

IN THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DJAMEL AMEZIANE,
Prisoner, U.S. Naval Station, Guantánamo Bay, Cuba

Petitioner,

v.

UNITED STATES,

Defendant.

PETITION AND REQUEST FOR PRECAUTIONARY MEASURES

Dated: August 6, 2008

*Respectfully submitted on behalf of
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I. PRELIMINARY STATEMENT

1. Djamel Ameziane is a prisoner at the U.S. Naval Base at Guantánamo Bay, Cuba, where he has been held virtually *incommunicado*, without charge or judicial review of his detention, for six and a half years. While arbitrarily and indefinitely detained by the United States at Guantánamo, Mr. Ameziane has been physically and psychologically tortured, denied medical care for health conditions resulting from his confinement, prevented from practicing his religion without interference and insult, and deprived of developing his private and family life. The stigma of Guantánamo will continue to impact his life long after he is released from the prison. These harms, as well as the denial of any effective legal recourse to seek accountability and reparations for the violations he has suffered, constitute violations of fundamental rights under the American Declaration of the Rights and Duties of Man (“American Declaration”). The U.S. government, as a signatory to the Declaration, is obliged to respect these rights vis-à-vis Mr. Ameziane by virtue of holding him as its prisoner.

2. A citizen of Algeria, Mr. Ameziane left his home country in the 1990s to escape escalating violence and insecurity and in search of a better life. He went first to Austria, where he worked as a high-paid chef, and then to Canada, where he sought political asylum and lived for five years but was ultimately denied refuge. Fearful of being deported to Algeria and faced with few options, Mr. Ameziane went to Afghanistan. He fled that country as soon as the fighting began in October 2001, but was captured by the local police and turned over to U.S. forces, presumably for a bounty.

3. From the point of his capture, Mr. Ameziane was shipped to a detention facility at the U.S.-occupied Air Base in Kandahar, Afghanistan, where his torture began. Military prison guards beat, punched and kicked Mr. Ameziane and other prisoners without provocation,

menaced them with working dogs, subjected them to brutal searches and desecrated their Qur'ans.

4. In February 2002, Mr. Ameziane was transferred from Kandahar to Guantánamo Bay, just weeks after the prison opened. As one of the first prisoners to arrive, Mr. Ameziane was held in Camp X-Ray – the infamous camp of the early regime at Guantánamo – in a small wire-mesh cage, exposed to the sun and the elements.¹ In March 2007, he was transferred to Camp VI – the newest maximum security facility at Guantánamo – where, according to unclassified information to date,² he sits in isolation all day, every day, in a small concrete and steel cell with no windows to the outside or natural light or air, and where he is slowly going blind.³

5. During his imprisonment at Guantánamo, Mr. Ameziane has been interrogated hundreds of times. In connection with these interrogations, he has been beaten, subjected to simulated drowning, denied sleep for extended periods of time, held in solitary confinement, and subjected to blaring music designed to torture. His abuse and conditions of confinement have resulted in injuries and long-term health conditions for which he has never received proper treatment, despite repeated requests. Medical treatment has furthermore been withheld to coerce his cooperation in interrogations.

6. Mr. Ameziane's imprisonment at Guantánamo has also deprived him of precious years during the prime of his life, during which he would have wished to marry, start a family

¹ See, e.g., Shafiq Rasul, Asif Iqbal, & Rhuheh Ahmed, *Composite Statement: Detention in Afghanistan and Guantánamo Bay* (July 26, 2004), available at <http://globalresearch.ca/articles/RAS408A.html>.

² The information provided in this Petition concerning Mr. Ameziane's confinement in Camp VI is based upon attorney-client meeting notes of visits to Mr. Ameziane at Guantánamo, as well as his letters to his attorneys, that were unclassified at the time of filing.

³ See Human Rights Watch, *Locked Up Alone: Detention Conditions and Mental Health at Guantánamo* (June 2008), available at <http://www.hrw.org/reports/2008/us0608/us0608webwcover.pdf>.

and pursue a career. It also denied him the chance to say goodbye to his father, who passed away while Mr. Ameziane has been imprisoned.

7. For more than six years, the United States has denied Mr. Ameziane the right not only to challenge his detention, but also to seek accountability and effective relief for the other harms he has suffered. At no time has the United States charged him with any crime, nor accused him of participating in any hostile action at any time, of possessing or using any weapons, of participating in any military training activity or of being a member of any alleged terrorist organization.

8. As this petition is filed, Mr. Ameziane continues to be indefinitely and inhumanely detained, and he faces an uncertain future. While the U.S. Supreme Court's ruling in *Boumediene v. Bush* in June 2008 restores Guantánamo detainees' right to habeas corpus,⁴ a remedy that Mr. Ameziane will pursue, the fact remains that he is still sitting in his cell at Guantánamo Bay without charge and that he has been deprived of any semblance of meaningful review of his detention for over six years.

9. Were Mr. Ameziane to be released from Guantánamo, he would need a third country in which to resettle safely. He is currently applying for resettlement in Canada, where he legally resided for five years prior to his detention. Mr. Ameziane confronts an ongoing risk of persecution in Algeria, the country he fled 16 years ago as a young man in hope of finding peace and security, only to end up at Guantánamo because of circumstances beyond his making or control.

⁴ *Boumediene v. Bush*, 128 U.S. 2229 (June 12, 2008).

I. BACKGROUND AND CONTEXT

A. The United States' Response to September 11

10. Days after the attacks on the World Trade Center and the Pentagon on September 11, 2001, the U.S. Congress passed a joint resolution that broadly authorized the President to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks ... in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”⁵ This resolution, the Authorization for the Use of Military Force (“AUMF”), provided the legal basis for the United States’ military campaign against the Taliban regime in Afghanistan and the al Qaeda elements that supported it.⁶

11. Two months later, on November 13, 2001, the President signed an executive order that defined a sweeping category of non-U.S. citizens whom the Department of Defense was authorized to detain in its “war against terrorism.”⁷ The order provided that the President alone would determine which individuals fit within the purview of that definition and could be detained.⁸ It also explicitly denied all such detainees being held in U.S. custody anywhere the right to challenge any aspect of their detention in any U.S. or foreign court or international tribunal, and authorized trial by military commissions for individuals who would be charged.⁹

⁵ Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001), *available at* <http://news.findlaw.com/wp/docs/terrorism/sjres23.es.html>.

⁶ *See Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

⁷ Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, Exec. Order No. 66 F.R. 57,833 (Nov. 13, 2001) [hereinafter “Exec. Order No. of Nov. 13, 2001”], *available at* http://www.law.uchicago.edu/tribunals/docs/exec_order.pdf.

⁸ *See* Exec. Order No. of Nov. 13, 2001 § 2(a).

⁹ *See* Exec. Order No. of Nov. 13, 2001 § 7(b)(2). In 2006, the U.S. Supreme Court ruled these military commissions unconstitutional in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

12. Pursuant to the AUMF and this order, hundreds of individuals were captured in the weeks and months following September 11, not only in Afghanistan, but in areas of the world where there was no armed conflict involving the United States.¹⁰ They were detained and interrogated in U.S. custody in various locations, including in U.S. military bases in Afghanistan and Guantánamo Bay, in foreign prisons and in secret sites operated by the CIA.¹¹

13. Confidential government memos written in the days, weeks and months after September 11 reveal that the United States did not intend to be bound by its constitutional or international legal obligations in responding to the attacks. A memo from the Director of the CIA from September 16, 2001 declared, “All the rules have changed,”¹² while a subsequent memo from the Office of the Legal Counsel at the Department of Justice counseled the President that there were essentially no limits to his authority “as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response.”¹³ In January 2002, as the first prisoners began to arrive at Guantánamo, additional memos from the Office of the Legal Counsel¹⁴ and from the President’s White House Counsel advised the

¹⁰ See U.N. Econ. & Soc. Council, Comm’n on Human Rights, *Situation of detainees at Guantánamo Bay*, U.N. Doc. E/CN.4/2006/120 (Feb. 15, 2006) [hereinafter “UN Special Mandate Holders’ Report”], available at <http://daccessdds.un.org/doc/UNDOC/GEN/G06/112/76/PDF/G0611276.pdf?OpenElement>. For example, six men of Algerian origin were detained in Bosnia and Herzegovina in October 2001 and transferred to Guantánamo. See *id.* at para. 25.

¹¹ See, e.g., Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post, Nov. 2, 2005, available at http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644_pf.html.

¹² Amnesty International, *USA Justice Delayed and Justice Denied? Trials under the Military Commissions Act*, at 2 (March 22, 2007), citing Memorandum: We’re at war (Sept. 16, 2001), available at <http://asiapacific.amnesty.org/library/Index/ENGAMR510442007?open&of=ENG-USA>.

¹³ U.S. Dep’t of Justice, Office of the Legal Counsel, Memorandum Opinion of Deputy Assistant Attorney General John Yoo to Timothy Flanigan, “The President’s constitutional authority to conduct military operations against terrorists and nations supporting them” (Sept. 25, 2001).

¹⁴ U.S. Dep’t of Justice, Office of the Legal Counsel, Memorandum Opinion of Deputy Assistant Attorney General John Yoo to William J. Haynes II, “Application of Treaties and Laws to al Qaeda and Taliban Detainees” (Jan. 9, 2002), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.09.pdf>; U.S. Dep’t of Justice, Office of the Legal Counsel, Memorandum Opinion of Assistant Attorney General Jay Bybee to Alberto Gonzalez et al.,

President that captured members of al Qaeda and the Taliban were not protected by the Third Geneva Convention, reasoning that this “new kind of war ... renders obsolete Geneva’s strict limitations on questioning of enemy prisoners” and that not applying “Geneva” would “substantially reduce” the risk that U.S. officials would later be prosecuted for war crimes under the War Crimes Act.¹⁵ The President issued an order one month later declaring that Taliban and al Qaeda detainees were not entitled to prisoner of war status under the Geneva Conventions.¹⁶

14. The manner in which the United States has conducted its “war on terror” has given rise to abuses that have been widely decried by the international community. While the United Nations Security Council adopted a strong anti-terrorism resolution only two weeks after September 11 condemning the attacks and calling upon States to take legislative, procedural and economic measures to prevent, prohibit and criminalize terrorist acts,¹⁷ subsequent resolutions also called upon “[s]tates [to] ensure that any measure[s] taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee and humanitarian law.”¹⁸ The United States has failed to respect these obligations. In the report of

“Application of Treaties and Laws to al Qaeda and Taliban Detainees” (Jan. 22, 2002), *available at* <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.22.pdf>.

¹⁵ Alberto Gonzales, White House Counsel, Memorandum for the President, “Decision re: application of the Geneva Convention on prisoners of war to the conflict with al Qaeda and the Taliban” (Jan. 25, 2002) (draft), *available at* <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.25.pdf>.

¹⁶ Memorandum of the President, “Humane Treatment of Al Qaeda and Taliban Detainees” (Feb. 7, 2002), *available at* http://lawofwar.org/bush.memo.7_Feb_2002_1_0001.jpg.

¹⁷ U.N. S.C. Res. 1373, U.N. Doc. S/RES/508 (Sept. 28, 2001), *available at* <http://www.state.gov/s/ct/index.cfm?docid=5108>.

¹⁸ *See* UN Special Mandate Holders’ Report, *supra* note 10, at para. 7, n. 3. (Declaration annexed to S.C. Res. 1456, U.N. Doc. S/RES/1456 (Jan. 20, 2003). Relevant General Assembly resolutions on this issue are G.A. Res. 57/219, G.A. Res. 58/187, and G.A. Res. 59/191. The most recent resolution adopted by the U.N. S.C. Res. 1624, U.N. Doc. S/RES/1624 (Sept. 14, 2005), in which the Security Council reiterated the importance of upholding the rule of law and international human rights law while countering terrorism.) *See also id.* at para. 7, nn. 4-6 (Statement delivered by the Secretary General at the Special Meeting of the Counter-Terrorism Committee with Regional Organizations, New York, March 6, 2003, *available at* <http://www.un.org/apps/sg/sgstats.asp?nid=275>; Speech delivered by the United Nations High Commissioner for Human Rights at the Biennial Conference of the International Commission of Jurists (Berlin, Aug. 27 2004), *available at*

his mission to the United States, the UN Special Rapporteur on Human Rights and Counter-Terrorism criticized the “serious situations of incompatibility between international human rights obligations and the counter-terrorism law and practice of the United States” and the fact that “a number of important mechanisms [in U.S. law] for the protection of rights have been removed or obfuscated under law and practice since the events of 11 September.”¹⁹ For years, this Commission and other international bodies,²⁰ as well as U.S. officials themselves,²¹ have called for the United States to close the prison at Guantánamo without further delay.

B. International Network of Detention Facilities, Including in Kandahar and at Bagram Air Force Base, Afghanistan; in Iraq; and in Guantánamo Bay, Cuba

15. As part of its response to September 11, the United States seized and detained hundreds, if not thousands, of individuals in sites and facilities away from public scrutiny, including U.S. military bases around the world, foreign prisons and secret CIA sites.²² As an indication that the United States is scaling up, not down, its global detention operations, recent news reports state that the Pentagon has planned to build a new, larger detention facility on the U.S. Air Base at Bagram, Afghanistan to replace the existing dilapidated one.²³ Currently, in known sites alone, the United States holds some 270 persons in Guantánamo, some 700 persons

<http://www.unhcr.ch/hurricane/hurricane.nsf/NewsRoom?OpenFrameSet>; Commission on Human Rights resolutions 2003/68, 2004/87 and 2005/80).

¹⁹ Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, paras. 53, 3 (Nov. 22, 2007) [hereinafter “2007 Scheinin Report”], available at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/149/55/PDF/G0714955.pdf?OpenElement>.

²⁰ See, e.g., Inter-Am. C.H.R., Res. No. 2/06 (July 28, 2006); UN Special Mandate Holders’ Report, *supra* note 10, at para. 96.

²¹ See, e.g., Tom Shanker & David E. Sanger, *New to Pentagon, Gates Argued for Closing Guantánamo*, Int. Herald Tribune, March 22, 2007, available at <http://www.ihrt.com/articles/2007/03/23/america/web-0323gitmo.php>; *Chief of U.S. Military Says Close Guantánamo to Salvage U.S. Image*, Ass. Press, Jan. 13, 2008.

²² See Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post, Nov. 2, 2005.

²³ See Eric Schmitt, *U.S. Planning Big New Prison in Afghanistan*, N.Y. Times, May 17, 2008.

in Afghanistan, including over 600 in Bagram, and over 20,000 persons in Iraq.²⁴ As was the path for Mr. Ameziane, many of those held in Afghanistan were subsequently transferred to Guantánamo.

1. Kandahar Detention Facility

16. During the first week of December 2001, in the later stages of the U.S. invasion of Afghanistan, U.S. Marines took control of the international airport in Kandahar and established a temporary U.S. base, including a prison reportedly capable of holding 100 detainees.²⁵ The U.S. military occupied and controlled the base over the following months, including the five-week period of Mr. Ameziane's detention there.²⁶ The prison at Kandahar subsequently became what the U.S. military calls an "intermediate" site, a holding facility where detainees await transportation to other permanent facilities.²⁷ News reports from February 2002, around the period of Mr. Ameziane's detention at Kandahar, described the facility as one of two main jails in Afghanistan for more than 200 terrorism suspects, many of whom were awaiting transfer to Guantánamo.²⁸ Detention conditions at Kandahar have been described by international monitors as below human rights standards.²⁹

²⁴ See Solomon Moore, *Thousands of New Prisoners Overwhelm Iraqi System*, N.Y. Times, Feb. 14, 2008, available at <http://www.nytimes.com/2008/02/14/world/middleeast/14justice.html> (reporting that over 24,000 prisoners are held in U.S. military prisons in Iraq).

²⁵ See Press Release, U.S. Dep't of Defense, *U.S. to Question Detainees* (Dec. 18, 2001), available at <http://www.defenselink.mil/news/newsarticle.aspx?id=44340>.

²⁶ See Steven Lee Myers, *A Nation Challenged: In the South; Anticipating Many Captives, U.S. Marines Build a Prison Camp at Kandahar Airport*, N.Y. Times, Dec. 16, 2001, available at <http://query.nytimes.com/gst/fullpage.html?res=9403E5D61F3FF935A25751C1A9679C8B63&sec=&spon=&pagewanted=1>.

²⁷ See Email Communication from CENTCOM Combined Forces Command Spokesperson Michele Dewerth to Human Rights First, June 9, 2004, cited in Human Rights First, *Ending Secret Detentions*, June 2004.

²⁸ Christopher Marquis, *A Nation Challenged: The Fighting; U.S. Troops Reinforcing Safety of Base in Kandahar*, N.Y. Times, Feb. 16, 2002.

²⁹ Comm'n on Human Rights, M. Cherif Bassiouni, Report of the Independent Expert on the Situation of Human Rights in Afghanistan, "Advisory Services and Technical Cooperation in the Field of Human Rights," para. 45, 61st Sess., U.N. Doc. E/CN.4/2005/122 (Mar. 11, 2005).

2. Guantánamo Bay Detention Facility

17. The territory of the Guantánamo Bay Naval Base has been under U.S. control since the end of the Spanish-American War.³⁰ The United States occupies the territory pursuant to a 1903 Lease Agreement executed with Cuba in the aftermath of the war, which expressly provides for the United States' "complete jurisdiction and control" over the area – control it may exercise permanently if it so chooses.³¹ In *Rasul v. Bush*, the U.S. Supreme Court rejected the government's argument that the right to habeas corpus does not extend to the prisoners at Guantánamo Bay because they are outside of U.S. territory.³² As one Justice wrote, "Guantánamo Bay is in every practical respect a United States territory" over which the United States has long exercised "unchallenged and indefinite control."³³

18. The first prisoners were transferred to Guantánamo on January 11, 2002.³⁴ At its peak, the prison held more than 750 men from over 40 countries, ranging in age from 10 to 80, most of whom U.S. officials have admitted should never have been held there in the first place.³⁵ As of August 2008, there were approximately 260 prisoners from about 30 countries being held

³⁰ See, e.g., *Rasul v. Bush*, 542 U.S. 466, 475 (2004) (describing the United States' "plenary and exclusive jurisdiction" over Guantánamo Bay).

³¹ Lease of Lands for Coaling and Naval Stations, U.S.-Cuba, art. III, Feb. 16-23, 1905, T.S. No. 418.

³² Leaked government memos from 2002 reveal that the administration selected Guantánamo as a prison site precisely because it believed that detainees being held there would be beyond the reach of U.S. law and the protections of habeas in particular. See U.S. Dep't of Justice, Office of Legal Counsel, Memorandum of Deputy Assistant Attorney General John C. Yoo for William J. Haynes, *Possible Habeas Jurisdiction over Aliens Held in Guantánamo Bay, Cuba* (Dec. 28, 2001), available at <http://www.gwu.edu/~7Ensarchiv/NSAEBB/NSAEBB127/01.12.28.pdf>.

³³ *Rasul*, 542 U.S. at 487 (Kennedy, J., concurring).

³⁴ See, e.g., Guantánamo Bay Timeline, Wash. Post, available at <http://projects.washingtonpost.com/Guantánamo/timeline/>; Amnesty International, *United States of America: No substitute for habeas corpus* at 11 (Nov. 2007).

³⁵ See Center for Constitutional Rights (CCR), *Guantánamo Bay Six Years Later*, available at <http://www.ccrjustice.org/files/GuantanamoSixYearsLater.pdf>; Joseph Margulies, *Guantánamo and the Abuse of Presidential Power* 209 (2006) (citing a former CIA officer who reported that "only like 10 percent of the people [there] are really dangerous, that should be there and the rest are people that don't have anything to do with it ... don't even understand what they're doing there"). See also Mark Denbeaux & Joshua Denbeaux, *The Guantánamo Detainees: The Government's Story* 2-3 (Feb. 8, 2006).

at Guantánamo.³⁶ These include approximately 50 men, like Mr. Ameziane, who cannot return to their home country for fear of torture or persecution and need a safe third country for resettlement.³⁷

19. The conditions of detention at Guantánamo have been described by international monitors as inhumane.³⁸ The first prisoners at Guantánamo, including Mr. Ameziane – who arrived blindfolded and goggled, wearing earmuffs and face masks, handcuffed and shackled – were held for the first few months of their imprisonment in open air wire-mesh cages in the infamous Camp X-Ray.³⁹ For more than two years, the prisoners were virtually cut off from the outside world, until *Rasul* opened Guantánamo to lawyers in 2004, but communication with lawyers, family members and other prisoners continues to be severely restricted.⁴⁰ Today, about 70% of all prisoners are held in solitary confinement or isolation in one of three camps – Camps 5 and 6, and Camp Echo.⁴¹ International NGOs have described Camp VI, where Mr. Ameziane is detained, as more severe in some respects than the most restrictive “super-maximum” facilities

³⁶ International Committee of the Red Cross (ICRC), Operational Update, *US detention related to the events of 11 September 2001 and its aftermath – the role of the ICRC* (July 30, 2008), available at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/usa-detention-update-300708?opendocument>. See also Press Release, U.S. Dep’t of Defense, Detainee Transfer Announced (July 2, 2008), available at <http://www.defenselink.mil/releases/release.aspx?releaseid=12100> (stating that approximately 265 prisoners remain at Guantánamo).

³⁷ See, e.g., Jennifer Daskal, *A Fate Worse than Guantánamo*, Wash. Post, Sept. 2, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/31/AR2007083101463.html>.

³⁸ See Human Rights Watch Report, *supra* note 3, at 3.

³⁹ See *id.* at 7.

⁴⁰ See *id.* at 14-15.

⁴¹ See CCR, *Solitary Confinement at Guantánamo Bay*, available at <http://www.ccrjustice.org/files/Solitary%20Confinement%20summary.pdf>. See also Human Rights Watch Report, *supra* note 3, at 1.

in the United States,⁴² which have been criticized by international bodies as incompatible with human rights, and the ICRC has described the conditions at Camp Echo as “extremely harsh.”⁴³

20. Prisoners are routinely abused and mistreated by military guards and it is well-established by now, after government reports and memos, news and NGO reports, and detainees’ accounts themselves, that they have been subjected to methods constituting torture during interrogations.⁴⁴ According to a report released by the Office of the Inspector General at the Department of Justice in May 2008, some of the most frequently reported techniques included sleep deprivation or disruption, prolonged shackling, stress positions, isolation, and the use of bright lights and loud music.⁴⁵

21. In response to years of indefinite and abusive detention, prisoners have engaged in acts of resistance and self-harm, including hunger strikes and suicide attempts; in 2003 alone, prisoners reportedly committed over 350 acts of self-harm.⁴⁶ To date, there have been five reported deaths at the base.⁴⁷ The most recent death was in December 2007; according to news reports, the prisoner suffered from a treatable form of colon cancer and died from lack of treatment.⁴⁸

⁴² See Amnesty International, *United States of America: Cruel and Inhuman: Conditions of isolation for detainees at Guantánamo Bay*, at 2 (April 2007).

⁴³ *Id.*

⁴⁴ See, e.g., Dep’t of Justice, Office of the Inspector General, *A Review of the FBI’s Involvement in and Observations of Detainee Interrogations in Guantánamo Bay, Afghanistan, and Iraq*, 171-201 (May 2008) [hereinafter “DOJ OIG Report”]; Neil A. Lewis, *Red Cross Finds Detainee Abuse in Guantánamo*, N.Y. Times, Nov. 30, 2004.

⁴⁵ See DOJ OIG Report, *supra* note 44, at 171.

⁴⁶ See UN Special Mandate Holders’ Report, *supra* note 10.

⁴⁷ See Petitioners’ Observations of February 16, 2007, Inter-Am. C.H.R. Precautionary Measures No. 259, *Detainees in Guantánamo Bay, Cuba*. Three prisoners were reported dead on June 10, 2006; a fourth on May 30, 2007; and a fifth on December 30, 2007. The government has yet to release the results of its purported investigation into the nature and circumstances of any of the deaths.

⁴⁸ See *Alleged Taliban Member Detained in Guantánamo Bay Dies of Cancer*, Assoc. Press, Dec. 31, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/30/AR2007123002423.html>.

C. The Legal Framework Governing Guantánamo Detainees: U.S. Legislation and Litigation

22. Since 2002, multiple legal challenges have been mounted against the President's purported authority to hold individuals in indefinite, unreviewable detention. Although U.S. courts have attempted to restrict that authority, the Executive and the Congress have responded time and again with ever-problematic legislation and procedures, namely, the Combatant Status Review Tribunal ("CSRT") procedures in 2004, the Detainee Treatment Act ("DTA") in 2005, and the Military Commissions Act ("MCA") in 2006. Notwithstanding the Supreme Court's ruling in *Boumediene* striking the MCA's denial of habeas as unconstitutional with respect to Guantánamo detainees, the United States has succeeded in delaying effective habeas relief for the detainees for over six years. Furthermore, the MCA's other provisions, as well as the DTA and the CSRT procedures, remain intact.

1. Habeas Corpus and Access to Courts

23. In February 2002, the first *habeas corpus* petition on behalf of Guantánamo prisoners was filed in the U.S. District Court for the District of Columbia ("D.C. District Court"). The district court dismissed the petition for lack of jurisdiction, holding that as non-citizens detained outside sovereign U.S. territory, the petitioners had no right to habeas, and the Court of Appeals affirmed. The U.S. Supreme Court granted certiorari and, on June 24, 2004, held in *Rasul v. Bush* that U.S. federal courts have jurisdiction to hear *habeas* petitions of Guantánamo detainees.⁴⁹ Two years into their detention, Guantánamo prisoners had access to the courts for the first time.

24. In the aftermath of *Rasul*, more than 200 *habeas* petitions were filed in the D.C. District Court on behalf of over 300 Guantánamo detainees. In January 2005, two district court

⁴⁹ *Rasul*, 542 U.S. at 483-84.

judges issued conflicting decisions regarding the extent of federal court access mandated by the Supreme Court’s decision in *Rasul*. In *Khalid v. Bush*, one judge held that nonresident noncitizens detained outside the sovereign territory of the United States in the course of the “war” against al Qaeda and the Taliban held no constitutional rights, that no federal law was relevant and applicable, and that international law was not binding in this instance.⁵⁰ In contrast, in *In re Guantánamo Detainee Cases*, another judge held that the detainees were entitled to constitutional due process rights that were not satisfied by the CSRTs created by the Bush Administration in response to *Rasul* (discussed *infra*), and that some of the detainees held rights under the Third Geneva Convention.⁵¹

25. As the litigation continued, Congress passed two laws pertinent to the question of the detainees’ right to *habeas*. In December 2005, Congress passed the DTA, which stripped federal courts of jurisdiction over any new *habeas* petitions filed on behalf of Guantánamo detainees and created as a purported substitute for *habeas* a limited remedy in the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit Court of Appeals”).⁵² Under the DTA, the scope of the Court’s review is limited solely to examining whether the CSRTs were conducted in compliance with procedures established by the Secretary of Defense for the CSRTs⁵³ – in other words, whether the military followed its own rules.⁵⁴ Although the DTA was

⁵⁰ *Khalid v. Bush*, 355 F. Supp. 2d 311 (D.D.C. 2005).

⁵¹ *In re Guantánamo Bay Detainee Cases*, 344 F. Supp. 2d 174 (D.D.C. 2004). These two cases were consolidated as *Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007).

⁵² Detainee Treatment Act of 2005 (“DTA”) § 1005(e), 42 U.S.C.A. § 2000dd (2005). The DTA stripped federal courts of jurisdiction to consider *habeas* petitions and “any other action” concerning any aspect of detentions at Guantánamo. In *Hamdan*, 548 U.S. 557 (2006), the U.S. Supreme Court recognized that the DTA did not apply to *habeas* petitions pending at the time of its passage.

⁵³ DTA, *cit.*, § 1005(e)(2); Military Commissions Act of 2006 (“MCA”) § 3(a)(1), 10 U.S.C.A. (2006), amending 10 U.S.C.A. § 950(g) (2006).

⁵⁴ *See Hamdan*, 548 U.S. 557 at 572.

enacted over three years ago, only one of the more than 150 DTA cases that have been filed since 2005 was recently decided on the merits.⁵⁵

26. In October 2006, Congress passed the MCA, which goes even further than the DTA by precluding federal courts from considering *habeas* petitions and “any other action” not only by Guantánamo detainees *or* by any other detainee captured after September 11, 2001 and held as an “enemy combatant” in U.S. custody anywhere.⁵⁶ The limited DTA review by the D.C. Circuit Court of Appeals is the only court access such detainees are permitted by the MCA.⁵⁷

27. In February 2007, a divided panel of judges of the D.C. Circuit Court of Appeals relied on the MCA in dismissing for lack of jurisdiction the leading *habeas* petitions on appeal from the D.C. District Court, consolidated as *Boumediene v. Bush* and *Al Odah v. United States* (“*Boumediene*”),⁵⁸ and the detainees petitioned for writ of certiorari to the Supreme Court. In June 2007, in a highly unusual move, the Supreme Court reversed its initial denial of cert and agreed to hear the combined cases. Pending the Supreme Court’s decision, judges of the D.C. District Court stayed or dismissed the hundreds of *habeas* petitions pending in the Court.⁵⁹

28. On June 12, 2008, the U.S. Supreme Court ruled in *Boumediene* that the MCA’s *habeas*-stripping provision was unconstitutional with respect to Guantánamo detainees and that

⁵⁵ *Parhat v. Gates*, No. 06-1397, 2008 WL 2576977 (C.A.D.C. June 20, 2008).

⁵⁶ MCA § 7(a)(2).

⁵⁷ MCA § 950g.

⁵⁸ All three judges agreed that Congress intended to strip the right of the courts to hear claims from Guantánamo detainees when it passed the MCA. However, the decision was split 2-1 on whether common law *habeas* review extended to Guantánamo. The majority ruled that it did not, and that the MCA was valid and did not constitute an unconstitutional suspension of the writ of *habeas corpus*. One judge, in dissent, found the MCA to be an unconstitutional withdrawal of jurisdiction from the federal courts. *Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007).

⁵⁹ On September 20, 2007, for example, the D.C. District Court dismissed the *habeas corpus* petitions of 16 Guantánamo detainees with a one paragraph explanation stating that “federal courts have no jurisdiction over *habeas* petitions of enemy combatants detained at Guantánamo Bay.” *Qayed v. Bush*, Mem. Order of Sept. 20, 2007, Civil Action No. 05-0454 (RMU).

the review process under the DTA was not an adequate substitute for full *habeas* review.⁶⁰ The Court's decision paves the way for the detainees' *habeas* petitions to be heard in the D.C. District Court, although no Guantánamo detainee has yet had a hearing on the merits of his *habeas* petition, and no such hearing has been scheduled to date.

29. Finally, on June 20, 2008, the D.C. Circuit Court of Appeals issued its first decision in a DTA case. In *Parhat v. Gates*, the Court held that a CSRT's designation of the petitioner as an "enemy combatant" was invalid and ordered the government to "release Parhat, to transfer him, or to expeditiously convene a new Combatant Status Review Tribunal."⁶¹

2. CSRTs and Status Determinations

30. On July 7, 2004, just days after the *Rasul* decision, the government hastily created an administrative review process under CSRTs – military tribunals composed of three mid-level officers tasked with reviewing whether the detainees at Guantánamo were being properly held as "enemy combatants."⁶² In addition to the CSRTs, Administrative Review Boards (ARBs) were established to review annually whether each detainee should continue to be held.⁶³ According to the government, every detainee at Guantánamo Bay has had a CSRT.⁶⁴

⁶⁰ *Boumediene v. Bush/Al Odah v. United States*, 128 S. Ct. 2229 (June 12, 2008).

⁶¹ *Parhat*, WL 2008 2576977, at 2-3. The Court stated that "Parhat's principal argument on this appeal is that the record before his Combatant Status Review Tribunal is insufficient to support the conclusion that he is an enemy combatant, even under the Defense Department's own definition of that term. We agree."

⁶² See Dep't of Defense, Deputy Secretary of Defense, Memorandum for Secretaries of Military Departments et al. (July 14, 2006), Encl. (1), §§ A & B [hereinafter "CSRT Procedures"], available at <http://www.defenselink.mil/news/Aug2006/d20060809CSRTProcedures.pdf>.

⁶³ See Dep't of Defense, Deputy Secretary of Defense, Memorandum for Secretaries of Military Departments et al. (July 14, 2006), Encl. (3), § 1(a) [hereinafter "ARB Procedures"], available at <http://www.defenselink.mil/news/Aug2006/d20060809ARBProceduresMemo.pdf>.

⁶⁴ See UN Special Mandate Holders' Report, *supra* note 10, at para. 28. Response of the United States of America Oct. 21, 2005, to Inquiry of the UNHCR Special Rapporteurs dated Aug. 8, 2005, Pertaining to Detainees at Guantánamo Bay, at 47.

31. As the government has acknowledged, the CSRTs and ARBs are administrative, not judicial proceedings.⁶⁵ Prisoners cannot see or rebut any information the government considers classified, even though the CSRTs in 2004 relied substantially on classified information in making their determinations.⁶⁶ While detainees have the right to present witnesses and evidence their tribunal deems are relevant and “reasonably available,” in practice, most detainee requests to present documentary evidence were denied, and all requests for witnesses who were other than other Guantánamo detainees were denied.⁶⁷ Formal rules of evidence do not apply and there is a presumption in favor of the government’s “evidence.”⁶⁸ Evidence obtained through torture can be used as a basis for continued detention.⁶⁹ The detainees have no right to counsel,⁷⁰ but only a “personal representative” who has no legal training, no duty to maintain confidentiality and an obligation, in fact, to disclose to the CSRT any relevant inculpatory information she or he receives from the detainee.⁷¹ Not surprisingly, given these procedures, the CSRTs conducted in 2004 found most of the detainees at Guantánamo to be “enemy combatants.”⁷²

⁶⁵ See CSRT Procedures § B; ARB Procedures § 1. See also 2007 Sheinin Report, *supra* note 19, para. 14.

⁶⁶ See CSRT Procedures § D(2); Brief for Petitioners El-Banna et al. in *Al Odah v. United States*, No. 06-1196, at 33.

⁶⁷ See CSRT Procedures §§ D & E; Seton Hall University School of Law, *No-Hearing Hearings: An Analysis of the Proceedings of the Government’s Combatant Status Review Tribunals at Guantánamo*, at 2-3 (Nov. 17, 2006). See also IACHR Precautionary Measures No. 259 (Oct. 28, 2005) at 8.

⁶⁸ See CSRT Procedures §§ G(7) & G(11).

⁶⁹ See *id.* Encl. (1) § G(7).

⁷⁰ See *id.* § F.

⁷¹ See Dep’t of Defense, Deputy Secretary of Defense, Memorandum for Secretaries of Military Departments et al. (July 14, 2006), Encl. (3), *available at* <http://www.defenselink.mil/news/Aug2006/d20060809CSRTProcedures.pdf>.

⁷² IACHR Precautionary Measures No. 259 (Oct. 28, 2005) at 8.

32. The CSRTs have been widely criticized by military officers who served on them,⁷³ U.S. courts and international bodies alike.⁷⁴ In January 2005, the D.C. District Court held in *In re Guantánamo Detainees Cases* that the CSRT proceedings failed to provide detainees “a fair opportunity to challenge their incarceration” and thus fail to comply with the Supreme Court’s decision in *Rasul*.⁷⁵ The Commission has also found the CSRTs inadequate; in 2005, the Commission concluded that “it remains entirely unclear from the outcome of those proceedings what the legal status of the detainees is or what rights they are entitled to under international or domestic law.”⁷⁶

33. Again, the review provided by the D.C. Circuit Court of Appeals under the DTA is too limited to correct these flaws.

3. Military Commissions

34. In June 2006, the military commissions authorized by the President in his November 2001 executive order were ruled unconstitutional by the Supreme Court in *Hamdan v. Rumsfeld*.⁷⁷ The MCA was enacted in direct response to *Hamdan* and authorized a new system of military commissions, but, for the second time, with procedures deviating from traditional U.S. court martial rules and the laws of war.⁷⁸

⁷³ See, e.g., William Glaberson, *Unlikely Adversary Arises to Criticize Detainee Hearings*, N.Y. Times, July 23, 2007, available at <http://www.nytimes.com/2007/07/23/us/23gitmo.html>.

⁷⁴ See Brief of Amicus Curiae United Nations High Commissioner for Human Rights in Support of Petitioners in *Boumediene v. Bush* and *Al Odah v. United States*, Nos. 06-1195, 06-1196; UN Special Mandate Holders’ Report, *supra* note 10, para. 28; 2007 Scheinin Report, *supra* note 19, para. 14

⁷⁵ See *In re Guantánamo Detainees Cases*, 355 F. Supp. 2d 443, 468-478 (2005).

⁷⁶ IACHR Precautionary Measures No. 259 (Oct. 28, 2005) at 8.

⁷⁷ *Hamdan*, 548 U.S. 557 (2006).

⁷⁸ Among other shortcomings, the military commissions authorized by the MCA reject the right to a speedy trial, allow a trial to continue in the absence of the accused, allow for the introduction of coerced evidence at hearings, permit the introduction of hearsay and evidence obtained without a warrant, and deny the accused full access to exculpatory evidence. The MCA also delegates the procedure for appointing military judges to the discretion of the Secretary of Defense. See U.S. Dep’t of Defense, Manual for Military Commissions [hereinafter “Military Commissions Manual”]. For a thorough examination of the procedural

35. U.S. officials have indicated that they expect to charge approximately 80 of the remaining prisoners at Guantánamo.⁷⁹ As of August 2008, charges had been announced against 20 detainees⁸⁰ and one trial has begun.⁸¹ Even if detainees are acquitted by a military commission or complete the term of imprisonment imposed by such a commission, they are not entitled to release from U.S. custody.⁸²

II. STATEMENT OF FACTS

A. Background

36. Mr. Ameziane was born on April 14, 1967 in Algiers, the sixth in a close-knit family of eight brothers and sisters. Mr. Ameziane's brother remembers that as a child, Mr. Ameziane was quiet and loved to read, and was content to sit in his room for hours surrounded by stacks of books. Mr. Ameziane attended primary school, secondary school and university in Algeria, and worked as a hydraulics technician after obtaining his university diploma.

37. Mr. Ameziane's hometown is in Kabylie, an unstable region in the north of Algeria known for frequent, violent clashes between the Algerian army and Islamic resistance groups. Practicing Muslims living in that region, such as Mr. Ameziane and his family, are

inadequacies of the military commissions created by the MCA, *see* CEJIL, CCR, American University Washington College of Law International Human Rights Law Clinic, "Observations presented before the Inter-American Commission on Human Rights, July 20, 2007, Precautionary Measures. No. 259, Detainees in Guantánamo Bay, Cuba."

⁷⁹ *See* News Release, U.S. Dep't of Defense, Charges Referred on Detainee al Bahlul, No. 156-08 (Feb 26, 2008), available at <http://www.defenselink.mil/releases/release.aspx?releaseid=11718>. *See Judge denies prisoner-of-war status to Guantánamo detainee*, Int. Herald Tribune, Dec. 20, 2007.

⁸⁰ *See* Donna Miles, *Guantánamo Detainee Charged for Role in USS Cole Attack*, American Forces Press Service, June 30, 2008, available at <http://www.defenselink.mil/news/newsarticle.aspx?id=50362>.

⁸¹ *See* William Glaberson & Eric Lichtblau, *Military Trial Begins for Guantánamo Detainee*, N.Y. Times, July 22, 2008 (reporting commencement of Salim Ahmed Hamdan's military commission). In addition, one of the first detainees to be charged, Australian David Hicks, pled guilty. Under increasing pressure from the Australian government to return their citizen, Hicks was returned to Australia after a highly politicized plea agreement was reached in which he admitted to a charge of material support for terrorism and received a sentence of nine months' imprisonment, served in Australia, and a yearlong "gag" order. *See, e.g.*, Spencer S. Hsu, "Guantánamo Detainee Returns to Australia," Wash. Post., May 21, 2007, p. A10.

⁸² *See* 2007 Scheinin Report, *supra* note 19, para. 32.

automatically suspected of being supporters of such groups and are frequently harassed and targeted by the government solely by virtue of being observant Muslims. Mr. Ameziane left his family home in 1992 to escape this discrimination and insecurity and to seek greater stability and peace abroad. He obtained a visa to travel to Italy, through which he transited to Vienna, Austria, where he lived for three years.

38. In Austria, Mr. Ameziane began working as a dishwasher, but his skill and talent led him to rise quickly to become the highest-paid chef at *Al Caminetto Trattoria*, a well-known Italian restaurant. In 1995, following the election of a conservative anti-immigrant government, new immigration policies prevented Mr. Ameziane from extending or renewing his visa, and his work permit was denied without explanation. Mr. Ameziane was forced to leave the country. He traveled directly to Canada, hoping that country's French-speaking population and progressive immigration policies would allow him to settle down and make a permanent home. Immediately upon his arrival, he told immigration officials at the airport that he wanted to apply for asylum because he was afraid of being deported to Algeria. As he awaited a decision, he obtained a temporary work permit and worked diligently for an office supply company and various restaurants in Montreal. His application was ultimately denied in 2000, and he was forced once again to uproot his life and leave the country he had made his home for five years.

39. Displaced, fearful of being forcibly returned to Algeria and – after eight years of searching for refuge only to be denied time and again – perceiving that he had few options, he went to Afghanistan, where he felt he could live without discrimination as a Muslim man, and where he would not fear deportation to Algeria. As soon as the war started, he fled to escape the fighting. He was captured by local police while trying to cross the border into Pakistan, and turned over by Pakistani authorities to U.S. forces, presumably for a bounty. Later, in

Guantánamo, soldiers told Mr. Ameziane that the Pakistanis sold people to them in Afghanistan for \$2,000 and in Pakistan for \$5,000.

40. Mr. Ameziane was transferred to the prison at the U.S.-occupied airbase at Kandahar, Afghanistan in January 2002 and to Guantánamo Bay on or around February 11, 2002, where he was one of the first prisoners to arrive. More than six years later, Mr. Ameziane remains detained at Guantánamo without charge or, to date, judicial review of the legality of his detention.

B. Administrative and Judicial Proceedings

41. Like many other detainees at Guantánamo, Mr. Ameziane did not participate in his CSRT in 2004 or his subsequent annual ARBs⁸³ because he did not believe that they provided any measure of due process and would be used only to justify his indefinite detention. Indeed, after a sham proceeding held in his absence, a CSRT determined that he was properly detained as an “enemy combatant.” His annual ARBs have also found him ineligible for release, although it appears that the United States has previously attempted to negotiate his transfer to Algeria, where he would be at risk of persecution.

42. Mr. Ameziane categorically rejects all of the U.S. government’s allegations against him, which are entirely unsupported by actual, reliable evidence. Even taken at face value, they do not justify his detention. He has never been alleged by the U.S. government to have engaged in any acts of terrorism or other hostilities against anyone, to have picked up a weapon or participated in any military training, or to be a member of an alleged terrorist organization. Nor has he ever had any involvement with extremism, terrorism or any act of violence whatsoever.

⁸³ See Mr. Ameziane’s unclassified CSRT & ARB records, annexed to this petition.

43. Furthermore, the United States itself states in the unclassified “summary of evidence” presented to Mr. Ameziane’s CSRT panel that he went to Afghanistan for religious purposes and not because he wanted to fight.⁸⁴ The government also notes that Mr. Ameziane stated to his “personal representative” that he was not a member of the Taliban or al-Qa’ida; that he neither trained for, witnessed, nor engaged in any fighting; and that he had no intention of participating in any fighting or terrorist activity if he were released.⁸⁵

44. On February 24, 2005, Mr. Ameziane filed a petition for *habeas corpus* in the D.C. District Court.⁸⁶ He was among the first to file after *Rasul* afforded prisoners that right. After surviving several attempts for dismissal by the government, his case was stayed pending the Supreme Court’s decision in *Boumediene*. That decision now paves the way for his case finally to be heard on the merits, but, more than three years after he first petitioned the court, it remains unclear when this will occur.

45. No criminal charges have been brought against Mr. Ameziane by the United States.

C. Torture and other Inhumane Treatment

46. Mr. Ameziane has suffered torture and other inhumane treatment in the custody of the United States at Kandahar and Guantánamo, which he has recorded in letters to his attorneys. In one letter, Mr. Ameziane describes the brutality of his treatment at Kandahar, where he was transferred by U.S. authorities in January 2002 and held for more than a month.⁸⁷ Upon his

⁸⁴ See unclassified Government Summary of Evidence, annexed to this petition.

⁸⁵ See *id.*

⁸⁶ See Petition for Writ of Habeas Corpus in *Ameziane v. Bush*, Civil Action No. 05-392 (D.D.C.), annexed to this petition.

⁸⁷ Letter from Djamel Ameziane to Wells Dixon, Nov. 6, 2007 (unclassified). Letters from Mr. Ameziane to his attorneys are on file with the Center for Constitutional Rights and can be made available to the Commission on a confidential basis if necessary.

arrival, Mr. Ameziane describes how soldiers punched, kicked and pushed him to the ground, pinned him down with their knees in his back, and slammed his head against the ground.⁸⁸ He and other prisoners were subjected to abusive searches each day and night, and soldiers would sometimes come armed with working dogs. When prisoners were moved to different sections of the camp, soldiers would take them outside and order them to kneel with their hands on their heads facing a barbed-wire fence, on the other side of which a dozen armed soldiers would stand with rifles aimed, yelling things like “kill him! kill him!” to the soldiers handling the prisoners. The soldiers would then push the prisoners flat on the ground on their stomachs and bring barking dogs close to their heads while they shackled the men’s hands and ankles. Mr. Ameziane remembers the dogs being so close that he could feel their breath on the side of his face. The prisoners would then be ordered to get up and walk for dozens of meters on bare feet and in shackles until they reached their destination.

47. From Kandahar, Mr. Ameziane was transferred to Guantánamo, arriving on or around February 11, 2002. For the duration of his 15-hour journey, Mr. Ameziane was hooded, shackled and chained to the floor of the plane, and forbidden from speaking. Upon his arrival at Guantánamo, he was put a bus and transported to Camp X-Ray, during which he was once again chained to the floor of the bus and forbidden from speaking or making the slightest movement. When his body swayed to the bus bumping along the road, soldiers struck him repeatedly on the back and head.

48. At Camp X-Ray, where Mr. Ameziane was detained for his first two and a half months at Guantánamo, from February to April 2002, he was held in a 6-feet-by-6-feet wire mesh cell, with a cement floor and a make-shift roof of metal sheets. In a letter to his attorneys,

⁸⁸ *Id.*

Mr. Ameziane described how guards would gratuitously yell obscenities and insults at him every time they walked by his cell or gave him an order, often for no reason other, for example, than to demand that he arrange his basic personal items in a certain order. Mr. Ameziane described the abusiveness and cruel absurdity of the situation:

I had to put the buckets, the tube of toothpaste, the toothbrush, the flask, the bar of soap, and the 'flip-flop' sandals on the side of the cage where the door is. A guard asks me to place these articles in a row in a certain order. A few minutes later, another guard comes by and yells at me to put the toothbrush to the right of the toothpaste, the flask to the left of the soap bar. Later, another guard yells again for me to place the toothbrush to the left of the toothpaste; the flask to the right of the soap bar and so on; several times per day and often waking me in the middle of the night to scream at me and tell me to move, for instance, the toothbrush to the left of the toothpaste. ... things that I am not sure we should laugh or cry about.⁸⁹

49. Prisoners who replied to the guards' insults or defied their orders were visited by the "Immediate Reaction Force team" ("IRF team") and punished.⁹⁰ Mr. Ameziane witnessed these teams beat prisoners and chain them up in painful positions for several hours at a time, for example, with their hands and feet cuffed together behind their back in such a way that their legs remained flexed.⁹¹

50. Mr. Ameziane has been moved between different blocks and camps since Camp X-ray. Several times for stretches of up to one month, he was held in solitary confinement in Camp I, where he was put in a cold steel cell with a steel bed and a rusted floor, with no article of clothing or warmth other than a shirt, a pair of pants and flip flops, and where guards would

⁸⁹ Letter from Djamel Ameziane to Pardiss Kebriaei, May 2008 (unclassified) (on file with CCR).

⁹⁰ Comparable to a riot squad, the IRF functions as a disciplinary force within the camps. Military police rotate on and off IRF duty and carry Plexiglas shields and frequently use tear gas or pepper spray. Guantánamo prisoners are frequently "IRF'd" as punishment. *See CCR, Report on Torture and Cruel, Inhuman, and Degrading Treatment of Prisoners at Guantánamo Bay, Cuba*, at 21 (July 2006).

⁹¹ Letter from Djamel Ameziane to Pardiss Kebriaei, May 2008 (unclassified).

prevent him from sleeping by making loud noise at night.⁹² For a period of about six months in 2006, for no infraction, Mr. Ameziane was transferred to the “Romeo” block of Camp 3 and the “Mike” block of Camp 2, which the military reserved for detainees who were perceived to be uncooperative. He was given only a thin mat on which to sleep, a pair of pants, a smock, and a pair of flip-flops, and a sheet that was handed to him at 10 p.m. and taken away at 5 a.m.⁹³ At night, guards would wake him each quarter or half hour by kicking on the wall or the door of his cell and yelling, “Wake up!”⁹⁴ When he was taken out of his cell shackled and chained each day to go to the “recreation yard,” he was forbidden from speaking with other prisoners or moving his eyes left and right as he was escorted to the yard. Sometimes, when his eyes would shift slightly to the side, his escort guards would brutally shove him against the wall, slamming his head against the wall with such force once that blood came out of his nose and mouth.⁹⁵

51. In another violent incident, guards entered his cell and forced him to the floor, kneeling him in the back and ribs and slamming his head against the floor, turning it left and right. The bashing dislocated Mr. Ameziane’s jaw, from which he still suffers. In the same episode, guards sprayed cayenne pepper all over his body and then hosed him down with water to accentuate the effect of the pepper spray and make his skin burn. They then held his head back and placed a water hose between his nose and mouth, running it for several minutes over his face and suffocating him, an operation they repeated several times. Mr. Ameziane writes, “I had the impression that my head was sinking in water. I still have psychological injuries, up to this day. Simply thinking of it gives me the chills.”⁹⁶ Following his waterboarding, he was

⁹² Letter from Djamel Ameziane to Wells Dixon, Mar. 17, 2008 (unclassified) (on file with CCR).

⁹³ Letter from Djamel Ameziane to Wells Dixon, Nov. 6, 2007 (unclassified).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Letter from Djamel Ameziane to Wells Dixon, Mar. 17, 2008 (unclassified).

taken to an interrogation room, where his feet were chained to a metal ring fixed to the floor and he was left writhing in pain and shivering under the cold air of the air conditioner, his clothes soaked and his body burning from the effect of the pepper spray.⁹⁷

52. Mr. Ameziane has also been subjected to many harsh interrogations. He was once kept inside an interrogation room for over 25 hours and allowed out only once for half an hour. Another time, he was kept in an interrogation room for over 30 hours with loud techno music blasting, “enough to burst your eardrums.”⁹⁸

53. Since the beginning of January 2008, Mr. Ameziane has had late night interrogation sessions with an interrogator he identifies as “Antonio,” who chain smokes for the duration of their two-hour sessions, blows smoke in Mr. Ameziane’s face, yells obscenities and taunts him, and has threatened him with the use of “other” harsher methods. Before these sessions begin, Mr. Ameziane sits bound to a chair waiting for up to an hour, with his feet shackled to the floor and his wrists cuffed so tightly that his hands are left swollen and discolored. He is left shackled and cuffed in the interrogation room for up to another hour after these sessions end waiting to be returned to his isolation cell, making these interrogations an abusive four-hour ordeal. While Mr. Ameziane’s attorneys made a formal complaint in February to the military about Antonio’s conduct, the sessions and the abuse have continued.

D. Camp VI Conditions

54. According to the most recent unclassified version of attorney-client meeting notes from visits to Mr. Ameziane at Guantánamo,⁹⁹ Mr. Ameziane is being held in solitary

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ The most recent meetings between Mr. Ameziane and his attorneys from which unclassified information is available took place on June 10-11, 2008 at Guantánamo Bay, Cuba.

confinement in Camp VI, one of the harshest facilities at the prison.¹⁰⁰ He says his interrogators used to threaten him with being moved to Camp VI as punishment for refusing to speak to them. He was finally transferred there in March 2007.

55. Mr. Ameziane is detained in a windowless 6-foot-by-12-foot concrete and steel cell, with a solid steel door and no openings for natural light or air.¹⁰¹ The only openings are a metal food slot and three narrow “windows” that all face the interior of the prison and serve only to allow prison guards to look in and keep watch. The temperature inside his cell is extremely cold, so much so that he describes even the air as a “tool of torture.”

56. The only staple items Camp VI prisoners are permitted in their cells are a thin mat on which to sleep, a pair of pants, a shirt, and a pair of flip flops. All other items – things like a toothbrush, toothpaste, a Styrofoam cup, and a towel – are considered “comfort items” and can be taken away for any infraction. Mr. Ameziane writes, “I would even venture that if they could confiscate the air we breathe, it would be counted as a [Comfort Item].”

57. The only time Mr. Ameziane is allowed outside is for a two-hour break for “recreation,” but even then, he is surrounded by solid walls two stories high that block the sun and wire mesh stretched across the top that obstructs his view of the sky.¹⁰² The recreation area itself is partitioned by fencing into small 4-meters-by-3-meters areas, which Mr. Ameziane likens to a kennel. Until recently, each detainee spent his recreation time by himself in one of these “kennels,” although two prisoners are now allowed in the same area.

58. When Mr. Ameziane’s attorneys visited him in October 2007, they were allowed to meet with him outside in a large yard adjacent to the prison. He commented that the meeting

¹⁰⁰ See Human Rights Watch Report, *supra* note 3.

¹⁰¹ See *id.*

¹⁰² See *id.* at 12.

was one of the few times in his then eight months at Camp VI that he had been in the yard and allowed an unobstructed view of the sky.

E. Denial of Adequate Medical Care

59. Because Mr. Ameziane spends nearly all of his time staring at the walls of his small cell in Camp VI, his vision is steadily deteriorating. He has made repeated requests for an eye exam and eyeglasses, which were ignored for almost a year. The glasses he did finally receive are the wrong prescription and he cannot wear them for more than half an hour without getting a headache. Because of the extremely cold temperatures in Camp VI, he also suffers from rheumatism in his legs, for which his requests for care have been denied as well.

60. Mr. Ameziane has also felt pain in an area on the side of his head for almost a year. After a doctor at the prison gave him a cursory examination and told him there was nothing the matter, Mr. Ameziane asked how he could be sure without conducting further tests. The doctor replied, "I am the test." He told Mr. Ameziane that there was nothing further he could do and left the room.¹⁰³

61. The medical treatment Mr. Ameziane has received at Guantánamo has not only been inadequate and negligent, but also abusive. On one occasion, Mr. Ameziane went into convulsions in his cell, where guards left him writhing on the floor for hours before taking him to the infirmary. The attending doctor inserted a serum in Mr. Ameziane's arm, but asked one of the soldiers standing watch to assist him by inserting a syringe needle into Mr. Ameziane's vein. With Mr. Ameziane lying prostrate and cuffed to the examination table, the guard stuck the needle into his forearm, which began spurting blood. The doctor and the guards laughed while Mr. Ameziane lay chained to the table.

¹⁰³ Letter from Djamel Ameziane to Wells Dixon, Apr. 4, 2008 (unclassified) (on file with CCR).

62. Mr. Ameziane's health care needs have also been used as a tool to coerce him into cooperating with interrogators. For months, Mr. Ameziane has been requesting a pair of socks from the infirmary to help with rheumatism he suffers in his feet and legs. Recently, when Mr. Ameziane asked the medical military staff once again for the socks, he was told, "the medical no longer supplies socks. You have to ask your interrogator for that."

F. Religious Abuse

63. Mr. Ameziane has been subjected to various offensive and intentionally disruptive acts with respect to his Islamic beliefs and practices both at Guantánamo and Kandahar. He describes one occasion when during dawn prayer, a guard began howling like a dog in imitation of the ritual Muslim call to prayer. When Mr. Ameziane asked the guard why he was imitating the call, the guard came over to his cell and threw water in his face. A few minutes later, Mr. Ameziane was taken to solitary confinement, where he was held for five days. He was told it was punishment for throwing water at the guard.

64. During his time in the "Romeo" and "Mike" blocks in Camps 2 and 3, Mr. Ameziane suffered routine abuse and disruptions. Guards would yell insults and obscenities at him while he prayed and sometimes throw stones at the metal grill window of his cell.

65. Now in Camp VI, his conditions of isolation create a structural interference with his religious practice. Since he and his fellow prisoners can only pray in their separate, individual cells, they cannot see or hear their prayer leader well enough to pray communally as they would otherwise.

66. Mr. Ameziane has also witnessed acts of abuse against his fellow detainees. He has seen prisoners punished by having their eyelids and eyebrows, beards, mustaches, and hair

completely shaved,¹⁰⁴ or the shape of a cross or a soccer ball shaved on their heads. He has also described incidents where soldiers have desecrated prisoners' Qur'ans, for example, by spraying water on them, trampling on them, or scrawling obscenities into them.

67. At Kandahar, Mr. Ameziane has told of similar desecration of the Qur'an during guards' daily searches of prisoners' cells, for example, by throwing the holy books on the ground, stepping on them, or ripping their pages and throwing them away. On one particular occasion, a soldier brandished a Qur'an in his hand for all the prisoners in the vicinity to see, and then plunged it into a tank full of excrement into which prisoners' toilet buckets had been emptied. Following this incident, the prisoners decided to return their Qur'ans to the camp authorities so as to prevent further abuse, but the authorities refused to take them back.

G. Impact on Private and Family Life

68. Mr. Ameziane has been deprived of critical moments with his family during his more than six years at Guantánamo. His father passed away during this period, before Mr. Ameziane could see or talk to him one last time. His brothers and sisters have had wedding ceremonies he has been unable to attend and have had children who have never known their uncle. He has also been deprived of news of family events because letters sent from his family often do not reach him until years later. He saw photographs of his nieces and nephews for the first time in years when his attorneys brought the photographs to Guantánamo.

69. Mr. Ameziane has told his attorneys that had he not been imprisoned in Guantánamo for the past six and a half years, he would have wished to train as an automobile mechanic and open his own garage, and get married and start a family.

¹⁰⁴ This level of shaving apparently no longer occurs, but Mr. Ameziane says detainees' beards are sometimes still closely shaved, leaving only about one centimeter of hair.

H. Risk of Return to Algeria

70. Mr. Ameziane would be at risk of persecution if he is forcibly repatriated to Algeria and needs the protection of a third country for resettlement in order to leave Guantánamo safely.

71. His family still resides in Kabylie and if he were returned, he would face a continuing risk of being targeted and subject to arbitrary arrest and detention – and in detention, further harm – by virtue of the fact that he and his family are observant Muslims. Mr. Ameziane’s prior application for political asylum in Canada on the basis of a fear of persecution in Algeria would also likely draw the attention of the Algerian security services and put him at further risk of being targeted and imprisoned. The fact that Mr. Ameziane has spent time in Guantánamo, and the resulting stigma of that association, would alone be enough to put him at risk of being imprisoned if he is returned.

72. Mr. Ameziane has been threatened on at least one occasion by U.S. interrogators who told him that he would be sent back to Algeria if he did not cooperate with them. They told him knowingly that *he* knew how he would be treated if he were to return. His brother believes that Mr. Ameziane would be shot if he were returned to Algeria and, according to him, “everyone thinks my family is connected to terrorism because [Mr. Ameziane] is in Guantánamo.” The Algerian Ambassador to the United States has also stated to lawyers for Guantánamo prisoners that all Algerian citizens in Guantánamo would be considered serious security threats, and would be subject to further detention and investigation if returned. The Ambassador stated specifically that there is no reason an Algerian citizen who had lived in Canada or Europe would go to Afghanistan except to engage in unlawful activity.

73. Mr. Ameziane is currently seeking resettlement in Canada, the country in which he legally resided for five years and would not have left had he not been denied asylum in 2000.

III. ADMISSIBILITY

A. Mr. Ameziane's Petition is Admissible Under the Commission's Rules of Procedure.

74. Mr. Ameziane's petition is admissible in its entirety under the IACHR Rules.¹⁰⁵

In particular, the Commission has jurisdiction *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci* to examine the petition, and Mr. Ameziane is exempt from the exhaustion of domestic remedies requirement under the terms of 31.2 of the IACHR Rules. The Commission should therefore reach a favorable admissibility finding and proceed in earnest to examine the merits of this grave case of human rights abuse.

1. The Commission has Jurisdiction *Ratione Personae*, *Ratione Materiae*, *Ratione Temporis*, and *Ratione Loci* to Consider Mr. Ameziane's Petition.

75. The Commission is competent *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci* to examine the complaints presented by Mr. Ameziane.

76. The Commission is competent *ratione personae* to consider Mr. Ameziane's complaint because Mr. Ameziane is a natural person who was subject to the jurisdiction of the United States and whose rights were protected under the American Declaration when the violations detailed in this petition occurred.¹⁰⁶ Although the violations took place outside the formal territory of the United States, the Commission has long established that it may exercise jurisdiction over conduct with an extra-territorial locus where the person concerned is present in

¹⁰⁵ Article 28 of the Rules of Procedure of the Inter-American Commission on Human Rights sets forth the Requirements for the Consideration of Petitions, in which it details factual information that the Commission needs to initiate proceedings in a contentious case and procedural requirements with which petitioners must comply. Rules of Procedure of the Inter-American Commission on Human Rights [hereinafter "IACHR Rules"], Art. 28.a-i.

¹⁰⁶ See *Jessica Gonzales and others v. United States*, Petition 1490-05, Inter-Am. C.H.R., Report No. 52/07 (Admissibility), para. 37 (2007).

the territory of one State, but subject to the authority and control of another OAS Member State.¹⁰⁷

77. The Commission’s authority to hear such extra-territorial claims was directly addressed and upheld in two 1999 decisions, *Coard et al. v. United States*¹⁰⁸ and *Alejandro v. Cuba*.¹⁰⁹ In *Coard*, the Commission, considering allegations of U.S. violations during its 1983 invasion of Grenada, held that the Commission’s jurisdictional analysis focuses on the state control over the individual whose rights have been violated.¹¹⁰ The Commission found that the phrase “subject to [the OAS country’s] jurisdiction,” the jurisdictional language commonly used in international human rights instruments,¹¹¹ “may, under given circumstances, refer to conduct with an extraterritorial locus where the person concerned is present in the territory of one state, but subject to the control of another state...”¹¹²

78. In *Alejandro*, the Commission found that Cuba, an OAS member state, exercised “authority and control” over the unarmed civilian aircraft the Cuban military shot down,

¹⁰⁷ See, e.g., *Coard et al. v. United States*, Case 10. 951, Inter-Am. C.H.R., Report No. 109/99, para. 37, (1999).

¹⁰⁸ Case 10.951, Report No. 109/99 (1999).

¹⁰⁹ Case 11.589, Report No. 86/99 (1999)

¹¹⁰ See *Case of Coard*.

¹¹¹ See, e.g., International Covenant on Civil and Political Rights [hereinafter ICCPR], Art. 2 (“[T]o respect and to ensure to all individuals within its territory and subject to its jurisdiction”); European Convention on Human Rights, Art. 1, (“[S]hall secure to everyone within their jurisdiction”); American Convention on Human Rights, Art. 1, (“[T]o ensure to all persons subject to their jurisdiction”). While article 2 of the ICCPR refers to all individuals within a State’s territory *and* subject to its jurisdiction, the Human Rights Committee has interpreted these two grounds to be independent as regards application of the ICCPR. See, e.g., *Burgos/Delia Saldias de Lopez v. Uruguay*, Communication No. 52/1979 (29 July 1981), U.N. Doc. CCPR/C/OP/1 at 88 (1984). The International Court of Justice endorsed this position in its Advisory Opinion on *Legal Consequences on the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Advisory Opinion, July 9, 2004, 43 International Legal Materials 1009 (2004). One U.S. court, however, has stated that the ICCPR applies to the United States only when the affected person is both within U.S. territory and subject to its jurisdiction. See *United States v. Duarte-Acero*, 296 F.3d 1277 (11th Cir. 2002).

¹¹² See *Case of Coard*.

sufficient for the Commission to hear the petitioners' complaint.¹¹³ In *Alejandro*, there was no territorial nexus between the victims of the alleged violations and the state of Cuba, or between the actions themselves and Cuban territory. Two of the victims had been born in the United States; none of the activities relevant to the petition took place on Cuban soil; and none of the victims were in a Cuban airplane.¹¹⁴ Nevertheless, in taking aim upon the civilian passenger plane, the Commission found, "the agents of the Cuban state, although outside their territory, placed the civilian pilots...under their authority."¹¹⁵ This placed the victims within the jurisdiction of Cuba for purposes of triggering Cuba's human rights obligations: "In principle, the [jurisdictional] investigation refers not to the nationality of the alleged victim or his presence in a particular geographic area, but to whether, in those specific circumstances, the state observed the rights of a person subject to its authority or control."¹¹⁶ In other words, the jurisdictional analysis is not predicated on the nature and characteristics of the alleged victim of the claim. Rather, whether the Commission has the authority to contemplate an OAS Member State's actions turns on whether the state has lived up to its responsibilities regarding the human rights of persons over whom the state exercised control.

79. Under the "authority and control" theory, the Commission has already established that Guantánamo detainees are subject to the jurisdiction of the United States and therefore benefit from the protection of the American Declaration.¹¹⁷ On this basis, the Commission has exercised its own jurisdiction to enforce the American Declaration to the benefit of such

¹¹³ *See Case of Alejandro.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *See* IACHR Precautionary Measures No. 259 (March 13, 2002) at 2.

persons.¹¹⁸ In the present case, there is no doubt that Mr. Ameziane has been subject to the jurisdiction of the United States since being transferred to Guantánamo Bay – he has been detained by the United States on a U.S. military base governed by an indefinite lease establishing U.S. control since 1903. The U.S. Supreme Court itself has referred to the “obvious and uncontested fact that the United States, by virtue of its complete jurisdiction and control over the [Guantánamo Bay Naval] base, maintains *de facto* sovereignty over this territory.”¹¹⁹ The Commission is therefore competent *ratione personae* to hear claims based on Mr. Ameziane’s detention at Guantánamo.

80. Furthermore, Mr. Ameziane was under the authority and control of the United States while detained by the U.S. military at the airbase in Kandahar, Afghanistan. The airbase was occupied by U.S. Marines in December 2001¹²⁰ and, during the five-week period when Mr. Ameziane was detained there from January to February 2001 the facility was clearly under U.S. control. The Commission may therefore exercise its *ratione personae* jurisdiction with respect to all the facts described in this petition, whether they occurred in Kandahar, Afghanistan or Guantánamo Bay, Cuba.

81. As Mr. Ameziane’s petition alleges the violation of several articles of the American Declaration, the Commission is also competent *ratione materiae* to consider the complaint.¹²¹ Although the United States has repeatedly contested the authority of the Commission to declare violations of rights enshrined in the American Declaration, the

¹¹⁸ See *id.*

¹¹⁹ *Boumediene*, 128 S. Ct. 2229, 2253 (June 12, 2008).

¹²⁰ See Myers, *A Nation Challenged: In the South; Anticipating Many Captives, U.S. Marines Build a Prison Camp at Kandahar Airport*, *supra* note 26.

¹²¹ See *id.* at para. 38.

Commission has long held that the Declaration constitutes a source of binding international obligations for the United States.¹²²

82. Furthermore, the Commission is competent *ratione temporis* to consider the petition, as the violations of Mr. Ameziane's rights occurred subsequent to the adoption of the American Declaration in 1948, to the United States' ratification of the OAS Charter on June 19, 1951, and to the creation of the IACHR in 1959.¹²³

83. Finally, the Commission is competent *ratione loci* to consider the violations alleged by Mr. Ameziane, as the petition alleges facts which occurred while he was under the jurisdiction of the United States as described above.¹²⁴

2. Mr. Ameziane Has Met the Exhaustion of Domestic Remedies Requirement.

84. Pursuant to Article 31 of the IACHR Rules of Procedure, individual petitions are admissible only where domestic remedies have been exhausted or where such remedies are unavailable as a matter of law or fact.¹²⁵ The rule that requires prior exhaustion of domestic

¹²² See, e.g., *Wayne Smith v. United States*, Petition 8-03, Inter-Am. C.H.R. Report No. 56/06 (Admissibility), paras. 32-33 (2006).

¹²³ See *id.* at para. 34.

¹²⁴ See *Case of Gonzales* at para. 40.

¹²⁵ See IACHR Rules of Procedure, art. 31:

1. 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.
2. The provisions of the preceding paragraph shall not apply when:
 - a. the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated;
 - b. the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
 - c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.
3. When the petitioner contends that he or she is unable to prove compliance with the requirement indicated in this article, it shall be up to the State concerned to demonstrate to the Commission that the

remedies was conceived in the interest of the State, as it seeks to dispense the State from having to respond to an international body for actions imputed to it before having had the opportunity to remedy them by its own means.¹²⁶ However, because this fundamental admissibility requirement is directly related to the need to protect victims of human rights abuse from the arbitrary exercise of government power,¹²⁷ domestic remedies must be “adequate to protect the rights allegedly infringed and effective in securing the results envisaged in establishing them.”¹²⁸ It must also be clear that the desired remedy is achievable.¹²⁹

85. The admissibility decision in a case in which the petitioner requests an Article 31 exception turns on the Commission’s finding that a domestic remedy has been proven unavailable as a matter of law or fact, inadequate or ineffective to rectify the violations alleged.¹³⁰

remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

¹²⁶ *See In the Matter of Viviana Gallardo et al.*, Inter-Am. Ct. H.R.(ser. A) No. G 101/81, para. 28 (1984).

¹²⁷ *Godínez Cruz Case*, Inter-Am. Ct. H.R. (ser. C), Judgment of June 26, 1987, para. 95.

¹²⁸ *El Mozote Massacre v. El Salvador*, Case 10.720, Inter-Am. C.H.R., Report No. 24/06 (Admissibility), para. 33 (2006); *see also Case of Velásquez Rodríguez Case*, cit., paras. 62-66; *Fairén Garbi and Solís Corrales Case* Inter-Am. Ct. H.R., Preliminary Objections, Judgment of March 15, 1989, paras. 86-90; *Godínez Cruz Case*, Judgment of January 20, 1989, paras. 65-69; *Santander Tristán Donoso v. Panama*, Petition 12.360, Inter-Am. C.H.R., Report No. 71/02 (Admissibility), paras. 21-22 (2002). The Commission has incorporated the longstanding jurisprudence of the Inter-American Court which states that “[a]dequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted.” *Fernando A. Colmenares Castillo v. Mexico*, Case No. 12.170, Inter.-Am. C.H.R., Report No. 36/05 (Inadmissibility), para. 37 (2005), *citing Velásquez Rodríguez Case*, Inter-Am. Ct. H.R., Merits, Judgment of July 29, 1988 (Ser. C Nº 4), para. 64.

¹²⁹ *See Velásquez Rodríguez Case*, cit., at para. 72; *Fairén Garbi and Solís Corrales Case*, cit., at para. 97; *Godínez Cruz Case*, cit., at para. 75.

¹³⁰ *See Mariblanca Staff Wilson and Oscar E Ceville R. v. Panamá*, Case No. 12.303, Inter.-Am. C.H.R., Report No 57/03 (Inadmissibility), at para. 42 (2003).

a) The “Adequate Domestic Remedies” in Mr. Ameziane’s Case

86. Mr. Ameziane alleges violations of several substantive rights enshrined in the American Declaration—the right not to be arbitrarily deprived of his liberty; to freedom from torture and cruel, inhumane and degrading treatment; to health; to religious freedom and worship; to private and family life; and to protection of his personal reputation – in addition to the procedural rights protected by articles XVIII and XXVI of the Declaration. In order to assess the admissibility of his petition, it is necessary first to identify whether there are available domestic remedies that would have been adequate and effective to address the violations of these rights, and then to determine whether such remedies have been exhausted or whether Mr. Ameziane is exempt from exhausting domestic remedies under one of the exceptions contemplated in Article 31 of the Commission’s Rules of Procedure.

87. As the violations Mr. Ameziane alleges stem from his detention by the United States and the abuse he has suffered while detained, Mr. Ameziane had a duty to exhaust the domestic remedies that were uniquely suitable to addressing the infringement of these rights before petitioning this Commission: *habeas corpus*, in relation to his arbitrary and indefinite detention; and criminal proceedings, in relation to the torture and mistreatment he suffered at the hands of the U.S. government. In addition, Mr. Ameziane had the duty to seek injunctive relief from the violations of his rights to health, religious freedom, private and family life, and protection of his reputation, as well as criminal sanctions (where applicable) against the individual State agents responsible for these violations.

88. With regard to Mr. Ameziane’s claim of arbitrary detention, the Commission’s jurisprudence clearly establishes the writ of *habeas corpus* as the appropriate domestic remedy to be pursued. In issuing precautionary measures in favor of Guantánamo detainees, the

Commission referred to the “longstanding and fundamental role that the writ of habeas corpus plays as a means of reviewing Executive detention.”¹³¹ The Commission’s resolution also favorably cited the U.S. Supreme Court’s decision in *Rasul* to uphold Guantánamo detainees’ right to habeas.¹³² Indeed, habeas is specifically protected by the U.S. Constitution and has long served as the U.S. legal system’s ultimate bulwark against arbitrary deprivations of liberty.¹³³ As the U.S. Supreme Court has stated, “The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless [government] action.”¹³⁴ Thus, this Commission and the U.S. government alike consider the writ of habeas corpus to be the appropriate remedy for addressing arbitrary and unlawful detention.

89. With regard to Mr. Ameziane’s torture and mistreatment while in U.S. custody, the Commission has repeatedly held that in such cases the appropriate remedy is criminal prosecution of those responsible for the harm. In *Wilson Gutierrez Soler v. Colombia*, for example, the victim alleged a violation of Article 5 of the American Convention for torture he suffered while detained by the Colombian National Police.¹³⁵ Although the petitioner had multiple remedies available to him under Colombian law, including the possibility of filing a civil suit against the state, the Commission declared the case admissible based solely on the fact that criminal proceedings against the individuals accused of torturing the petitioner had concluded.¹³⁶ As the Commission made clear in another Colombian case, when a criminal law remedy is available, neither disciplinary proceedings against individual state employees nor civil

¹³¹ IACHR Precautionary Measures No. 259 (Oct. 28, 2005), para. 8.

¹³² *Id.*

¹³³ See U.S. Const. art. I, § 9; *Boumediene*, 128 S. Ct. 2229, 2246 (June 12, 2008).

¹³⁴ *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969).

¹³⁵ See *Wilson Gutierrez Soler v. Colombia*, Case 12.291, Inter.-Am. C.H.R., Report. No. 76/01 (Admissibility), at paras. 8-9 (2001).

¹³⁶ See *id.* paras. 11, 16, 19.

suits against the State itself need be exhausted in order for a case to be deemed admissible.¹³⁷

Notwithstanding the availability of civil, disciplinary and administrative remedies, then, the Commission has clearly established that the appropriate remedy in cases of torture and abuse is the criminal prosecution of the responsible individuals.

90. With regard to Mr. Ameziane's remaining claims – those based on violations of his rights to health, religious freedom, private and family life, and protection of his personal reputation – the Commission's jurisprudence is less clear but reveals a more *ad hoc* approach based on the judicial remedies available in the relevant national jurisdiction. In general, past precedent suggests that the appropriate avenue for relief in Mr. Ameziane's case would be some combination of injunctive relief and criminal proceedings, respectively aimed at halting and punishing the violations of these fundamental rights. In *Maya Indigenous Communities and their Members v. Belize*, for example, the petitioners alleged that the Belize government had issued licenses permitting logging activities to occur on Mayan traditional land, in violation, *inter alia*, of the communities' rights to family, health and religious freedom and worship.¹³⁸ In declaring the case admissible, the Commission found that the petitioners had attempted to exhaust the appropriate judicial remedy by seeking an injunctive order from the Supreme Court of Belize suspending the licenses for resource extraction.¹³⁹ In *Santander Tristán Donoso v. Panama*, the petitioner, an attorney, alleged a violation of his right to privacy based on the wiretapping of a conversation between him and one of his clients, and on the subsequent dissemination of the

¹³⁷ See *La Granja, Ituango v. Colombia*, Case 12.050, Inter.-Am. C.H.R., Report No. 57/00 (Admissibility), at para. 41 (2000).

¹³⁸ See *Maya Indigenous Communities and their Members v. Belize*, Case 12.053, Inter-Am. C.H.R. Report No. 78/00, at paras. 36-37 (2000).

¹³⁹ *Id.* at paras. 38, 54.

content of the conversation by the Attorney General.¹⁴⁰ In admitting the right to privacy claim, the Commission found that the petitioner had exhausted domestic remedies by filing a criminal complaint against the Attorney General, which was ultimately dismissed by the Panamanian Supreme Court.¹⁴¹

91. In summary, the Commission's jurisprudence makes clear that in cases of arbitrary detention and torture, the adequate domestic remedies that must be exhausted before presenting a claim to the Commission are the writ of habeas corpus and criminal proceedings, respectively. The Commission has been less firm in establishing the appropriate domestic remedies for violations of the rights to health, religious freedom and privacy, often displaying a degree of deference to the remedies available at the national level. In order to be adequate and effective, however, such remedies must be capable of establishing criminal sanctions against the responsible individuals or providing injunctive relief to halt an ongoing violation.

(b) Mr. Ameziane is Exempt from the Exhaustion of Domestic Remedies Requirement under Article 31(2) of the Commission's Rules.

92. Article 31(2) of the Commission's Rules of Procedure establishes an exception to the exhaustion of domestic remedies requirement where: (a) the domestic legislation of the State concerned does not afford due process of law; (b) the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay.¹⁴² In the present case, Mr. Ameziane has been denied access to the appropriate domestic remedies identified in the previous section by a combination of *de jure* and *de facto* prohibitions and unwarranted delays. Mr. Ameziane may

¹⁴⁰ See *Case of Santander*, cit., at para. 2.

¹⁴¹ *Id.* at para. 18.

¹⁴² IACHR Rules of Procedure, art. 31.2(a)-(c).

therefore successfully invoke the exceptions contemplated in Article 31(2) of the IACHR Rules, and the Commission should consider his petition admissible on such grounds.

**(i) Mr. Ameziane Has Been Denied the Right to
Habeas Corpus for over Six Years.**

93. The Commission's jurisprudence establishes the writ of habeas corpus as the appropriate remedy for addressing Mr. Ameziane's arbitrary deprivation of liberty, but more than six years into his detention, Mr. Ameziane has been prevented from exhausting this remedy. Mr. Ameziane's claim is thus exempt from exhaustion on Article 31(2)(b) and (c) grounds.

94. The Commission underlined the purpose of *habeas corpus* as a "timely remedy,"¹⁴³ while the U.S. Supreme Court has described its "principal aim" as providing for "swift judicial review."¹⁴⁴ Perhaps more than any other judicial remedy, habeas claims must be resolved quickly if the writ is to serve its fundamental purpose of providing relief from arbitrary deprivations of liberty. After being denied access to lawyers and the courts for over two years, Mr. Ameziane filed a petition for *habeas corpus* on February 24, 2005. After pending in federal court for more than three years, his petition was finally stayed in anticipation of the Supreme Court's decision in *Boumediene*. On June 12, 2008, the Court ruled in *Boumediene* that section 7 of the MCA "operates as an unconstitutional suspension of the writ" and that Guantánamo detainees have a constitutional right to habeas.¹⁴⁵

¹⁴³ IACHR, Precautionary Measures No. 259, *Detainees in Guantánamo Bay, Cuba*, October 28, 2005, ¶ 8.

¹⁴⁴ *Peyton v. Rowe*, 391 U.S. 54, 63 (1968).

¹⁴⁵ *See Boumediene*, 128 S.Ct. at 2240. The MCA, cit., § 7 established:

No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

[...]

The amendment...shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of

95. As a result of *Boumediene*, Mr. Ameziane may finally have the opportunity to challenge his detention in federal court in the near future. His access to this remedy, however, is more than six years after he was transferred to Guantánamo, and more than three years after he first sought habeas relief. This is a far cry from the “timely remedy” envisioned by the Commission and the guarantee of review “without delay” explicitly enshrined in the American Declaration. In the case of Mr. Ameziane and other Guantánamo prisoners, justice delayed is indeed justice denied. Mr. Ameziane may thus successfully invoke the exceptions contemplated in Article 31(2)(a) and 31(2)(c) of the Commission’s Rules of Procedure with regard to the admissibility of his arbitrary deprivation of liberty claim.

(ii) The DTA Review is an Inadequate Substitute for Habeas Corpus and Need Not Be Exhausted.

96. The DTA creates and the MCA incorporates an alternative process of limited review by the D.C. Circuit Court of Appeals, whereby the Court may only examine whether the CSRTs were conducted in accordance with military procedures promulgated for the CSRTs and, to the extent they apply, the laws and Constitution of the United States.¹⁴⁶ The government created this limited review process as a substitute for habeas and intended it to be the only access that Guantánamo detainees such as Mr. Ameziane would have to the courts.¹⁴⁷

97. The review provided under the DTA is exceedingly limited.¹⁴⁸ Limiting the scope of review to whether CSRTs complied with procedures that themselves violate fundamental due

the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

¹⁴⁶ DTA, cit., § 1005(e)(2).

¹⁴⁷ *Boumediene*, 128 S.Ct. at 2266 (“In passing the DTA Congress did not intend to create a process in name only. It intended to create a more limited procedure... It is against this background that we must interpret the DTA and assess its adequacy as a substitute for habeas corpus.”).

¹⁴⁸ For a thorough discussion of the procedural shortcomings in the DTA review process—including the prohibition on presenting evidence, the rebuttable presumption in favor of the government’s evidence, the lack of speed, the restrictions on the attorney-client relationship, and the lack of authority to order release—

process norms does little to ensure an adequate review of detainees' status or the legality of their detention. While the language of the DTA does allow for judicial review of the constitutionality of the CSRT procedures, the United States has argued that the Constitution and laws of the United States do not apply to detainees held in Guantánamo or anywhere outside the U.S. mainland.¹⁴⁹ In addition, neither the DTA nor the MCA require the D.C. Circuit Court of Appeals to order a detainee released upon finding his CSRT's "enemy combatant" determination to be invalid, which the Supreme Court found "troubling" in *Boumediene*.¹⁵⁰ The government's position is that the appropriate remedy would be a new CSRT.

98. In *Boumediene*, the Supreme Court examined the DTA's myriad flaws before concluding that its review procedures are an inadequate substitute for habeas corpus.¹⁵¹ Furthermore, the Court explicitly stated that detainees need not exhaust the DTA before proceeding with their habeas actions.¹⁵²

99. The D.C. Circuit Court of Appeals has itself recognized the severe limitations of the DTA review in *Parhat* – the first and, thus far, only DTA petition on behalf of a Guantánamo detainee to be decided. Concluding that the petitioner's "enemy combatant" designation was invalid, the Court noted that a habeas corpus proceeding was a better path to release than a new

see Reply Brief for the Petitioners at 15-20, *Boumediene*, 128 S.Ct. 2229, available at <http://ccrjustice.org/files/reply%20brief%20boumediene.pdf>.

¹⁴⁹ *See, e.g.*, U.S. Dep't of Justice, Office of Legal Counsel, Memorandum of Deputy Assistant Attorney General John C. Yoo for William J. Haynes, *Possible Habeas Jurisdiction over Aliens Held in Guantánamo Bay, Cuba* (Dec. 28, 2001), available at <http://www.gwu.edu/~7Ensarchiv/NSAEBB/NSAEBB127/01.12.28.pdf>.

¹⁵⁰ *See Boumediene*, 128 S.Ct. at 2271 ("The DTA does not explicitly empower the Court of Appeals to order the applicant in a DTA review proceeding released should the court find that the standards and procedures used at his CSRT hearing were insufficient to justify detention. This is troubling.").

¹⁵¹ *Id.* at 2274.

¹⁵² *Id.* at 2275.

CSRT.¹⁵³ The Court noted that the “habeas proceeding will have procedures that are more protective of Parhat’s rights than those available under the DTA.... Most important, in that proceeding there is no question but that the court will have the power to order him released.”¹⁵⁴

100. The recent federal court decisions in *Boumediene* and *Parhat* make abundantly clear that DTA review is a deeply flawed process incapable of remedying Mr. Ameziane’s arbitrary detention. Requiring Mr. Ameziane to exhaust this remedy would thus compel him to jump through an additional, ineffective legal hoop that does not contemplate the desired remedy and promises only to delay the process further so as to render international support ineffective, a result that the Commission has found unacceptable.¹⁵⁵ As a result, and in light of the Commission’s determination that “if a remedy is not adequate in a specific case, it obviously need not be exhausted,”¹⁵⁶ Mr. Ameziane need not pursue DTA review under the exhaustion of domestic remedies rule.

(iii) The DTA and the MCA Bar Mr. Ameziane from Pursuing Criminal Sanctions against Individuals Responsible for his Torture and Mistreatment.

101. The United States sought not only to strip Mr. Ameziane’s right to habeas, but to bar him from pursuing criminal proceedings against those responsible for his torture and abuse in

¹⁵³ *Parhat v. Gates*, No. 06-1397, 2008 WL 2576977, *15 (C.A.D.C. June 20, 2008).

¹⁵⁴ *Id.*

¹⁵⁵ See *Velásquez Rodríguez Case*, Preliminary Objections, Inter. Am. Ct. H.R., Judgment of June 26, 1987, Series C No. 1, para. 93; *Godínez Cruz Case*, Preliminary Objections, Inter. Am. Ct. H.R., Judgment of June 26, 1987, Series C No. 3, para. 93. As the Commission has indicated, remedies which are unduly delayed essentially lose their efficacy. See, e.g., *Ramón Mauricio García-Prieto Giralt v. El Salvador*, Case 11.697, Inter.-Am. C.H.R., Report No. 27/99 (Admissibility), at para. 47 (1999).

¹⁵⁶ See *Fernando A. Colmenares Castillo v. Mexico*, Petition 12.170, Inter.-Am. C.H.R., Report No. 36/05 (Inadmissibility), at para. 37 (2005), citing *Velásquez Rodríguez Case*, Inter-Am. Ct. H.R., Merits, Judgment of July 29, 1988, Ser. C N° 4, para. 64.

U.S. custody.¹⁵⁷ U.S. legislation currently provides ongoing and retroactive immunity to the State agents responsible for Mr. Ameziane's mistreatment.¹⁵⁸

102. The DTA establishes that in a civil or criminal action against a U.S. agent engaged in the "detention and interrogation of aliens" determined by the President or his designees to be engaged in terrorism, a finding that the activities were "officially authorized and determined to be lawful at the time that they were conducted" and that the agent "did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful" shall act as a complete defense to the civil or criminal action.¹⁵⁹

103. The MCA exacerbates this immunity provision by making it retroactive for both civil actions and criminal prosecutions related to actions occurring between September 11, 2001 and the enactment of the DTA on December 30, 2005.¹⁶⁰ As modified by the MCA, therefore, Section 1004 of the DTA provides official retroactive immunity for actions authorized by the Executive branch that constitute torture or cruel, inhuman or degrading treatment under international law.

104. This legislatively-enshrined immunity effectively bars Mr. Ameziane from pursuing criminal law remedies under U.S. law. Mr. Ameziane's designation as an "enemy combatant" means that alleged actions in violation of his rights fall within the scope of the

¹⁵⁷ Petitioners do not ignore the fact that in cases of grave human rights violations, such as torture, the State has an *ex officio* obligation to investigate, an obligation that the United States has failed to discharge for over six years in the present case. *See, e.g., La Cantuta v. Peru*, Inter-Am. Ct. H.R., November 29, 2006, para. 110. We contend that even if the onus were on Mr. Ameziane to initiate criminal proceedings, he is legislatively barred from doing so.

¹⁵⁸ *See* MCA, cit., § 8(b).

¹⁵⁹ DTA, cit., § 1004. Furthermore, "Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful."

¹⁶⁰ MCA, cit., § 8(b)(3).

DTA's immunity provision. As his detention began after September 11, 2001, the entirety of his detention period is covered by the immunity provision as amended by the MCA. And as those responsible for his detention and interrogation were agents of the U.S. government whose actions were officially authorized and considered lawful at the time they were committed,¹⁶¹ the DTA as modified by the MCA effectively blocks Mr. Ameziane from pressing criminal charges.

¹⁶¹ Since September 11, 2001, the U.S. government has repeatedly permitted and even authorized military personnel to employ aggressive interrogation tactics such as the ones used against Mr. Ameziane. In early 2002, as the first detainees were arriving at Guantánamo Bay, President Bush announced that the Geneva Conventions would not apply to Taliban and al Qaeda suspects. See Amnesty International, *United States of America: Justice Delayed and Justice Denied: Trials under the Military Commissions Act*, at 3 (March, 2007). Furthermore, on December 2, 2002, then Secretary of Defense Donald Rumsfeld authorized a series of interrogation techniques that included, "yelling at the detainee," "stress positions (like standing) for a maximum of four hours," "the use of the isolation facility for up to 30 days," "deprivation of light and auditory stimuli," "removal of all comfort items (including religious items)," "20 hour interrogations," "removal of clothing," "forced grooming (shaving of facial hair, etc.)," "exposure to cold weather or water (with appropriate medical monitoring)," and "use of wet towel and dripping water to induce the misperception of suffocation." In approving the December 2, 2002 memorandum, Secretary Rumsfeld signed the document and added a handwritten note stating, "I stand for 8-10 hours a day. Why is standing limited to 4 hours?"

Document available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.12.02.pdf>.

Though Rumsfeld later rescinded this memorandum, the U.S. government has continued to issue a dizzying series of interrogation technique authorizations and Department of Justice Office of Legal Counsel opinions that provide official cover for U.S. agents who engage in conduct prohibited by international law. One such opinion, issued on August 1, 2002, acknowledged the U.S. legislative prohibition on torture but established that the legislation was intended to proscribe only "physical pain...equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death." Document available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.08.01.pdf>. This memorandum was rescinded in June 2004 after it was leaked to the media, but its replacement, issued in December 2004, included a footnote clarifying that it was not declaring previous interrogation tactics illegal. See Scott Shane et al., *Secret U.S. Endorsement of Severe Interrogations*, N.Y. Times, Oct. 4, 2007, available at <http://www.nytimes.com/2007/10/04/washington/04interrogate.html?pagewanted=all>.

Many of the rules and opinions regarding the treatment and interrogation of detainees remain secret, including the rules governing the more aggressive interrogations conducted by the Central Intelligence Agency (CIA). The press and human rights organizations have reported, however, that in 2005 the OLC explicitly authorized the CIA to employ "a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures." See *id.*

Moreover, in early 2008, CIA Director Michael V. Hayden publicly acknowledged for the first time that the Agency had used the torture technique known as waterboarding as part of its "enhanced interrogation" program. The Bush Administration subsequently asserted that waterboarding is legal, and that the President had the authority to continue authorizing the CIA to use the technique. See Greg Miller, *Waterboarding is legal, White House says*, L.A. Times, Feb. 7, 2008, available at <http://www.latimes.com/news/nationworld/nation/la-na-torture7feb07,1,3156438.story>. The White House further stated that "every" enhanced interrogation technique employed by the CIA had been determined to be lawful by the Department of Justice. See Dan Eggen, *White House Defends CIA's Use of Waterboarding in Interrogations*, Wash. Post, Feb. 7, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/05/AR2008020502764.html>. Indeed,

105. In light of the fact that U.S. law provides retroactive immunity for those who participated in Mr. Ameziane's torture and mistreatment, any and all of Mr. Ameziane's claims for which the adequate remedy would be a criminal proceeding against the responsible individuals should be deemed admissible under the Article 31(2)(a) exception to the exhaustion of domestic remedies rule.

(iv) The DTA and the MCA Bar Mr. Ameziane from Pursuing "Any Other Action" Capable of Remediating the Violations He has Suffered.

106. In addition to provisions that seek specifically to prohibit habeas corpus claims (ruled unconstitutional in *Boumediene*) and criminal complaints regarding torture and mistreatment, the DTA and MCA also include sweeping language barring those detained as "enemy combatants" by the United States from presenting any claims, civil or criminal, in U.S. courts.¹⁶²

Attorney General Michael Mukasey subsequently announced that the Justice Department "cannot possibly" investigate the use of waterboarding by CIA agents because the technique was part of the program approved by Justice Department lawyers. Mukasey remarked, "That would mean that the same department that authorized the program would now consider prosecuting somebody who followed that advice." See Dan Eggen, *Justice Department 'Cannot' Probe Waterboarding, Mukasey Says*, Wash. Post, Feb. 7, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/07/AR2008020701542.html?hpid=topnews>. In March 2008, President Bush vetoed a bill passed by Congress that would have explicitly outlawed waterboarding by the CIA. See Steven Lee Meyers, *Bush vetoes bill to limit CIA interrogation methods*, Int. Herald Tribune, March 9, 2008, available at <http://www.iht.com/articles/2008/03/09/america/policy.php>.

Finally, recent press reports confirm that top government officials, including Vice President Dick Cheney, National Security Advisor Condoleezza Rice, Defense Secretary Donald Rumsfeld and Secretary of State Colin Powell, met in the White House, with President Bush's knowledge, to personally discuss and approve the details of the CIA's enhanced interrogation program. See Jan Crawford Greenburg et al., *Sources: Top Bush Advisors Approved 'Enhanced Interrogation'*, ABC NEWS, April 9, 2008, available at: <http://abcnews.go.com/TheLaw/LawPolitics/story?id=4583256>; Editorial, *The Torture Sessions*, N.Y. Times, April 20, 2008, available at http://www.nytimes.com/2008/04/20/opinion/20sun1.html?_r=1&ref=opinion&oref=slogin.

¹⁶² See MCA and DTA, cit.

107. As previously discussed, the MCA’s retroactive immunity provision applies not only to criminal prosecutions but also to civil actions.¹⁶³ Under U.S. legislation, Mr. Ameziane is therefore prohibited from bringing both civil and criminal actions for any of the other substantive harms he has suffered in detention at the hands of U.S. officials and agents. The MCA also provides a sweeping provision eliminating the right of non-citizens determined to be “unlawful enemy combatants” or “awaiting such determination” from bringing any claim “relating to any aspect of the detention, transfer, treatment, trial or conditions of confinement.”¹⁶⁴ This provision applies to cases pending at the time of the MCA’s enactment, as well as those brought subsequently.¹⁶⁵ With the exception of the DTA review process and, only recently, the writ of habeas corpus, existing U.S. legislation thus bars Mr. Ameziane from pursuing any other avenue of relief in U.S. courts.

108. Based on the preceding considerations, Mr. Ameziane’s petition is wholly admissible under one or more of the exceptions to the exhaustion of domestic remedies rule established in Article 31(2) of the Commission’s Rules of Procedure.

3. The Petition is Submitted within a Reasonable Time.

109. Article 32(2) of the Commission’s Rules of Procedure provides that where, as in this case, an exception to the exhaustion of domestic remedies rule is invoked, “the petition shall be presented within a reasonable time,” with the Commission considering the date of the alleged

¹⁶³ DTA, cit., § 1004:

No court, justice or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

¹⁶⁴ MCA, cit., § 7(a).

¹⁶⁵ MCA, cit., § 7(b).

violation and the circumstances of each case.¹⁶⁶ In considering the timeliness of petitions filed under an exception to the exhaustion rule – and therefore exempt from the six-month deadline provided by Article 31(1) of the Rules of Procedure – the Commission has taken into account factors such as the existence of precautionary measures in favor of the petitioner and whether the violations alleged continued to be committed following the adoption of such measures,¹⁶⁷ as well as the fact that the petitioner is in detention.¹⁶⁸

110. In the present case, Mr. Ameziane has been in detention since early 2002 and is a beneficiary of the precautionary measures first issued by the Commission in favor of Guantánamo detainees in 2002, expanded several times since then, and continuing in effect.¹⁶⁹ Nonetheless, the violations of Mr. Ameziane’s fundamental rights have continued unabated. Given the continuing nature of these violations and Mr. Ameziane’s detention, and the fact that the United States has repeatedly failed to comply with the precautionary measures, the Commission should conclude that Mr. Ameziane’s petition has been presented within a reasonable time.

4. The Petition is Not Pending before another International Body.

111. Article 33 of the Commission’s Rules of Procedure establishes that the Commission may not consider a petition if its subject matter is pending before another international governmental organization or essentially duplicates a petition already decided by the Commission or another international governmental organization.¹⁷⁰ Neither of these

¹⁶⁶ See IACHR Rules of Procedure art. 32(2).

¹⁶⁷ See *Members of José Alvear Restrepo Lawyers’ Collective v. Colombia*, Petition No. 12.380, Inter-Am. C.H.R., Report 55/06 (Admissibility), at para. 41 (2006).

¹⁶⁸ See *Antonio Zaldana Ventura v. Panama*, Petition No. 977-06, Inter-Am C.H.R., Report 77/07 (Admissibility), at para. 54 (2007).

¹⁶⁹ See IACHR Precautionary Measures No. 259.

¹⁷⁰ See IACHR Rules of Procedure art. 33.

provisions applies to the present case, as Mr. Ameziane's case is not pending before, and has not been decided by, any other international governmental organization. Mr. Ameziane's petition therefore complies with the prohibition on duplicate proceedings.

5. Conclusion: Mr. Ameziane's Petition is Admissible under the Commission's Rules of Procedure.

112. Mr. Ameziane's petition plainly complies with the admissibility requirements established in the Commission's Rules of Procedure. The Commission has jurisdiction *ratione personae* because Mr. Ameziane is a natural person who is subject to the complete jurisdiction and control of the United States and whose rights have been protected under the American Declaration since the ongoing violations alleged in the petition commenced. The Commission has *ratione materiae*, *ratione temporis* and *ratione loci* jurisdiction because the petition alleges violations of rights protected under the American Declaration; the violations occurred subsequent to the adoption of the American Declaration, the United States' ratification of the OAS Charter and the creation of the Commission; and they occurred while Mr. Ameziane was under the jurisdiction of the United States. Furthermore, one or more exceptions to the exhaustion to the domestic remedies rule applies to each of the violations alleged in the petition because judicial remedies are either unavailable by law or have been rendered ineffective by excessive delay. Finally, this petition complies with the formal requirements outlined in Article 28 of the Rules of Procedure, with the timeliness requirement, and with the prohibition on duplicate proceedings. The Commission should therefore determine Mr. Ameziane's petition to be admissible.

IV. VIOLATIONS OF THE AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN¹⁷¹

A. The United States has Arbitrarily Deprived Mr. Ameziane of his Liberty and Denied his Right to Prompt Judicial Review in Violation of Article XXV of the American Declaration.

113. The ongoing detention of Mr. Ameziane as an “enemy combatant” – until recently without the prospect of court review – constitutes an arbitrary deprivation of his liberty and a denial of his right to prompt judicial review of the legality of his detention in violation of Article XXV of the American Declaration. While the U.S. Supreme Court recently ruled in *Boumediene* that Guantánamo detainees have the right to habeas, as it did in 2004,¹⁷² the fact is that Mr. Ameziane remains imprisoned after more than six years, and a court has yet to examine the lawfulness of his detention, despite his best efforts to seek review. The violation of his right not to be arbitrarily detained and to have a court ascertain the legality of his detention without delay occurred years ago, and it will continue until the day that a U.S. federal court rules on his habeas petition.

¹⁷¹ Petitioners note at the outset of this section that in “interpreting and applying the Declaration” and its individual protections, the Commission has reiterated on numerous occasions that “it is necessary to consider its provisions in light of developments in the field of international human rights law since the Declaration was first composed.” Following this reasoning, the Commission has found that the American Convention on Human Rights (“American Convention” or “Convention”) “may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration.” *Solidarity Statehood Committee v. United States*, Case 11.204, Inter-Am C.H.R., Report No. 98/03, at para. 87, n. 79 (2003). *See, e.g., Juan Raul Garza v. United States*, Case 12.243, Inter-Am. C.H.R., Report No. 52/01, at paras. 88, 89 (2000) (citing Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89 of July 14, 1989, Inter-Am. Ct. H.R. (Ser. A) N° 10 (1989), at para. 37). *See also* Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, Inter-Am. C.H.R., OEA/Ser.L/V/II.106, doc. 40 rev., at para. 38 (2000) (confirming that while the Commission clearly does not apply the American Convention in relation to member states that have yet to ratify that treaty, its provisions may well be relevant in informing an interpretation of the principles of the Declaration).

¹⁷² *Rasul*, 542 U.S. 466 (2004).

Article XXV of the American Declaration provides:

No person may be deprived of his liberty except ... according to the procedures established by pre-existing law.

...

Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court.¹⁷³

114. These protections, like international human rights law in general, apply in all situations, including those of armed conflict.¹⁷⁴ In the latter context, however, international humanitarian law may serve as the *lex specialis* in interpreting international human rights instruments, such as the American Declaration.¹⁷⁵ Under international humanitarian law, certain deprivations of liberty, which would otherwise constitute violations of international human rights law, may be justified.

115. Properly determining the legal status of Mr. Ameziane, and whether international humanitarian law is indeed the *lex specialis* in interpreting his rights or whether his rights are governed strictly by international human rights law, is of critical importance in assessing the legality of his detention, and is an obligation of the United States as the detaining state.¹⁷⁶ This determination has been rendered impossible by the U.S. government's definition of "enemy combatant," pursuant to which Mr. Ameziane is being held at Guantánamo, and furthermore by the inadequacy of the CSRT review process. The failure of the United States to determine Mr.

¹⁷³ American Declaration of the Rights and Duties of Man, Mar. 30-May 2, 1948, O.A.S. Res. XXX, OEA/Ser.L/V/II.82 doc 6 rev. 1, Article XXV.

¹⁷⁴ See, e.g., IACHR Report on Terrorism and Human Rights, cit., at para. 61; 2007 Scheinin Report, *supra* note 19, para. 7.

¹⁷⁵ IACHR Report on Terrorism and Human Rights, cit., at para. 61.

¹⁷⁶ See IACHR Precautionary Measures No. 259 (March 13, 2002), at 3 (citing Article 5 of the Third Geneva Convention).

Ameziane's status and define the law pursuant to which his detention is governed has deprived him and other Guantánamo detainees of the ability to know and exercise their rights.

116. The sections that follow begin by establishing the United States' failure to properly determine Mr. Ameziane's status under international law, the result of which is that the exact legal framework applicable to Mr. Ameziane's deprivation of liberty remains unclear. As the subsequent sections demonstrate, however, regardless of whether Mr. Ameziane's right to personal liberty would be properly analyzed under international human rights or humanitarian law, his detention at Guantánamo Bay for more than six years without charge or a fair judicial process to challenge his detention constitutes a clear violation of his Article XXV right not to be arbitrarily detained.

1. The United States' Failure to Adequately Determine Mr. Ameziane's Legal Status has Frustrated the Appropriate Application of Article XXV to his Case.

117. The United States has an obligation to determine Guantánamo detainees' legal status. It has failed to satisfy this obligation in two ways: by applying an ambiguous definition of "enemy combatant" as the basis for holding detainees at Guantánamo, and by creating the flawed CSRTs as the only mechanism to review detainees' status.

118. Since it first adopted precautionary measures in March 2002, the Commission has insisted that the United States take the "urgent measures necessary to have the legal status of the detainees at Guantánamo Bay determined by a competent tribunal," expressing concern that "it remains entirely unclear from their treatment by the United States what minimum rights under international human rights and humanitarian law the detainees are entitled to."¹⁷⁷ The Commission reiterated this request in 2003, 2004 and 2005, before calling on the United States

¹⁷⁷ See IACHR Precautionary Measures No. 259 (March 13, 2002).

to close Guantánamo in 2006.¹⁷⁸ As the Commission has explained, determining detainees' status is indispensable to identifying the scope of their rights and assessing whether their rights have been respected.¹⁷⁹

119. Notwithstanding the Commission's repeated admonitions, the United States has failed in its obligation to determine detainees' legal status in two critical ways.

120. First, the definition of "enemy combatant" eludes a determinate status for detainees. The class of individuals whose detention the United States has authorized pursuant to its "war on terror" has been variously defined since 2001,¹⁸⁰ but at the time of Mr. Ameziane's CSRT in 2004, Guantánamo detainees were determined to be properly held if they met the following definition:

An "enemy combatant" ... shall mean an individual who was part of or supporting Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces.¹⁸¹

Currently, the MCA authorizes the detention of "unlawful enemy combatants" at Guantánamo and under U.S. custody elsewhere, which are defined as:

(i) a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces); or

¹⁷⁸ See IACHR Precautionary Measures No. 259 (March 18, 2003; July 29, 2004; and Oct. 28, 2005); Press Release No. 27/06.

¹⁷⁹ See, e.g., IACHR Precautionary Measures No. 259 (March 13, 2002), at 3.

¹⁸⁰ See Exec. Order No. of Nov. 13, 2001, *supra* note 7 (defining the class of individuals as "any individual who is not a United States citizen with respect to whom [the President] determine[s] from time to time in writing that: (1) there is reason to believe that such individual, at the relevant times, (i) is or was a member of the organization known as al Qaida; (ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism or acts in preparation therefore, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States...; or (iii) has knowingly harbored one or more individuals described [above]; and (2) it is in the interest of the United States that such individual be subject to this order").

¹⁸¹ CSRT Procedures, cit., § B.

(ii) a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense.¹⁸²

121. The breadth and vagueness of these definitions, which conflate different categories of individuals whose detention and rights would be governed by different regimes of international law, render it impossible to determine the specific rights of Guantánamo detainees and the obligations of the United States.¹⁸³ In the context of armed conflict, international humanitarian law distinguishes between, and provides different protections for, “combatants,” who take direct part in the hostilities and whose rights are governed by the Third Geneva Convention, and “non-combatants” (or civilians), who are present in the zone of conflict but do not directly participate in the hostilities and whose rights are governed by the Fourth Geneva Convention.¹⁸⁴ The Geneva Conventions further distinguish between lawful (or privileged) and unlawful (or unprivileged) combatants, the former of which are entitled to prisoner-of-war (POW) status.¹⁸⁵

¹⁸² The MCA is the first instance in which “unlawful enemy combatant” is statutorily defined. MCA, cit., § 3(a)(1), amending § 948a(1)(A).

¹⁸³ Commenting on the inadequacy of status determinations by the CSRTs, the UN Special Mandate holders concluded, “[i]n determining the status of detainees the CSRT has recourse to the concepts recently and unilaterally developed by the United States Government, and not to the existing international humanitarian law regarding belligerency and combatant status[.]” UN Special Mandate Holders’ Report, *supra* note 10, para. 28(d).

¹⁸⁴ Combatants are defined as persons who take direct part in the hostilities by “participating in an attack intended to cause physical harm to enemy personnel or objects.” IACHR Report on Terrorism and Human Rights, at para. 67 (citing Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, Article 4). Generally, non-combatants are defined as persons who are present in zones of international armed conflict, but who do not directly participate in the hostilities; they fall under the protection of the Fourth Geneva Convention. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949.

¹⁸⁵ Privileged combatants are entitled to all the protections and rights emanating from the Third Geneva Convention, or from the First and Second Conventions if they are wounded or otherwise placed *hors de combat*. Unprivileged combatants are not entitled to POW status, although they do enjoy non-derogable, fundamental protections under both international human rights and humanitarian law. These include, *inter*

122. The definition of “enemy combatant” or “unlawful enemy combatant” collapses all of these categories into one, blurring the distinctions between individuals who may have participated directly in hostilities and may be classified as POWs,¹⁸⁶ individuals who may not have directly participated in any attacks,¹⁸⁷ and individuals who may not have been captured in the context of an armed conflict at all and whose rights would be governed strictly by international human rights law.¹⁸⁸ Thus, as an initial matter, the classification the United States uses to purportedly justify the detention of Mr. Ameziane and other Guantánamo detainees makes it impossible to determine their rights and assess the legality of their detention with any precision.

123. Secondly, the CSRTs only review whether detainees are properly held according to this broad and muddled definition and, because of their myriad flaws and procedural shortcomings, are incapable of making even that determination fairly and accurately. As such, they are wholly inadequate in clarifying detainees’ status and rights. As the Commission has previously found, “it remains entirely unclear from the outcome of [the CSRTs and ARBs] what

alia, the right that their status be determined by a competent court or tribunal, as opposed to a political authority, and other fundamental guarantees embodied in Common Article 3 of the Geneva Conventions and Article 75 of the First Optional Protocol. See Knut Dormann, *The Legal Situation of “Unlawful/Unprivileged Combatants,”* 85 Int’l Rev. Red Cross 45, 50-51, 73 (2003).

¹⁸⁶ For instance, the MCA presumptively classifies members of the Taliban and “associated forces” as “unlawful enemy combatants,” instead of POWs.

¹⁸⁷ Commentaries on the Geneva Protocols define the term “direct” as requiring “a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and the place where the activity takes place,” a standard not satisfied by merely providing financial support to persons involved in hostilities against the United States. See INT’L COMM. OF THE RED CROSS, COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, PARA. 1679 (Yves Sandoz et al. eds., 1987).

¹⁸⁸ For example, a number of detainees were captured far from Afghanistan, in Europe and in Africa.

the legal status of the detainees is or what rights they are entitled to under international or domestic law.”¹⁸⁹

124. The failure of the United States to adequately determine Mr. Ameziane’s status – in clear defiance of repeated admonitions by the Commission since 2002 – has had serious consequences for the clarity and exercise of his rights, particularly those protected by Article XXV. In effect, the lack of an effective status determination makes it impossible to know whether his detention should be analyzed exclusively under international human rights law, or whether international humanitarian law should also apply as *lex specialis*. However, regardless of which legal regime is applied, the ensuing sections demonstrate that Mr. Ameziane has been and continues to be arbitrarily deprived of his liberty.

2. Regardless of Whether International Human Rights or Humanitarian Law Governs Mr. Ameziane’s Detention, his Imprisonment for over Six Years without Charge or Judicial Review Constitutes an Arbitrary Deprivation of his Liberty.

125. The United States has violated Mr. Ameziane’s right not to be arbitrarily deprived of his liberty by imprisoning him for more than six years without charge and by denying him the opportunity to challenge the legality of his detention *without delay* in a court, regardless of whether his detention is governed exclusively by international human rights law or whether international humanitarian law also applies as *lex specialis* in interpreting his rights. For detainees whose treatment is governed strictly by international human rights law, prolonged and indefinite detention without charge or prompt judicial review violates established norms, even in

¹⁸⁹ See IACHR Precautionary Measures No. 259 (Oct. 28, 2005) (“While the State argues that the procedures before the Combatant Status Review Board and the Administrative Review Boards likewise satisfy the Commission’s request, it remains entirely unclear from the outcome of those proceedings what the legal status of the detainees is or what rights they are entitled to under international or domestic law. [...] Accordingly, the Commission does not consider that these procedures have adequately responded to the concerns at the base of the Commission’s request for precautionary measures.”).

the context of alleged terrorism.¹⁹⁰ For detainees where the rules of international humanitarian law are the *lex specialis*, the United States' failure to make proper status determinations and to try or release detainees at the end of hostilities constitutes an arbitrary deprivation of liberty.

(a) Under a Strict Human Rights Law Analysis, the United States has Violated Mr. Ameziane's Right Not to be Arbitrarily Detained.

126. Given that international human rights law applies to the conduct of states at all times, including in times of threats to national security, and that international humanitarian law provides specific rules of interpretation only in the context of armed conflict,¹⁹¹ the detention of Guantánamo prisoners captured in the *absence* of armed conflict is governed solely by international human rights law. If Mr. Ameziane was captured outside of a situation of armed conflict, then under international human rights law, his imprisonment for over six years without charge and the opportunity to seek prompt judicial review of his detention constitutes a violation of his rights under Article XXV.

127. As stated above, Article XXV of the Declaration provides that anyone deprived of his liberty has the right to have the legality of his detention reviewed without delay by a court.¹⁹² Article 7(6) of the American Convention, which governs the remedy of habeas corpus, echoes this guarantee, providing that anyone who is deprived of his liberty “shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.”¹⁹³ The Commission has emphasized, including in its precautionary measures in favor of Guantánamo

¹⁹⁰ See IACHR Report on Terrorism and Human Rights, cit., at paras. 139-40.

¹⁹¹ See *id.* at paras. 136, 141.

¹⁹² American Declaration, *supra* note 173, art. XXV.

¹⁹³ American Convention, art. 7.6. See also ICCPR, art. 9(4) (“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”).

detainees, “the longstanding and fundamental role that the writ of habeas corpus plays as a means of reviewing Executive detention” in particular.¹⁹⁴

128. While neither the Court nor the Commission has established a definitive rule for determining the length of detention without charge or judicial review that would rise to the level of an arbitrary deprivation of liberty, the jurisprudence of the Inter-American system indicates that more than six years would clearly constitute a violation. The Commission has emphasized that habeas is intended to be a timely remedy.¹⁹⁵ In ordinary circumstances, the Commission has suggested that a delay of more than two or three days in bringing a detainee before a judicial authority would generally not be considered reasonable.¹⁹⁶ In the context of alleged terrorism, both the Commission and the Court have found that holding an individual suspected of terrorism for 20 days without charge or judicial review violated the right to be free from arbitrary detention.¹⁹⁷

129. Furthermore, while derogations of the right to personal liberty are permissible in certain contexts, the Inter-American system’s jurisprudence makes clear that certain fundamental aspects of the right, such as the writ of habeas corpus, are non-derogable even in times of

¹⁹⁴ IACHR Precautionary Measures No. 259 (Oct. 28, 2005), at 8.

¹⁹⁵ See, e.g., IACHR Precautionary Measures No. 259 (Oct. 28, 2005), at 8 (*citing* Castillo Paez Case, Inter-Am. Ct. H.R., Judgment of November 3, 1997 (Ser. C) No. 34, para. 83).

¹⁹⁶ IACHR Report on Terrorism and Human Rights, *cit.*, at para. 122, n. 334. See also *Suarez-Rosero v. Ecuador*, Inter-Am. Ct. H.R., Judgment of November 12, 1997 (Ser. C) No. 35 (finding that a judicial proceeding occurring one month after a defendant’s arrest constituted arbitrary detention), available at <http://www1.unm.edu/humanrts/Inter-Am. C.H.R./C/35-ing.html>.

¹⁹⁷ See, e.g., *Cantoral Benavides v. Peru*, Inter-Am. Ct. H.R., Judgment of August 18, 2000 (Ser. C) No. 69, at paras. 63, 66, 74.

emergency and threats to national security¹⁹⁸ – position in accordance with the interpretations of UN bodies.¹⁹⁹

130. Mr. Ameziane was transferred to Guantánamo on or around February 2002, purportedly on the basis of a unilateral determination by the Executive that he is an “enemy combatant.” He has been held without charge and without judicial review of the lawfulness of his detention during the six intervening years since then, and the United States has made no indication of either charging or releasing him in the future.

131. For the first two years of his detention, Mr. Ameziane was held virtually *incommunicado*, without access to counsel or even administrative review of his status and detention. In June 2004, with the U.S. Supreme Court’s ruling in *Rasul*, he and other detainees were for the first time afforded access to lawyers and the right to habeas in U.S. courts, but the government opposed and successfully stalled each and every one of detainees’ habeas petitions, including Mr. Ameziane’s, and ultimately stripped their right to habeas through the DTA in 2005 and the MCA in 2006.

132. Habeas is now again available to detainees pursuant to the Court’s recent decision in *Boumediene* and will be pursued, but Mr. Ameziane’s habeas petition will have been pending for at least three and a half years by the time it is heard. To date, not a single Guantánamo prisoner has had a hearing on the merits of his habeas case. The only review the prisoners have had is by the sham CSRTs and ARBs, which have been amply criticized by the Commission and other international human rights bodies.

¹⁹⁸ IACHR Report on Terrorism and Human Rights, *cit.*, at paras. 127, 139. The Inter-American Court has ruled that the right to habeas corpus under Article 7(6) may not be subject to derogation in the Inter-American system. *Id.* at para. 126, n. 342.

¹⁹⁹ *See* U.N. Human Rights Committee, General Comment No. 29 (2001), para. 11 (explaining that Article 9(4) is non-derogable even in times of emergency); 2007 Scheinin Report, *supra* note 19, para. 14.

133. Thus, notwithstanding the habeas remedy now available and being pursued, in the case of Mr. Ameziane and the over 250 other detainees past their sixth year of imprisonment without charge, habeas has long since ceased to be the timely remedy it was intended to be. Under a strict international human rights framework, Mr. Ameziane's right not to be arbitrarily detained under Article XXV of the American Declaration was violated long ago, and the violation will continue until a federal court reviews and rules on the legality of his detention.

(b) Even if International Humanitarian Law is the *Lex Specialis* in Mr. Ameziane's Case, the United States has Violated his Right Not to be Arbitrarily Detained.

134. With respect to detainees such as Mr. Ameziane who may have been captured by the United States in the context of an international armed conflict, the American Declaration and other international human rights instruments still apply, but international humanitarian law provides the *lex specialis* in interpreting their rights and assessing the legality of their detention.²⁰⁰ Even if international humanitarian law were to prove relevant in the case of Mr. Ameziane, his detention for over six years by the United States would still constitute an arbitrary deprivation of his liberty.

135. Under the Third Geneva Convention, in the context of an international armed conflict, "combatants" who have fallen into the hands of a party to the conflict may be detained for the duration of the hostilities, so long as the detention serves the purpose of preventing them from continuing to take up arms against the detaining party.²⁰¹ Lawful (or privileged) combatants are entitled to POW status during the period of detention, and detainees whose status

²⁰⁰ See UN Special Mandate Holders' Joint Report, *supra* note 10, paras. 15-16.

²⁰¹ Geneva Convention Relative to the Treatment of Prisoners of War art. 118, Aug. 12, 1949, 6 U.S.T. 3116, 75 U.N.T.S. 135[hereinafter "Third Geneva Convention"]; see also UN Special Mandate Holders' Joint Report, *supra* note 10, para. 22.

is in doubt are also presumptively considered POWs.²⁰² The Fourth Geneva Convention also permits a party to the conflict to detain “non-combatants” (or civilians) if they pose a security threat or otherwise intend to harm the party, or for the purposes of prosecution on war crimes charges.²⁰³ The power to continue holding detainees during a situation of armed conflict, regardless of how they are classified, is limited by the existence of an ongoing armed conflict and safeguards by which detainees can challenge their continued detention.²⁰⁴ Once the conflict has come to an end, prisoners of war and non-combatants must be released, although they may be detained until the end of any criminal proceedings brought against them.²⁰⁵ As the rationale for the detention of combatants not enjoying POW status (unlawful or unprivileged combatants) is to prevent them from taking up arms against the detaining party, they, too, should be released or charged once the conflict is over.²⁰⁶

136. The basic position of the United States is that it should be able to detain Mr. Ameziane and the other prisoners at Guantánamo as “enemy combatants,” without charge or access to counsel or the courts, for the duration of its “war on terror,” which by the government’s own admission is a war without end. However, as the UN Special Mandate Holders have noted,

²⁰² Third Geneva Convention, arts. 4 & 5. *See also* IACHR Report on Terrorism and Human Rights, cit., at para. 130 (*citing* Third Geneva Convention art. 5).

²⁰³ Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 42, 1949, 6 U.S.T. 3516 [hereinafter “Fourth Geneva Convention”]; *see also* UN Special Mandate Holders Joint Report, *supra* note 10, at para. 22.

²⁰⁴ *See, e.g.*, 2007 Scheinin Report, *supra* note 19, at para. 14 (“[T]he right to judicial review of any form of detention does not depend on whether humanitarian law is also applicable. All Guantánamo Bay detainees are entitled to this right, irrespective of whether they were involved in armed conflict or the status of proceedings against them.”).

²⁰⁵ Third Geneva Convention, arts. 118-19; Fourth Geneva Convention, art. 133. *See also* UN Special Mandate Holders’ Joint Report, *supra* note 10, at para. 22.

²⁰⁶ Third Geneva Convention, art. 118; *see also* UN Special Mandate Holders’ Joint Report, *supra* note 10, at para. 22. An unprivileged combatant, although unable to enjoy the protections of the Third Geneva Convention, still enjoys the core protections of Common Article 3 to the 1949 Geneva Conventions and Article 75 of Additional Protocol I in addition to the fundamental, non-derogable protections of international human rights law. *See, e.g.*, Knut Dormann, *The Legal Situation of “Unlawful/Unprivileged Combatants,”* 85 Int’l Rev. Red Cross 45, 50-51 (2003).

“the global struggle against international terrorism does not, as such, constitute an armed conflict for the purposes of the applicability of international humanitarian law.”²⁰⁷ Assuming *arguendo* that the United States’ invasion of Afghanistan in October 2001 effectively launched an international armed conflict as defined under the laws of war,²⁰⁸ according to the ICRC, that conflict ended with the establishment of the new Afghan government in June 2002.²⁰⁹ Thus, while the detention of both lawful and unlawful combatants and civilians captured by the United States in Afghanistan may have been permissible during the period of hostilities, such detainees should have been repatriated or charged once the hostilities were over on or about June 2002. Any detention continuing past that point in time, unless of detainees against whom criminal proceedings were pending, would be in violation of international humanitarian law. While the United States continues to be involved in combat operations in Afghanistan and in other countries, as the UN Special Mandate Holders have observed, it is “not currently engaged in an international armed conflict between two Parties to the Third and Fourth Geneva Conventions.”²¹⁰ Furthermore, the government itself has confirmed that the objective of the ongoing detention of Guantánamo detainees is not primarily to prevent any individuals from taking up arms against the United States, but to obtain information and intelligence.²¹¹

137. Given that any international armed conflict between the United States and Afghanistan ended long ago, the detention of any Guantánamo detainees who may have been captured in the course and zone of that conflict can no longer be justified by international

²⁰⁷ UN Special Mandate Holders’ Joint Report, *supra* note 10, at para. 21.

²⁰⁸ See, ICRC, International Humanitarian Law and Terrorism: Questions and Answers at 3 (May 5, 2004), available at www.icrc.org/Web/eng/siteeng0.nsf/html/5YNLEV.

²⁰⁹ See *id.*

²¹⁰ UN Special Mandate Holders’ Joint Report, *supra* note 10, at para. 24.

²¹¹ See *id.* at para. 23. See also ARB Procedures, *cit.*, § 3F(1)(c) (factors for continuing detention includes intelligence value).

humanitarian law.²¹² Such detainees should have been released once the hostilities ended, and their continuing detention would have been lawful only if criminal proceedings were pending against them. Even if Mr. Ameziane's detention was initially permissible under the *lex specialis* of international humanitarian law, the fact that he continues to be held without charge more than six years after the conclusion of any international armed conflict in Afghanistan clearly constitutes an arbitrary deprivation of his liberty.

B. Mr. Ameziane's Detention Conditions and Treatment Amount to Torture and Cruel, Inhuman, and Degrading Treatment in Violation of Articles I and XXV of the American Declaration.

138. The Inter-American System prohibits and condemns the use of torture and cruel, inhuman, or degrading treatment or punishment ("CIDT") for any purpose and in all circumstances.²¹³

139. It is now well-established through government memos and investigations, direct detainee accounts, and news and NGO reports that detention conditions and interrogation techniques amounting to torture were sanctioned and imposed at Guantánamo. The ICRC – the authoritative voice on government obligations under international humanitarian and human rights law in detentions operations – has described the entire detention regime at Guantánamo as an intentional system of cruel and degrading treatment and a form of torture.

140. Mr. Ameziane has personally been subjected to conditions of confinement and mistreatment that this Commission and other international bodies have recognized as rising to the level of torture and other inhumane treatment. The fact that these conditions and his mistreatment were part of a deliberate and purposeful system, whether to break his resistance for

²¹² See UN Special Mandate Holders' Joint Report, *supra* note 10, at para. 23.

²¹³ The System's prohibitions are embodied in the American Declaration of the Rights and Duties of Man; the American Convention on Human Rights; the Inter-American Convention to Prevent and Punish Torture; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

the purposes of interrogation or to punish and discipline him, and that they were authorized and carried out by U.S. government officials and agents, renders them violations of Articles I and XXV of the American Declaration for which the United States must be held accountable.

1. Torture and Cruel, Inhuman, and Degrading Treatment Are Prohibited in the Inter-American System.

141. Protections against torture and abuse are guaranteed by at least two articles of the American Declaration. Article I protects the right of “[e]very human being ... to life, liberty and the security of his person.”²¹⁴ The Commission has consistently interpreted personal security to include the right to humane treatment and has further specified that “[a]n essential aspect of the right to personal security is the absolute prohibition of torture.”²¹⁵ Article XXV of the American Declaration specifically protects the right of persons in state custody to humane treatment: “[e]very individual who has been deprived of his liberty ... has the right to humane treatment during the time he is in custody.”²¹⁶ Article 5 of the American Convention, the analog to Article I of the Declaration, in more explicit terms guarantees the right of “[e]very person ... to have his physical, mental, and moral integrity respected. ... No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”²¹⁷

142. In interpreting the scope and content of the prohibition on torture, the Commission and the Court have generally looked to the Inter-American Convention to Prevent

²¹⁴ American Declaration, *supra* note 173, art. I.

²¹⁵ See IACHR Report on Terrorism and Human Rights, at para. 155, n.389; see also *Ovelario Tames v. Brazil*, Case 11.516, Inter-Am. C.H.R., Report No. 60/99, OEA/Ser. L/V/II.102, doc. 6 rev. , para. 39 (1998).

²¹⁶ American Declaration, *supra* note 173, art. XXV. The Commission has found that, by depriving a person of his liberty, the state “places itself in the unique position of guarantor of his right to life and to humane treatment.” *Minors in Detention v. Honduras*, Case 11.491, Inter-Am. C.H.R., Report No. 41/99, OEA/Ser.L/V/II.102, doc. 6 rev., para. 135 (1998).

²¹⁷ American Convention, art. 5. The Commission has interpreted Article I of the American Declaration as containing a prohibition similar to that under the American Convention. See IACHR Report on Terrorism and Human Rights, at para. 155 n.388.

and Punish Torture (“Inter-American Torture Convention”).²¹⁸ Article 2(1) of the Inter-American Torture Convention defines torture as follows:

“For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.”²¹⁹

143. Guided by this definition, the Commission has indicated that the following elements must exist for an act to constitute torture: (1) it must produce physical and mental pain and suffering in a person; (2) it must be committed with a purpose (such as personal punishment or intimidation) or intentionally (e.g., to produce a certain result in the victim); and (3) it must be committed by a public official or by a private person acting at the instigation of the former.²²⁰

144. The Commission has held that the key factor that distinguishes torture from other cruel, inhuman or degrading treatment or punishment is “the intensity of the suffering

²¹⁸ *Raquel Martin de Mejia v. Peru*, Case 10.970, Inter-Am. C.H.R., Report No 5/96, at 185 (1995) (declaring that, while the American Convention does not define “torture,” “in the Inter-American sphere, acts constituting torture are established in the Inter-American Convention to Prevent and Punish Torture”). The Inter-American Court has stated that the Inter-American Convention to Prevent and Punish Torture constitutes part of the Inter-American *corpus iuris*, and that the Court must therefore refer to it in interpreting the scope and content of Article 5(2) of the American Convention. *See Tibi v. Ecuador*, Inter-Am. Ct. H.R. (ser. C) No. 114, para. 145 (2004).

²¹⁹ Unlike many other international bodies, the Inter-American Convention to Prevent and Punish Torture is not limited to acts committed for the purpose of extracting information through interrogation but instead covers acts committed for any purpose whatsoever.

²²⁰ *See* IACHR, Report on Terrorism and Human Rights, at para. 154 n.385; *see also* Robert K. Goldman, *Trivializing Torture: The Office of Legal Counsel’s 2002 Opinion Letter and International Law Against Torture*, in 12 No. 1 Hum. Rts. Brief (2004).

inflicted.”²²¹ For treatment to be considered inhuman or degrading, it must attain a minimum level of severity, which the Commission has held is a relative measurement and dependent on the specific circumstances of each case, including the duration of the treatment, its physical and mental effects, and the sex, age and health of the victim, among other factors.²²² Severe mental and psychological suffering alone, including humiliation, can constitute inhuman and degrading treatment, even in the absence of physical injuries.²²³ In *Loayza Tamayo*, the Court described degrading treatment as the fear, anxiety and inferiority induced in a victim for the purpose of humiliating the victim and breaking his physical and moral resistance.²²⁴ It also noted that the degrading aspect of treatment can be exacerbated by the vulnerability of an individual unlawfully detained.²²⁵

145. The law of the Inter-American system, like international law in general, considers the prohibition of torture to be a non-derogable, *jus cogens* norm, meaning that it cannot be suspended for any reason, including war or any other emergency situation.²²⁶ The Inter-American Court has repeatedly referred to the *jus cogens* character of the absolute prohibition of

²²¹ IACHR, Report on Terrorism and Human Rights, cit., at para. 158 (citing *Case of Luis Lizardo Cabrera*, at para. 80); see also *Caesar v. Trinidad and Tobago*, Inter-Am. Ct. H.R. (ser. C) No. 123, para. 70 (Mar. 11, 2005); *Lori Berenson-Mejía v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 119, para. 100 (Nov. 25, 2004).

²²² IACHR, Report on Terrorism and Human Rights, cit., at para. 157; see also *Case of Hermanos Gomez – Paquiyauri*, cit.; *Case of Loayza Tamayo*, cit.; *Case of Jailton Neri da Fonseca v. Brazil*, cit.

²²³ IACHR, Report on Terrorism and Human Rights, cit., at paras. 156, 159.

²²⁴ *Id.* at para. 159 n.395.

²²⁵ *Id.* at para. 159.

²²⁶ See IACHR, Report on the Situation of Human Rights Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, doc. 40 rev., para. 154 (Feb. 28, 2000); *Case of Lori Berenson-Mejía*, cit., at para. 100. The Court has stated that “the fact that a State is confronted with terrorism [or a situation of internal upheaval] should not lead to restrictions on the protection of the physical integrity of the person.” See *Case of Gomez Paquiyauri*, cit., at para. 37; *Case of Cantoral Benavidez*, cit., at para. 143; *Case of Castro*, cit., at para. 271; *Caesar v. Trinidad and Tobago*, Inter-Am. Ct. H.R. (ser. C) No. 123, para. 70 (Mar. 11, 2005).

all forms of torture,²²⁷ and it is now clear that it also considers the prohibition on other forms of ill-treatment to be customary international law.²²⁸ The Inter-American Torture Convention provides specifically that the existence of a state of war, threat of war, state of emergency, domestic disturbance or other type of emergency cannot be invoked to justify acts that constitute torture.²²⁹

146. The Inter-American and “universal condemnation of torture precludes any state not only from engaging in torture, but also from expelling, returning, ‘rendering,’ or extraditing a person to another state where there are substantial grounds for believing that the person would be in danger of being tortured.”²³⁰

2. Mr. Ameziane Has Been Subjected to Physical and Psychological Torture and Cruel, Inhuman, and Degrading Treatment in Guantánamo and Kandahar.

(a) Detention Conditions, including Prolonged Incommunicado Detention and Isolation

147. Mr. Ameziane’s conditions of detention at Guantánamo, including in particular his solitary confinement in Camp VI since March 2007, fail to meet the basic standards required by the American Declaration for the personal security and humane treatment of persons in state custody, as well as by other sources of international law to which the Commission looks in interpreting the Declaration’s provisions. As the ICRC has said of the conditions of detention at Guantánamo, “the construction of [the detention facilities], whose stated purpose is the

²²⁷ *Goiburú v. Paraguay*, Inter-Am. Ct. H.R. (ser. C) No. 154, para. 128 (Sept. 26, 2006); *Case of Tibi*, cit., at para. 143; *Gómez-Paquiyaury Brothers v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 110, para. 112 (July 8, 2004); *Urrutia v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 103, para. 92 (Nov. 27, 2003).

²²⁸ *Ximenes-Lopes v. Brazil*, Inter-Am. Ct. H.R. (ser. C) No. 139, para. 127 (Nov. 30, 2005).

²²⁹ Inter-American Torture Convention, art. 5.

²³⁰ See Goldman, *supra* note 220.

production of intelligence, cannot be considered other than an intentional system of cruel, unusual and degrading treatment and a form of torture.”²³¹

148. The Inter-American system’s jurisprudence on the right to humane treatment establishes that persons deprived of their liberty have the right to conditions of detention that respect their personal dignity and that the State, as the primary entity responsible for prisons, is obligated to ensure conditions that safeguard prisoners’ fundamental rights.²³² The Commission and the Court have specifically found that detention conditions similar in many respects to those in which Mr. Ameziane has been held – e.g., prolonged incommunicado detention, isolation in a small cell without natural air or light, deficient medical care (discussed *infra*) – amount to inhumane treatment and even torture, and fail to safeguard those basic rights.

149. For example, in the *Velasquez Rodriguez* case, the Court held that “[p]rolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being” – a position the Court and the Commission have consistently held in their jurisprudence on prisoners’ right to humane treatment.²³³

150. The system’s caselaw has also specifically addressed situations of solitary confinement, holding that such conditions constitute cruel and inhuman treatment and even torture under certain circumstances. In *Lori Berenson Mejia v. Peru*, the Court found that a

²³¹ ICRC, *The ICRC’s Work at Guantánamo Bay* (Nov. 30, 2004), available at <http://www.icrc.org/Web/eng/siteeng0.nsf/iwpList4/C5667B446C9A4DF7C1256F5C00403967>.

²³² See *Case of Bulacio*, cit., at para. 126; *Case of Cantoral Benavides*, cit., at para. 87; *Case of Lori Berenson Mejia*, cit., at para. 102; *Case of Tibi*, cit., at para. 150; *Case of the “Juvenile Reeducation Institute”*, cit., at para. 151.

²³³ *Velasquez Rodriguez case*, (ser. C) No. 4, para. 156 (July 28, 1988); see also *Godínez Cruz case*, (ser. C) No. 5, para. 164 (Jan. 20, 1989); *Camilo Alarcon Espinoza v. Peru*, Cases 10.941, 10.942, 10.944, 10.945, Inter-Am. C.H.R., Report No. 40/97, OEA/Ser.L/V/II.98, doc. 6 rev., para. 83 (1997); *Case of Lori Berenson*, cit., at para. 103; IACHR, Report on Terrorism and Human Rights, cit., at para. 162.

detention regime resembling Mr. Ameziane’s conditions in many respects – continuous solitary confinement for one year in a small cell without ventilation, natural lighting or heating, adequate food, sanitary facilities or necessary medical care (for vision problems resulting from the lack of natural light in the small cell), and with severe restrictions on receiving visitors – constituted cruel, inhuman and degrading treatment.²³⁴ The fact that some of these conditions changed or improved after a certain point in time, such as the continuous solitary confinement, did not affect the Court’s finding.²³⁵ The UN Committee Against Torture similarly found that the detention conditions in the *Berenson Mejia* case amounted to cruel and inhuman treatment and punishment.²³⁶

151. In addition to the suffering inherent in solitary confinement, such conditions place individuals “in a particularly vulnerable position, and increase[] the risk of aggression and arbitrary acts in detention centers.”²³⁷ Thus, in *Montero-Aranguren v. Venezuela*, the Court held that “solitary confinement cells must be used as disciplinary measures or for the protection of

²³⁴ *Case of Lori Berenson*, cit., at paras. 106, 109; see also *Case of Tibi*, cit., at para. 150; *Case of the “Juvenile Reeducation Institute*, cit., at para. 151; *Case of Cantoral Benavides*, cit., at para. 89; *Martín Javier Roca Casas v. Peru*, Case 11.233, Inter-Am. C.H.R., Report No. 39/97, OEA/Ser.L/V/II.98, doc. 6 rev., para. 90 (1997); *Case of Loayza Tamayo*, cit., at paras. 57-58; *Case of Castillo-Petruzzi*, cit., at para. 197; Nicaragua, Case 9170, Inter-Am. C.H.R. (1986) (holding that a man who had been kept in isolation for nine months had been denied his right to humane treatment, in violation of Article 5 of the American Convention). See also First United Nations Congress on the Prevention of Crime and Treatment of Offenders, Aug. 22-Sept. 3, 1995, U.N. Standard Minimum Rules for the Treatment of Prisoners, adopted by U.N. Econ. & Soc. Council, Res. 663C (XXIV) (July 31, 1957) and Res. 2076 (LXII) (May 13, 1977) [hereinafter “UN Minimum Rules for the Treatment of Prisoners”].

²³⁵ See *Case of Lori Berenson*, cit., at para. 108; see also *Case of Loayza Tamayo*, cit., at paras. 57-58; *Case of Castillo-Petruzzi*, cit., at para. 197.

²³⁶ See *Case of Lori Berenson*, cit., at para. 107 (citing U.N. Committee Against Torture, Investigation in relation to Article 20: Peru, A/56/44, paras. 144-93 (May 16, 2001); Inquiry under Article 20, paras. 183-84).

²³⁷ *Bámaca-Velásquez v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 70, para. 150 (Nov. 25, 2000). See also *De la Cruz Flores v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 115, para. 129 (Nov. 18, 2004); *Urrutia v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 103, para. 87 (Nov. 27, 2003); *Castillo Petruzzi v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 52, para. 195 (May 30, 1999); *Suárez-Rosero v. Ecuador*, Inter-Am. Ct. H.R. (Series C) No. 35, para. 90 (Nov. 12, 1997); *Miguel Castro-Castro Prison v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 160, para. 323 (Nov. 25, 2006).

persons only during the time necessary and in strict compliance with the criteria of reasonability, necessity and legality,” and specifically stated that minimum standards for conditions of detention must still be met.²³⁸

152. Even the threat of solitary confinement may be enough to constitute inhuman treatment.²³⁹

153. In *Cabrera v. Dominican Republic*, the Commission found that the solitary confinement to which Mr. Cabrera had been subjected amounted to torture, reasoning that: (i) it was deliberately imposed on the applicant; (ii) the measure was imposed under circumstances in which the applicant’s health was in a delicate state; (iii) the solitary confinement was imposed for the purpose of personal punishment; and (iv) the act of torture was attributable to the State as it was perpetrated by its agents in the course of official duties.²⁴⁰

154. The Commission has also interpreted Article XXV’s guarantee of humane treatment for individuals in state custody along the lines of international standards for the confinement and treatment of prisoners. In *Oscar Elias Biscet v. Cuba*, the Commission made specific reference to the United Nations’ Standard Minimum Rules for the Treatment of Prisoners as prescribing basic benchmarks²⁴¹ in such areas as accommodation,²⁴² hygiene,²⁴³

²³⁸ *Montero-Aranguren v. Venezuela*, Inter-Am. Ct. H.R. (ser. C) No. 150, para. 94 (July 5, 2006). The Inter-American Court specifically referred to other international instances in this regard, including the report of the UN Committee Against Torture on Turkey, the U.N. Standard Minimum Rules for the Treatment of Prisoners and the findings of the European Court in *Mathew v. Netherlands*, No. 24919/03, Eur. Ct. H.R. (2005).

²³⁹ *Case of the “Juvenile Reeducation Institute,”* cit., at para. 167; see also *supra* section 3.1.1.

²⁴⁰ *Luis Lizardo Cabrera v. Dominican Republic*, Case No. 10.832, Inter-Am. C.H.R., Report No. 35/96, at para. 86 (1997).

²⁴¹ *Oscar Elias Biscet et al. v. Cuba*, Case 12.476, Inter-Am. C.H.R., Report No. 67/06, at paras. 153-58 (2006). See also *Paul Lallion v. Grenada*, Case 11.765, Inter-Am. C.H.R., Report No. 55/02, at para. 86 (2003); *Benedict Jacob v. Grenada*, Case 12.158, Inter-Am. C.H.R., Report No. 56/02, at para. 43 (2003). See also IACHR Report on Terrorism and Human Rights, cit., at para. 167.

²⁴² “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic

clothing and bedding,²⁴⁴ exercise and sport,²⁴⁵ discipline, punishment, and instruments of restraint,²⁴⁶ and contact with the outside world.²⁴⁷

155. For the first few years of his imprisonment at Guantánamo, Mr. Ameziane and other prisoners were largely cut off from and unknown to the outside world. The U.S. government denied anyone other than military and government officials and the ICRC access to the base, and refused to disclose even the names and nationalities of the prisoners publicly until four years after they were brought to Guantánamo. Lawyers were finally permitted to visit the base after June 2004, although Mr. Ameziane did not actually meet with a lawyer until several months later. Prisoners' ability to communicate with their lawyers and their families, and access to any outside news or information remains extremely restricted. Letters from Mr. Ameziane to his family often do not reach them for a year or more. Letters from his attorneys are often held for weeks. While incommunicado detention has been the norm at Guantánamo for over six years, the law of the Inter-American system has warned that "[i]ncommunicado may only be

content of air, minimum floor space, lighting, heating and ventilation." U.N. Minimum Rules for the Treatment of Prisoners, rule 10. "In all places where prisoners are required to live or work, a) the windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; [and] b) [a]rtificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight." *Id.* at rule 11.

²⁴³ "The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner." *Id.* at rule 12. "Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate." *Id.* at rule 13.

²⁴⁴ "Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health." *Id.* at rule 17(1).

²⁴⁵ "Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits." *Id.* at rule. 21(1).

²⁴⁶ "Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life." *Id.* at rule 27.

²⁴⁷ "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits." *Id.* at rule 37. "Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications...." *Id.*

used exceptionally, taking into account its severe effects, because ‘isolation from the exterior world produces moral suffering and mental stress on any individual, which place him in an exacerbated situation of vulnerability,’²⁴⁸

156. In addition to the general isolation of prisoners at Guantánamo from the outside world, Mr. Ameziane’s solitary confinement in Camp VI for over a year has been further isolating, restricting his contact even with other prisoners. His small cell is cold, completely sealed and lets in no natural air or light. The only openings are two thin “windows” that face the interior of the prison and allow guards to look in and keep watch day and night, and a food slot in his door, which he crouches down to and yells through to other prisoners in his block – one of the few if only ways they can communicate. He sits, sleeps, eats and uses the toilet all in the same small space, which he is unable to clean because he is given no cleaning supplies. He is confined to this space for most of every day, with the exception of a five minute shower, often without any hot water, and a short “recreation” time, when he is shuffled outside in chains to a small fenced-in area surrounded by walls five meters high and covered in wire mesh. Even outside, his only view of the sky is through metal wires.

157. His confinement in these conditions has taken a heavy physical and psychological toll. His deteriorating eyesight and rheumatism are some of the physical manifestations of being held in solitary confinement for so long. There are also psychological scars that are less visible. As the Court has held, “the injuries, sufferings, damage to health or prejudices suffered by an individual while he is deprived of liberty may become a form of cruel punishment when, owing

²⁴⁸ *Case of Lori Berenson*, cit., at para. 104; cf. *Case of Maritza Urrutia v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 103, at para. 87 (Nov. 27, 2003); *Case of Bámaca-Velásquez*, cit., at para. 150; *Case of Cantoral Benavides*, cit., at para. 84.

to the circumstances of his imprisonment, there is a deterioration in his physical, mental and moral integrity.”²⁴⁹

158. Given the length and severity of Mr. Ameziane’s incommunicado and solitary conditions at Guantánamo, in general and in Camp VI specifically, their intentional and purposeful nature, whether to produce intelligence and/or to punish and torture, and their authorization and enforcement by U.S. government officials and agents, Mr. Ameziane’s conditions of detention at Guantánamo rise to the level of torture in violation of Articles I and XXV of the American Declaration.

(b) Physical and Verbal Assaults, Modified Waterboarding, Abusive Interrogations, and Sleep Deprivation in the Context of Detention and Interrogation.

159. In addition to his incommunicado and solitary conditions of confinement, Mr. Ameziane has been subjected to specific acts of torture and abuse in the context of his detention and interrogations over the past six years that constitute additional violations of Articles I and XXV of the American Declaration. These include physical beatings resulting in injuries, simulated drowning, 30-hour interrogation sessions, prolonged periods of sleep deprivation, threats of rendition and menacing by military dogs. These methods were often applied in combination, compounding his suffering.

160. Inter-American jurisprudence has held that many of the acts to which Mr. Ameziane has been subjected constitute inhumane treatment, including beatings,²⁵⁰ holding a person’s head in water until the point of drowning,²⁵¹ threats of a behavior that would constitute

²⁴⁹ *Case of Lori Berenson*, cit., at para. 102. *See also Case of “Juvenile Reeducation Institute,”* cit., at para. 168 (finding that the subhuman and degrading detention conditions that inmates were forced to endure inevitably affected their mental health, with adverse consequences for the psychological growth and development of their lives and mental health).

²⁵⁰ IACHR Report on Terrorism and Human Rights, cit., at para. 161 n.405.

²⁵¹ *Id.* at para. 161 n.403.

inhumane treatment,²⁵² death threats,²⁵³ and standing or walking on top of individuals.²⁵⁴ More broadly, the Court has held that “any use of force that is not strictly necessary to ensure proper behavior [by] the detainee constitutes an assault on the dignity of the person in violation of Article 5 of the American Convention.”²⁵⁵

161. International authorities also provide guidance in identifying specific acts that constitute torture or other inhumane treatment. The UN Human Rights Committee has considered beatings and stress positions such as forcing a prisoner to remain standing for extremely long periods of time to constitute torture or other inhumane treatment.²⁵⁶ In a 1997 report on interrogation tactics used by the Israeli Defense Forces, the UN Committee Against Torture concluded that sleep deprivation for “prolonged periods” constitutes torture for purposes of Article 1 of the Convention Against Torture.²⁵⁷ The UN Special Rapporteur on Torture has identified similar and additional acts that involve the infliction of suffering severe enough to constitute torture, including beating, suspension, suffocation, exposure to excessive light or noise, prolonged denial of rest, sleep or medical assistance, total isolation and sensory deprivation, and being held in constant uncertainty in terms of space and time.²⁵⁸

²⁵² *Id.* at para. 161 n.410.

²⁵³ *Id.* at para. 161 n.412.

²⁵⁴ *Id.* at para. 161 n.404.

²⁵⁵ *Id.* at para. 166.

²⁵⁶ *Id.* at para. 162 n.414.

²⁵⁷ *See* Office of the High Commissioner for Human Rights, Concluding Observations of the Committee Against Torture: Israel, A/52/44, para. 257 (Sept. 5, 1997) [hereinafter “Concluding Observations: Israel”]. The Committee does not state what constitutes a “prolonged period”; however, in making this determination, the Committee considered a case in which the detainee was “interrogated and tortured over the course of the next 30 days” while another detainee was “forced to sit handcuffed and hooded in painful and contorted positions, subjected to prolonged sleep deprivation and beaten over the course of three weeks.” Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted to the UN Commission on Human Rights, E/CN.4/1998/38/Add.1 (Dec. 24, 1997).

²⁵⁸ IACHR Report on Terrorism, *cit.*, at para. 162 n.413. *See also* Concluding Observations: Israel, *supra* note 257, at para. 257.

162. The Commission and the Court have also relied on European Court of Human Rights jurisprudence, including the case of *Ireland v. UK*, and suggested that techniques similar to those addressed by the European Court, including forcing detainees to remain in stress positions for periods of several hours, hooding, subjecting detainees to continuous loud noise and depriving detainees of sleep pending their interrogations are prohibited in any interrogations by state agents.²⁵⁹ The European Court has also found that shackling a prisoner, where shackling causes pain and discomfort, constitutes a breach of Article 3 of the European Convention.²⁶⁰

163. Mr. Ameziane has been subjected to numerous acts of mistreatment at the hands of the U.S. military at Guantánamo that this Commission and other international bodies recognize as torture or other inhuman treatment. He has endured violent beatings and head bashings that have resulted in physical injuries, including a dislocated jaw, a bloody nose and a split lip. He has been subjected to a method similar to waterboarding, with the same intended effect of suffocation, whereby guards held his head back and placed a hose of running water between his nose and mouth for several minutes, giving him the sensation “that my head was sinking in water.” He has been denied sleep for stretches of time, for example, in the “Romeo” and “Mike” blocks, when guards would wake him every quarter or half-hour by kicking on the wall or the door of his cell and yelling at him to wake up. He has been subjected to dozens, if not hundreds of interrogations, some of which have lasted more than 25 and 30 hours. During one of these sessions, he was chained to the floor and held in a freezing room with techno music blasting his eardrums. Interrogators have also threatened him with return to Algeria if he does not cooperate, where they have suggested he would be tortured. More recently and routinely, with the interrogator “Antonio,” he has been forced to sit through hours of having Antonio assail

²⁵⁹ IACHR Report on Terrorism and Human Rights, cit., at para. 164 n. 419-22.

²⁶⁰ See *Henaf v. France*, App. No. 65436/01, 2003-XI Eur. Ct. H.R., para. 56.

him with obscenities, insults and threats, and blow smoke in his face. At Kandahar and at Guantánamo, he has been subjected to brutal searches and, at Kandahar, guards were sometimes accompanied by military dogs. These acts have not only inflicted severe physical pain and injuries, but traumatized him psychologically as well. Of his waterboarding experience, for example, Mr. Ameziane writes, “I still have psychological injuries, up to this day. Simply thinking of it gives me chills.”

164. In addition, these acts have all been intentional and purposeful, whether for interrogation purposes or as a means of punishment or intimidation, and they have all been carried out and sanctioned as a matter of policy by the state and its agents.

165. Mr. Ameziane’s mistreatment thus constitutes torture in violation of Articles I and XXV of the American Declaration because of the high intensity of suffering it has caused, particularly in considering the cumulative effect his abuse, its purposeful and deliberate nature, and the fact that it was sanctioned and perpetrated by state agents.

(c) Denial of Adequate Medical Care

166. Mr. Ameziane has sustained specific injuries and developed chronic health conditions as a result of his inhumane conditions and treatment at Guantánamo, for which he has never received adequate medical treatment. The deterioration of his physical and psychological health over the course of his more than six years of unlawful detention, and the denial of medical care to address the injuries and effects of his imprisonment, constitute additional violations under Articles I and XXV of the Declaration, in conjunction with the right to health under Article

XI.²⁶¹

²⁶¹ Article XI of the American Declaration guarantees “every person ... the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”

167. The Inter-American system’s jurisprudence has consistently held that the denial of regular and adequate medical care to prisoners in state custody constitutes a violation of their right to humane treatment.

168. In *Tibi v. Ecuador*, a prisoner detained by state agents, who was physically beaten and on one occasion had his head submerged in a water tank during interrogation, was denied a proper medical examination and treatment for injuries resulting from his abuse. Citing UN standards, European Court case law, and its own jurisprudence, the Inter-American Court held that the State has a duty to provide medical examinations and care to detainees in its custody on a regular basis and when necessary for specific health conditions, and that Ecuador’s denial of adequate and timely medical treatment for the prisoner constituted a violation of his right to humane treatment under Article 5 of the American Convention.²⁶²

169. In *Juan Hernández v. Guatemala*, a prisoner incarcerated in a Guatemalan jail died from a common and easily curable case of cholera for which prison authorities neglected to provide treatment.²⁶³ The Commission held that the Guatemalan government had a duty to take the necessary measures to protect the prisoner’s health and life.²⁶⁴ The government’s failure to take reasonable steps and act with a certain level of diligence, including transferring the prisoner to a hospital, violated the prisoner’s right to humane treatment under Article 5.²⁶⁵

170. In *Montero-Aranguren v. Venezuela*, the Court emphasized that assistance by a doctor *without* links to the detention center authorities constitutes “an important safeguard

²⁶² *Case of Tibi*, cit., at paras. 154-57 (citing United Nations, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 24). See *Kudla v. Poland*, No. 30210/96, 2000-XI Eur. Ct. H.R., para. 93-94; *Case of Bulacio*, cit., at para. 131; *De La Cruz-Flores*, cit., at paras. 131-34, 136.

²⁶³ See *Juan Hernández v. Guatemala*, Case No. 11.297, Inter-Am. C.H.R., Report No. 28/96, OEA/Ser.L/V/II.95, doc. 7 rev. (1997).

²⁶⁴ See *id.* at paras. 58-60.

²⁶⁵ See *id.* at para. 61.

against torture and physical or mental ill-treatment of inmates” and protection of their right to humane treatment.²⁶⁶

171. The Commission has also previously found the denial of adequate medical care to prisoners in state custody to constitute an additional violation of Article XI of the Declaration. In a series of cases on behalf of political prisoners in Cuban jails, the prisoners were subjected to torture and inhuman conditions and treatment, including the denial of adequate medical care. The provision of care was also made contingent on the prisoners’ compliance with authorities’ demands, such that, if the prisoners refused to cooperate, their needs for medical treatment were also refused. The Commission found that the facts constituted both a violation of the prisoners’ right to humane treatment under Article XVV of the Declaration, as well as a separate violation of their right to the preservation of health and well-being under Article XI.²⁶⁷

172. The Commission’s precautionary measures also provide guidance in determining the scope of states’ obligations to protect prisoners’ rights to humane treatment and health. The Commission has regularly issued precautionary measures to address the inadequate provision of medical care in prison contexts and to protect prisoners’ health, including asking states to provide inmates with necessary medical exams and specialized care. In one case, the Commission asked the Cuban government to transfer an inmate suffering from a lung tumor to a specialized hospital and provide him with specialized medical care administered with a physician selected by his family. Despite being diagnosed with the tumor almost one year before the Commission’s intervention, the only medical attention the inmate had received under the prison’s watch, and only after he commenced a hunger strike to protest his lack of treatment, was

²⁶⁶ *Case of Montero-Aranguren*, cit., at para. 102. The Court made reference to the findings of the European Court in *Mathew v. Netherlands* (2005) in this respect.

²⁶⁷ *See Cuba*, Case No. 6091, Inter-Am. C.H.R., Res. No. 3/82, OEA/Ser.L/V/II.57, doc. 6 rev. 1 (1982).

by a physician who told the prisoner there was nothing wrong with him and returned him to the prison.²⁶⁸ In another case, the Commission asked the Peruvian government to provide a medical exam and treatment to a prisoner who was being denied medical care for a prostate condition.²⁶⁹

173. The Commission and the Court have also often looked to UN standards and the case law of the European human rights system in finding that states have a duty to provide adequate medical care to prisoners in their custody. The UN Body of Principles for the Protection of Persons under Detention or Imprisonment provides that “[a] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary.”²⁷⁰ The UN’s Standard Minimum Rules for the Treatment of Prisoners further define the scope and content of the rights of persons deprived of their liberty to medical treatment, providing for example:

Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.²⁷¹

The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures

...²⁷²

²⁶⁸ See Annual Report of the Inter-American Commission on Human Rights 2001, OEA/Ser.L/V/II.114, doc. 5 rev. (2002), ch. III.C.1, para. 28.

²⁶⁹ See Annual Report of the Inter-American Commission on Human Rights 2002, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2003), ch. III.C.1, para. 78. See also Annual Report of the Inter-American Commission on Human Rights, para. 50 (issuing precautionary measures asking state to provide a specialized medical exam for a prisoner to protect her health).

²⁷⁰ UN Office of the High Commissioner for Human Rights, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by General Assembly resolution 43/173, Dec. 9, 1988, Principle 24.

²⁷¹ UN Minimum Rules for the Treatment of Prisoners, rule 22(2).

²⁷² *Id.* rule 24.

The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed; and (2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.²⁷³

174. The conditions of Mr. Ameziane's imprisonment at Guantánamo and the torture and abuse he has endured have led directly to the deterioration of his health and well-being over the past six years. His failing vision, convulsions and rheumatism are some of the physical manifestations of his declining health. Like other detainees, his conditions and treatment combined with the reality of indefinite detention have also taken a toll on his psychological health and well-being.

175. In response to Mr. Ameziane's needs for medical care, the government has either deliberately denied him care or provided him with wholly incompetent care. His repeated requests for a simple eye exam to address his deteriorating eyesight were denied for almost a year, and he has still not received a pair of eyeglasses with the correct prescription. He has also not received any care for the rheumatism he has developed in his legs from the cold temperatures in Camp VI, let alone socks or additional clothing to stay warm. When he has received treatment, it has been more abusive than healing, for example, when he was taken to the infirmary for his convulsions and recklessly stuck with a needle by a guard who had been asked by the attending doctor to assist him.

176. His requests for health care have also been met with a response to ask his interrogator, thus conditioning the provision of care on his cooperation in interrogations, which is unlawful per the Commission's caselaw.²⁷⁴

²⁷³ *Id.* rule 25(1).

²⁷⁴ *See, e.g.*, Cuba, Case No. 6091, Inter-Am. C.H.R., Res. No. 3/82, OEA/Ser.L/V/II.57, doc. 6 rev. 1 (1982).

177. The right to humane treatment, taken together with Article XI of the Declaration's right to health, create a duty of states not only to provide adequate medical care to persons in their custody, but to take other affirmative measures to ensure the health and well-being of such individuals. As Inter-American and international human rights standards make clear, the right to health is not confined to the right to health care, but should be "understood to mean the enjoyment of the highest level of physical, mental and social well-being."²⁷⁵ Mr. Ameziane's current poor state of health – the result of both his conditions and treatment at Guantánamo and the denial of adequate medical care for his injuries and ailments – is thus far from the high standard of health that this system and international bodies envision as a fundamental right for all human beings, whether in detention or not, and evidences a breach of the government's duties to protect his right to humane treatment and health under Articles I and XXV in conjunction with Article XI.

(d) Religious Abuse and Interference

178. Mr. Ameziane has suffered religious insult, humiliation and interference during his imprisonment at Guantánamo, which amounts to an additional violation of his right to humane treatment under Article XXV, in conjunction with his right to religious freedom under Article III.

179. As previously discussed, the Commission has held that the concept of "inhumane treatment" includes that of degrading treatment.²⁷⁶ The Court has described degrading treatment as "the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the

²⁷⁵ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador," art. 10(1). *See also* Committee on Economic, Social and Cultural Rights, General Comment 14 (2000), para. 1 ("[E]very human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.").

²⁷⁶ *See Case of Luis Lizardo Cabrera*, cit., at para. 79 (citing the Greek Case, cit., at para. 186).

victim and breaking his physical and moral resistance,” which can be felt even more intensely by a person unlawfully detained.²⁷⁷

180. In addition, Article III of the American Declaration provides, “[e]very person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.”²⁷⁸ Article 12 of the American Convention more explicitly provides that the right to profess one’s religion or beliefs may be done individually or together with others, and that any permissible restrictions of this right must be prescribed by law and necessary to protect public safety, order, health or morals, or the rights or freedoms of others.²⁷⁹ While the Commission has not considered the right to religious freedom in the context of a case such as Mr. Ameziane’s, it has emphasized that measures to prevent and punish terrorism must be carefully tailored to recognize and guarantee due respect for the right to freedom of conscience and religion.²⁸⁰

181. The UN Human Rights Committee has considered a case involving religious abuse similar to that which Guantánamo detainees have suffered. The Committee found that Trinidad and Tobago had violated a detainee’s right to religious freedom where the detainee’s government captors had forcibly shaved him, removed his prayer books and prevented him from participating in religious services.²⁸¹

182. The verbal and physical abuse to which Mr. Ameziane has been subjected with respect to his Muslim faith, either personally or in witness, has had the purpose and effect of humiliating and demoralizing him. Mr. Ameziane has described how prison guards have

²⁷⁷ *Case of Loayza Tamayo*, cit., at paras. 36, 57.

²⁷⁸ American Declaration, *supra* note 173, art. III.

²⁷⁹ American Convention, arts. 12(1), (3).

²⁸⁰ *See* IACHR, Report on Terrorism and Human Rights, cit., at para. 363.

²⁸¹ *See Clement Boodoo v. Trinidad and Tobago*, Communication No. 721/1996, para. 6.6, UN Doc. CCPR/C/74/D/721/1996 (Apr. 2, 2002).

screamed insults and obscenities at him during his daily prayers and imitated howling dogs during the distinctive Muslim call to prayer. He has witnessed guards shave crosses into his Muslim brothers' hair and demand prisoners to turn over their pants so that they cannot pray. At Kandahar, he and other prisoners were subjected to watching a guard rip pages from a Qur'an and then toss it into a bucket of human excrement. The degrading aspect of these acts is all the more injurious given the unlawfulness of his imprisonment. In addition to the harm to his personal dignity and security, this mistreatment has also had the effect of interfering with his religious practice freely and in peace. As such, the religious abuse Mr. Ameziane has suffered amounts to inhuman treatment and an interference with his right to freedom of religion in violation of Article I and XXV, in conjunction with Article III.

C. Mr. Ameziane's Conditions of Detention Violate his Right To Private and Family Life and to Protection for his Personal Reputation under Articles V and VI of the American Declaration.

183. Mr. Ameziane's imprisonment at Guantánamo has profoundly impacted his private and family life. He has effectively been denied any meaningful contact with his family for over six years, and deprived of founding his own family and developing his own personal life during some of the prime years of his life. The stigma of being labeled an "enemy combatant" and a "terrorist" has also damaged his and his family's good name and reputation, and will continue to follow him for years after his release. The deprivations and stigma of his imprisonment and their far-reaching repercussions, particularly in light of the fact that he is unlawfully detained, amount to an arbitrary and illegal interference with his rights under Articles V and VI of the American Declaration.

Article V of the Declaration provides:

Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation and his private and family life.

Article VI of the Declaration provides:

Every person has the right to establish a family, the basic element of society, and to receive protection therefore.

184. The Commission has established that Articles V and VI of the American Declaration, taken together, prohibit arbitrary or illegal government interference with family life,²⁸² where “arbitrary interference” refers to elements of “injustice, unpredictability and unreasonableness.”²⁸³ While the rights to private and family life are thus not absolute, they may only be circumscribed where restrictions are prescribed by law, necessary to protect public order, and proportional to that end.²⁸⁴

185. With regard to Article VI of the Declaration specifically, the Commission has noted that the right to establish and protect the family cannot be derogated under any circumstances, however extreme.²⁸⁵ Thus, while situations such as incarceration or military service inevitably restrict the exercise and enjoyment of the right, they may not suspend it.²⁸⁶

1. Mr. Ameziane has been Deprived of Developing his Private and Family Life.

186. The Commission has consistently held that the State is obliged to facilitate contact between a prisoner and his family, notwithstanding the restrictions of personal liberty implicit in the condition of imprisonment.²⁸⁷ In this respect, the Commission has repeatedly indicated that visiting rights are a fundamental requirement for ensuring the rights of prisoners and their

²⁸² IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, Feb. 28, 2000, para. 162.

²⁸³ *X and Y v. Argentina*, Case No. 10.506, Inter-Am. C.H.R., Report. No. 38/96, para. 92 (1996).

²⁸⁴ IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, cit., at para 166; *Case of X and Y v. Argentina*, cit., at para. 92.

²⁸⁵ *See id.* at para 96; *see also Case of Biscet et al.*, cit., at para 236.

²⁸⁶ *See Case of X and Y v. Argentina*, cit., at para 96.

²⁸⁷ *See id.* at para. 98.

families.²⁸⁸ The Commission has gone further and stated that because of the exceptional circumstances of imprisonment, the State must indeed take positive steps to guarantee prisoners' right to maintain and develop family relations.²⁸⁹

187. Similarly, the European Court of Human Rights has held that a total prohibition on visits by a detainee's family constitutes a violation of Article 8, the European Convention on Human Rights' analog to Article V of the Declaration.²⁹⁰ The Court has held that the State must enable a detainee to maintain contact with his family and, further, that there is a positive obligation on the State to assist the detainee to maintain that contact if need be.²⁹¹

188. Article 37 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides that "[p]risoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and receiving visits."²⁹² Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that "[a] detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family

²⁸⁸ See *Case of Biscet*, cit., at para 237; *Case of X and Y v. Argentina*, cit., at para. 98. See also IACHR, *The Situation of Human Rights in Cuba Seventh Report* at Chap. III, para. 25 (1983); IACHR, *Annual Report of the Inter-American Commission on Human Rights (Uruguay) Chap. IV*, para. 10 (1983-1984).

²⁸⁹ See *Case of X and Y v. Argentina*, cit., at para. 98; *Case of Biscet*, cit., at para. 237.

²⁹⁰ See *McVeigh, O'Neill and Evans v. United Kingdom*, App. Nos. 8022/77, 8025/77 and 8027/77, 5 Eur. Ct. H.R. 71, at paras. 52-53 (1983) (Commission Report), in which the European Commission on Human Rights held that a failure to allow persons detained under anti-terrorism legislation to communicate with their spouses constituted a denial of private and family life contrary to Article 8. Similarly, in *PK, MK and BK v. United Kingdom*, App. No. 19086/91 (1992), the European Commission noted, whilst finding no violation in the instant case, that significant limits on visits from family members may well raise Article 8 issues.

²⁹¹ *X v. United Kingdom*, App. No. 9054/80 30 DR 113 (Oct. 8, 1982); *Baginski v. Poland*, App. No. 37444/97, Eur. Ct. H.R., at para. 89 (Oct. 11, 2005).

²⁹² U.N. Minimum Rules for the Treatment of Prisoners, cit.

and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions, as specified by law or lawful regulation.”²⁹³

189. Since he was taken into U.S. custody in 2002, Mr. Ameziane has been deprived of virtually all communication with his family. He has not seen his parents, his seven brothers and sisters, or his nieces and nephews for over six years, as family visits are prohibited under the regime at Guantánamo. Until recently, telephone calls between detainees and their families were prohibited as well, although in March 2008, the U.S. Department of Defense announced that it would allow detainees one hour-long telephone call up to twice a year to a family member.²⁹⁴ On February 29, 2008, the ICRC facilitated the first telephone call Mr. Ameziane has been permitted to make to a family member or to anyone since 2002. The only other more “regular” method of communication available to Mr. Ameziane is the mail system, but letters between him and his family have sometimes taken a year or more to reach the other side.

190. Mr. Ameziane’s father passed away while he has been at Guantánamo. He was deprived not only of the chance to see or speak to his father before his death, but to attend his funeral, pay his respects and be with his family during an emotionally difficult time instead of alone in his cell thousands of miles away. While the Commission has not directly considered circumstances such as these, the European Court has found that a refusal to permit a prisoner to attend his parents’ funeral constituted an unjustified interference with his private and family life.²⁹⁵ That Court also held that where a detainee’s request to visit his dying father had been refused, respect for his Article 8 right to private and family life required the state to afford him

²⁹³ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, *supra* note 270, Principle 19.

²⁹⁴ Reuters, *U.S. says some Guantanamo prisoners can phone home*, Mar. 12, 2008, available at <http://www.reuters.com/article/latestCrisis/idUSN12190031>.

²⁹⁵ *Ploski v. Poland*, App. No. 26761/95, Eur. Ct. H.R., at para. 39 (2002).

an alternative opportunity to bid farewell to his dying father. A failure to permit the detainee to do so constituted a violation of Article 8.²⁹⁶

191. In addition to being deprived of all meaningful contact with his family, his years at Guantánamo have prevented him from developing other personal relationships and aspects of his life during what would otherwise have been prime years of his life. As the European Court has held, the concept of private life “encompasses the right for an individual to form and develop relationships with other human beings”²⁹⁷ and should be interpreted broadly.²⁹⁸ For over six years, the only individuals Mr. Ameziane has seen or spoken to are his prison guards, his interrogators, his fellow prisoners, his lawyers, and the ICRC, and because of the security regime at Guantánamo and his isolation in Camp VI, his contact with other prisoners and his lawyers has been extremely restricted.

192. Beyond arresting his ability to develop personal and social relationships, his imprisonment at Guantánamo has also deprived him of opportunities for educational and vocational development. To fill this void, his lawyers can only mail a restricted range of books and magazines to a general detainee library, which take months to reach him, if at all. He has also taken it upon himself to teach himself English. He described the painstaking process in a letter to his lawyers:

“Since we weren’t allowed to have a dictionary and we didn’t have the right to keep more than one book in our cells, the library had some ‘Harry Potter’ books in English and French, so I took out a Harry Potter book in English and copied a hundred and seventy pages from the book onto sheets of paper, then I returned the book and took out the same book in French. I would read a sentence in French, translate it myself into English, then compare my translation with the one on the paper that I had copied and correct my mistakes. I would move on to the next sentence, translate it, and compare my translation to that on paper, and so on,

²⁹⁶ *Lind v. Russia*, App. No. 25664/05, Eur. Ct. H.R., at para. 98 (2007).

²⁹⁷ *C v. Belgium*, App. No. 21794/93, Eur. Ct. H.R., at para. 25 (1996).

²⁹⁸ *Niemietz v. Germany*, App. No. 13710/88, 16 Eur. Ct. H.R. 97, at para. 29 (1992).

sentence by sentence until I had finished the hundred and seventy pages. When the guards who walked by my cell asked what I was doing, seeing my copy from the book, I answered that I was an illiterate and that I was learning how to write. I told them that because I was afraid that if they knew my real intentions, they would talk about them to their superiors who would confiscate my papers.”²⁹⁹

193. In depriving him of meaningful communication with his family and the ability to develop the personal and professional aspects of his life, the United States has violated Mr. Ameziane’s rights under Articles V and VI of the American Declaration. The violation is even more egregious given the unlawful nature of Mr. Ameziane’s imprisonment.

2. Mr. Ameziane has Suffered Unfair Attacks on his Personal Honor and Reputation.

194. The Commission has previously found that a petitioner’s honor and reputation were harmed by the imposition of a penalty that the State recognized as “arbitrary.”³⁰⁰ Further, the Inter-American Court has found that descriptions of detainees as “terrorists” by a state in circumstances where such individuals have not been convicted of a criminal offence may constitute a violation of the rights of the detainees and their next of kin under Article 11 of the American Convention.³⁰¹

195. Mr. Ameziane has been classified and held by the United States for over six years at Guantánamo as an “enemy combatant,” a status labeling him as an individual who is a member of or associated with al Qaeda or the Taliban, and who committed or was otherwise involved in hostilities against the United States or its allies. Despite the gravity of this classification, Mr. Ameziane was neither allowed to see the government’s purported evidence against him, mount his own defense, nor seek review of his status and the legality of his detention by a court. Rather, he was designated an enemy combatant solely on the basis of a

²⁹⁹ Letter from Djamel Ameziane to Wells Dixon, June 15, 2008 (unclassified) (on file with CCR).

³⁰⁰ *Cirio v. Uruguay*, Case 11.500, Inter-Am. C.H.R., Report No. 124/06 (2006).

³⁰¹ *Case of The Miguel Castro Prison v. Peru*, Case 11.015, Inter-Am. C.H.R., para. 359 (2006).

unilateral determination by the President and a subsequent review by a CSRT designed in effect to rubber stamp that determination. Despite the fact that his enemy combatant status was derived through a process wholly lacking in rigor and fairness, that the legality of his detention has yet to receive judicial review and that he has never been charged, the United States persists in describing him and other detainees as, for example, “dangerous terrorists,” and fueling public misconceptions.

196. Were a court to find his imprisonment unlawful and order him released, the stain of Guantánamo would continue to trail him and his family long after his name is officially cleared, impacting his life in myriad ways – in his social relationships, his employment prospects, his mobility and ability to travel, and his safety, among others.

197. In arbitrarily imprisoning Mr. Ameziane at Guantánamo, labeling him an “enemy combatant” on the basis of an unfair process and persisting in calling detainees terrorists despite the fact that the majority have not been charged and none have received judicial review of their status or the legality of their detention, the United States has damaged Mr. Ameziane’s honor and reputation in violation of Article V of the Declaration.

D. The United States Has Denied Mr. Ameziane his Rights to Due Process and Judicial Remedies under Articles XVIII and XXVI of the American Declaration.

1. The CSRTs Violate Fundamental Due Process Norms.

198. The fact that Mr. Ameziane was until recently denied access to judicial review of the legality of his detention and afforded the CSRTs and the DTA as his only recourse constitutes not only an Article XXV violation of his right to liberty as previously discussed, but a separate violation of his rights to due process and a fair hearing under Articles XVIII and XXVI of the American Declaration.

199. The Commission has held that Articles XVIII and XXVI of the American Declaration guarantee certain fundamental due process protections to defendants,³⁰² including the right to a hearing by a competent, independent and impartial tribunal within a reasonable time,³⁰³ to have access to the evidence against oneself and to obtain witnesses and evidence in one's defense,³⁰⁴ and to the assistance of counsel.³⁰⁵ These protections are non-derogable even in situations of armed conflict.³⁰⁶

200. The due process protections of Articles XVIII and XXVI have been considered most frequently by the Commission and the Court in the context of criminal proceedings, but the system's jurisprudence clearly establishes that such protections are also applicable in "non-criminal proceedings for the determination of a person's rights and obligations of a civil, labor, fiscal or any other nature."³⁰⁷ The Inter-American Court has observed, for example, that "the due process of law guarantee must be observed in the administrative process and in any other procedure whose decisions may affect the rights of persons."³⁰⁸

³⁰² See IACHR Report on Human Rights and Terrorism, cit., at para. 218.

³⁰³ See *id.* at para. 218.

³⁰⁴ See *id.* at para. 238.

³⁰⁵ See *id.* at para. 236.

³⁰⁶ See *id.* at paras. 258-59; see also Human Rights Committee, General Comment No. 29 (2001), at para. 11.

³⁰⁷ See IACHR, Report on Human Rights and Terrorism, cit., at para. 240.

³⁰⁸ *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Int-Am. Ct. H.R., Merits, Reparations and Costs, Judgment of March 29, 2006 (Ser. C), No. 146, at para. 82. See also *Case of Baena-Ricardo et al. v. Panama*, Int-Am. Ct. H.R., Merits, Reparations and Costs, Judgment of February 2, 2001 (Ser. C), No. 72, at paras. 127. The judgment, at paras. 124-126, further states:

"Although Article 8 of the American Convention is entitled 'Right to a Fair Trial,' its application is not limited to judicial remedies in a strict sense, 'but [to] all the requirements that must be observed in the procedural stages,' in order for all persons to be able to defend their rights adequately vis-à-vis any type of State action that could affect them. That is to say that the due process of law must be respected in any act or omission on the part of the State bodies in a proceeding, whether of a punitive administrative, or of a judicial nature.

[...]

"the individual has the right to the due process as construed under the terms of Articles 8(1) and 8(2) in both penal matters, as in all of these other domains.

201. In more than six years of detention at Guantánamo, Mr. Ameziane has never had a fair hearing in court on the legality of his detention, although the right is finally available to him. He has only been permitted the flawed administrative proceedings of the CSRTs and ARBs,³⁰⁹ and the limited review of the D.C. Circuit Court under the DTA, which individually and together fall far short of the due process and fair hearing guarantees of Articles XVIII and XXVI.

202. As previously discussed, the composition and the lack of institutional safeguards of the CSRTs and ARBs render them insufficiently independent and impartial to make fair determinations of detainees' status. In addition, the rules and evidentiary procedures of the tribunals deny detainees access to and the ability to confront much of the "evidence" against them; the government need only provide detainees with a summary of its unclassified evidence supporting continued detention and none of the classified information otherwise considered by the tribunals. In practice, detainees' ability to call witnesses in their defense has been limited to calling fellow prisoners, and even those requests are regularly refused. The rules for the tribunals also deny detainees access to counsel, affording them only a "personal representative" who is not a lawyer and who owes no duty of confidentiality to the detainee. These and other shortcomings leave detainees without any meaningful opportunity to mount an effective defense or otherwise receive a fair hearing. While detainees may appeal the determination of their CSRT to the D.C.

[...]

"In any subject matter, even in labour and administrative matters, the discretionality of the administration has boundaries that may not be surpassed, one such boundary being respect for human rights. It is important for the conduct of the administration to be regulated and it may not invoke public order to reduce discretionally the guarantees of its subjects. For instance, the administration may not dictate punitive administrative actions without granting the individuals sanctioned the guarantee of the due process.

"The right to obtain all the guarantees through which it may be possible to arrive at fair decisions is a human right, and the administration is not exempt from its duty to comply with it. The minimum guarantees must be observed in the administrative process and in any other procedure whose decisions may affect the rights of persons."

³⁰⁹ See 2007 Sheinin Report, *supra* note 19, at paras. 13, 14; UN Special Mandate Holders' Report, *supra* note 10, at paras. 27-29.

Circuit Court of Appeals, that Court is limited to examining the compliance of the CSRTs with their own flawed procedures and does not have the authority to take up the merits of the case, as fundamental fair hearing protections require.³¹⁰ Denied access to a court to seek review of the legality of his detention, and with the deficient CSRTs and DTA as his only recourse until now, Mr. Ameziane has been deprived of his rights to a fair hearing and the accompanying due process guarantees necessary to ensure fairness under Articles XVIII and XXVI of the American Declaration.

203. Furthermore, while the Supreme Court in *Boumediene* held that Guantánamo detainees are entitled to seek the writ of *habeas*, and that the DTA's procedures for reviewing detainees' status are not an adequate or effective substitute for *habeas*, the Court was also clear in stating that the DTA and CSRT process remain intact.³¹¹ Thus, despite the CSRTs' failure to comport with international due process and fair hearing standards, under the existing domestic framework, they continue to serve as initial status review tribunals for "enemy combatants" held by the United States.³¹²

2. U.S. Legislation Deprives Mr. Ameziane of Judicial Remedies for Violations He has Suffered in U.S. Custody.

204. The Commission has established that Article XVIII protects the right of victims of human rights violations to have their violations investigated, prosecuted and punished, as well as to receive compensation for the damages and injuries they sustained.³¹³

³¹⁰ See IACHR, Report on Human Rights and Terrorism, cit., at para. 239 (citing Case of Castillo Petruzzi et al., cit., at para. 161).

³¹¹ *Boumediene*, 128 S. Ct. 2229, 2275 (2008).

³¹² *Id.* at 66-67 (holding that the Executive is entitled to a reasonable period of time to determine a detainee's status, via the CSRT, before a court entertains that detainee's habeas corpus petition).

³¹³ See *Franz Britton v. Guyana*, Case 12.264, Inter-Am. H.R., Report No. 1/06, at para. 30 (2006).

205. As discussed in the admissibility section of this petition, the United States has effectively eliminated the right of Guantánamo detainees such as Mr. Ameziane to seek judicial remedies for the human rights violations (including torture and other CIDT) they have suffered at the hands of the United States. The DTA and MCA establish broad and retroactive immunity—both civil and criminal—for U.S. agents involved in the detention and interrogation of non-citizens determined by the President or his designees to be “enemy combatants.”³¹⁴

206. As discussed above, the DTA further contains sweeping language barring those detained as non-citizen “enemy combatants” from presenting “any other action” against the United States or its agents in U.S. courts.³¹⁵ The result, in practice, is a legal framework that denies Mr. Ameziane the right to pursue justice—criminal, civil or administrative—in any court of law for many of the harms, enumerated elsewhere in this petition, committed against him by the U.S. government.

207. The denial of a right to a remedy for violations of Mr. Ameziane’s fundamental rights runs contrary to clearly established principles of human rights law³¹⁶ and the terms of Article XVIII of the American Declaration. In particular, it is worth recalling the longstanding and oft-repeated jurisprudence of the Inter-American system establishing that:

“all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or

³¹⁴ See DTA, cit., § 1004; MCA, cit., § 8(b)(3).

³¹⁵ DTA, cit., § 1004:

“No court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.”

³¹⁶ See *Almonacid-Arellano et al. v. Chile*, Inter-Am. Ct. H.R., Preliminary Objections, Merits, Reparations and Costs, Judgment of September 26, 2006 (Ser. C), No. 154 at para. 110.

arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.”³¹⁷

208. This Commission has likewise found that laws granting amnesty for human rights violations committed in response to perceived threats to national security violate Article XVIII of the American Declaration.³¹⁸

209. The broad immunity and amnesty provisions adopted into law by the United States recall the now infamous “forgive and forget” legislation adopted by several Latin American governments in the 1980s and 1990s. The Inter-American system has stood firm against such systematic attempts to deprive the victims of gross human rights violations their day in court, even contributing to the overturning of some of the aforementioned laws. This Commission must now stand equally firm in the face of the United States’ attempts to shield its officials from any form of accountability for the torture and abuse suffered by Mr. Ameziane and others like him. The Commission should therefore find that the United States has violated Mr. Ameziane’s Article XVIII right to resort to the courts to protect his legal rights, and that the immunity provisions adopted into law by the United States *per se* violate Article XVIII.

V. APPLICATION OF ARTICLE 37.4 OF THE IACHR RULES

A. The Commission’s Rules of Procedure Provide for an Exceptional Procedure to Join the Admissibility and Merits Phases of Urgent Cases in order to Expedite the Proceedings.

210. The Commission’s Rules of Procedure provide for an expedited process whereby, “in serious and urgent cases, or when it is believed that the life or personal integrity of a persona is in real and imminent danger,” the Commission may hear the admissibility and merits phases of a case simultaneously.

³¹⁷ *Barrios-Altos v. Peru*, Inter-Am. Ct. H.R., Judgment of March 14, 2001 (Ser. C) No. 75 at para. 41.

³¹⁸ *See* IACHR, Report No. 28/92 (Oct. 2, 1992) and Report No. 29/92 (Oct. 2, 1992).

211. In this regard, Article 30.4 of the Rules states:

In serious and urgent cases, or when it is believed that the life or personal integrity of a person is in real and imminent danger, the Commission shall request the promptest reply from the State, using for this purpose the means it considers most expeditious.³¹⁹

Article 30.7 of the Rule states:

In the cases envisioned in subparagraph 4, the Commission may request that the State presents [sic] its response and observations on the admissibility and the merits of the matter. The response and observations of the State shall be submitted within a reasonable period, to be determined by the Commission in accordance with the circumstances of each case.³²⁰

Finally, Article 37.4 of the Rules provides:

When the Commission proceeds in accordance with Article 30.7 of these Rules of Procedure, it shall open a case and inform the parties in writing that it has deferred its treatment of admissibility until the debate and decision on the merits.³²¹

212. As Article 37(4) was only recently incorporated into the Commission's Rules of Procedure, it is difficult to glean an interpretation of the article from the Commission's jurisprudence. Two considerations, however, shed light on the Commission's intentions in adopting Article 37(4) and on the circumstances in which it should be applied. The first such consideration is that Article 30(4) mirrors Article 25(1)'s reference to "serious and urgent cases."³²² Article 25 of the Commission's Rules defines the circumstances under which the IACHR may adopt precautionary measures. In cases where precautionary measures have already

³¹⁹ IACHR Rules, art. 30.4.

³²⁰ *Id.* art. 30.7.

³²¹ *Id.*

³²² *Id.* art. 25 ("In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons.").

been adopted, a presumption of seriousness and urgency may therefore be said to exist, potentially requiring the application of Article 37(4) in the event that a petition alleges facts similar to those that led the Commission to issue precautionary measures.

213. Second, the Commission has a long record of combining the admissibility and merits phases of contentious cases, although it has traditionally done so under the more ambiguous terms of Article 37(3) of the Rules.³²³ Article 37(3) refers generally to “exceptional circumstances,” without defining such circumstances. The Commission’s jurisprudence, however, sheds some light on its interpretation. The Commission applied Article 37(3), for example, in the *Toronto Markkey Patterson v. United States* case, after the State violated the precautionary measures issued by the Commission by putting the petitioner to death while his case was still pending.³²⁴ Article 37(3) was also applied in the *Martin Pelico Coxic v. Guatemala* case, in part due to an ongoing risk of harm to the victims, relatives of an indigenous human rights defender who had been arbitrarily executed by members of Civil Self-Defense Patrols (PAC).³²⁵

214. If the Commission’s interpretation of Article 37(4) is guided by its prior interpretation of Article 37(3), it is likely to apply the former in cases where precautionary measures have been issued and the State has failed to comply with such measures, and/or where there is an ongoing risk of harm to the life or integrity of the victims. Indeed, a plain reading of Article 30(4), which alludes to “serious and urgent cases, *or* when it is believed that the life or

³²³ *Id.* art. 37.3 (“In exceptional circumstances, and after having requested information from the parties in keeping with the provisions of Article 30 of these Rules of Procedure, the Commission may open a case but defer its treatment of admissibility until the debate and decision on the merits. The case shall be opened by means of a written communication to both parties.”).

³²⁴ *Toronto Markkey Patterson v. United States*, Case 12.439, Inter-Am C.H.R., Report No. 25/05 (2005).

³²⁵ *Martin Pelico Coxic v. Guatemala*, Case 11.658, Inter-Am C.H.R., Report No. 80/07 (2007).

personal integrity of a persona is in real and imminent danger,” reveals that Article 30(4) (and thus, Article 37(4)) largely codifies the Commission’s historic interpretation of Article 37(3).

B. Mr. Ameziane’s case presents urgent circumstances that call for Application of Article 37(4) of the Commission’s Rules.

215. In light of the preceding analysis, it is imperative that the Commission invoke Article 37(4), and proceed to examine the admissibility and merits of Mr. Ameziane’s petition simultaneously and with all due speed.

216. Shortly after Mr. Ameziane’s arrival at Guantánamo Bay, the Commission adopted precautionary measures in favor of Mr. Ameziane and all other Guantánamo detainees. The Commission subsequently reiterated and expanded these measures in 2003, 2004 and 2005 (while also calling for Guantánamo’s closure in 2006), in response to emerging information on the situation at Guantánamo and the United States’ continuing non-compliance with the measures, e.g., by establishing the flawed CSRTs as the initial status review mechanisms for detainees by stripping detainees’ right to habeas in the DTA and later the MCA, by continuing to detain and interrogate detainees under conditions and using techniques amounting to torture, by continuing to return detainees to countries where they face a real risk of torture or persecution – in short, by continuing the illegal and inhumane regime at Guantánamo for more than six years and counting.

217. As this petition demonstrates, Mr. Ameziane has directly and intensely suffered – legally, physically, psychologically, morally, and socially – the effects of the United States’ refusal to comply with the Commission’s precautionary measures. These harms will continue as his illegal detention drags on into what will soon be its seventh year.

218. Given the United States’ consistent non-compliance with precautionary measures meant to protect Mr. Ameziane from irreparable harm, as well as the ongoing and serious nature

of the harm to Mr. Ameziane's personal integrity, the Commission should not hesitate to invoke Article 37(4) of its Rules of Procedure in the instant case. After six and a half years without charge, Mr. Ameziane should be afforded the most expedited procedure possible before this Commission. He therefore respectfully urges the Commission to join the admissibility and merits of his case.

VI. REQUEST FOR PRECAUTIONARY MEASURES

A. The Commission Has Authority to Issue Precautionary Measures.

219. Under Article 25(1) of its Rules of Procedure, the Inter-American Commission has the authority to receive and grant requests for precautionary measures.³²⁶ Where such measures are essential to preserving the Commission's mandate under the OAS Charter, OAS member states such as the United States are subject to an international legal obligation to comply with a request for such measures.³²⁷

220. Since 2002, the Commission has repeatedly exercised its authority to issue precautionary measures in order to protect Guantánamo detainees from irreparable harm. Mr. Ameziane is undoubtedly a beneficiary of these collective precautionary measures. Nonetheless, given the individualized nature of the harm to which Mr. Ameziane is exposed, as well as the U.S. government's past failure to comply with precautionary measures in favor of Guantánamo detainees, petitioners respectfully request that the Commission issue additional precautionary measures to prevent the particular harm to which Mr. Ameziane is uniquely exposed.

³²⁶ IACHR Rules, art. 25.1 ("In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons.").

³²⁷ See IACHR, Fifth Report on the Situation of Human Rights in Guatemala, OEASer.L/V/II.111 doc. 21 rev., paras. 71-72 (2001); *Juan Raul Garza v. United States*, Case No. 12.243, Inter-Am C.H.R., Report No. 52/01; Annual Report of the Inter-Am. C.H.R. 2000, at para. 117.

B. The Commission Should Issue Precautionary Measures Requiring the United States to Honor its Non-Refoulement Obligations and To Refrain from Transferring Mr. Ameziane To a Country Where He Will Be at Risk of Harm.

1. The United States Continues to Violate its Non-Refoulement Obligations.

221. In issuing its Precautionary Measures of October 28, 2005 on the situation of Guantánamo Bay detainees, the Commission considered information that the United States had at that point repatriated some 240 detainees from Guantánamo, including to countries where the U.S. government itself had documented a record of disappearances, torture, arbitrary arrests and detention, and unfair trials, and where some detainees faced a substantial risk of harm upon return. While the United States, for its part, indicated that its policy was to obtain specific assurances from the receiving State against torture of the detainee being transferred, the Commission held that such assurances were inadequate safeguards because the United States had no method of enforcing or monitoring compliance with the assurances once the detainee was removed – a “defect” that the Commission noted had been criticized by other international human rights bodies. Noting the “absolute nature” of the obligation of *non-refoulement* – an obligation that does not depend on the claimant’s status as a refugee – the Commission requested that the United States:

“[T]ake the measures necessary to ensure that any detainees who may face a risk of torture or other cruel, inhuman or degrading treatment if transferred, removed or expelled from Guantánamo Bay are provided an adequate, individualized examination of their circumstances through a fair and transparent process before a competent, independent and impartial decision-maker. Where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or other mistreatment, the State should ensure that the detainee is not transferred or removed and that diplomatic assurances are not used to circumvent the State’s non-refoulement obligation.”³²⁸

³²⁸ IACHR Precautionary Measures No. 259 (2005).

222. In the face of this request in 2005 and again in 2006,³²⁹ the United States has continued to repatriate detainees to countries with well-documented records of abuse where detainees have faced a substantial risk of torture or mistreatment – a risk that has played out in each case. Since 2005, the Department of Defense has transferred more than half a dozen detainees to Libya,³³⁰ Tajikistan,³³¹ and Tunisia,³³² where they have effectively disappeared, been tortured and/or sentenced to lengthy prison terms after unfair trials. These are countries where, again, the United States itself has recognized torture, arbitrary arrest, incommunicado detention, poor prison conditions and unfair trials as persistent concerns, despite the prohibition of such practices under the domestic laws of these countries,³³³ and where persons detained on terrorism-related charges in particular receive harsher treatment than other detainees.³³⁴

223. In June 2007, for example, the United States repatriated two Tunisian detainees, relying in part on promises of humane treatment from the Tunisian government.³³⁵ One of the men had been convicted in absentia on terrorism-related charges by a Tunisian military court and was transferred from Guantánamo without ever being informed of the conviction or afforded the chance to speak with his lawyer.³³⁶ Both men were hooded and taken for several days of abuse interrogation by Tunisian authorities upon arrival, and then held in solitary confinement for more

³²⁹ IACHR Resolution No. 2/06 on Guantánamo Bay Precautionary Measures, Jul. 28, 2006.

³³⁰ See U.S. Dep't. Defense, "Detainee Transfer Announced," News Release No. 1287-06, Dec. 17, 2006; No. 1166-07, Sept. 29, 2007.

³³¹ See U.S. Dep't. Defense, "Detainee Transfer Announced," News Release No. 233-07, Mar. 1, 2007.

³³² See U.S. Dep't. Defense, "Detainee Transfer Announced," News Release No. 765-07, June 19, 2007.

³³³ See, e.g., U.S. Dep't. State, Country Reports on Human Rights Practices 2007, Libya (Mar. 11, 2008). The report noted, e.g., that domestic law prohibits torture and cruel and inhuman treatment, but security personnel routinely tortured prisoners during interrogations or as punishment.

³³⁴ See, e.g., U.S. Dep't. State, Country Reports on Human Rights Practices 2007, Tunisia (Mar. 11, 2008).

³³⁵ See Human Rights Watch, *Ill-fated Homecomings: A Tunisian Case Study of Guantánamo Repatriations*, at 3, Vol. 19, No. 4(E) (Sept. 2007).

³³⁶ See *id.* at 4.

than a month.³³⁷ One of the detainees reported that things were so bad that he would have rather stayed in Guantánamo.³³⁸

2. Mr. Ameziane Would Be at Risk of Serious Harm if Returned to Algeria.

224. Should the United States transfer Mr. Ameziane to Algeria, it would expose him to a real risk of being mistreated or tortured and arbitrarily deprived of his liberty. As previously stated, separate from his association with Guantánamo, Mr. Ameziane would already be at risk of being targeted by the Algerian government if returned by virtue of his and his family's religious observance, and the fact of his prior application for asylum in Canada. His association with Guantánamo and Afghanistan alone are enough to create a substantial risk that he would be subjected to abuse or torture in detention and during interrogations upon his return, and perhaps convicted and sentenced to several years of imprisonment.

225. Concerns for Mr. Ameziane's safety are warranted by the findings of the U.S. government itself. In its latest report on human rights conditions in Algeria, the Department of State noted reports that government officials and members of the Department of Information and Security (DRS) – the military's intelligence agency, which plays a key role in interrogating though to possess information about alleged terrorist activities³³⁹ – frequently use torture to obtain confessions, despite the prohibition of torture in the Algeria Constitution and penal code, and that individuals arrested in connection with alleged terrorist activities are at particular risk.³⁴⁰ Such detainees have reportedly been beaten, tortured with electric shocks, suspended from the

³³⁷ See *id.* at 4-8.

³³⁸ See *id.* at 8.

³³⁹ See Amnesty International, *Unrestrained Powers: Torture by Algeria's Military Security* at 7 (July 10, 2006), available at <http://www.amnesty.org/en/library/info/MDE28/004/2006> (last visited August 5, 2008).

³⁴⁰ See U.S. Dep't. State, Country Reports on Human Rights Practices 2007, Algeria (Mar. 11, 2008).

ceiling and forced to swallow large amounts of urine, dirty water or chemicals to force confessions.³⁴¹

226. Amnesty International reports that individuals suspected of terrorism can legally be held by the DRS without charge or access to lawyers for as long as 12 days – a period of detention called *garde à vue* – and that the DRS frequently violates this already excessive time limit, in some cases by several months or even years.³⁴² During *garde à vue* detention by the DRS, detainees are routinely held incommunicado in effectively secret facilities and denied access to medical care.³⁴³ In one of the most frequently used DRS facilities, detainees are held in small, poorly ventilated cells without access to daylight. They are forced to sleep on concrete floors, and are allowed little or no access to toilets and showers.³⁴⁴

227. In July 2008, the United States transferred two Algerian detainees from Guantánamo. The men were held incommunicado in *garde à vue* for a period of approximately 12 days.³⁴⁵ Their treatment during this time is still unknown. They have since appeared and currently face terrorism-related charges.

3. Request for Precautionary Measures

228. As the Commission stated in its October 2005 Precautionary Measures, “[t]here is no question that transferring or removing a detainee to a country where he or she may face a real risk of torture or other mistreatment can give rise to a serious and urgent risk of irreparable harm

³⁴¹ See *id.* (citing Amnesty International Report 2007).

³⁴² Amnesty International, *Unrestrained Powers: Torture by Algeria’s Military Security*, *supra* note 339, 16-17.

³⁴³ *Id.* at 19.

³⁴⁴ *Id.* at 22-23.

³⁴⁵ See U.S. Dep’t. Defense, “Detainee Transfer Announced,” News Release No. 561-08, July 2, 2008; Human Rights Watch, “US/Algeria: Reveal Location of Guantánamo Detainees,” Press Release, Jul. 11, 2008.

warranting precautionary measures from this Commission.”³⁴⁶ In light of the real risk of irreparable harm that Mr. Ameziane would face if forcibly returned to Algeria, petitioners respectfully request that the Commission issue precautionary measures requesting the United States to honor its non-refoulement obligations with respect to Mr. Ameziane. Specifically, the United States should:

1. Take the measures necessary to ensure that, prior to any potential transfer or release, Mr. Ameziane is provided an adequate, individualized examination of his circumstances through a fair and transparent process before a competent, independent, and impartial decision-maker.
2. Ensure that Mr. Ameziane is not transferred or removed to a country where there are substantial grounds for believing that he would be in danger of being subjected to torture or other mistreatment, and that diplomatic assurances are not used to circumvent the United States’ non-refoulement obligations;
3. Comply with a court order in Mr. Ameziane’s habeas case to provide 30 days’ advance notice to his lawyers prior to any transfer from Guantánamo Bay, including the proposed destination and conditions of transfer; and³⁴⁷
4. In the event that his release from Guantánamo is authorized by the government or ordered by a court, accept him into the United States or facilitate his resettlement in a safe third country (for example, Canada).

C. The Commission should Issue Precautionary Measures Requiring the United States to Cease All Abusive Interrogations and Any Other Mistreatment of Mr. Ameziane and to Ensure him Humane Conditions of Confinement, Adequate Medical Treatment, and Regular Communication with his Family.

1. Mr. Ameziane’s Treatment and Conditions of Detention at Guantánamo Continue To Violate His Right to Humane Treatment.

229. Despite the Commission’s repeated emphasis in its jurisprudence as well as its precautionary measures regarding Guantánamo detainees on the non-derogable nature of the right to humane treatment and the prohibition against torture, Mr. Ameziane’s physical, psychological and moral integrity have been and continue to be violated daily by his treatment

³⁴⁶ IACHR Precautionary Measures No. 259 (Oct. 2005).

³⁴⁷ See Order, *Ameziane v. Bush*, Civil Action No. 05-392 (D.D.C. April 12, 2005), annexed to this petition.

and conditions at Guantánamo. He continues to be subjected to abusive and unlawful interrogations, despite his lawyers' repeated requests to the authorities at Guantánamo for an investigation into the matter. For over a year, he has been detained in a small cold cell in Camp VI in conditions of solitary confinement, deprived of natural light and air, contact with other prisoners and exposure to the sun or exercise save for his "recreation" time in a small caged-in area. In Camp VI, his "comfort items," such as his toothbrush or toothpaste, can be taken away for any infraction at his guards' discretion, and the facility's structure and acoustics make communal prayer effectively impossible. To this day, he has never received adequate and effective medical treatment for his failing eyesight, his rheumatism or his various injuries resulting from physical beatings by guards. The provision of care for his needs has also been made contingent on his cooperation with interrogators. For six and a half years, he has also been deprived of virtually all communication with his family.

230. In its previous precautionary measures, the Commission has repeatedly called for the United States thoroughly and impartially to investigate, prosecute and punish all instances of torture and other mistreatment against Guantánamo detainees. No one has ever been investigated or held accountable for any of the mistreatment Mr. Ameziane has suffered at Guantánamo, or, if any inquiries, reviews or disciplinary action have been carried out, they have not resulted in effective protection against continuing harm both in his conditions and treatment at Guantánamo.

2. Request for Precautionary Measures

231. In light of Mr. Ameziane's continuing mistreatment and his current conditions of confinement, petitioners respectfully request that the Commission issue precautionary measures to protect Mr. Ameziane from further irreparable physical and psychological harm while he remains in U.S. custody. Specifically, the United States should:

1. Cease all abusive interrogations of Mr. Ameziane;

2. Ensure that Mr. Ameziane's conditions of confinement comply with international standards for the treatment of prisoners for the remainder of his detention at Guantánamo, namely: prohibit his detention in conditions of isolation; ensure that his cell meets minimum requirements for floor space, lighting, ventilation and temperature, and has windows affording natural light and air, and ensure that he is permitted adequate daily exercise in open air;
3. Prohibit all corporal punishment and punishment that may be prejudicial to Mr. Ameziane's physical or mental health, and prohibit the use of chains and irons as restraints;
4. Take immediate measures to provide Mr. Ameziane with prompt and effective treatment for his physical and psychological health, and ensure that such care is not made contingent on his cooperation with interrogators or any other condition;
5. Ensure that Mr. Ameziane is able to satisfy the needs of his religious life without interference, including group prayer with other prisoners;
6. Enable Mr. Ameziane to communicate regularly with his family through correspondence and visits.

II. CONCLUSION AND PRAYER FOR RELIEF

232. For the aforementioned reasons, Petitioners respectfully request that the Honorable Commission:

1. With regard to Mr. Ameziane's request for precautionary measures:
 - a. Urgently issue the necessary and appropriate precautionary measures to prevent further irreparable harm to Mr. Ameziane's fundamental rights, in accordance with Sections VI.B.3 and VI.C.2;
2. With regard to Mr. Ameziane's individual petition against the United States:
 - a. Consider the admissibility and merits of this petition simultaneously, in accordance with Article 37(4) of the Commission's Rules of Procedure, given the serious and urgent nature of the case and the ongoing violations of Mr. Ameziane's fundamental rights;
 - b. Declare the petition admissible and find that the United States has violated Mr. Ameziane's rights enshrined in Articles I, III, V, VI, XI, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man; and

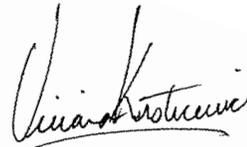
- c. Order the United States to provide prompt and adequate reparations for the violations suffered by Mr. Ameziane.

The Petitioners thank the Commission for its careful attention to this pressing matter.

Dated: August 6, 2008

Respectfully submitted,

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LIST OF APPENDICES

1. Petition for Writ of Habeas Corpus, *Ameziane v. Bush*, Civil Action No. 05-392 (D.D.C. Feb. 24, 2005)
2. Order, *Ameziane v. Bush*, Civil Action No. 05-392 (D.D.C. April 12, 2005)
3. Combatant Status Review Tribunal (CSRT) and Administrative Review Board (ARB) unclassified records from 2004-2006