitted abundant information on Mr. Thompson’s mental health.

81. Although the Inter-American Commission has no competence to replace domestic courts in the appraisal of evidence, this does not preclude the Commission from considering possible violations of any of the rights set forth in the American Declaration, especially in cases involving the death penalty given the interests at stake. The Commission notes that in the present case domestic courts applied too high a standard to establish whether defense counsel made a threshold showing sufficient to warrant a hearing in order to prove, according to adequate evidence, that Mr. Thompson had a mental disability.

82. The Commission understands that a threshold showing of incompetence should exist, as the US Supreme Court held in *Panetti*,⁸⁰ to avoid last minute filings that are frivolous and designed to delay execution. In this case, however, the incompetence claim was based on medical records and several expert opinions, but the courts imposition of a high standard to show incompetence did not allow counsel the opportunity to have a hearing. Therefore, substantial doubts remained as to Mr. Thompson’s competency to be executed. In order to guarantee access to an effective remedy, the threshold required to warrant a hearing cannot be as high as the one required to rule on the merits of the claim.

83. Further, as indicated above, the State has the duty to provide with the means necessary to have an independent mental health evaluation done in a timely manner. In this case, however, the information shows that the post-conviction court denied a request for funds to hire an expert even though a licensed psychologist stated the need of a full psychological evaluation.

84. Based on the above considerations, the available information, and given the heightened degree of scrutiny that it has applied in death penalty cases, the IACHR concludes that the United States violated Articles I and XXVI of the American Declaration to the detriment of Mr. Thompson.

⁸⁰ *Panetti v. Quarterman*, 551 U.S. 930 (2007).

D. The deprivation of liberty on death row and the right of protection against cruel, infamous or unusual punishment⁸¹

85. It is noted that Mr. Thompson was sentenced to death on August 22, 1985, and thereafter died on November 27, 2014. Mr. Thompson was therefore on death row for 29 years. The long term of his deprivation of liberty on death row is referred to within both International human rights and comparative law as the “death row phenomenon”, and infringes on a person’s freedom from cruel, inhuman or degrading punishment. Such treatment violates the prohibition of cruel, inhuman or degrading punishment in Constitutions and in multiple international treaties, including the American Declaration (Articles XXV and XXVI).⁸²

86. The Commission takes note of the concept of the *death row phenomenon* of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment that:

(...) it consists of a combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death.⁸³ Those circumstances include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held. Death row conditions are often worse than those for the rest of the prison population, and prisoners on death row are denied many basic human necessities.⁸⁴

87. In the case of *Soering vs. The United Kingdom*, the European Court of Human Rights, in its interpretation of the norm banning cruel, inhuman, and unusual punishment and in reference to the death penalty, pointed out that:

The manner in which it is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3.⁸⁵

88. The European Court found that the “death row phenomenon” is a cruel, inhuman and degrading treatment, and is characterized by a prolonged period of detention while awaiting execution, during which prisoners sentenced to death suffer severe mental anxiety, extreme psychological tension and trauma.⁸⁶

89. The European Court was referring to an average of six to eight years on death row from imposition of the penalty to execution and it mentioned how proceedings and appeals subsequent to the imposition of the death penalty themselves have a bearing on the aforementioned wait time on death row. The court referenced the lapse of time between sentence and execution is inevitable however, the consequence is that the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death.⁸⁷

90. The court further recognized that some element of delay between imposition and execution of the sentence and the experience of severe stress in conditions necessary for strict incarceration are inevitable and

⁸¹ Article XXV of the American Declaration provides: “[...] Every individual who has been deprived of his liberty has the right [...] to humane treatment during the time he is in custody.”

Article XXVI of the American Declaration provides: “[...] Every person accused of an offense has the right [...] not to receive cruel, infamous or unusual punishment.”

⁸² IACHR, Report No. 71/18, Case 12.958. Merits. Russell Bucklew. United States, May 10, 2018, paras. 86-90. In this report the Commission has cited a number of developments in the inter-American and other protections systems, including the regional and United Nations systems.

