
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 6/2016

PRECAUTIONARY MEASURE No. 5-11¹
EXTENSION OF NUMBER OF BENEFICIARIES
Matter of Gary Resil et al. regarding the United States of America
March 2, 2016

I. INTRODUCTION

1. On February 1, 2016, the Inter-American Commission on Human Rights (hereinafter "the Commission," "Commission" or "IACHR ") received a request for an extension submitted by the Immigration Clinic of the University of Miami School of Law (hereinafter "the applicants"), asking that the Commission request the United States of America (hereinafter "United States," "U.S." or "the State") to protect the life and personal integrity of R.² (the "proposed beneficiary"). According to the request, the rights to life and personal integrity of R. are at risk, due to the current order to deport her from the U.S. to Haiti, in light of allegations that she was subject to physical and sexual abuse while living in Haiti, as well as those concerning her health issues.

2. After analyzing the arguments of fact and law submitted by both parties, the Commission considers that the information presented demonstrates *prima facie* that R. is currently in a situation that presents seriousness, urgency and the need to avoid irreparable harm, considering that her life and personal integrity are at risk. Consequently, in accordance with Article 25 of the Rules of Procedure of the Commission, the IACHR requests that the United States of America refrain from deporting R., in order to protect her life and personal integrity.

II. ANTECEDENTS

3. On February 1, 2011, the IACHR granted precautionary measures for Gary Resil, Harry Mocombe, Roland Joseph, Evel Camelién, and Pierre Louis, in the United States. The request for precautionary measures alleged that the lives and health of these individuals would be at grave risk if they were to be deported to Haiti, given that once they arrived in the country they would probably remain in custody, without access to food, drinking water, and adequate medical treatment. It also indicated that the immediate family members of these individuals were in the United States and that most of their family members in Haiti had died in the January 2010 earthquake. The Inter-American Commission asked that the United States suspend the deportation process in the case of the five beneficiaries until such time as: (1) Haiti is able to guarantee that detention conditions and access to medical care for persons in custody comply with applicable minimum standards, and (2) the procedures in place to decide upon and review the deportation of the five beneficiaries adequately take into account their right to family life and their

¹ In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner James Cavallaro, a United State national, did not participate in the discussion or vote on this precautionary measure.

² Upon request of the applicants, the Commission has decided not to publish the identity of the proposed beneficiary; she is, therefore, identified in this resolution as R.

family ties in the United States. The IACHR extended the precautionary measures in other occasions and continued to monitor the situations through different working meetings.

III. SUMMARY OF FACTS AND ARGUMENTS REGARDING THE REQUEST FOR EXTENSION

4. On February 1, 2016, the applicants requested an extension of the precautionary measures, in favor of R. alleging that:

A. R. is a 48 year-old woman with close family and community ties to the United States without any family in Haiti. She has lived in the United States continuously for almost 20 years. Her daughter, granddaughter, and mother are U.S. citizens.

B. R. first came to the United States in 1988, when she was 20 years old. In 1990, at the age of 22, she was arrested for carrying a package containing cocaine from Haiti to the United States and, consequently, deported in 1995. Upon arrival to Haiti, in accordance with standard procedure, R. was imprisoned as a criminal deportee. While detained, she was brutally raped in her holding cell. She was raped again months later when she was living at her aunt and uncle's house. According to the results of the medical assessment on her physical and psychological health, R. suffers from a series of health conditions that require treatment: Hypertension, dysmetabolic syndrome (pre-diabetes), post-traumatic stress disorder and moderate depression/anxiety. In particular, the medical assessment pointed out that "the lack of medical treatment for her Hypertension and pre-diabetes –not accessible in Haiti- could eventually result in severe cardiovascular difficulties and death."

C. After being raped twice, R. fled to the United States again in 1996 because she feared for her life. In 2010, she was arrested for illegally reentering the United States in 1996 and was sentenced to 13 months. The proposed beneficiary was subjected to removal proceedings in which she was denied relief under the Convention Against Torture by the Immigration Judge. The Board of Immigration Appeals dismissed her appeal on September 9, 2015. She, therefore, is at imminent risk of deportation.

D. R. is the primary income earner in the household. She also supports her elderly mother, Anna, a 67 year old retiree, who suffers from numerous ailments which cause her chronic pain for which she visits a doctor at least twice a month. R.'s daughter, Rose, a single mother, also depends on the proposed beneficiary. Since 2005, R has worked as a certified home health aide caring for the sick and elderly. She takes care of many of her family members.

E. If R. is deported to Haiti for a second time, she is at risk of homelessness and living in a tent camp or in another precarious situation. As a single woman with no family ties in Haiti, she faces a particularly heightened risk of rape upon deportation. Furthermore, she is undeniably traumatized by the rape incidents, as evidenced by her medical evaluation, and continues to fear re-victimization.

5. On February 17, 2016 the Inter-American Commission requested information from the State and the applicants.

6. On February 17, 2016 the State responded to the request for information, resubmitting a report originally sent to the Commission on May 9, 2014. In that report, the State alleged that in the last four years, the United States has worked with the Government of Haiti to ensure removals are conducted in a humane manner, with protections for the health and safety of those removed, and to help establish a socio-economic reintegration program. Moreover, the Haitian government, with continued engagement from the U.S. government, international organizations and NGO partners, is now well positioned to fully

take over responsibility for ensuring that the reception of Haitian nationals removed from the United States continues to take place in a humane manner. Furthermore, the Office of National Migration established an accommodation center that provided temporary lodging and other support for those who do not have family in Haiti or are delayed in reuniting with a family member. The State did not provide information on whether the competent authorities have assessed the possible situation that the proposed beneficiary might face upon her return to Haiti, regarding her health situation and the allegations of sexual violence and their resulting consequences.

7. On February 19, 2016 the applicants replied to the request for information sent by the IACHR, alleging that R. “now has a final order of removal and faces imminent deportation.” Furthermore, the applicants alleged that they continue to have serious concerns about the U.S. Government’s decision to deport individuals to Haiti, in violation of their fundamental human rights and in light of the ongoing humanitarian crisis and political turmoil in Haiti.

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

8. 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 the 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.

9. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “I/A Court H.R.”) have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding the precautionary nature, the measures have the purpose of preserving a legal situation while being considered by the IACHR. The precautionary nature aims to preserve those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the reparations ordered. 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 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.

10. In the present matter, the Commission considers that the requirement of seriousness is met, to the extent that, according to the information provided by the applicants, Ms. R. could be at risk if deported to Haiti. In particular, the applicants have provided information alleging that she was physically and sexually

abused in Haiti, therefore her return represents an imminent risk of revictimization. In this regard, the applicants have alleged that the proposed beneficiary was raped when she was 20 years old, while being held as a criminal deportee in Haiti, and that she continues to suffer emotional and psychological consequences. Moreover, the Inter-American Commission takes into consideration that, according to the applicants, if Ms. R. is deported to Haiti, she will not have access to the necessary medical treatment to treat her current health conditions, specifically, hypertension, dysmetabolic syndrome (pre-diabetes), post-traumatic stress disorder and moderate depression/anxiety.

11. In its analysis of this requirement, the Commission notes that the information provided by applicants appears to be generally consistent with the information the IACHR has received concerning the situation of persons facing deportation proceedings from the United States to Haiti. In this regard, through the IACHR's public hearings "Women and Girls in camps for Forcibly Displaced Persons in Haiti" (2011), "Human Rights Situation in the Camps for Internally Displaced Persons in Haiti" (2010), "Human Rights Situation During Reconstruction in Haiti" (2010), IACHR has received information that persons with specific health problems, under certain circumstances, could find themselves in situations of irreparable harm, due to a possible lack a proper medical treatment. In this scenario, the Inter-American Commission on Human Rights has urged the United States to suspend deportations to Haiti of persons of Haitian origin who are seriously ill or who have their only or closest family ties in the United States.

12. Particularly, the IACHR has stated that "the deportation of seriously ill persons to Haiti could jeopardize their lives, considering the humanitarian crisis that persists in the country, especially the detention conditions in jails and prisons. According to the information received by the Commission, detention centers in Haiti are overcrowded, and the lack of drinking water and adequate sanitation or toilets could facilitate the transmission of cholera, tuberculosis, and other diseases. The IACHR is also concerned that once they arrive in Haiti, seriously ill persons could remain in detention without access to food, drinking water, and adequate medical treatment. [...] In addition, the Inter-American Commission has received troubling information regarding persons being processed for deportation who have immediate family members, even children, in the United States and who in some cases do not have any family members in Haiti."^[1]

13. Taking into consideration the information provided, evaluated as a whole, and in light of the *prima facie* criteria of the precautionary measures mechanism, the Commission considers that the rights to life and personal integrity of R. are at risk.

14. Regarding the condition of urgency, the Commission believes that it is fulfilled, to the extent that R. has an order of removal from the United States and could be deported in the near future. In this regard, despite the request for information from the State, the IACHR has not received specific information on whether the state authorities have assessed the possible situation that Ms. R. might face upon her return to Haiti, regarding her health situation and the allegations of sexual violence and related consequences.

15. Regarding the requirement of irreparable harm, the Commission considers that it is met, to the extent that the possible effect on the right to life and personal integrity presents a clear risk of irreparable harm.

IV. BENEFICIARIES

^[1] IACHR, Press Release: "ACHR Urges United States to Suspend Deportations to Haiti," February 4, 2011. Available: http://www.oas.org/en/iachr/media_center/PReleases/2011/006.asp

16. The request was submitted on behalf of R., who is fully identified in the documents submitted in this proceeding.

V. DECISION

17. In view of the above-mentioned information, the Commission considers that the information presented demonstrates *prima facie* that R. is currently in a situation of seriousness, urgency and risk of irreparable harm, as her life and personal integrity are at risk. Consequently, in accordance with Article 25 of the Rules of Procedure of the Commission, the IACHR requests that the United States of America refrain from deporting R., in order to protect her life and personal integrity.

18. The Commission also requests the Government of the United States of America to inform the IACHR, within 10 days from the date of this resolution, on the adoption of the precautionary measures requested and to update such information regularly.

19. The Commission emphasizes that, according to Article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State shall not constitute a prejudgment on any possible violation of the rights protected in the American Declaration of the Rights and Duties of Man or other applicable instruments.

20. The Commission orders the Executive Secretariat of the Inter-American Commission on Human Rights to notify the Government of the United States of America and the applicant of this resolution.

21. Approved on the 2nd of March, 2016 by: José de Jesús Orozco Henríquez, Second Vice-president; Paulo Vannuchi, Margarette May Macaulay, Esmeralda Arosemena de Troitiño, Francisco Eguiguren Praeli and Enrique Gil Botero, members of the Inter-American Commission.



Elizabeth Abi-Mershed
Assistant Executive Secretary