PETITION TO THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

1. NAME AND DETAILS OF THE PERSON AFFECTED BY THE HUMAN RIGHTS VIOLATIONS (VICTIM)

1.1	Name	Rex Allan Krebs
1.2	Date of Birth	January 28, 1966
1.3	California Dept. Corrections Number	69844
1.4	Social Security Number	519-02-6994
1.5	Mailing Address	P.O. Box 69844 5EB65 CSP San Quentin San Quentin, CA 94974

2. MEMBER STATE RESPONSIBLE FOR THE HUMAN RIGHTS VIOLATIONS

United States of America

3. INCIDENT OR SITUATION DENOUNCED

On April 2, 2001, a jury convened by the Superior Court of the State of California found Mr. Krebs guilty of two murders, including the intentional killing of one woman, and the unintentional killing of a second woman. On May 11, 2001, the same jury determined that Mr. Krebs should be sentenced to death for his crimes. Before the trial even commenced, Mr. Krebs challenged the California death penalty statute on the grounds that it is inconsistent with the United States' obligations under international human rights law. The court refused to address the merits of Mr. Krebs' international human rights defense. The court's refusal to consider the merits of Mr. Krebs' proffered defense violated his right to a judicial remedy under the American Declaration of the Rights and Duties of Man.

The trial that resulted in Mr. Krebs' capital sentence violated his internationally protected human rights in at least three other respects. First, the California statute that provided the legal basis for Mr. Krebs' sentence is inconsistent with international human rights norms because it does not limit application of the death penalty to the most serious crimes. Second, during jury selection, the court refused to exclude from the jury prospective jurors who explicitly stated that they were unwilling to consider mitigating evidence pertaining to the character and record of the defendant. Finally, California's method of selecting and retaining judges does not adequately guarantee an impartial tribunal.

Three months after the jury rendered its death sentence, officials notified Mr. Krebs' trial attorney that he should expect a five year delay before the State would appoint counsel for Mr. Krebs' initial appeal. *See* Annex One. Since Mr. Krebs

cannot afford to hire his own attorney, he expects to spend the next five years on California's death row, waiting for the State to appoint an attorney to represent him *in his initial appeal*. After the State appoints an attorney for his initial appeal, Mr. Krebs can reasonably anticipate that an additional ten years (approximately) of legal proceedings will be required before he has exhausted the remedies available within the United States' domestic legal system. Petitioners submit that the ordinary requirement to exhaust domestic remedies is inapplicable in this case, due to the unwarranted delay in appointing counsel for Mr. Krebs' initial appeal.

3.1 **Witnesses to the Violations**

3.1.1 William McLennan (Victim's attorney during trial before the California Superior Court)

3.1.2 Rex Allan Krebs

3.2 Persons Responsible for the Violations

3.2.1 Judge Barry T. LaBarbera (Presiding Judge at Victim's trial)
San Luis Obispo County Superior Court
County Administrative Center
150 Monterey St.
San Luis Obispo, CA 93401

3.2.2 Gerald Shea, District Attorney
Office of the District Attorney
County Government Center
150 Monterey St., Room 450
San Luis Obispo, CA 93401

3.2.3 Timothy Covello (Prosecuting Attorney at Victim's Trial)
Office of the District Attorney
County Government Center
150 Monterey St., Room 450
San Luis Obispo, CA 93401

3.2.4 John A. Trice (Prosecuting Attorney at Victim's Trial)
Office of the District Attorney
County Government Center
150 Monterey St., Room 450
San Luis Obispo, CA 93401

3.2.5 Attorney General Bill Lockyear (Atty Gen'l for State of California)
300 S. Spring St., Fifth Floor, North Tower
Los Angeles, CA 90013

4. HUMAN RIGHTS VIOLATED

Petitioners allege violations of Articles I, XVIII, XXIV, XXV and XXVI of the American Declaration of the Rights and Duties of Man. Petitioners emphasize "the fundamental significance of ensuring full and strict compliance with due process protections in trying individuals for capital crimes, from which there can be no derogation." IACHR, Report No. 52/01, *Garza v. United States*, ¶ 100.