⁸³ United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment. 9 August 2012. A/67/279, para 42. Citing: Patrick Hudson, “Does the death row phenomenon violate a prisoner’s rights under international law?”, *European Journal of International Law*, vol. 11, No. 4 (2000), pp. 834-837.

⁸⁴ United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment. 9 August 2012. A/67/279. para 42.

⁸⁵ ECtHR. Case of *Soering v. The United Kingdom*. Report No. 14038/88. Judgment, July 7, 1989. para. 104.

⁸⁶ ECtHR. Case of *Soering v. The United Kingdom*. Judgment of July 7, 1989. Series A, Vol. 161. Likewise, the Supreme Court of the United States of America recognized in *Furman v. Georgia* that the time spent awaiting the execution of a death sentence destroys the human spirit and constitutes psychological torture that often leads to insanity. Cf. *Furman v. Georgia*, 408 U.S. 238, 287-288 (1977).

⁸⁷ ECtHR. Case of *Soering v. The United Kingdom*. Report No. 14038/88. Judgment, July 7, 1989. para. 106.

considered elements like, the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, which brought the delay into the realm of exposed real risk of treatment going beyond the threshold set by Article 3.⁸⁸

91. Furthermore, in a comparative law context, the Commission notes that the Privy Council of the British House of Lords considered in 1993 on the issue of the *death row phenomenon* in the *Pratt and Morgan v. Jamaica* case, that:

In their Lordships' view a State that wishes to retain capital punishment must accept the responsibility of ensuring that execution follows as swiftly as practicable after sentence, allowing a reasonable time for appeal and consideration of reprieve. It is part of the human condition that a condemned man will take every opportunity to save his life through use of the appellate procedure. If the appellate procedure enables the prisoner to prolong the appellate hearings over a period of years, the fault is to be attributed to the appellate system that permits such delay and not to the prisoner who takes advantage of it. Appellate procedures that echo down the years are not compatible with capital punishment. The death row phenomenon must not become established as a part of our jurisprudence.

(...)

These considerations lead their Lordships to the conclusion that in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute "inhuman or degrading punishment or other treatment."⁸⁹

92. In the same vein, the Supreme Court of Uganda considered in 2009 that "to execute a person after a delay of three years in conditions that were not acceptable by Ugandan standards would amount to cruel, inhuman punishment."⁹⁰ For its part, the Supreme Court of Zimbabwe has pointed out since 1993 that "having regard to judicial and academic consensus concerning the death row phenomenon, the prolonged delays and the harsh conditions of incarceration, a sufficient degree of seriousness had been attained to entitle the applicant to invoke the protection concerning the prohibition of torture and inhuman or degrading punishment." That Supreme Court maintained that "52 and 72 months, respectively, on death row constituted a violation of the prohibition of torture and would render an actual execution unconstitutional."⁹¹

93. Specifically regarding the matter of prolonged solitary confinement on death row, the Inter-American Commission has determined that deprivation of liberty under certain conditions on death row, including solitary confinement for four years, constituted inhuman treatment.⁹²

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

Individuals held in solitary confinement suffer extreme forms of sensory deprivation, anxiety and exclusion, clearly surpassing lawful conditions of deprivation of liberty. Solitary confinement, in combination with the foreknowledge of death and the uncertainty of whether or when an execution is to take place, contributes to the risk of serious and irreparable mental and physical harm and suffering to the inmate. Solitary confinement used on death row is by definition prolonged and indefinite and thus constitutes cruel, inhuman or degrading treatment or punishment or even torture.⁹³

95. Based on the foregoing considerations, the Commission concludes that the deprivation of liberty of a person with a mental disability on death row, for more than 29 years, constituted a form of torture, to Mr. Thompson's personal integrity. Consequently, the United States is responsible for having violated, to the detriment of Gregory Thompson, the rights of protection against arbitrary detention, to humane treatment, and not to receive cruel, infamous, or unusual punishment established in Articles XXV and XXVI of the American Declaration.

⁸⁸ ECtHR. Case of Soering v. The United Kingdom. Report No. 14038/88. Judgment, July 7, 1989. para. 111.

⁸⁹ Pratt and Morgan v. The Attorney General for Jamaica and another (Jamaica) [1993] UKPC 1 (2nd November, 1993), paragraphs 73, 74, 75, and 84.

⁹⁰ Supreme Court of Uganda in *Attorney General v. Susan Kigula and 417 others* (Constitutional Appeal No. 3 of 2006), 2009.

⁹¹ Judgment of the Supreme Court of Zimbabwe of 24 June 1993 in *Catholic Commissioner for Justice and Peace in Zimbabwe v. Attorney General* (4) SA 239 (ZS).

⁹² CIDH, Report No. 58/02. Merits. Case 12.275. Denton Aitken. Jamaica. October 21, 2000, paragraphs 133 and 134

⁹³ United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment. 9 August 2012. A/67/279. para 48.

V. REPORT No. 242/19 AND INFORMATION ABOUT COMPLIANCE

96. On December 31, 2019, the Commission approved Report No. 242/19 on the merits of the instant case, which encompasses paragraphs 1 to 95 *supra*, and issued the following recommendations to the State:

1. Provide reparations to the family of Gregory Thompson as a consequence of the violations established in this report.
2. Review its laws, procedures, and practices at the state, and if applicable, at the federal level to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII, XXV and XXVI thereof, and, in particular, that court-appointed counsel provide adequate legal representation in death penalty cases and is trained to screen individuals for the presence of mental disabilities.
3. Ensure that the death sentence is not imposed on persons with mental disability in accordance with international human rights standards and the right of protection against cruel, infamous or unusual punishment.
4. Given the violations of the American Declaration the IACHR has established in the present case and in others involving application of the death penalty, the Inter-American Commission also recommends to the United States that it adopt a moratorium on executions of persons sentenced to death.⁹⁴

97. On February 24, 2020 the IACHR transmitted the report to the State with a time period of two months to inform the Commission on the measures taken to comply with its recommendations. To date, the Commission has not received any response from the United States regarding report No. 242/19.

VI. ACTIONS SUBSEQUENT TO REPORT No. 334/21

98. On November 22, 2021, the Commission approved Final Merits Report No. 334/21, which encompasses paragraphs 1 to 97 *supra*, and issued its final conclusions and recommendations to the State. On December 6, 2021, the Commission transmitted the report to the State and the petitioners with a time period of three weeks to inform the Inter-American Commission on the measures taken to comply with its recommendations. To date, the IACHR has not received any response from the United States or the petitioners regarding Report No. 334/21.

VII. FINAL CONCLUSIONS AND RECOMMENDATIONS

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

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

1. Provide reparations to the family of Gregory Thompson as a consequence of the violations established in this report.
2. Review its laws, procedures, and practices at the state, and if applicable, at the federal level to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII, XXV and XXVI thereof, and,

⁹⁴ See in this regard, IACHR, The death penalty in the Inter-American Human Rights System: From restrictions to abolition, OEA/Ser.L/V/II.Doc 68, December 31, 2011.

in particular, that court-appointed counsel provide adequate legal representation in death penalty cases and is trained to screen individuals for the presence of mental disabilities.

3. Ensure that the death sentence is not imposed on persons with mental disability in accordance with international human rights standards and the right of protection against cruel, infamous or unusual punishment.
4. Given the violations of the American Declaration the IACHR has established in the present case and in others involving application of the death penalty, the Inter-American Commission also recommends to the United States that it adopt a moratorium on executions of persons sentenced to death.⁹⁵

VIII. PUBLICATION

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

Approved by the Inter-American Commission on Human Rights on the 31st day of December 2021. (Signed):
Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández García and Edgar Stuardo Ralón Orellana, Commissioners.

⁹⁵ See in this regard, IACHR, The death penalty in the Inter-American Human Rights System: From restrictions to abolition, OEA/Ser.L/V/II.Doc 68, December 31, 2011.