
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 22/2023**

Precautionary Measures No. 176-23

Michael Tisius regarding the United States of America

April 16, 2023

Original: English

I. INTRODUCTION

1. On March 2, 2023, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures filed by Laurence Komp and Julie Taylor (“the applicants” or “the requesting party”). The request urged the Commission to require that the United States of America (“the State” or “United States”) adopt the necessary measures to protect the rights of Michael Tisius (“the proposed beneficiary”), who is currently facing the risk of imminent execution in the state of Missouri, where he has been held in solitary confinement on death row for 21 years. The request for precautionary measures is linked to petition P-397-23, in which the applicant alleges violations of Article I (right to life, liberty and personal security), Article XVIII (right to a fair trial), Article XXV (right to humane treatment in custody) and Article XXVI (right to due process of law and right not to receive cruel, infamous or unusual punishment) of the American Declaration of the Rights and Duties of Man (“American Declaration” or “Declaration”).
2. Pursuant to Article 25(5) of its Rules of Procedure, the IACHR requested information from the State on March 10, 2023, and reiterated the request on March 27, 2023. The State submitted its observations on March 31, 2023, and the applicant provided updated information on March 29, 2023.
3. Having analyzed the submissions of fact and law presented by the parties, the Commission considers that the information submitted demonstrates *prima facie* that there is a serious and urgent risk of irreparable harm to Mr. Tisius’ rights to life and personal integrity in accordance with Article 25 of its Rules of Procedure. Moreover, in the event that Mr. Tisius is executed before the Commission has the opportunity to examine the merits of his petition, any eventual decision would be rendered moot, leading to irreparable harm. Consequently, the Commission requests that the United States of America: a) adopt the necessary measures to protect the life and personal integrity of Michael Tisius; and b) refrain from carrying out the death penalty on Michael Tisius, until the IACHR has had the opportunity to reach a decision on his petition.

II. SUMMARY OF FACT AND ARGUMENTS PROVIDED BY THE APPLICANT

4. The request indicated that the proposed beneficiary is currently facing the risk of imminent execution in the state of Missouri, United States. He has been detained for over 21 years on death row in the Potosi Correctional Center of Missouri. According to the applicants, Mr. Tisius has exhausted all domestic remedies available to him and has been scheduled to be executed on June 6, 2023. A petition related to the issue at stake has been presented to the IACHR.

a. Background of the proposed beneficiary

5. According to the request, since Mr. Tisius's early years, his life was marked by neglect and intrafamilial violence and abuse. From 15 to 18 years old, the proposed beneficiary experienced homelessness and faced different degrees of degradation (e.g., substance abuse and violence). Due to his life experiences the proposed beneficiary has developed a wide range of mental disorders. The request stated that the proposed beneficiary suffered from depression, dependent personality disorder, post-traumatic stress disorder and had repeatedly suicidal thoughts. Additionally, the applicant addressed that neuropsychological evaluations result in several cognitive and behavioral issues.¹ Finally, the applicant stated that recent neurological exams have found symptoms suggesting that Mr. Tisius suffers from epilepsy. In 1999, he was arrested for stealing and for an outstanding warrant related to failure to return a rental stereo. He pleaded guilty and was subsequently incarcerated in the Randolph County Jail in Huntsville, Missouri.

6. The request affirmed that the State actors failed to protect and provide support to the proposed beneficiary throughout his lifetime, especially considering his medical, physical, and emotional abuse and neglect by his family. Once Mr. Tisius became entangled in the United States legal system, both the United States and the State of Missouri compounded their failure by denying Mr. Tisius due process of law in proceedings against him, failing to provide the necessary protection required for those with mental illness and subjecting him to conditions of confinement that violate human rights.

b. Proposed beneficiary's conviction and death sentence

7. The applicant addressed that, while in jail, the proposed beneficiary met another inmate- Mr. Vance- who presumably manipulated young Mr. Tisius to implement a scaping plan in exchange of a family life together in Mexico. In this sense, after being released from jail, the proposed beneficiary met with Mr. Vance's girlfriend on June 22, 2000, and went back to jail armed with guns to implement the plan and set Mr. Vance free. According to the request, Mr. Tisius panicked and started to dissociate, which eventually led him to fire the gun, killing two guards. He was apprehended a few hours later and quickly confessed the crime.

