

**TO THE HONORABLE MEMBERS OF THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
ORGANIZATION OF AMERICAN STATES**

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INTRODUCTION

This petition is brought against the United States (U.S.) by Estela Lebron on her own behalf and on behalf of her son, Jose Padilla, for violating their rights guaranteed under the American Declaration on the Rights and Duties of Man (American Declaration).

In 2002, U.S. agents arrested Mr. Padilla in Chicago, Illinois, designated him an “enemy combatant,” and transferred him—without judicial oversight, representation by counsel, or a hearing of any kind—into the custody of the U.S. military in Charleston, South Carolina. Mr. Padilla, a Hispanic-Muslim U.S. citizen, remained in military confinement for 43 months without being charged with a crime, the first 21 months of which he was held completely incommunicado, with the exception of a single short letter to his mother letting her know that he was alive. During his deten

lack of knowledge regarding her son's condition between 2002 and 2005, and the recognition that her son had suffered serious maltreatment by the United States, caused Ms. Lebron severe mental anguish.

Ms. Lebron and her son repeatedly turned to U.S. courts to seek redress for the violations of their rights, but the courts never reached a final ruling on the legality of Mr. Padilla's detention by the military. Further, no court ever ruled upon the lawfulness of the methods of confinement and interrogation used against him. Mr. Padilla and Ms. Lebron now petition this Commission to redress human rights injuries they have suffered at the hands of the United States.

The United States' mistreatment of Mr. Padilla constitutes multiple violations of the American Declaration. First, by designating Mr. Padilla an enemy combatant and detaining him arbitrarily in military custody without charge for forty three months, the United States violated Mr. Padilla's rights under Articles I, XVIII, XXV, and XXVI. Second, the traumatic confinement conditions and interrogation techniques used against Mr. Padilla violated his rights under Articles I, XXV, and XXVI. Third, by blocking communication between Mr. Padilla and his mother and denying him the right to practice Islam, his chosen religion, the United States violated his rights to familial relations under Article VI and his right to religion under Article III. Fourth, the United States discriminated against Mr. Padilla—at least implicitly—based on his race and/or religion, and thus violated Mr. Padilla's rights to equality before the law protected under Article II. Finally, U.S. courts violated Mr. Padilla's right to a remedy for violation of these protected rights guaranteed under Article XVIII, through the refusal to consider the merits of civil suits brought by him and Ms. Lebron challenging Mr. Padilla's arbitrary detention and torture.

The United States' mistreatment of Mr. Padilla also resulted in separate violations of Ms.

~~Lebron~~ Lebron's rights, including her right to family life guaranteed by Article VI, her right to be free

from attacks against her f (ga) 0.r Q q 0.24 0 0 0 Tm /TT1.0 1 Tf [(he) 0.2 (r ri)356(a) 0.2356(a) 6n (l) 0.2p

On May 8, 2002, agents from the U.S. Federal Bureau of Investigation (FBI) arrested and detained Mr. Padilla at Chicago O'Hare International Airport as he stepped off an airplane from Switzerland.³ The arrest was allegedly authorized pursuant to a material witness warrant issued under the Material Witness Statute⁴ by the United States District Court for the Southern District of New York, in connection with an investigation into the terrorist attacks against the United States on September 11, 2001.⁵

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access and informed her that she required additional permission from higher levels of the U.S. government.¹¹

B. Transfer to U.S. Military Custody

On June 9, 2002, without any warning or explanation to the federal district court or to his court-appointed counsel, U.S. government officials seized Mr. Padilla from the civilian jail where he was being held in New York and transferred him to the Naval Consolidated Brig, a military prison in Charleston, South Carolina.¹² The official justification for this extrajudicial

interrogation methods and conditions of confinement.²² As part of this program, Mr. Padilla was subjected to extreme isolation, sensory deprivation, sleep deprivation, and other forms of physical and psychological torture and abuse.²³ Government officials threatened Mr. Padilla

believed to be some form of lysergic acid diethylamide (LSD) or phencyclidine (PCP)—against his will, to act as a sort of truth serum.³²

From June 9, 2002 until March 4, 2004, Mr. Padilla was held incommunicado.³³ The U.S. government refused him contact with anyone outside the military prison, including his family and legal counsel.³⁴ With the exception of a single short message, informing his mother that he was alive, ten months after his initial confinement, Mr. Padilla's only human contact during this period was with his interrogators or with guards delivering food through a slot in the door or monitoring when he used toilet facilities or showered. Even after the U.S. government permitted Mr. Padilla limited contact with his lawyers in 2004, the conditions of his confinement remained largely the same.³⁵ He was held in a unit comprising sixteen individual cells, eight on the upper

adjacent common areas of his unit.⁴¹ Even when he was permitted outside for exercise, it was in a bare concrete “cage” and often at night,⁴² so that Mr. Padilla was prevented from seeing sunlight for many months at a time.⁴³ Because he lacked a clock or a watch, and the artificial

numerous health effects, both physical and psychological.⁴⁸ She and her son, Tomas, have suffered from depression, anxiety, nightmares, and insomnia, and both are currently seeing psychiatrists.⁴⁹

In March 2004, Ms. Lebron was finally able to speak with her son, and some seven months later, in October 2004, the federal government approved a visit between them.⁵⁰ The visit was monitored, and their entire conversation recorded. At one point, she asked her son how the government officials were treating him, but he refused to answer. Ms. Lebron had waited for this one-hour conversation for over three years.⁵¹

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learning that a court was considering his case could give him the hope and expectation that he would one day be released, and thus undermine the process.⁵⁴

On March 4, 2004, while the *habeas* petition, filed with the federal court in New York, was pending review by the U.S. Supreme Court, the government finally permitted Mr. Padilla's lawyers to meet with him.⁵⁵ The access afforded, however, was subject to many restrictions. The lawyers were unable to meet with their client in private. Government agents were present in every meeting and recorded conversations between Mr. Padilla and his attorney on video cameras. Government officials reviewed all legal correspondence and attorney notes and terminated any discussions between Mr. Padilla and his attorneys that they considered would convey information about internal operations of the prison or U.S. intelligence sources and methods. Perhaps most damaging to attorney-client relations (and unknown at the time to his lawyers), interrogators repeatedly told Mr. Padilla that his attorneys were government agents and untrustworthy. Interrogators also threatened Mr. Padilla "with unpleasant consequences" if he revealed to his attorneys the true conditions of his detention.⁵⁶

In addition, to this direct interference with attorney-client relations, the psychological damage to Mr. Padilla from his confinement and interrogation rendered him incapable of effectively and accurately communicating to his attorneys all of the necessary information to allow them to effectively represent his interests.⁵⁷ The psychological damage caused to Mr.

