

April 9, 2020

Inter-American Commission on Human Rights
1889 F Street, NW
Washington D.C. 20006

Re: Additional observations as requested for the petition of *Oswaldo Marcelo Lucero, et al. v. United States*, Case No. 13.735, Admissibility Report No. 192/18

In response to the Commission's letter dated February 1, 2019, notifying Petitioners that their petition, *Oswaldo Marcelo Lucero et al. v. United States*, Case No. 13.735 (Admissibility Report No. 192/18), was found to be admissible, Petitioners now submit this letter in response to the Commission's request for any additional information concerning the above referenced case.¹

Despite more than a decade passing since filing their petition, the United States has reverted back to the same draconian, discriminatory and abusive policies and positions that are the subject of Petitioners' claims, ultimately leaving them fully ripe for the Commission's attention and investigation. The anti-immigrant and anti-Latinx climate that has fostered law enforcement's abuses as well as failures to protect Latinx² civilians from violence and harassment has only escalated and is now at levels unseen in decades. Latinx and immigrant residents of the United States continue to be targets of hate crimes, racial profiling, massive detentions and deportations and either the active targeting by law enforcement or the silent complicity when failing to protect Latinxs who far too often are unnecessary victims of crimes.

Latinxs continue to be targeted, harassed, abused and killed, either directly by the state or in the face of vivid disinterest by law enforcement personnel to protect Latinxs. The highest levels of government—including the President of the United States—continue to actively encourage such hate-filled rhetoric, and there are numerous cases of federal and local law enforcement either abandoning their obligations to respect, protect and fulfill human rights obligations in securing the safety of all civilians, or they have affirmatively violated the dignity and well-being of Latinx civilians. The anti-immigrant, anti-Latinx climate has encouraged similar language and hate crimes among citizens who target Latinx immigrants with overwhelming impunity. "Local, state, and national government participation in alarmist

¹ Petitioners requested an extension to file their additional observations on May 6, 2019, and communicated that request in person on December 16, 2019. On March 9, 2020, the Commission notified Petitioners that their request was denied and had one month to submit their observations. Petitioners do so now.

² Petitioners use the term "Latinx" to refer to the Latino or Latina community in accordance with contemporary vernacular representing the intention of the community to be as inclusive as possible.

immigration rhetoric and laws embracing ‘alien immigrant,’ ‘criminal,’ and terrorist’ as one in the same, lend legitimacy to a range of anti-immigration activities by civilians.”³

The disproportionate impact of failed immigration enforcement and policing policies on the Latinx community comes at a time when the Commission has been paying close attention to the killing of African-American citizens at the hands of law enforcement in the United States,⁴ recognizing the pattern of a failed criminal justice system from initial interaction with law enforcement to investigation, indictment, prosecution and conviction. This pattern of unchecked violence is not limited to any one particular state, but rather is occurring nationwide in cities and towns across the country. Despite the United States’ withdrawal from human rights mechanisms and showing reluctance, if not adversity, to participating in long-established forums intended to vindicate human rights, the United States is still responsible for complying with its international human rights obligations, including informing, training, monitoring, and enforcing compliance with relevant international law.

In fact, the admissibility of Petitioners’ claims under Articles I, II, V, XVII and XVIII of the American Declaration on the Rights and Duties of Man (“Declaration”) as found by the Commission in its Report on Admissibility 192/18 presented on December 31, 2018, and in compliance with Article 37 of the Rules of Procedure, continue to be more present and relevant than ever in the United States and are worthy of a merits-based investigation by the Commission. The affirmative duty to prevent hate crimes and private violence based on discrimination, and to refrain from actively fostering a climate that encourages, incites, permits, normalizes, justifies and politically rewards such violence is in substance what the Petitioners continue to allege and what remains fully within the Commission’s competence to adjudicate.

Below and attached, Petitioners briefly summarize the procedural history of the case, offer additional information providing current context related to the United States’ active contributions to discrimination and hate-based violence against the Latinx community, and reiterate their request that the Commission initiate the merits phase of the petition.

I. Procedural History

In the Commission’s Report on Admissibility, the procedural history was reviewed extensively. In sum, on December 24, 2008, Petitioners timely filed this petition before the Commission, showing the exhaustion—or futility of—domestic remedies in accordance with Art. 31.2(b) of the Rules of Procedure. Petitioners provided supplemental information to the Commission on March 5, 2009; October 24, 2011; January 6, 2012; April 19, 2013; and February 5, 2014. Petitioners received the State’s first response on September 14, 2015.

³ Mary Romero, *Are Your Papers in Order?: Racial Profiling, Vigilantes and “America’s Toughest Sheriff”*, 14 HARV. LATINO L. REV. 337, 349 (2011).

⁴ See IACHR Expresses Concern with the Deficiencies in the Investigation of Cases Relating to Killing of Afro-descendants by the Police in the United States (Aug. 23, 2016), http://www.oas.org/en/iachr/media_center/PReleases/2016/120.asp.

As Petitioners explained in their petition and subsequent filings, there is a normative gap in holding both public and private actors accountable for human rights violations of a group based on their identity. True protections mean more than just remedying individual, private harm long after it occurs through burdensome legal standards that make it difficult to sue for economic, injunctive or declaratory relief. As the Commission correctly points out,⁵ the limited civil rights statutes that make it permissible for an individual to sue a local government agent for a violation of his or rights are not applicable to state or federal actors, such as in the instant case. And yet, the State continues to allow, or actively engage in, the same behaviors that caused the violence against Petitioners in the first place.

Despite the United States' repeated assertion that it is not bound by the American Declaration on the Rights and Duties of Man, the Commission has repeatedly rejected that conclusory statement. The Commission has found, and Petitioners agree with, that it is "competent to examine and pronounce upon [] allegations against the State of the United States," and that the "Declaration is a source of legal obligation for application by the Inter-American Commission to the United States on the basis of its commitment to uphold respect for human rights as provided in the Charter of the Organization of America States (OAS)."⁶ The Commission also found in its Report on Admissibility that Petitioners sufficiently exhausted all available remedies that would have been corrective, at least in part, to the harms caused them. However, as the Commission also noted, exhaustion of civil actions – however limited or ample they may be – is not required before resorting to the Inter-American system "since that remedy would not settle the main issue in this petition." Indeed, the Commission noted that the State has not identified any remedies that currently exist that would remedy the harms caused Petitioners and those similarly situated, and Petitioners reassert that no such remedy exists. Additionally, Petitioners, as members of the Latinx community, are at risk of having the same egregious harms repeated against them given the current hostile and anti-immigrant climate that exists that is similar to, if not worse than, when this petition was filed in 2008.⁷ The Commission's decision confirming its competence to review the petition addressed the State's proffered justifications and now allow the Commission to advance to the merits stage.

II. Supplemental Information on Current State Conduct Relevant to Petitioners' Claims

The current State behavior by the United States is not only a continuation of the unlawful conduct in 2008 when Petitioners filed their claim, but has worsened in terms of its discriminatory treatment, overt attacks, incitement to private violence, and failure to protect Latinx immigrant populations found in the United States' jurisdiction. The summary of changed

⁵ Report on Admissibility, No. 192/18, para. 11.

⁶ *Undocumented Workers, United States of America*, Inter-American Commission on Human Rights, Report No. 50/16, OEA/Ser.L/V/II.159 (30 November 2016).

⁷ Petitioners detail in Addendum A how the State actively promotes anti-immigrant and anti-Latino sentiment, stoking racial fears and xenophobia that increasingly leads to both private and state violence.

state policies and practices that leave Latinx immigrant communities unprotected from private violence while actively creating a culture of impunity is extensive. The context provided the Commission concerning the active fostering of hate crimes against the Latinx community remains, including but not limited to:

- Abusive practices by immigration authorities directed almost exclusively at Latinxs, including raids, excessive use of force, targeted harassment, unauthorized surveillance, and delegation of federal responsibilities to local law enforcement;
- Immigration enforcement practices that create unsafe social and living conditions for families and undermine public policy priorities, such as arrests in courthouses, outside schools and child daycare facilities, near religious institutions and health clinics;
- Inadequate—albeit intentionally misleading—data collection on hate crimes against Latinxs;
- Limited training of law enforcement personnel on documenting, encouraging prosecution of and actually prosecuting hate crimes against Latinxs;
- Defunding of civil rights enforcement against racial minorities, including Latinxs;
- The prioritization of victims of supposed crimes by immigrants for investigation and prosecution versus actual hate crimes committed against Latinxs;
- Official anti-immigrant and anti-Latinx rhetoric that encourages and fosters a climate of hate and ripe for private violence against Latinxs on the basis of their race, ethnicity and national origin;
- Little to no resources dedicated to monitoring and prosecuting hate groups that repeat xenophobic language used by the State;
- Unsanitary, torturous and unsafe conditions at immigrant detention facilities;
- Separation of Latinx immigrant families along the southern border and jailing of Latinx immigrant children and parents in conditions that have been adjudicated to be unsafe, cruel and unsanitary;
- Removal of universally recognized categories for seeking asylum, such as victims of domestic violence or gang violence and persecution.

This coordinated state action continues to perpetuate a climate where access to justice, due process and equality before the law are unavailable to Latinxs, as evidenced by Petitioners' claims. It is also this larger and coordinated context which directly implicates the State's failure to uphold the Declaration and prevent the type of discrimination and hate crimes alleged by

Petitioners. The State's actions continue an ill-advised and unlawful trajectory of removing administrative and judicial protections for Latinx immigrants to seek justice and to remedy racial violence, and in fact leave them exposed to increased and targeted violence by both state and private actors. For the Commission's reference, Petitioners attach Addendum A summarizing and updating the current context to which Petitioners referred in their original petition, and in which Petitioners' claims can be understood.

III. Petitioners' Request

For 12 years, Petitioners have sought relief by this Commission in tending to the grave violations of life, due process and dignity suffered. They reiterate their request that the Commission advance their investigation of their claims and insist their claims continue to be justiciable.

The named Petitioners, and additional examples cited, are far from isolated incidents. Indeed, Petitioners have demonstrated a long-standing pattern of targeted violence against Latinxs by state and private actors, and the failure to protect and remedy when needed. Unremarkably, Latinx citizens increasingly live in fear, including of engaging in the most basic aspects of livelihood,⁸ such as shopping for food, taking their children to school or daycare,⁹ going to the hospital¹⁰ or worshipping at their religious site.¹¹ After the massacre in El Paso,¹² Latinxs are fearful that they, too, will be a target of racist violence because of their accent, skin

⁸ Simon Rios, *'Somebody Could Try To Kill Us': Mass. Latinos Fear For Safety Amid Shootings, Racism*, WBUR (Aug. 6, 2019), <https://www.wbur.org/news/2019/08/06/el-paso-chelsea-collective-immigration-attacks-fear>.

⁹ Stephen Sawchuk, et al., *'Anywhere I Go, I Feel Threatened': Schools Encounter Latino Students' Fears in Shooting Aftermath*, Education Week (Aug. 6, 2019), <https://www.edweek.org/ew/articles/2019/08/06/anywhere-i-go-i-feel-threatened-schools.html> (“I am Hispanic, and this was solely targeted toward the Hispanic culture and Mexicans,” said a young man age 17-years-old. “My family is documented and we’re residents, but regardless of that fact, we’re just scared. We’re afraid that something can go down. Personally, I didn’t want to go to school. Anywhere I go, I feel threatened.”)

¹⁰ Jane Dalton, *El Paso shooting: Some victims too scared to seek medical help for 'fear over immigration status'*, Independent, (Aug. 4, 2019), <https://www.independent.co.uk/news/world/americas/el-paso-shooting-victims-walmart-immigration-ice-raids-trump-mexico-a9038671.html>.

¹¹ Giulia McDonnell, *Churches struggle to comfort Latinos feeling besieged in a Trump era marked by hate, fear*, Los Angeles Times (Aug. 12, 2019), <https://www.latimes.com/california/story/2019-08-11/churches-struggle-to-comfort-latinos-feeling-besieged-in-a-trump-era-marked-by-hate-fear>.

¹² See Addendum A, p. 6.

color or surname.¹³ These attacks have been committed over far more than the last twelve years since this petition was filed and the likelihood that they will be repeated – particularly under the current administration – is unfortunately high. Therefore, it is urgent that the Commission address these concerns on these facts and help craft a remedy.

Petitioners await further instructions by the Commission and stand ready to provide additional information as needed and relevant.

Respectfully submitted,

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¹³ Dianna Nájuez, et al., *After El Paso, Latinos across America voice a new kind of fear*, AZ Central (Aug. 17, 2019), <https://www.azcentral.com/in-depth/news/nation/2019/08/16/el-paso-texas-mass-shooting-latino-hispanic-reaction-fears/1992555001/>.