8. On October 01, 2001, Mr. Tisius was sentenced to death by the Boone County, Missouri, charged of doubled homicide. The request stated that, after serious prosecutorial misconduct during this trial, the post-conviction motion court granted Michael a resentence in 2006. The death sentence was confirmed by the Missouri Supreme Court in 2012. The proposed beneficiary was denied post-conviction relief in 2017. The applicant highlighted that internal remedies were exhausted in 2022 when the U.S. Supreme Court denied the writ of certiorari.

c. Allegation of the proposed beneficiary's failed defense and failure of fair trial

9. The requesting party alleged that State-appointed counsel was ineffective, in particular regarding its alleged failure to present evidence to sustain mitigating circumstances regarding Mr. Tisius' impaired mental state at the time of the commission of the crime. Additionally, the applicant alleged a failure to present evidence from expert witnesses corroborating Mr. Tisius' abuse and

¹ The applicant indicates symptoms as following: erratic and impulsive behavior, difficulty accurately deciding between correct and incorrect responses, deficits in memory, attentional and auditory processing tasks, and deficits in using verbal fluid reasoning skills to reason and solve problems.

neglect during his childhood.

10. They argued that the State should not execute the proposed beneficiary due to his diminished mental capacity and considering his complex post traumatic disorder. The applicants also addressed the widespread medical consensus that brain development continues until the mid-20s. Therefore, according to the request, at the time of the commission of the crime Mr. Tisius brain was still underdeveloped, affecting his reasoning and behavior, which is to be added to his pre-existing mental illness, cognitive dysfunction and past trauma. In this sense, the applicants stated that Mr. Tisius mental capacity was not sufficiently considered by both the prosecution and counsel. Hence, the requesting party claimed that the proposed beneficiary was deprived of fair trial and due process.
11. Given all the above, the applicant alleged a violation of Articles XVIII and XXVI of the American Declaration by having provided incompetent defense counsel in a capital case. In this regard, they alleged that the state council failed to comprehend the profound and permanent impact of Mr. Tisius's years of neglect and abuse. The applicants indicated that: a. the defense conducted a superficial investigation into the proposed beneficiary's life history, overlooking mitigating evidence; b. they pursued defense theories unsupported by facts or psychological expertise; c. counsel's receipt of a flat fee insufficient to cover the full scope of the proceeding and which created a conflict of interest; d. counsel's failure to present available evidence establishing two statutory mitigating circumstances regarding Michael's impaired mental state at the time of the offenses; e. counsel's failure to investigate and rebut the State's aggravating evidence presented without context and some of which did not make sense; f. counsel's failure to object to improper prosecutorial arguments regarding the opinions of the victims' families about the appropriate sentence.

d. The proposed beneficiary's current conditions of confinement

12. The applicants sent updated information on March 29, 2023. They stated that the proposed beneficiary remains under custody in pre-execution status at Potosi Correctional Center in Mineral Point, Missouri. According to the information provided, pre-execution status requires his isolation from the general prison population, and he is rarely allowed to leave his cell. Since Mr. Tisius' warrant for execution was issued on March 1, 2023, Mr. Tisius has been enclosed in a single-person cell. Additionally, in pre-execution, Mr. Tisius is being denied contact visits with his family and friends. During the visits, he is only allowed to speak with them from behind a glass and through a phone. The applicants confirm that, to the best of their knowledge, the Missouri Department of Corrections is providing adequate medical assistance. However, as the execution date approaches, his medical disorders exacerbate the effects of this anxiety.

e. Execution date

13. On October 3, 2022, the Missouri Attorney General requested that the Supreme Court of Missouri set the execution date of the proposed beneficiary. On March 1, 2023, the Court issued a warrant of execution, setting June 6, 2023, as the execution date of Mr. Tisius.