4.1 The United States Violated the Victim's Right to an Individualized Sentencing Proceeding Under Articles I, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man

The Commission has previously held that Articles 4, 5 and 8 of the American Convention "require individualized sentencing in implementing the death penalty." IACHR, Report No. 38/00, Baptiste v. Grenada, ¶ 106. Specifically, the individual circumstances of an individual offender, including the character and record of the offender and subjective factors that might have influenced the offender's conduct "*must be taken into account* by a court in determining whether the death penalty can and should be imposed." *Id*., ¶ 105. The same principle applies with equal force to the parallel provisions of the American Declaration, including the right to life under Article I, the right to a fair trial under Article XVIII, the right to humane treatment under Article XXV, and the right to due process under Article XXVI. *See* IACHR, Report No. 52/01, Garza v. United States, ¶ 89 (stating that the American Convention "may be considered an authoritative expression of the fundamental principles set forth in the American Declaration").

During the sentencing phase of a capital murder trial, California's death penalty statute permits the introduction of mitigating evidence pertaining to the individual circumstances of an individual offender. CAL. PENAL CODE § 190.3 (*included in* Annex Two). At Victim's trial, the defense introduced substantial mitigating evidence, including evidence of horrific childhood abuse. See Annex Three, pgs. 4-6. Although the jury was permitted to hear this evidence, *the jury was not required to take this evidence into account*, because the relevant statute is exceptionally vague with respect to mitigating factors, and because the statute gives the jury discretion to disregard any such evidence it deems irrelevant. *See* CAL. PENAL CODE § 190.3 (*included in* Annex Two).

In California, as in other states, prior to the commencement of a criminal trial the judge and attorneys question prospective jurors in an effort to determine whether they are biased. CAL. CIV. PRO. CODE § 223 (*included in* Annex Four). This process is known as "voir dire." During voir dire, prospective jurors may be excluded "for cause" based on a showing of actual or implied bias. CAL. CIV. PRO. CODE § 225 (*included in* Annex Four). In criminal trials, each side is given an unlimited number of "for cause" challenges.

During the voir dire process that preceded the Victim's criminal trial, the Victim's attorneys challenged certain prospective jurors "for cause" on the grounds that they were

unwilling to consider mitigating evidence pertaining to the individual circumstances of the defendant. The court, however, rejected these for cause challenges on the grounds that California does not require jurors to consider such evidence.

For example, prior to voir dire, juror # 187 answered "no" to the following written question: "Is there any type of information regarding a defendant's background or character that would be important to you when choosing between life without parole and death (e.g., work record, childhood abuse, brutal parents, alcoholism, former good deeds, illnesses, etc.)?" *See* Annex Five. During voir dire, defense counsel asked: "If you've rendered the verdict . . . and you feel he's guilty beyond a reasonable doubt, are you willing at that point to consider what the judge may have called other mitigation factors, which could be some of the things such as abuse, alcoholism, illness, or is that the type of information that you would not be willing to consider?" The juror responded: "No, I wouldn't consider that." *See* Annex Six, pgs. 4251-53. Defense counsel challenged juror # 187 for cause, but the judge rejected the challenge on the grounds that California does not require jurors to consider this type of information as mitigating evidence. *See id*., pgs. 4256-69.

By refusing to exclude from the jury prospective jurors who professed their unwillingness to consider mitigating evidence pertaining to the character and record of the offender, California violated the Victim's right to an individualized sentencing hearing under Articles I, XVIII, XXV and XXVI of the Declaration.

4.2 The United States Violated the Victim's Right to Life Under Article I of the American Declaration of the Rights and Duties of Man

Article I of the American Declaration provides that "every human being has the right to life." Petitioner submits that the California death penalty statute violates Article I by failing to define narrowly the class of death-eligible offenses.

The Commission has established that Article I requires States to limit the death penalty to crimes of "exceptional gravity," prescribed by preexisting laws. IACHR, Report No. 57/96, Andrews v. United States, ¶ 177. The Commission's jurisprudence on this matter draws upon the opinions of other international human rights bodies and several national courts. *See, e.g.*, American Convention on Human Rights, Article 4(2); International Covenant on Civil and Political Rights, Art. 2(6); U.N. Human Rights Committee, General Comment 6(16), ¶ 7 (stating that the expression "most serious crime" must be read "restrictively", because of the "exceptional" nature of the death penalty). In particular, the Commission has suggested that the crime of "murder" is insufficiently "exceptional" to warrant imposition of the death penalty, absent the presence of some "aggravating factors."

> [T]he normal rule is that the offense of murder shall be punished with the sentence of life imprisonment. The Court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death

> sentence. . . . A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That should not be done save in the *rarest of rare cases when the alternative option is unquestionably foreclosed*.

IACHR, Report No. 38/00, Baptiste v. Grenada, ¶¶ 103-104 (quoting Bachan Singh v. State of Punjab, (1980) 2 S.C.C. 475 (Supreme Court of India)) (emphasis added).

Although California law defines murder broadly, its death penalty law, by its terms, does not extend to all cases of murder. California law assigns to the sentencing authority the discretion to impose the death penalty only if the criminal defendant is convicted of murder with one or more of the enumerated "special circumstances." *See* CAL. PENAL CODE § 190.2(a)(1)-(21) (*included in* Annex Two). The breadth of the "special circumstances" categories, however, fails to narrow the class of death eligible offenses to crimes of exceptional gravity. The "special circumstances" alleged by the state in Victim's case illustrate the defects of California's death penalty scheme.

In Victim's case, the state alleged two "special circumstances" to warrant application of the death penalty: (1) the "felony murder" special circumstance, CAL. PENAL CODE § 190.2(a)(17); and (2) the "multiple murders" special circumstance, CAL. PENAL CODE § 190.2(a)(3). First, the prosecution alleged that Victim killed two persons in the course of committing the felonies of rape and kidnapping. These allegations, if proven beyond a reasonable doubt, render his crimes death-eligible under California law, *despite the fact that the evidence at petitioner's trial demonstrated that one of the charged murders was unintentional*. *See* Annexes Seven and Eight. Under California law, any person who kills "in the commission of, or attempted commission of, or the immediate flight after committing or attempting to commit" any of twelve listed felonies is not only guilty of first degree murder but is also automatically death-eligible, irrespective of the defendant's mental state.[1] Moreover, the California felony murder rule is itself exceedingly broad. For example, the felony murder rule applies to the most common felonies, including rape, robbery and burglary. And, most importantly, the felony murder rule applies to altogether accidental and unforeseeable deaths:

> [F]irst degree felony murder encompasses a far wider range of individual culpability than deliberate and premeditated murder. It includes not only the latter, but also a variety of unintended homicides resulting from reckless behavior, or ordinary negligence, or pure accident; it embraces both calculated conduct and acts committed in panic or rage, or under the dominion of mental illness, drugs, or alcohol; and it condemns alike

[1] *See* CAL. PENAL CODE § 190.2(a)(17), (b). Although the felony murder language of Penal Code section 189 is not identical to the special circumstances language, the California Supreme Court has held that there is no difference. *See* People v. Hayes, 802 P.2d 376, 410 (Cal. 1990) (holding that reach of felony murder and felony murder special circumstance are equally broad and both apply to killing "committed in the perpetration of an enumerated felony if the killing and the felony 'are parts of one continuous transaction.'" (quoting People v. Ainsworth, 248 Cal. Rptr. 568, 587 (1988))).

> consequences that are highly probable, conceivably possible, or wholly unforeseeable.

People v. Dillon, 668 P.2d 697, 719 (Cal. 1983). Petitioners submit that the felony murder "special circumstance" fails to limit application of the death penalty to exceptional cases.

Second, the prosecution alleged the "multiple murders" special circumstance. That is, the state argued that the death penalty was warranted in Victim's case because he had committed multiple murders. Petitioners acknowledge that the "multiple murders" factor generally serves to limit application of the death penalty to exceptional cases. Indeed, the Commission's jurisprudence supports this argument.[2] However, California's broad definition of first-degree murder renders the "multiple murders" special circumstance unacceptably broad. As previously discussed, one of the petitioner's murders in this case was unintentional. The state could nevertheless classify this killing as a "first degree murder" under either of two theories: felony murder (the deficiencies of which are analyzed above) or "implied malice" murder. In California law, any unlawful killing of a human being with "malice aforethought" is murder. CAL. PENAL CODE § 187 (*included in* Annex Two). "Malice" may be express or implied. "Express malice" murder requires an intent to kill, while "implied malice" murder requires only an intent to do some act, the natural consequences of which are dangerous to human life. *See, e.g.*, People v. Silva (2001) 106 Cal.Rptr.2d 93, 25 Cal.4th 345, 21 P.3d 769. Therefore, a defendant acting with implied malice is guilty of first-degree murder even if defendant lacks the intent to kill. CAL. PENAL CODE § 189 (*included in* Annex Two); *see also* People v. Diaz (1992), 11 Cal.Rptr.2d 353, 3 Cal.4th 495, 834 P.2d 1171. Petitioners contend that this broad definition of first-degree murder in California law invalidates an otherwise acceptable narrowing circumstance. In particular, Petitioners submit that the "multiple murders" special circumstance adequately limits the class of death-eligible offenses only if the defendant has committed two or more intentional killings.

By failing to limit application of the death penalty to the "most serious crimes," California violated the Victim's rights under Article I of the Declaration.

4.3 The United States Violated the Victim's Right to a Judicial Remedy Under Articles XVIII, XXIV, and XXVI of the American Declaration of the Rights and Duties of Man

Prior to commencement of his trial, Victim moved to preclude application of capital punishment on the grounds that a capital sentence would violate international human rights norms prohibiting the arbitrary deprivation of life. *See* Annex Nine. In

[2] *See* Garza, ¶ 95 (suggesting that the "most serious crimes" requirement is satisfied where defendant was convicted of three murders committed as part of a continuing criminal enterprise). Mr. Garza's case was, of course, significantly different from petitioner's case. Garza was accused of three intentional murders, each of which was committed as part of an illegal drug enterprise supervised by Garza. In that case, the government proved that Garza ordered the execution-style killings in furtherance of a highly organized, extremely violent criminal conspiracy.

response, the prosecution argued that the court need not address the merits of Victim's human rights defense because the international norm invoked by Victim was not binding on the State of California. *See* Annex Ten. The court agreed with the prosecution and refused to address the merits of Victim's human rights defense. *See* Annex Eleven, at 1415-16. The California Superior Court's refusal to reach the merits of Victim's proffered human rights defense violated his right to a judicial remedy under Articles XVIII, XXIV and XXVI of the American Declaration.

The right to a judicial remedy for violations of internationally protected human rights is a fundamental right that is codified in most major international human rights instruments. *See, e.g.,* Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2, para. 3; European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 13; American Convention on Human Rights, art. 25, para. 2. The Inter-American Court of Human Rights has consistently affirmed the principle that individuals are entitled to a judicial remedy for violations of their internationally protected human rights. *See, e.g*., *Velasquez Rodriguez Case*, Inter-Am. Ct. H.R., (Ser. C) No. 4, at 994, ¶ 189 (1988); Advisory Opinion OC-9/87, *Judicial Guarantees in States of Emergency*, Inter-Am. Ct. H.R., ¶ 24 (1987).

4.3.1 Article XVIII of the American Declaration states:

> 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.*

The explicit duty for courts to protect individuals from acts that violate their fundamental rights requires, at a minimum, that courts prevent threatened violations whenever they have the power to do so. Victim explicitly requested the California Superior Court to protect him from a capital sentence that would violate his right under the International Covenant on Civil and Political Rights (ICCPR) "not to be arbitrarily deprived of his life." *See* ICCPR, art. 6, para. 1; *see also* Annex Nine. Although the California Superior Court clearly had the power to protect Victim from the impending human rights violation, it refused to do so. *See* Annex Eleven, pgs. 1415-16. The court's refusal to protect Victim from the arbitrary deprivation of life constituted a violation of the United States' obligation under Article XVIII of the Declaration to "protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights."

The conclusion that the United States violated Article XVIII of the Declaration is reinforced by reference to Article 25 of the American Convention. The Commission has stated: "the right to an effective remedy in Article 25 of the Convention corresponds to Article XVIII of the Declaration." IACHR, Report No. 25/99, Shaw v. Jamaica, ¶ 6. Moreover, the Commission has held that "the logic of every judicial remedy – including that of Article 25 – indicates that the deciding body must specifically establish the truth or error of the claimant's allegation." IACHR, Report No. 30/97**,** Carranza v. Argentina,

¶ 73. In Victim's case, the California Superior Court failed to "establish the truth or error" of his allegation that imposition of capital punishment would violate his right under the ICCPR not to be arbitrarily deprived of his life. That failure constitutes a violation of Article XVIII of the Declaration.

4.3.2 Article XXVI of the American Declaration states:

> 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 . . . .*

The United States ratified the ICCPR in 1992. *See* Multilateral Treaties Deposited with the Secretary General: Status as at 31 Dec. 2001, at 182, U.N. Doc. ST/LEG/SER.E/20. Immediately upon ratification, the ICCPR became the "Law of the Land" within the United States, in accordance with the United States Constitution. *See* U.S. Const. art. VI, cl. 2 (stipulating that ratified treaties "shall be the supreme Law of the Land"). Thus, in May 2000, when Petitioner raised a defense before the California Superior Court on the basis of Article 6 of the ICCPR, Article 6 was a "pre-existing law" within the meaning of Article XXVI of the Declaration. The Court's refusal to apply Article 6 to Petitioner's case violated his right under Article XXVI of the Declaration "to be tried . . . in accordance with pre-existing laws."

4.3.3 Article XXIV of the American Declaration states:[3]

> Every person has the right to submit respectful petitions . . . *and the right to obtain a prompt decision thereon*.

The individual right under Article XXIV to obtain a prompt decision necessarily entails a right to obtain a prompt decision *on the merits*. The contrary view – that Article XXIV permits states to decide claims without regard to the merits – is patently absurd.

The Commission's decision in *Carranza v. Argentina* supports the view that Article XXIV requires a decision *on the merits*. In *Carranza*, the petitioner was a lower court judge in the Superior Court of Justice of the Province of Chubut. IACHR, Report No. 30/97**,** Carranza v. Argentina. He sought the "nullification of a decree issued by the previous military government of Argentina that had ordered his removal" from the bench. *Id*. The Argentine domestic court refused to address the merits of petitioner's claim, ruling that his claim raised a non-justiciable political question. The Commission held

---

[3] In relation to members of the Organization of American States that are not parties to the American Convention (including the United States), Article 20 of the Statute of the Inter-American Commission directs the Commission to pay particular attention to the observance of the human rights referred to in specified Articles of the American Declaration. Article XXIV is not one of those specified articles. Even so, the Commission has not hesitated to apply, in appropriate cases involving OAS members not party to the Convention, provisions of the American Declaration that are not explicitly mentioned in Article 20 of the Statute. *See, e.g.*, IACHR, Report No. 51/96, The Haitian Centre for Human Rights v. United States (applying Article XXVII of the Declaration to the United States); IACHR, Report No. 47/96, Victims of the Tugboat "13 de Marzo" v. Cuba (applying Article VIII of the Declaration to Cuba).

that the Argentine court's failure to decide the merits of petitioner's claim violated Article 25 of the Convention, because Article 25 requires that "the intervening body must *reach a reasoned conclusion on the claim's merits,* establishing the appropriateness or inappropriateness of the legal claim that precisely gives rise to the judicial recourse." *Id.* ¶ 71.

The present case is indistinguishable from *Carranza*. Here, as in *Carranza*, the domestic court refused to decide the merits of petitioner's allegation. The Argentine court in *Carranza* invoked the political question doctrine to justify its refusal to decide the merits of the claim. In this case, the California Superior Court invoked the doctrine of non-self-executing treaties to justify its refusal to decide the merits of petitioner's defense. *See* Annex Eleven, at 1415-16. As one distinguished commentator has noted, "the self-executing/non-self-executing distinction [in the treaty context] has come to serve the functions that are served in the statutory and constitutional contexts" by the political question doctrine. *See* Carlos M. Vazquez, *The Four Doctrines of Self-Executing Treaties*, 89 AM. J. INT'L L. 695, 711-12 (1995). Thus, the California Superior Court's reliance on the non-self-execution doctrine in the present case is functionally indistinguishable from the Argentine court's reliance on the political question doctrine in *Carranza*.

Granted, the Commission decided *Carranza* on the basis of the American Convention, whereas this case arises under the Declaration. Even so, the Declaration and Convention protect the same essential rights because "the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality." Preamble to the American Convention. *See also* American Declaration (introductory clauses before the Preamble). As stated previously, the Convention, per *Carranza*, requires the court to "reach a reasoned conclusion on the claim's merits." *See Carranza*, ¶ 71. Since the Declaration protects the same essential rights as the Convention, it follows that Article XXIV of the Declaration requires the court to reach a reasoned decision on the merits. In the present case, the California Superior Court's refusal to reach a reasoned decision on the merits of petitioner's human rights defense violated Article XXIV of the Declaration.

In sum, the California court's refusal to decide the merits of Petitioner's human rights defense violated U.S. obligations under articles XVIII, XXIV, and XXVI of the American Declaration.

4.4 The United States Violated the Victim's Right to an Impartial Hearing Under Article XXVI of the American Declaration of the Rights and Duties of Man

California also violated the Victim's right to an impartial hearing enshrined in Article XXVI of the Declaration. Specifically, Petitioners submit that California's method of selecting and retaining judges impermissibly compromises the independence of the judiciary. In California, judges are insufficiently insulated from political pressures because they are subject to frequent elections. The California Constitution provides that

trial court judges are selected by general election in their counties.[4] CAL. CONST. Art. VI, § 16 (*included in* Annex Twelve). Terms of these judges are fixed at six years following their election. *Id.* Therefore, every six years the judge must seek reelection to remain in office.[5]

Several international human rights authorities, including the Commission, have expressed grave concern regarding the impact of judicial elections on the impartiality and independence of the judiciary.[6] The Commission has often recognized that an independent and impartial judiciary is essential to the fairness and impartiality of judicial proceedings. *See, e.g.*, IACHR, Report No. 48/00, Vasquez-Vejarano v. Peru, 46-47. The independence and impartiality of the judiciary is a function of several factors, including the manner of appointment of its members, their terms of office, and the existence of formal guarantees against outside pressures. ECHR, Morris v. U.K., Application No. 38784/97, ¶¶ 58-59 (26 February 2002). In fact, the European Court of Human Rights has suggested that the "irremovability" of judges is essential to the independence of the judiciary from outside influences. Morris, ¶ 68 (suggesting that judges should only be removed for "judicial misconduct"). Although judicial elections are not necessarily incompatible with the independence and impartiality requirements of international human rights law, they make the presence of safeguards against outside influence indispensable. *Cf. id*. ¶ 70-71.

California's method of selecting and retaining judges does not adequately insulate the judiciary from outside influence. That is, the periodic judicial elections impermissibly politicize the judiciary. In particular, judicial decisions in capital cases have increasingly become campaign fodder in elections.[7] Campaign rhetoric often focuses on the gruesome facts of a case, without mentioning the quality of the judicial reasoning in the case.[8] Although the California Code of Judicial Ethics calls for judges to be faithful to the law instead of to public clamor, a judge is often forced to take the political considerations of a decision into account when faced with a decision that is of great importance to the

---

[4] Appellate court judges are selected and retained in a different manner. The California Constitution empowers the chief executive officer of the state, the Governor, to appoint Supreme Court Justices and appeals court judges to serve a twelve-year term after running in an unopposed primary election. CAL. CONST. Art. VI, § 16 (*included in* Annex Twelve). Every twelve years thereafter, the judge is subject to a "retention election." *Id.* In these elections, judges run unopposed for retention in office. That is, the ballots ask voters only whether the judge in question should continue in office. *Id.*

[5] The legislature may provide that an unopposed incumbent's name not appear on the ballot. CAL. CONST. Art. VI, § 16(b)(1).

