INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 10/2014
PRECAUTIONARY MEASURE No. 255-13

Matter Robert Gene Garza concerning United States
May 5, 2014

I. Background
1. On August 8, 2013, the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission,” “Commission” or “IACHR”) received a request for precautionary measures filed by The Association of Humanitarian Lawyers (hereinafter “the representatives”), in favor of Robert Gene Garza (hereinafter “the beneficiary”), an American citizen, who was sentenced to death and could be executed in the state of Texas, United States, on September 19, 2013. The request was filed in the context of an individual petition P-1278-13, which alleges violations to Articles I (Right to life), II (Right to equality before law), XVII (Right to recognition of juridical personality), XVIII (Right to a fair trial) and XXVI (Right to due process of law) of the American Declaration of the Rights and Duties of Man” (hereinafter “the American Declaration” or “the Declaration”). The representatives requested the IACHR to require the United States of America (hereinafter “the State” or “United States”) to suspend the execution to ensure that the IACHR has the opportunity to decide on the merits of the petition and prevent the proposed beneficiary from suffering irreparable harm.

2. On August 16, 2013, the IACHR granted precautionary measures in favor of Robert Gene Garza, and requested the United States to adopt the necessary measures to preserve the life and physical integrity of Mr. Garza until the IACHR would decide on the individual petition, in order for the processing of his case before the Inter-American System not to be rendered moot. In this regard, the Commission also requested the United States Government to inform the Commission within 10 days from the day in which the resolution to grant the precautionary measures was notified, about the adoption of the precautionary measures granted and to update this information on a regular basis.

II. Summary of the Information provided after the granting of the precautionary measures
3. On August 22, 2013, a report was received by the representatives of the beneficiary about a request for clemency raised before the authorities of the state of Texas for the purpose of suspending the execution of the beneficiary.

4. In view of the lack of information about compliance with the precautionary measures, on September 12, 2013, the IACHR requested information to the State, regarding the measures adopted to implement the precautionary measures granted. On the same date, the applicants informed that Mr. Garza’s lawyer filed a document requesting the suspension of the beneficiary’s execution, while the State of Texas’s Criminal Appeals Court assessed his request for reconsideration of the appeal.

5. On September 16, 2013, after analyzing the allegations and evidence submitted, the IACHR decided to declare admissible the beneficiary’s precautionary measures petition, “for the purpose of examining the alleged violations of the rights enshrined in Articles I (Right to life), II (Right to

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1 In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner James Cavallero, a United State national, did not participate in the discussion or vote on this precautionary measure.
equality before law), XVII (Right to recognition of juridical personality), XVIII (Right to a fair trial) and XXVI (Right to due process of law) of the American Declaration of the Rights and Duties of Man” (hereinafter “the American Declaration” or “the Declaration”).

6. On September 18, 2013, the Commission issued a press release “urging the United States to suspend the execution of Robert Gene Garza, beneficiary of precautionary measures granted by the IACHR.” Likewise, the IACHR urged “the United States to implement the precautionary measures referred to Robert Gene Garza until the Commission can decide on the merits of the case, and to comply in full with its international obligations as regards human rights, especially those derived from the American Declaration and the OAS Charter. In this sense, the IACHR expects the United States to suspend this execution.”

III. ANALYSIS OF THE REQUIREMENTS OF GRAVITY, URGENCY AND IRREPARABILITY

7. The mechanism of precautionary measures is part of the Commission’s function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter, and in the case of Member States that have yet to ratify the American Convention on Human Rights, the American Declaration of Rights and Duties of Man. These general oversight functions are set forth in Article 18 of the Commission’s Statute, and the mechanism of precautionary measures is detailed in Article 25 of the Commission’s Rules of Procedure. According to this Article the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

8. The Inter-American Commission and Court have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective.2 Regarding the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights.3 Regarding the precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR.4 As such, for the purposes of making a decision, and in accordance with Article 25.2 of its Rules of Procedures, the Commission considers that:

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

b. “urgent situation” refers to a risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and

c. “irreparable harm” refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

9. Regarding the foregoing, article 25.7 of the Commission’s Rules of Procedure provides that “the decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” Article 25.9 sets forth “The Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary

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7 2011 IACHR Annual Report, Chapter 3, petitions and cases before the IACHR, Parr. 11. http://www.oas.org/en/iachr/docs/annual2011/TOC.asp
measures in force.” In this regard, the Commission must evaluate whether the situation of gravity, urgency and possible generation of irreparable harm leading to the adoption of precautionary measures still persists today. Likewise, it must consider whether new situations arising in the follow-up of the precautionary measures meet the requirements under article 25 of its Rules of Procedure.

10. In the present case, the IACHR has received information of public access about the execution of Robert Gene Garza, held on September 19, 2013.

11. In this regard, the Commission condemns the execution of Robert Gene Garza, in disregard of the precautionary measures granted in his favor and despite the fact that his petition before the IACHR was declared admissible on September 16, 2013. In this sense, the Commission reiterates that this disregard by a member State of the Organization of American States of a request to preserve the life of a person sentenced to death, while the petition he has filed is examined, contravenes the State’s international obligations. Noncompliance with this precautionary measure is detrimental to the effectiveness of the Commission’s procedures, depriving sentenced persons of their right of petition in the inter-American system of human rights and affects his right to life in a serious and irreparable manner.

IV. DECISION
12. The Commission considers that the precautionary measures granted in favor of Robert Gene Garza have lost its purpose, as a result of his execution by the United States. Therefore, the Commission decides to lift the present precautionary measure in favor of Robert Gene Garza.

13. The commission orders the Executive Secretariat of the IACHR to notify this resolution to the United States and the applicant.

14. Approved on the 5th day of May, 2014 by: Tracy Robinson, President; Commissioners: Felipe González, José de Jesús Orozco Henríquez, and Rosa María Ortiz.

Elizabeth Abi-Mershed
Assistant Executive Secretary