B. Observations of the State

14. The United States submitted its observations on March 31, 2023. The State informed that have forwarded the request for information concerning the request for precautionary measures to the Governor and Attorney General of the State of Missouri. Additionally, the State reaffirmed its position that the Commission lacks the authority to require that States adopt precautionary measures. As such, if the Commission adopt a precautionary measures resolution in this matter, the State would take it under advisement and construe it as recommendatory.

III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABILITY

15. The precautionary measures mechanism is part of the Commission’s functions of overseeing Member States’ compliance with the human rights obligations established in Article 106 of the Charter of the Organization of American States (“OAS”). These general functions are set forth in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR. Moreover, the precautionary measures mechanism is enshrined in Article 25 of the Rules of Procedure, by which the Commission grants precautionary measures in serious and urgent situations, where such measures are necessary to prevent irreparable harm.

16. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have repeatedly established that precautionary and provisional measures have a dual nature, both protective and precautionary. Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights. To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and how vulnerable the persons proposed as beneficiaries would be left in case the measures are not adopted. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while under the consideration of the IACHR. Their precautionary nature aims at safeguarding the rights at risk until the request pending before the Inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations. In the process of reaching a decision, and according to Article 25(2) of the 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” is determined by means of the information provided and refers to risk of 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.

17. In analyzing these requirements, the Commission reiterates that the facts supporting a request for precautionary measures do not need to be proven beyond doubt. Rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.

18. As a preliminary observation, the Commission considers it necessary to highlight that, according to its mandate, it is not called upon to determine the criminal responsibility of individuals in relation to their alleged commission of crimes or infractions. Additionally, the IACHR does not have the mandate, through the precautionary measures mechanism, to determine whether the State has incurred in violations of the American Declaration as a result of the alleged events. In this sense, the Commission reiterates that, with respect to the precautionary measures' procedure, it is only called upon to analyze whether the proposed beneficiary is in a situation of seriousness and urgency facing harm of an irreparable nature, as established in Article 25 of its Rules of Procedure. With regards to P-397-23, which alleges violations of the rights of the proposed beneficiary, the Commission recalls that the analysis of these claims will be carried out in compliance with the specific procedures of its Petition and Case System, in accordance with the relevant provisions of its Statute and Rules of Procedure.
19. Additionally, the Inter-American Commission recalls that the death penalty has been subject to strict scrutiny within the inter-American human rights system.² While most OAS Member States have abolished the death penalty, a significant minority still hold on to this form of punishment.³ With regard to the States that maintain the death penalty, there are a series of restrictions and limitations established in regional human rights instruments that States are bound to comply with in accordance with international law.⁴ These restrictions and limitations are based on the broad recognition of the right to life as the supreme human right and as the *sine qua non* of the enjoyment of all other rights, thus requiring greater scrutiny to ensure that any deprivation of life resulting from the application of the death penalty complies strictly with the requirements of the applicable inter-American human rights instruments, including the American Declaration.⁵
20. In this sense, the Commission has underlined that the right to due process plays an essential role in guaranteeing the protection of the rights of persons who have been sentenced to death. In order to protect due process guarantees, States have the obligation to ensure the exercise of the right to a fair trial, the strictest compliance with the right to defense, and the right to equality and non-discrimination.⁶ The Commission highlights that it has granted several precautionary measures to individuals on death row, considering both the precautionary and protective dimensions of the precautionary measures' mechanism.⁷

² IACHR. Press Release No. 248/20. The IACHR stresses its call for the abolition of the death penalty in the Americas on the World Day Against the Death Penalty. October 9, 2020.

³ IACHR. The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition. OAS/Ser.L/V/II., Doc. 68, December 31, 2011, paras. 12 & 138; IACHR. Press Release No. 248/20. The IACHR stresses its call for the abolition of the death penalty in the Americas on the World Day Against the Death Penalty. October 9, 2020.

⁴ IACHR. The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition. OAS/Ser.L/V/II., Doc. 68, December 31, 2011, paras. 138-39.