[6] *See e.g.,* Inter American Commission on Human Rights Report on Paraguay, OEA/Ser.L/V/II.110 (2001) (expressing concern over political partisanship on judges); Inter American Commission on Human Rights Fifth Report on The Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.111 (2001) (expressing concern over short term limits of judges); Report of the Special Rapporteur on the Independence of the Judiciary, E/CN.4/1998/39 (1998) (expressing concern over undue influence by the executive branch); Inter American Commission on Human Rights Report on the situation of Human Rights in Panama, 1989 (expressing concern over the arbitrary removal of judges); Human Rights Committee Country Reports on the United States, U.N. Doc. CCPR/C/79/Add50 (1995); United Nations Basic Principles on the Independence on the Judiciary, Canons 2, 11, 12.

[7] Stephen B. Bright and Patrick J. Keenan, *Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases*, 75 B.U.L. Rev. 759, 760 (1995).

[8] *Id.*

community.[9] As stated by one sitting judge in California, "No judge can ignore the politics of a decision when it comes close to election time. Doing so would be like trying to ignore a crocodile in your bathtub."[10] The California system clearly lacks sufficient safeguards to ensure the impartiality and independence of its judges. Indeed, such a system is designed to inject political influence into the judicial process. Because terms of California judges are quite short and it has been demonstrated in the past that the California electorate is more than willing to remove a judge for unpopular decisions,[11] political calculations infect the judicial process in high profile cases—such as death penalty cases. Petitioners submit that the Declaration requires more.

5. UNWARRANTED DELAY

Petitioners acknowledge that the Victim has not exhausted all available domestic remedies. Nevertheless, this petition is admissible because meaningful access to those remedies is subject to an "unwarranted delay."

The issue of exhaustion of domestic remedies is governed by Article 31 of the Commission's Rules of Procedure. Article 31(1) of the Rules provides: "In order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law." Article 31(2)(c) provides that the exhaustion requirement shall not apply when "there has been unwarranted delay in rendering a final judgment under the aforementioned remedies." Petitioners submit that the exception recognized in Article 31(2)(c) is applicable in this case. Moreover, since Article 31(2)(c) provides an exception to the exhaustion requirement, Petitioners need not comply with the six-month filing deadline. *See id.*, Art. 32(1). Under the circumstances of this case, the petition has been filed within a reasonable period of time. *Id.*, Art. 32(2).

---

[9] California Code of Judicial Ethics, Canons 2B, 3, and Commentary to Canon 3, *available at* http://www.lectlaw.com/files.jud32.htm (last visited April 15, 2002). *See also,* Stephen B. Bright and Patrick J. Keenan, *Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases*, 75 B.U.L. Rev. 759, 775 (1995).

[10] L.A. Times, Sept. 28, 1986, Part I, at 23, col. 3., *quoted in* Joseph R. Grodin, *Developing a Consensus of Constraint: A Judge's Perspective on Judicial Retention Elections*, 61 S.Cal.L.Rev. 1969, 1980 (1986).

[11] In 1986, then California Governor George Deukmejian opposed retention of three of the state's Supreme Court justices, including Chief Justice Rose Bird, on the grounds that they voted to overturn too many death sentences. *See* Leo C. Wolinsky, Governor's Support for Justices Tied to Death Penalty Votes, L.A. Times, Mar. 14, 1986, at 3. All three justices lost their seats after a campaign dominated by the death penalty. *See* Frank Clifford, Voters Repudiate 3 of Court's Liberal Justices, L.A. Times , Nov. 5, 1986, pt. 1, at 1 (describing how Rose Bird's "box score" of 61 reversal votes in 61 capital cases became a "constant refrain of the campaign against her," and how campaign commercials against the other two justices in the last month of the race insisted "that all three justices needed to lose if the death penalty is to be enforced"); *see also* Philip Hager, Grodin Says He Was "Caught" in Deukmajian's Anti-Bird Tide, L.A. Times , Nov. 13, 1986, pt. 1, at 3 (quoting defeated Justice Joseph R. Grodin saying that he was defeated in a "tide of opposition to the chief justice and frustration over the death penalty").

Under California and U.S. law, Victim has the right to challenge his conviction and sentence through both direct, appellate proceedings and post-conviction, habeas corpus proceedings. Of course, these remedies are "adequate" and "available" only insofar as the Victim has meaningful access to the courts. "When there has not existed effective access to remedies and there has been a delay in the application of justice, the requirement of previous exhaustion of domestic remedies cannot prevent a case of alleged human rights violations from being heard by an international forum such as the Commission." IACHR, Report No. 10/96, Case 10.636 (Admissibility), Guatemala, ¶ 44. In this case, the Victim's meaningful access to the courts is subject to an "unwarranted delay." Due to his indigence, Victim is unable to afford legal counsel. California has informed the Victim that it will provide him appellate counsel, but *there is currently a five year delay in appointing counsel for the initial appeal in capital cases*. *See* Annex One. This delay, according to the state, is caused by administrative complications arising from budgetary constraints. Petitioners submit that this extraordinary delay in the appointment of counsel constitutes an "unwarranted delay in rendering a final judgment."

Petitioners further submit that this delay in the appointment of counsel prejudices Victim's rights under the Declaration. The extended interruption in the appellate process will exacerbate the considerable delays associated with judicial review in capital cases. Since reinstating the death penalty in 1978, California has executed eleven persons; they served an average of thirteen years on death row.[12] Following the jurisprudence of other international human rights bodies, the Commission has recognized that such delays in final judgment violate the human rights of death row inmates. IACHR, Report No. 57/96, Andrews v. United States, ¶¶ 46-49. In this regard, the Commission's jurisprudence provides additional evidence that the delay in this case is "unwarranted."

6. DUPLICATION OF PROCEDURES

Petitioners have not submitted a petition based on the same facts to the U.N. Human Rights Committee, or to any other international governmental organization.

[12]California Department of Corrections, www.cdc.state.ca.us/issues/capital, California Executions Since 1978.

7. **PETITIONERS**

7.1 David L. Sloss
Assistant Professor of Law
Saint Louis University School of Law
3700 Lindell Blvd.
St. Louis, MO 63108
E-Mail: slossdl@slu.edu
Phone: (314) 977-3477
FAX: (314) 977-3332

_____
Signature

_____
Dated

7.2 Derek P. Jinks
Assistant Professor of Law
Saint Louis University School of Law
3700 Lindell Blvd.
St. Louis, MO 63108
E-Mail: jinkesdp@slu.edu
Phone: (314) 977-3066
FAX: (314) 977-3332

_____
Signature

_____
Dated

7.3 William McLennan
Attorney at Law
1022 Mill St., Suite E
San Luis Obispo, CA 93401
E-Mail: Mcl706@aol.com
Phone: (805) 544-7950
FAX: (805) 783-2036

_____
Signature

_____
Dated

8 ANNEXES

8.1 Annex One – Letter from California Appellate Project to Mr. William McLennan

8.2 Annex Two – California Penal Code, Sections 187, 189, 190.2, and 190.3

8.3 Annex Three – Memorandum of Authority in Support of Motion to Modify Sentence Pursuant to Penal Code Section 190.4(e)

8.4 Annex Four – California Civil Procedure Code, Sections 223 and 225

8.5 Annex Five – Juror Questionnaire for Juror # 187 (excerpts)

8.6 Annex Six – Transcript of Proceedings, Thursday, March 1, 2001 (excerpts)

8.7 Annex Seven – San Luis Obispo Police Department, Tape Transcription, Interview Dates 4/22/99 and 4/24/99 (excerpts)

8.8 Annex Eight – Prosecution Opening Statement, Guilt Phase (excerpts)

8.9 Annex Nine – Memorandum of Authority in Support of Motion to Strike Special Circumstances for Violations of the International Covenant on Civil and Political Rights and/or Violations of the Eighth and Fourteenth Amendments (excerpts)

8.10 Annex Ten – Peoples' Opposition to Defendant's Motion to Strike Special Circumstances for Violation of International Covenant on Civil and Political Rights

8.11 Annex Eleven – Transcript of Proceedings, October 24, 2000

8.12 Annex Twelve – California Constitution, article VI, section 16

8.13 Annex Thirteen – Stephen B. Bright and Patrick J. Keenan, *Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases*, 75 B.U. L. Rev. 759 (1995) (excerpts).

8.14 Joseph R. Grodin, *Developing a Consensus of Constraint: A Judge's Perspective on Judicial Retention Elections*, 61 S. Cal. L. Rev. 1969 (1986).