⁵⁴ Jacoby Declaration, *supra* note 47, at 8 (stating that the U.S. government found it necessary to subject Mr. Padilla to severe isolation because "(o)nly after such time as Padilla has perceived that help is not on the way can the United States reasonably expect to obtain all possible intelligence information from Padilla.... Providing him access to counsel now...would break—probably irreparably—the sense of dependency and trust that the interrogators are attempting to create.”).

⁵⁵ Third Amended Complaint, *supra* note , para. 84.

⁵⁶ *Id.* para. 86.

⁵⁷ Affidavit of Angela Hegarty, MD, para. 19, *United States v. Padilla*, No. 04-60001-CR (S.D. Fla. Jan. 22, 2007), attached as Exhibit G, [hereinafter Hegarty Affidavit].

Padilla at this time continues to this day, and he is often reluctant to see or to share information that may assist in his defense with his attorneys.⁵⁸

During the nearly two years that Mr. Padilla was held incommunicado, Ms. Lebron and her family were desperately worried about him. Ms. Lebron's first contact with her son occurred ten months after his transfer to military detention, when a Pentagon official finally brought her a brief greeting card that Mr. Padilla had been allowed to write to her.⁵⁹ Afterwards, in the nearly two-year period between March 4, 2004, and January 5, 2006, he was allowed to receive three twenty-minute telephone calls and one visit from his mother. The United States imposed strict parameters on these conversations; for example, interrogators warned Mr. Padilla against describing his interrogations.⁶⁰

Mr. Padilla's extreme isolation and mistreatment remained largely unchanged by the limited access to counsel granted by the United States in March 2004. However, toward the end of his captivity, his counsel was permitted to provide him with a copy of the Koran,⁶¹ and Mr. Padilla was also permitted limited access to a

III. Domestic Legal Proceedings

A. Habeas Corpus Proceedings

Following Mr. Padilla's extrajudicial seizure

factual basis for his detention before the federal court in South Carolina. Significantly, a Fourth Circuit Court of Appeal judge, who previously had affirmed the government's detention authority, wrote that Mr. Padilla's last-minute transfer had "given rise to at least an appearance that the purpose of these actions may be to avoid consideration of [the court of appeals] decision by the Supreme Court" and created an impression of wrongful detention that seriously corrodes government credibility in future cases.⁸⁵

B. Civilian Criminal Proceedings

On January 5, 2006, as his second *habeas* petition challenging his designation as an enemy combatant and detention in military custody was pending before the federal court in South Carolina, the government indicted Mr. Padilla in the United

mental health experts, including Dr. Hegarty, testified that Mr. Padilla's treatment while in military custody had rendered him mentally unfit for trial and unable to participate fully in his own defense.⁹⁰ Mr. Padilla is currently serving a sentence of 17 years at the Florence ADX facility in Colorado. A resentencing hearing is scheduled to take place before the federal court in

inhumane treatment were unconstitutional. Mr. Padilla also sought an injunction against his return to military custody as an enemy combatant, and nominal monetary relief. In February 2011, the federal district court dismissed Mr. Padilla's claims on the basis that national security concerns constitute "special factors" that bar recovery, and qualified immunity protected the named defendants from civil liability.⁹² The Fourth Circuit Court of Appeals affirmed this decision on the basis that civil damages actions challenging the designation and mistreatment of persons and groups as national security threats are not reviewable by courts.⁹³ It further held that that Mr. Padilla's claim for injunctive relief was moot due to Mr. Padilla's transfer to civilian custody.⁹⁴

Meanwhile, on January 4, 2008, Mr. Padilla and his mother had filed a similar suit in the United States District Court for the Northern District of California against former Justice Department official John Yoo, who authored the legal memoranda used by the Bush administration.

citizen is unconstitutional, it found that that U.S. law between 2001 and 2003 did not clearly establish that “the treatment to which [Mr.] Padilla says he was subjected amounted to torture.”⁹⁸

On April 23, 2012, Mr. Padilla sought review of the Fourth Circuit Court of Appeals decision in *Rumsfeld* by the U.S. Supreme Court. The Court, however, declined review, without comment, on June 11, 2012.⁹⁹

CONTEXT AND PATTERNS: AUTHORIZATION FOR THE USE OF TORTURE AND ARBITRARY DETENTION IN THE “WAR ON TERROR”

I. Creating a Legal Black Hole: Bush Executive Orders and the “Torture Memos”

Mr. Padilla’s unlawful detention, torture and inhumane treatment occurred as part of a larger detention and interrogation regime instituted by the United States in response to terrorist acts of the militant Muslim fundamentalist group known as Al Qaeda. On September 11, 2001, hijackers acting on behalf of Al Qaeda crashed passenger planes into the Pentagon building in East Virginia and the two World Trade Center towers in New York City, killing thousands of civilians. Days later, the U.S. Congress passed the Authorization to Use Military Force (AUMF), authorizing 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 that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations,

Pursuant to the AUMF, the United States and other nations began a military intervention in Afghanistan in October 2001 and seized suspected members of Al Qaeda and the Taliban. In January 2002, the U.S. military opened a military prison at the Guantánamo Bay Naval Base in Cuba (“Guantánamo”) to detain and interrogate foreign nationals suspected of involvement with Al Qaeda or other militant groups. For years, the United States disputed the authority of U.S. courts to review its custody and treatment of detainees held at Guantánamo.¹⁰¹ For a smaller set of terrorism suspects who, like Mr. Padilla, were U.S. citizens or legal residents, the United States conducted interrogations at the Naval Consolidated Brig in Charleston, South Carolina.¹⁰² According to internal government emails, the Brig was subject to a “lash-up” with Guantánamo,¹⁰³ meaning that Mr. Padilla and others at the Brig were subject to the same operating procedures as Guantánamo and that their treatment was approved by high-level government officials.¹⁰⁴

¹⁰¹ The U.S. Supreme Court ultimately found in a series of rulings: that U.S. citizens who are declared “enemy combatants” have a right to challenge that designation status and their detention based upon it in U.S. courts, *Hamdi v. Rumsfeld*, 542 U.S. 507, 508 (2004); that U.S. federal courts have jurisdiction to hear challenges brought by

A key feature of the U.S. government's anti-terrorism strategy was to loosen or to redefine protections for terrorism suspects under domestic law and international humanitarian and human rights law. On February 7, 2002, President George W. Bush issued an Executive Order stating that those connected with Al Qaeda or the Taliban were not entitled to Geneva Convention protections due to their status as "unlawful combatants."¹⁰⁵ A string of subsequent memos authored by high-level officials at the U.S. Department of Defense and Department of Justice indicate that the U.S. government sought to eliminate long-

tactics for use against suspected enemy combatants at Guantánamo that violated the Geneva Conventions and rose to the level of torture.¹¹¹ These tactics included stress positions, the removal of clothes, sensory deprivation, and intimidation by dogs during interrogations.¹¹² Military interrogators used many of those techniques against Mr. Padilla.¹¹³

This program of arbitrary detention and torture has been largely limited to non-white, Muslim suspects, such as Mr. Padilla. Although domestic terrorism within or against the United States is by no means exclusive to Islamic fundamentalism,¹¹⁴ the suspects who have been

been exclusively Muslim.¹¹⁵ Of the hundreds of people who have been detained at Guantánamo or rendered to Central Intelligence Agency (CIA) “black sites” or detention and interrogation by foreign governments around the world, almost none of them have been white and every single one has been Muslim.¹¹⁶

II. Failure to Prosecute Perpetrators and the Denial of Remedies for Torture, Inhuman Treatment, and Prolonged Arbitrary Detention in U.S. Courts

In the years following Mr. Padilla’s initial arrest and detention, there has been a modest effort to investigate and to uncover U.S. government complicity in torture and other abuses at Guantánamo and elsewhere. In 2008 the Senate Armed Services Committee, a group within the U.S. Senate with legislative oversight over the military and the Department of Defense, conducted an official investigation into the treatment of detainees in U.S. custody. Following its review of the memoranda and other evidence of torture, the Committee concluded:

The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees.¹¹⁷

In 2009, the Department of Justice conducted an ethics investigation into former Assistant Attorney Generals John Yoo, Jay Bybee, authors of the so-called “torture memos.”¹¹⁸

¹¹⁵ No white U.S. citizen, and no Christian U.S. citizen, has ever been subjected to the kind of torture and prolonged incommunicado detention inflicted on Mr. Padilla.

¹¹⁶ Mr. Padilla is of Hispanic descent and is Muslim by religion. Only a handful of U.S. citizens or legal residents were ever detained and interrogated as “enemy combatants”: Yaser Hamdi, a U.S. citizen arrested in Afghanistan, Ali Saleh Kahlal al-Marri, a U.S. resident arrested on U.S. soil, and Mr. Padilla, a U.S. citizen arrested on U.S. soil. A fourth, John Walker Lindh—a white man—experienced a far shorter period of incommunicado detention and interrogation. Mr. Lindh was captured in December 2001 in Afghanistan while embedded with a Taliban fighting force. By mid-January 2002 John Ashcroft had announced Lindh would be tried in the United States, by early February he had been indicted by a civilian grand jury, and by July 2002 he had pled guilty to aiding the Taliban and to carrying an explosive during the commission of a felony. Plea Agreement para 1, *United States v. Lindh*, No. 02-37A, (E.D. Vir. 2002), available at <http://www.justice.gov/ag/pleaagreement.htm>

Though the initial ethics investigation concluded that Yoo and Bybee had both committed professional misconduct due to their biased legal opinions in the “torture memos,” a later 2010 memorandum from the Attorney General softened these findings to conclude that Yoo and Bybee had generated erroneous opinions, but not willfully so.¹¹⁹ Despite this public acknowledgement of U.S. wrongdoing, however, no individual has been criminally prosecuted for the abuses committed against Mr. Padilla. Indeed, no high-level U.S. officials have been prosecuted for the prolonged arbitrary detention, torture and other abuse of the hundreds of other detainees held at Guantánamo Bay, at U.S.-run “black sites” or by foreign governments.¹²⁰ Despite the documentation of hundreds of cases of torture and abuse, the U.S. has only prosecuted eleven low-level soldiers for abuses at the Abu Ghraib facility in Iraq.¹²¹

Moreover, no detainee tortured and abused by U.S. officials at Guantánamo or elsewhere has obtained civil redress for their injuries or time spent in detention without charge. Although U.S. laws provide redress for torture and other human rights abuses,¹²² in every suit brought to date, the U.S. government has su

that the lawsuit should be dismissed at the very outset because its continuance would undermine U.S. national security interests.¹²³

LEGAL ARGUMENT

I. The Commission's Interpretative Mandate

This Commission should interpret the protections afforded by the American Declaration in the light of evolving human rights laws and standards. International tribunals, including the Inter-American Court (Court) and the Inter-American Commission (Commission) have long recognized this principle. In its Advisory Opinion on South West Africa, the International Court of Justice (ICJ) noted that, “an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation.”¹²⁴ The Inter-American Court has applied this same principle in relation to the proper interpretati.

The Commission too has consistently adopted this principle in relation to its interpretation of the American Declaration. For example, in the *Villareal* case, the Commission noted that:

in interpreting and applying the American Declaration, it is necessary to consider its provisions in the context of developments in the field of international human rights law since the Declaration was first compose

II. The United States Violated Articles I, XXV, and XXVI of the American Declaration by Arbitrarily Detaining Mr. Padilla

The United States violated Mr. Padilla's right to be free from arbitrary detention under the American Declaration by detaining him for almost

the right to effective review of detention can never be restricted, even in times of armed conflict or other state of emergency.¹³⁰

1. Arbitrary Detention Occurs When Detention Is Not Authorized by Law

In assessing whether a period of detention is arbitrary the Commission first considers whether domestic law authorizes detention.¹³¹ The Commission has found that detention that is not authorized under domestic law constitutes arbitrary detention that violates Article 7 of the American Convention.¹³² The Commission has applied this same standard in assessing whether a period of detention violates Article XXV of the American Declaration.¹³³

2. The Right to a Speedy Trial

Article XXV of the American Declaration and Article 7(5) of the American Convention

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by the defendant, the burden is placed on the state to give reasons for the delay, and the state's justifications are always subject to the "closest scrutiny."¹³⁶

3. Preventative Detention is Permissible Only When Authorized by Law and Occurs for Limited Periods

Preventative detention is authorized under the American Declaration in very limited circumstances.¹³⁷ Where such detention is excessively long, or has no legitimate basis, the Commission has determined that it constitutes arbitrary detention. The Commission has also determined that lengthy or unjustified periods of preventative detention amount to a criminal

than the person in custody indicates insufficient diligence, and any detention that results as a consequence will be deemed arbitrary.¹⁴¹

4. Effective Judicial Review of Detention is a Non-Derogable Right

No one can be deprived of their liberty without due process of law, and once detained everyone, regardless of their status, has a right to judicial review of that detention.¹⁴² Thus,

allow a detainee to challenge the basis of their detention. A failure to afford such meaningful review renders the detention arbitrary in violatio

merits, and instead found that the petition had been wrongly filed in New York, when it should have been filed in South Carolina where Mr. Padilla was then held.¹⁵⁵

The federal district court judge in South Carolina who reviewed Mr. Padilla's second *habeas* petition agreed with the Second Circuit and the four Justices that there was no lawful basis for Mr. Padilla's detention.¹⁵⁶ The Fourth Circuit Court of Appeals, however, reversed, holding that the 2001 AUMF authorized military detention of U.S. citizens who had carried arms on a foreign battlefield, and remanded to the lower court to find whether, in fact, Mr. Padilla had carried arms.¹⁵⁷ Before the U.S. government could be compelled to produce evidence supporting its allegation, it transferred him to the criminal justice system. This maneuver also prevented Supreme Court review, which likely would have compelled the government to release Mr. Padilla regardless of factual findings because the executive had exceeded its authority by exerting military authority over a U.S. citizen on U.S. soil.¹⁵⁸

In all events, military detention for the purpose of interrogation is unlawful under the U.S. Constitution, as the Supreme Court has recognized.¹⁵⁹ The United States government seized and held Mr. Padilla for 43 months, 21 of which were incommunicado, for the purpose, in its own words, of "intelligence-gathering."¹⁶⁰ Thus, by seizing Mr. Padilla under a pretextual basis and holding him incommunicado in military detention for the purpose of extracting intelligence

¹⁵⁵ *Rumsfeld v. Padilla ex rel. Newman*, 542 U.S. at 427.

¹⁵⁶ *Padilla v. Hanft*, 389 F.Supp.2d at 678-79.

¹⁵⁷ *Padilla v. Hanft*, 423 F.3d at 389-90 n1.

¹⁵⁸ Of the nine justices who would have ruled on the legality of Mr. Padilla's detention, four had already voiced the view that such detention was unlawful. *Rumsfeld v. Padilla ex rel. Newman*, 542 U.S. at 464 n.8 (Stevens J, dissenting). A fifth, Justice Scalia, had dissented from *Hamdi v. Rumsfeld*, another case involving a U.S. citizen held as an enemy combatant, on the grounds that military detention of a citizen was unlawful, absent suspension of habeas corpus by Congress. *Hamdi v. Rumsfeld*, 542 U.S. 507, 554 (2004)(Scalia, J., dissenting).

¹⁵⁹ *Hamdi v. Rumsfeld*, 542 U.S. 507, 521 (2004) (O'Connor, J., plurality opinion) ("we agree that indefinite detention for the purpose of interrogation is not authorized.").

¹⁶⁰ Jacoby Declaration, *supra* note 47, at 5-7.

from him, the United States subjected Mr. Padilla to arbitrary detention and violated Article

authorized to hold Mr. Padilla under a set of stipulated facts in which Mr. Padilla hypothetically carried arms against the United States on a foreign battlefield, and remanded to the lower court to determine whether such facts were true.¹⁶⁵ At the same time, the Supreme Court agreed to review the appellate court's decision to determine whether the government had sufficient authority to detain Mr. Padilla even under the stipulated facts.¹⁶⁶

Before the trial court could determine the truthfulness of these stipulated facts and two days before the Supreme Court was to decide on the merits of Mr. Padilla's *habeas* challenge, the government filed criminal charges and transferred Mr. Padilla into civilian custody to avoid further judicial review.¹⁶⁷ The Supreme Court decided that, because civilian charges had been filed, it need not consider the merits of Mr. Padilla's petition,¹⁶⁸ even though, as one Supreme Court Justice noted, nothing prevents the military from re-detaining Mr. Padilla as an enemy combatant at the conclusion of his criminal trial or after serving his sentence.¹⁶⁹ The United States thereby denied Mr. Padilla the opportunity to receive a final judicial holding on either the factual or legal validity of his military detention, thereby denying him meaningful and effective judicial review of the legality of his detention as required by Article XXV.

3. *The United State Subjected Mr. Padilla to an Unreasonable Period of Pre-Trial Delay*

More than four years passed between Mr. Padilla's initial arrest and his eventual criminal trial. The Commission has found similarly extended periods of time constitute a *prima facie* violation of the right of detainees to a trial without undue delay.

United States argued in federal court that vital national security reasons justified holding Mr. Padilla indefinitely in military custody, rather than in the criminal justice system, it nonetheless

detonate a “dirty bomb” in the United States or any other criminal activity.¹⁷⁹ Rather, the government defended Mr. Padilla’s preventive detention on the basis of

States would have held Mr. Padilla in military custody for even longer. Indeed, even following Mr. Padilla's transfer to civilian custody—and to this day—the United States has refused to rescind Mr. Padilla's designation as an enemy combatant and to disavow the authority to return him to military custody. Accordingly, Mr. Padilla's preventative detention was unreasonably long and thus unauthorized and arbitrary in violation of Article XXV. In addition because his detention lacked any legitimate basis, it was the equivalent to criminal punishment without trial and violated Mr. Padilla's right to be presumed innocent under Article XXVI of the American Declaration.¹⁸⁶

III. The United States Violated Articles I, XXV, and XXVI of the American Declaration by Torturing Mr. Padilla and Subjecting Him to Cruel, Inhuman or Degrading Treatment

Mr. Padilla was subjected to various unlawful interrogation methods and conditions of confinement including, but not limited to: death threats and threats of torture and cruel, inhuman, and degrading treatment (CIDT); sleep deprivation; stress positions; and sensory deprivation. The Inter-American system and other international bodies have found that these types of methods and conditions constitute torture and CIDT as prohibited by Articles I, XXV, and XXVI of the American Declaration.

A. The American Declaration Prohibits Torture and CIDT

Articles I, XXV and XXVI of the American Declaration prohibit torture and other CIDT. Article I protects personal security, Article XXV grants the right to “humane treatment” to individuals in custody, and Article XXVI prohibits “cruel, infamous or unusual punishment.”¹⁸⁷ Although the American Declaration does not contain an explicit definition on the right to humane treatment, the Commission has interpreted.2 (e) 00 1.3 (hum)T.2 (nt).2 (vi) 0.2 (d.2 (i) 0.2 (nt)9.2(m) (

equivalent protections in Article 5 of the Convention,¹⁸⁸ which guarantees the right of everyone to respect for their “physical, mental, and moral integrity,” and to be free from “torture or to cruel, inhuman, or degrading punishment or treatment.”¹⁸⁹

Reading Articles I, XXV, and XXVI together, the Commission has stated that the Declaration’s right to humane treatment encompasses three broad categories of prohibited treatment: “(1) torture; (2) other cruel, inhumane, or degrading treatment or punishment; (3) other prerequisites for respect for physical, mental and moral integrity, including certain regulations governing the means and objectives of detention or punishment.”¹⁹⁰ As the Commission has also noted, the Inter-American Court has held that “every person deprived of her or his liberty has the right to live in detention conditions compatible with her or his personal

that the Commission has identified the prohibition of torture as a *jus cogens* norm,¹⁹⁴ and has emphasized that the right to humane treatment is a non-derogable right that applies equally in time of peace or armed conflict.¹⁹⁵ As such, the American Declaration strictly prohibits detention and interrogation methods that amount to torture or CIDT.

Neither the American Declaration nor the American Convention expressly defines “torture.” However, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the United States has ratified, defines torture for the purposes of that treaty as:

Under the Inter-American Torture Convention, torture refers to acts committed by state agents or individuals acting under the orders of instigation of state agents.¹⁹⁷ In addition, the Commission has considered that for treatment to rise to the level of torture, it must (1) produce physical and mental pain and suffering, (2) be inflicted intentionally, and (3) be committed by either a public official or by a private person acting at the instigation of the former.¹⁹⁸ In sum, the Commission considers both intensity and purpose in evaluating whether specific conduct or treatment amounts to torture.

In its analysis of the contours of the protections afforded by Article 5 of the American Convention, the Commission has considered decisions of the European Commission on Human Rights (European Commission). According to this body, “the notion of inhuman treatment

certain acts are deliberately inflicted, carefully thought-through before being administered, and carried out with the express purpose of obtaining admissions or information from the victim, it will constitute torture.²⁰² The Commission has accepted this analysis.²⁰³

In examining whether a particular detainee has been subjected to torture or CIDT, it is appropriate to consider the totality of the circumstances; acts that might not individually constitute torture or CIDT may rise to this level when performed in combination. For example, in *Selmouni*, the European Court found that “the physical and mental violence, *considered as a whole*, committed against the applicant's person caused ‘severe’ pain and suffering and was particularly serious and cruel. Such conduct must be regarded as acts of torture....”²⁰⁴

The Commission has found that both the American Convention and the Inter-American Convention to Prevent and Punish Torture permit flexibility in assessing whether, in view of its severity, an act or practice constitutes torture or inhuman treatment. Regarding the conceptual difference between “torture” and “inhuman treatment,” the Commission has shared the view of the European Commission on Human Rights that “inhuman treatment” includes “degrading treatment” and that “torture” is “an aggravated form of inhuman treatment perpetrated with a purpose, namely to obtain information or confessions or to inflict punishment.”²⁰⁵ According to the Commission, such classification should be done on a case-by-case basis, taking into account factors such as “the duration of the suffering, the physical and mental effects on each specific victim, and the personal circumstances of the victim.”²⁰⁶

²⁰² *Aksoy v. Turkey*, App. No. 100/1995/606/694, Judgment, Report of Judgments and Decisions, para. 64 (1996).

²⁰³ *Victor Rosario Congo v. Ecuador*

Consistent with its interpretative mandate, the Commission has relied on human rights and humanitarian law treaties and other international instruments, customary international law, and decisions of U.N. and regional human rights bodies to define the content and scope of the protections afforded by the prohibitions of torture and CIDT guaranteed under the American Declaration.

B. Mr. Padilla Was Tortured and Subjected to CIDT.

The Inter-American system and other international bodies have consistently found that the interrogation methods and detention conditions to which Mr. Padilla was subjected fall squarely within the definition of the prohibitions against torture and CIDT guaranteed by the American Declaration.²⁰⁷ Each of these individual acts constitutes torture, and at a minimum, CIDT. Moreover, the many abusive actions to which Mr. Padilla was subjected *together* amount to torture, per the Commission's consideration of the totality of the circumstances. Given the duration, severity, and calculated nature of the United States' abuse of Mr. Padilla, there is no question that he was tortured.

1. Death Threats and Threats of Torture and CIDT

On orders from senior government officials, interrogators threatened Mr. Padilla with torture and death. They also threatened to unlawfully render Mr. Padilla from the United States to another location or foreign country, including Guantánamo Bay, where he would be subjected to even worse torture. Interrogators also threatened Mr. Padilla with imminent execution and with being cut with a knife and having alcohol poured on the open wounds.

The Inter-American system has found that such threats of death, torture, or CIDT themselves constitute torture or CIDT when they cause severe suffering, either alone or when

²⁰⁷ The U.S. government claimed in domestic civil proceedings that U.S. law between 2001 and 2003 did not clearly establish that the abuses committed against Mr. Padilla amounted to torture. That distinction is not of concern to the Inter-American system since it has considered these abuses as torture even before 2001.

combined with physical abuse. Relevant factors include the duration of the mental abuse and the credibility of the threats. For example, in *Maritza Urrutia v. Guatemala*, the Commission observed that intimidation can produce “severe mental or moral suffering in the victim” so as to constitute torture.²⁰⁸ In

constitutes torture or CIDT. The Commission has noted that torture or CIDT “could include more subtle treatments that have nevertheless been considered sufficiently cruel, such as . . . prolonged denial of rest or sleep.”²¹¹ In *Urrutia v. Guatemala*, the Court determined that when sleep deprivation is used “to obliterate the victim’s personality and demoralize her” it constitutes torture.²¹²

Other international bodies have noted that sleep deprivation is used primarily to break down the will of the detainee and is prohibited under international anti-torture law when it is not merely a side effect of a lengthy interrogation. The UN Committee Against Torture, for example, has noted that “sleep deprivation for prolonged periods” constitutes torture.²¹³

interrogation constitutes inhuman and degrading treatment when used in combination with other techniques.²¹⁶

3. Stress positions

Government officials often placed Mr. Padilla in stress positions for hours at a time. They forced him to stand or to be shackled with a belly chain, a practice that results in severe pain.

International human rights bodies have long recognized that similar stress positions to those used on Mr. Padilla, including forced standing and forced sitting in uncomfortable positions in order to cause severe pain, constitute torture or CIDT, when used either alone or in combination with other abuses. The European Court has also held that certain stress positions on their own can constitute torture or CIDT.²¹⁷ The U.N. Special Rapporteur on Torture found that the combined interrogation techniques of forcing prisoners to s 0.24 n tee h d f e l o n e b i n a t i u e s 9 2 4 5 9 . 9 6 0 0 0 0 :

4. Sensory deprivation

Under strict orders from the highest levels of government, Mr. Padilla's captors kept him in almost complete isolation for nearly two years. Beyond denying him human contact, they also denied Mr. Padilla all types of sensory stimuli, including natural sunlight, the time, and even a mirror.

Regional courts and international human rights bodies have found that when sensory deprivation causes severe suffering, either alone or in combination with other treatments, it constitutes torture or CIDT. Such sensory deprivation, including certain forms of solitary confinement and restrictions on sight, can cause severe psychological harm and long-term mental damage. For example, in *Velásquez Rodríguez*, the Inter-American Court held that "prolonged 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," constituting a violation of Article 5 of the American Convention's prohibition against torture and inhuman and degrading treatment.²¹⁹ The Court has highlighted the suffering that prolonged isolation causes: "Solitary confinement produces moral and psychological suffering in the detainee, placing him in a particularly vulnerable position."²²⁰

Similarly, the Commission has found that "isolation can in itself constitute inhumane treatment."²²¹ In *Victor Rosario Congo v. Ecuador*, for example, it held that solitary confinement, during which the complainant was held in isolation and was "unable to satisfy his

²¹⁹ *Velásquez-Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, paras. 156, 187 (July 29, 1988).

²²⁰ *Urrutia v. Guatemala*, *supra* note 132, para. 87.

²²¹ *Victor Rosario Congo v. Ecuador*, *supra* note 203, paras. 58-59.

basic needs,” constituted inhuman and degrading treatment.²²² Whereas the petitioner in that case was held in solitary confinement for approximately 40 days, Mr. Padilla was held in almost complete isolation for nearly two years.

The suffering caused by solitary confinement can also be exacerbated by restrictions on the ability to move and by concealment of the detention facility’s location. In the *Loayza-Tamayo Case*, the Court held that solitary confinement in a tiny cell with no light constitutes CIDT.²²³ Likewise, in *El Megreisi v. Libya*

IV. The United States Violated Ms. Lebron's Right to Humane Treatment under Article I of the American Declaration

The United States' arbitrary detention, torture and inhumane treatment of her son also violated Ms. Lebron's right to humane treatment, protected under Article I of the Declaration. As noted, Article I, encompasses broadly similar protections as those provided under Article 5 of the American Convention.²²⁶

Significantly, Article 5—and hence those guaranteed by Article I—are much broader in scope than mere protection from physical mistreatment; rather they extend to any act that is “clearly contrary to respect for the inherent dignity of the human person” and specifically include acts that cause psychological and emotional damage.²²⁷

A. Article I of the American Declaration Recognizes the Right to be Free from Psychological and Emotional Damage

Both the Commission and the Court have found that proscribed conduct need not necessarily be physical in nature but rather may include conduct that causes psychological and moral suffering.²²⁸ Accordingly, the Commission and the Court have found that acts resulting in “emotional trauma,”²²⁹ “trauma and anxiety,”²³⁰ and “intimidation” or “panic”²³¹ violate Article 5. The Commission has also found that acts affecting an individual's “personal self-esteem translate[] into important damage to moral i

development of daily life and causes great tumult and perturbation to him and his family,”

“seriously damages his mental and moral integrity” in violation of Article 5(1).²³²

B. The United States Violated Ms. Lebron’s Right to be Free from CIDT by Causing Her Psychological and Emotional Damage

On numerous occasions, the Inter-

his conditions of confinement and the techniques employed on him during his interrogation.²³⁶ Inter-American jurisprudence recognizes that both unjustified prevention of familial interaction, and knowledge of mistreatment of loved ones can injure the “psychic integrity” of family members of human rights abuse victims, and constituted breach of the right to humane treatment.²³⁷ In this case, Ms. Lebron suffered psychological pain as a result of the government’s refusal to provide information about her son’s whereabouts and condition, and as a result of learning about the United States’ mistreatment of her son.²³⁸ As the Inter-American Court has found similar suffering to constitute a violation of Article 5 of the American Convention’s guarantee of humane treatment,²³⁹ Ms. Lebron’s suffered a violation of her right to humane treatment under Article I of the American Declaration.

V. The United States Violated Ms. Lebron’s and Mr. Padilla’s Right to Family Life Under Articles V and VI

By preventing Ms. Lebron from visiting her son, Mr. Padilla, while he was arbitrarily detained, the United States violated their rights to family life protected by Article VI of the American Declaration.²⁴⁰ Further, by branding Mr. Padilla publicly as a terrorist while holding him for a lengthy period without trial, the United States violated Ms. Lebron’s right under Article V of the Declaration to be free from attacks against her family’s reputation.²⁴¹ Articles V and VI encompass broadly similar rights to those guaranteed by Article 11(2) of the American Convention, which the Commission may reference to give content to the more general but analogous rights under the Declaration. Article 11(2) provides that “[n]o one may be the object

²³⁶ Estela Lebron v. United States, 2011 OAS OJ Ser. L/V/II, at ¶ 168 (2011).

of arbitrary or abusive interference with ... his family... or of unlawful on his honor or reputation.”²⁴²

Incommunicado detention to which Mr. Padilla was subjected can violate the right of family relations. In the *Castro Castro massacre case*, the Court recognized that prolonged incommunicado detention can violate the rights of the prisoners the

and subjects his or her family “to hatred, public contempt, persecution, and discrimination...

that it is listed among the non-derogable rights in the Convention, and it can only be circumvented if “necessary” for public safety or the freedoms of others.²⁵³ The Inter-American system also recognizes that the right to religion is connected to the right to be free from discrimination.²⁵⁴

While he was detained without charge, Mr. Padilla’s religious items were taken from him, and he was periodically forbidden from practicing his religion, Islam.²⁵⁵ This directly implicated his freedom to practice his religion in violation of Article III of the American Declaration.

VII. The United States Violated Mr. Padilla’s Rights to Equality Before the Law Under Article II

The United States violated the American Declaration by discriminating against Mr. Padilla because its mistreatment of him was based, at least implicitly, on his race and/or religion. If Mr. Padilla were white and/or non-Muslim, he would neither have been detained without charge for almost four years nor subjected to detention and interrogation methods that constitute torture and CIDT.

A. The American Declaration Provides for Equality Before the Law.

Article II of the American Declaration provides that, “[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.”²⁵⁶ Consistent with the Commission’s interpretative

their religious beliefs in burying their loved ones); *Jehovah’s Witnesses v. Argentina*, Case 2137, Inter-Am. Comm’n H.R. Report No. 45-78, OEA/Ser.L/V/II.47, doc. 13 rev. 1, “Resolves” para. 1 (1979) (holding that an official decree signed by the President of Argentina limiting the ability of Jehovah’s Witnesses to exercise their religion was a violation of their right to religion).

²⁵³ Report on Terrorism and Human Rights, *supra* note 128, at para. 361.

²⁵⁴ American Declaration art. II; American Convention art. 1(1), 24, 27(1).

²⁵⁵ Third Amended Complaint, *supra* note , para. 81.

²⁵⁶ American Declaration art. II. *See also* Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84, Inter-Am. Ct. H.R. (ser. A) No. 4 para. 55 (Jan. 19, 1984) (holding that

mandate, Article II of the Declaration should be read in light of the analogous provisions of Articles 1²⁵⁷ and 24²⁵⁸ of the American Convention.²⁵⁹

the ends sought.²⁶³ Because the non-discrimination provision of Article II protects against the application of laws in unequal ways, “any treatment that can be considered to be discriminatory with regard to the exercise of any of the rights guaranteed under the Convention is per se incompatible with that instrument.”²⁶⁴ Significantly, for this petition, the Commission has noted its special concern regarding the potential for discrimination on the basis of race and/or religion in the application of counter-terrorism laws.²⁶⁵

Thus, for a finding of discriminatory conduct, a petitioner need prove only that she was a

B. The Unites States Dis

fundamentalism; 15 terrorism-related deaths are attributable to far-right Christian violence since 9/11, as compared to 17 deaths attributable to Islamic fundamentalism.²⁷¹ Other reports indicate that far-right groups have been responsible for 145 religiously motivated homicidal incidents, killing 180 people (excluding the Oklahoma City bombing), from 1990-2010.²⁷² The most deadly act of terrorism to occur on U.S. soil before 9/11 was the Oklahoma City bombing, which killed 168 people and was planned by a white Christian.²⁷³ In 2009, a Department of Homeland Security (DHS) Report warned of an increasing threat in far-right terrorism due to the economic downturn, the election of a black president, a tide of illegal immigration, and a perceived threat to U.S. sovereignty.²⁷⁴ The study found that the majority of 86 major foiled and executed plots from 1999-2009 were *unrelated* to Al Qaeda or other Islamist movements.²⁷⁵

But no white U.S. citizen, and no Christian U.S. citizen, has ever been subjected to the kind of torture and prolonged incommunicado detention inflicted on Mr. Padilla, even when arrested for acquiring materials for chemical, biological, radiological or nuclear (CBRN) weapons, or dirty bomb material.²⁷⁶—the same accusation used to excuse the U.S. government’s treatment of Mr. Padilla. Moreover, following conservative political backlash from its 2009 report, DHS “eviscerated” its department on domestic terrorism related to non-Islamic threats and publicly repudiated the author of the report.²⁷⁷

²⁷¹ Peter Bergen, *Right-Wing Extremist Terrorism As Deadly a Threat as Al-Qaeda?*, CNN, Aug. 7, 2012, available at <http://www.cnn.com/2012/08/07/opinion/bergen-terrorism-wisconsin/index.html>

Thus Mr. Padilla’s right to equality before the law has been violated, as the United States has only arbitrarily detained and tortured people who are non-white and/or Muslim. The United States does not have to be explicit about its discriminatory actions or motivated exclusively by discriminatory intent; disparate impact is enough. Implicit in the decision to incarcerate Mr. Padilla without charge and subject him to torture was his identity as a non-white Muslim man. Moreover, Mr. Padilla’s treatment cannot be justified by any “objective and reasonable” ground, nor did his treatment serve any legitimate purpose or comply with the Declaration’s proportionality requirements. Asking the counterfactual suggested by the Council of Europe handbook is telling: “Would people like Lindh, the Oklahoma City bomber, and far-right Christian militants—people in “materially similar” circumstances, but of different races and/or religions—have been worse off if they were non-white and/or Muslim?” The answer is an instinctive “yes.” Accordingly, because Mr. Padilla’s mistreatment by the United States was on account of his race and/or his religion it constitutes discriminatory treatment in violation of Article II of the American Declaration.

VIII. The Failure of U.S. Courts to Consider the Merits of Mr. Padilla’s and Ms. Lebron’s Claims Violated Their Rights to a Remedy Guaranteed under Article XVIII of the American Declaration

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American Convention.²⁷⁸ Article 8 provides for “the right to a hearing with due guarantees ... for the determination of ... rights ...” and Article 25 provides for the “protection against acts that violate ... fundamental rights recognized by the constitution or laws of the state or by the Convention.”²⁷⁹

The Commission has also determined that together with Articles 1(1) and 2 of the Convention, Article 25²⁸⁰ comprises three elements: first, “the right of every individual to go to a tribunal when any of his rights have been violated”; second, the right “to obtain a judicial

Finally, to satisfy element three, both the Commission and the Court have found that the tribunal must be able to grant a remedy that adequately addresses the violation.²⁸³

because it found national security concerns are “special factors” that preclude claims like Mr. Padilla’s.²⁸⁵

repeatedly asserted its competence to receive petitions alleging violation of rights under the American Declaration by OAS member states, including the United States.²⁸⁹

Further, Article 20 of the Commission's Statute expressly empowers the Commission to consider allegations of human rights violations by non-parties to the American Convention and to make recommendations to bring about more effective human rights observance.²⁹⁰ Article 23 of the Rules of Procedure for the Inter-American Commission on Human Rights (Rules of Procedure) permits persons or groups from OAS states to submit petitions to this Commission alleging violations of human rights enshrined in the American Declaration.²⁹¹ Therefore, the Commission possesses competence *ratione personae* to receive this petition by virtue of the United States' membership in OAS.

The Commission also has competence *ratione loci* and *ratione temporis* to consider this petition. This petition alleges that violations of human rights occurred within the territory of the United States and the alleged violations occurred between 2002 and 2006 – well after the United States' ratification of the OAS Charter in 1951. Finally, the Commission has competence *ratione materiae* since the petition alleged violations of human rights that are protected by the American Declaration.

²⁸⁹ See, e.g., *Virgilio Maldonado Rodriguez v. United States*, Petition 1762-11, Inter-Am. Comm'n H.R., Report No. 63/12, para. 45 (2012); *Djamel Americana v. United States*, Petition P-900-08, Inter-Am. Comm'n H.R., Report No. 17/12, para. 27 (2012); *Coard et al. v. United States*, Case 10.951, Inter-Am. Comm'n H.R., Report No. 109/99, para. 7 (1999); *James Terry Roach and Jay Pinkerton v. United States*, Case 9647, Inter-Am. Comm'n H. R., Report No. 147, OEA/Ser.L/V/II.71, doc. 9, para. 29 (1987).

²⁹⁰ Statute of the Inter-American Commission on Human Rights art. 20 (providing that, in respect to those OAS members states that are not parties to the American Convention on Human Rights, the Commission may examine communications submitted to it and any other avail3 (av)-1 (av4F8 1 Tf [(th)--1 (f)-1 (o) -1 er) 2 (m) -2(at) 3 (i) 3 (o) -1 (n) -1 (.)

B.

State had an opportunity to remedy the issue within its jurisdiction, the purpose of the [exhaustion of domestic remedies rule] is fulfilled.”²⁹⁷

All claims advanced in this petition meet these requirements. Mr. Padilla and Ms. Lebron provided the United States with a reasonable opportunity to provide redress for the injuries resulting from Mr. Padilla’s unlawful detention and torture by filing two lawsuits in U.S. federal courts, the first against Defense Secretary Donald Rumsfeld and other Defense Department officials and the second against Mr. John Yoo,²⁹⁸ alleging violations of their constitutional rights, including denial of access to counsel, denial of access to courts, unconstitutional conditions of

Articles V and VI, to equality under the law under Article II, to freedom of religion under Articles III, and to judicial remedy of injuries to fundamental rights under Article XVIII;

4. Declare that the United States of America is responsible for violating Ms. Lebron's rights under the American Declaration of the Rights and Duties of Man, including, *inter alia*, her rights to be free from inhumane treatment under Articles I, and to family relations under Articles V and VI;
5. Request that the United States annul Mr. Padilla's status as an "enemy combatant" who can be subject to indefinite military detention at the discretion of the United States; and
6. S