⁵ IACHR. Report No. 210/20. Case 13.361. Admissibility and Merits (Publication). Julius Omar Robinson (United States of America), August 12, 2020, para. 55; IACHR. Report No. 200/20. Case 13.356. Admissibility and Merits (Publication). Nelson Ivan Serrano Saenz (United States of America), August 3, 2020, paras. 44-45; IACHR. Report No. 211/20. Case 13.570. Admissibility and Merits (Publication). Lezmond C. Mitchell (United States of America), August 24, 2020, paras. 72-73.

⁶ IACHR. The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition. OAS/Ser.L/V/II., Doc. 68, December 31, 2011, para. 141.

⁷ See, in this regard: IACHR. Resolution 95/2020. Precautionary Measures No. 1080-20. Christa Pike regarding the United States of America. December 11, 2020; IACHR. Resolution 91/2020. Precautionary Measures No. 1048-20. Lisa Montgomery regarding the United States of America. December 1, 2020; IACHR. Resolution 77/2018. Precautionary Measures No. 82-18. Ramiro Ibarra Rubí regarding the United States of America. October 1, 2018; IACHR. Resolution 32/2018. Precautionary Measures No. 334-18. Charles Don Flores regarding the United States of America. May 5, 2018 (available only in Spanish); IACHR. Resolution 41/2017. Precautionary Measures No. 736-17. Rubén Ramírez Cárdenas regarding the United States of America. October 18, 2017; IACHR. Resolution 21/2017. Precautionary Measures No.

21. Taking this into account, the IACHR will proceed to analyze the procedural requirements with regard to Mr. Tisius.
22. In the instant matter, the Commission considers that the requirement of seriousness has been fulfilled. With regard to the precautionary dimension, the Commission observes that, according to the petition 397-23 presented by the applicants, the legal proceedings which led to Mr. Tisius' death sentence allegedly did not comply with his rights to fair trial and due process of law. In particular, the applicants claimed that, during the criminal proceedings the State-appointed counsel for Mr. Tisius was ineffective. In particular, the applicants indicated that: a. the defense conducted a superficial investigation into the proposed beneficiary's life history, overlooking mitigating evidence; b. they pursued defense theories unsupported by facts or psychological expertise; c. counsel's receipt of a flat fee insufficient to cover the full scope of the proceeding and which created a conflict of interest; d. counsel's failure to present available evidence establishing two statutory mitigating circumstances regarding Michael's impaired mental state at the time of the offenses; e. counsel's failure to investigate and rebut the State's aggravating evidence presented without context and some of which did not make sense; f. counsel's failure to object to improper prosecutorial arguments regarding the victims' families' opinions about the appropriate sentence.
23. Given to the all above, the applicants indicated violations of Article I (right to life, liberty and personal security), Article XVIII (right to a fair trial), Article XXV (right to humane treatment in custody) and Article XXVI (right to due process of law and right not to receive cruel, infamous or unusual punishment) of the American Declaration of the Rights and Duties of Man ("American Declaration" or "Declaration").
24. In this regard, while the imposition of the death penalty is not prohibited *per se* under the American Declaration,⁸ the Commission has recognized systematically that the possibility of an execution in such circumstances is sufficiently serious to permit the granting of precautionary measures to the effect of safeguarding a decision on the merits of the petition filed.⁹
25. In view of the aspects stated above, and without prejudice of the petition presented, the Commission concludes that the rights of Mr. Tisius are *prima facie* at risk due to the possible execution of the death penalty, and its subsequent effects on his petition which is currently under the Commission's analysis.
26. The IACHR considers that the requirement of urgency has been fulfilled. Regarding the

250-17. Lezmond Mitchell regarding the United States of America. July 2, 2017; IACHR. Resolution 14/2017. Precautionary Measures No. 241-17. Matter of Víctor Hugo Saldaño regarding the United States of America. May 26, 2017; IACHR. Resolution 9/2017. Precautionary Measures No. 156-17. William Charles Morva regarding the United States of America. March 16, 2017.

⁸ IACHR. The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition. OAS/Ser.L/V/II., Doc. 68, December 31, 2011, para. 2

⁹ See, in this regard: IACHR. Resolution 95/2020. Precautionary Measure No. 1080-20. Christa Pike regarding the United States of America. December 11, 2020, para. 34; IACHR. Resolution 91/2020. Precautionary Measure No. 1048-20. Lisa Montgomery regarding the United States of America. December 1, 2020, para. 40; IACHR. Resolution 77/2018. Precautionary Measure No. 82- 18. Ramiro Ibarra Rubí regarding the United States of America. October 1, 2018; IACHR. Resolution 32/2018. Precautionary Measure No. 334-18. Charles Don Flores regarding the United States of America. May 5, 2018 (available only in Spanish); IACHR. Resolution 41/2017. Precautionary Measure No. 736-17. Rubén Ramírez Cárdenas regarding the United States of America. October 18, 2017; IACHR. Resolution 21/2017. Precautionary Measure No. 250-17. Lezmond Mitchell regarding the United States of America. July 2, 2017; IACHR. Resolution 14/2017. Precautionary Measure No. 241-17. Matter of Víctor Hugo Saldaño regarding the United States of America. May 26, 2017; IACHR. Resolution 9/2017. Precautionary Measure No. 156-17. William Charles Morva regarding the United States of America. March 16, 2017

precautionary dimension, according to the information presented by the applicant, in 2022 the U.S. Supreme Court denied the proposed beneficiary's writ of certiorari, leading to the exhaustion of internal remedies, as stated by the applicants. According to the information presented by the applicants, the Supreme Court of Missouri set the date of the proposed beneficiary's execution for June 6, 2023. Therefore, considering the imminent possibility of the death penalty being applied, the Commission considers it is necessary to adopt precautionary measures in order to protect Mr. Tisius's life and physical integrity and to examine the petition presented by the applicant according to the Rules of Procedure.

27. The Commission considers that the requirement of *irreparability* has been fulfilled, insofar as the potential impact on the rights to life and personal integrity of proposed beneficiary constitutes the maximum situation of irreparability. Furthermore, the IACHR estimates that if Mr. Tisius is executed before the Commission has had the opportunity to evaluate P-397-23 any eventual decision on the merits of the case would be rendered futile, given that the situation of irreparable harm would have already materialized.
28. In the matter at hand, the Commission does not have enough information regarding the current conditions of Mr. Tisius's detention. It is noted that the applicant that the proposed beneficiary has been imprisoned for 22 years and has been diagnosed with various mental conditions, such as cognitive dysfunction, depression, possible epilepsy and past trauma. However, the applicants have confirmed before the Commission that, to the best of their knowledge, the Missouri Department of Corrections is providing adequate medical assistance. In such circumstances, the Commission does not have additional assessment elements to assess his current conditions of detention.

IV. BENEFICIARY

29. The Commission declares that the beneficiary of this precautionary measure is Michael Tisius, who is duly identified in this proceeding.

V. DECISION

30. The Inter-American Commission on Human Rights concludes that this matter meets *prima facie* the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the IACHR requests that the United States of America:
- a. adopt the necessary measures to protect the life and personal integrity of Michael Tisius; and
 - b. refrain from carrying out the death penalty on Michael Tisius, until the IACHR has had the opportunity to reach a decision on his petition.
31. The Commission requests the United States of America to inform, within a period of 15 days, as from the date of notification of this resolution, on the adoption of the precautionary measures requested and to update such information periodically.
32. The Commission emphasizes that, in accordance with Article 25(8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a

prejudgment of any violation of the rights protected in the applicable instruments.

33. The Commission instructs its Executive Secretariat to notify this resolution to the United States of America and the applicants of this resolution.
34. Approved on April 16, 2023, by Margarette May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Roberta Clarke, Second Vice-President; Joel Hernández García; Julissa Mantilla Falcón; and Edgar Stuardo Ralón Orellana, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary