

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 14/2014**

PRECAUTIONARY MEASURE No. 177-14¹

Matter of Russell Bucklew and Charles Warner regarding United States of America
May 20th, 2014

I. INTRODUCTION

1. On May 19, 2014 the Inter-American Commission on Human Rights (hereinafter "Commission" or "IACHR") received a request for precautionary measures presented by the American Civil Liberties Union (hereinafter "the applicants"), in favor of Russell Bucklew and Charles Warner (hereinafter "the proposed beneficiaries"), United States citizens, sentenced to the death penalty and scheduled to be executed on May 21, 2014 and November 13, 2014, respectively, in the states of Oklahoma and Missouri, United States. The application was submitted in the context of individual petition P 684-14, which alleges violations of the "right to life (Article I), the security of person and freedom from cruel, infamous or unusual punishment (Article XXVI), and the rights to a fair trial and due process (Articles XVIII, XXVI)" of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration" or "the Declaration"). The applicants request the Commission to require the United States of America (hereinafter "the State", "United States" or "U.S.") to stay the execution of the proposed beneficiaries to ensure that the Commission has an opportunity to rule on the merits of the petition and to avoid irreparable harm to the proposed beneficiaries.

2. After analyzing the factual and legal arguments put forth by the applicants, the Commission considers that if Russell Bucklew and Charles Warner are executed before it has an opportunity to examine this matter, any eventual decision would be rendered moot in respect of the effectiveness of potential remedies, resulting in irreparable harm. Consequently, pursuant to Article 25(1) of the Rules of Procedure, the Commission hereby requests that the United States take the measures necessary to preserve the life and physical integrity of Russell Bucklew and Charles Warner until the IACHR has pronounced on their petition so as not to render ineffective the processing of their case before the inter-American system.

II. BRIEF SUMMARY OF THE INFORMATION AND ARGUMENTS PROVIDED BY THE APPLICANTS

A) Allegations related to the situation of Russell Bucklew

3. According to the request filed by the applicants, Russell Bucklew is currently held at the "Potosi Correctional Center" in Mineral Point, Missouri. Applicants report that the proposed beneficiary had been "sentenced to death in 1997." Applicants inform that the proposed beneficiary's "state direct appeal, state post-conviction, and federal habeas claims" were denied. According to the applicants, "plaintiffs' writ of certiorari to the United States Supreme Court was also denied." On April 9, 2014, the Missouri Supreme Court set his execution date for May 21, 2014. On May 9, 2014, Mr. Bucklew filed a lawsuit challenging the Missouri's execution protocol as it applies to him, given his serious medical condition, in the United States District Court-Western District of Missouri. With this lawsuit, the proposed beneficiary would seek "a stay of execution and a temporary restraining order from the Court"; to date, this lawsuit remains pending for final decision.

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

4. Applicants question the state of Missouri's method of execution because it allegedly violates "the prohibition of cruel and unusual punishment by barring [people to be executed] from knowing what the method is." Applicants allege that the state of Missouri plans to execute the proposed beneficiary by using its current method of "compounded pentobarbital," whose "efficacy depends on its purity and concentration." In this regard, applicants report that "[t]he Missouri Department of Corrections refuses to disclose any information about the drug's safety, purity, and will not even confirm whether the drug is subject to any laboratory testing at all." Additionally, applicants indicate that the procedure by which the state acquires pentobarbital is "absence of any regulation or accountability."

5. Applicants assert that the use of pentobarbital in other states has caused prisoners to gasp heavily, snore loudly with open eyes, their skin to turn purple, and to feel burning before they die. According to applicants, "an expert pharmacologist has described this reaction as consistent with contaminated drugs."

6. The Missouri execution protocol would also allow carrying out executions by using "a central venous line (femoral, jugular, or subclavian)." With respect to this method, applicants state that it is inherently invasive and can cause different complications such as "suffocation by collapsed lung; perforation or laceration of large blood vessels leading to severe and fatal hemorrhage," among others complications.

7. In the case of Mr. Bucklew, applicants argue that if executed by the compounded pentobarbital method, he could face a "threat of cruel, inhuman, or degrading treatment and even torture." In this regard, applicants state that the proposed beneficiary has several health conditions such as "cavernous hemangioma in his neck and head, a blood vessel condition that causes clumps [...], malformed vessels to grow in his head, face, and throat." As a result, the proposed beneficiary has a tumor occupying his nose, throat and airway. Thus, applicants alleged that there is a very substantial risk that the proposed beneficiary "will suffer excruciating, even torturous, pain during the execution," and his airway could be obstructed. Additionally, applicants indicate that since the proposed beneficiary takes certain drugs to treat his health issues, if executed by using pentobarbital, he could be at risk of experiencing "adverse effects resulting from drug interaction." According to applicants, the Missouri execution protocol does not "address how to handle the risk posed by a prisoner's unique medical or physical condition." Taking into account the alleged particular circumstances of the proposed beneficiary, applicants also question if the team members in charge of carrying out the execution have the necessary training to properly carry out such a procedure.

8. In the individual petition to which this request for precautionary measure is connected, applicants allege that the execution of Mr. Bucklew by the method of compounded pentobarbital would violate Articles I (right to life), XXVI (the security of person and freedom from cruel, infamous or unusual punishment), XVII (right to a fair trial) and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man.

b) Allegations related to the case of Charles Warner

9. According to the request filed by the applicants, Charles Warner is currently held at the Oklahoma State Penitentiary in McAlester, Oklahoma. Applicants report that the proposed beneficiary had been "sentenced to death on July 23, 2003." Applicants state that the proposed beneficiary's appeals to his death sentence were denied by Oklahoma Courts and the Supreme Court. Similarly, the review of his conviction and sentence in a state post-conviction and federal habeas proceeding were denied. The Supreme Court also denied certiorari of the proposed beneficiary's federal habeas proceeding. On May 8, 2014, the Oklahoma Court of Criminal Appeals set the propose beneficiary's execution for November 13, 2014.

10. Applicants question the state of Oklahoma's method of execution by using "compounded pentobarbital." In this regard, applicants alleged that the compounded pentobarbital carries "unique risks because they are manufactured with minimal government oversight and have a documented history of contamination." As an example, applicants indicate that, after being injected, a prisoner executed by this method in the State of Oklahoma, had said he felt his body burning. The state allegedly refuses to disclose the procedure by which it acquires this drug.

11. Applicants inform that due to the recent "botched execution of Clayton Lockett," the Oklahoma State government had decided to conduct an investigation of this person's execution process and a review of the execution protocol in order to conform to the best practice. Based on the aforementioned, the Oklahoma Court of Appeals postponed the proposed beneficiary's execution until November 13, 2014 to allow the necessary time for complete review of the execution protocols to take place. However, applicants doubt that the state would implement best practices because of the lack of independence of those in charge of the review. Additionally, applicants assert that, taking into account the recent botched execution in Oklahoma, that the execution of Mr. Warner would violate the prohibition of cruel, inhuman, or degrading treatment.

12. In the individual petition to which this request for precautionary measure is connected, applicants allege that the execution of Mr. Warner by the method of compounded pentobarbital would violate Articles I (right to life), XXVI (the security of person and freedom from cruel, infamous or unusual punishment), XVII (right to a fair trial) and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man.

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

13. The mechanism of precautionary measures is part of the Commission's function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter, and in the case of Member States that have yet to ratify the American Convention on Human Rights, those set forth in the American Declaration of the Rights and Duties of Man. These general oversight functions are set forth in Article 18 of the Commission's Statute, and the mechanism of precautionary measures is detailed in Article 25 of the Commission's Rules of Procedure. According to this Article, the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

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

15. As such, for the purposes of making a decision, and in accordance with Article 25.2 of its Rules of Procedures, the Commission considers that:

- a. "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American system;
- b. "urgent situation" refers to a risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

16. The present request for precautionary measures seeks to protect the right to life of Russell Bucklew and Charles Warner, who in 1997 and 2003 were respectively sentenced to death and could be executed on May 21, 2014 and November 13, 2014, respectively, in the states of Oklahoma and Missouri, United States. The request for precautionary measures is related to individual petition P-684-14, in which applicants allege violations of Articles I (right to life), XXVI (the security of person and freedom from cruel, infamous or unusual punishment), XVII (right to a fair trial) and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man.

17. In the present matter, the requirement of seriousness is met, in its precautionary and protective aspects; the rights involved include primarily the right to life and the security of person and freedom from cruel, infamous or unusual punishment under Articles I and XXVI, respectively, of the American Declaration in relation to the risk resulting from the possible application of the death penalty in the states of Missouri and Oklahoma, United States. In this regard, it has been alleged that the eventual method of execution of the proposed beneficiaries by using compounded pentobarbital does not observe the rights protected under the international law of human rights, particularly the right to life, the security of person and freedom from cruel, infamous or unusual punishment, and judicial protection under Articles I, XVIII, XXV and XXVI of the American Declaration, as well as the risk of obstructing the right to file petitions before the IACHR contained in Article 30.3 of the Rules of Procedure.

18. Regarding the requirement of urgency, the Commission notes that Russell Bucklew and Charles Warner could be executed on May 21, 2014 and November 13, 2014, respectively, in the states of Oklahoma and Missouri, United States. Accordingly, the Commission could be in a position in which it would be unable to complete an assessment of the allegations of violations of the American Declaration submitted in their petition prior to an eventual execution of the proposed beneficiaries. Consequently, the Commission deems the requirement of urgency satisfied as it pertains to a timely intervention, in relation to the immediacy of the threatened harm argued in the request for precautionary measures.

19. Concerning the requirement of irreparability, the Commission deems the risk to the right to life to be evident in light of the possible implementation of the death penalty; the loss of life imposes the most extreme and irreversible possible situation. Regarding the precautionary nature, the Commission considers that if Russell Bucklew and Charles Warner are executed before the Commission has an opportunity to examine this matter, any eventual decision would be rendered moot in respect of the efficacy of potential remedies, resulting in irreparable harm.

20. Under Article 25.5 the Commission generally requests that the State concerned present information prior to taking its decision on a request for precautionary measures, except in a matter such as the present case where the immediacy of the potential harm allows for no delay.

IV. DECISION


21. In view of the above-mentioned information, taking into account the human rights obligations of the United States as a Member State of the OAS; and as part of the Commission's function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter,² and in the case of Member States that have yet to ratify the American Convention on Human Rights, those of the American Declaration of the Rights and Duties of Man; the Commission considers that this matter meets *prima facie* the requirements of seriousness, urgency and irreparability set forth in Article 25 of its Rules of Procedure. Consequently, the Commission requests the Government of the United States to abstain from executing Russell Bucklew and Charles Warner until the IACHR has ruled on the merits of the individual petition filed on their behalf.

22. The Commission also requests the Government of Your Excellency to report, within 5 days from the date of this resolution, on the adoption of the precautionary measures required and update such information regularly.

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

24. The Commission orders the Secretariat of the Inter-American Commission to notify the Government of the United States and the applicants of this resolution.

25. Approved on the 20th day of May, 2014 by: Tracy Robinson, President; Felipe González, Second Vice President; Commissioners José de Jesús Orozco, Rosa Maria Ortiz, and Paulo Vannuchi.



Elizabeth Abi-Mershed
Assistant Executive Secretary

² Charter of the Organization of American States, Article 106, http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm