

**IN RELATION TO PETITION NO. P-478-05 (U.S.A.)
SUBMITTED BY BORDER ACTION NETWORK REGARDING
VICTIMS OF ANTI-IMMIGRANT ACTIVITIES
AND VIGILANTE VIOLENCE IN SOUTHERN ARIZONA**

**SUPPLEMENTAL INFORMATION IN RESPONSE TO
MARCH 7, 2008 ADMISSIBILITY HEARING**

April 15, 2008

**Submitted by:
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I. Introduction

1. On March 7, 2008, the Commission convened a hearing at the request of Border Action Network to discuss admissibility of their petition regarding vigilante violence and anti-immigrant activities in southern Arizona. This submission responds to the United States government's presentation and provides additional information in response to the Commission's questions to the petitioners.

II. Identification of Victims

2. The Commission noted that many of the victims were not identified in this case and brought the petitioner's attention to recent jurisprudence of the Inter-American system requiring identification of victims in contentious cases. Although many, if not most, of the victims were identified by name in the petition and follow-up submissions, the situation of the victims in this case is unique in that they are often reluctant to identify themselves for fear of revealing their undocumented status and facing deportation back to their country of origin.
3. There are two distinct classes of victims in this case. First, immigrants from Mexico and other countries of Latin America who have suffered specific physical abuse at the hands of vigilantes in southern Arizona and other immigrants who are likely to suffer similar harm in the future. Given the nature of the human rights violations specified in the petition, it is impossible to name all of the victims. However, among the past victims of specific instances of anti-immigrant abuse and human rights violations for which the United States is responsible are the individuals named in: paragraphs 32,

34, and 37 of the petition and appendices W1-W17 and X to the petition; pages 3-26 of the petitioner's 2005 supplement; and appendices 1 and 2 to the petitioner's February 2008 update. The second group of victims is the broader Hispanic population of southern Arizona comprised of U.S. citizens and legal permanent residents who are victims of vigilantism, racism and intimidation by anti-immigrant groups and individual vigilantes in the region. Among the victims in this class are the persons named in paragraphs 37 and 38 of the petition.

4. According to Commission jurisprudence and policies, there is no strict requirement for the identification of each and every victim. Article 28(e) of the Commission's Rules of Procedure states that petitions shall contain "if possible, the name of the victim ...". The Commission has held that it is not necessary to name every victim when there is an overall pattern of human rights abuse. [Case 10.675, Inter-Am. C.H.R. Report 28/93, para. II.1 (admissibility) Haiti (Oct. 13, 1993)]. The Commission admitted and ultimately decided in favor of a petition submitted by several nongovernmental organizations on behalf of "unnamed Haitian nationals" to address the United States policy of "interdicting" at sea Haitian refugees, a policy that affected, much like here, a broad indeterminate class. [*id.*] Only one individual victim was identified by the Commission in its decision on admissibility [*id.* at para.V.I.8] yet the Commission rightly proceeded to address the alleged human rights violations as they affected all actual and potential victims.
5. The Commission mentioned recent jurisprudence on this issue, most likely referring to the case of *Marino López et al. (Operation Genesis)* [Petition 499-04, Inter-Am. C.H.R., Report 86/06, (admissibility) Colombia (Oct. 21, 2006)]. This decision further supports the petitioner's claim that the Commission is competent *ratione personae* to consider petitions in cases where some but not all of the victims are named. In *López*, the Colombian government asked the Commission to restrict its competence to examining the death of a named individual and refrain from considering the forced displacement of communities, of which the individual community members were not specifically named. [*id.* at para. 33] The Commission declared the case admissible because it was not asked to examine a general or abstract situation as the alleged facts specified the time and place of the forced displacement. [*id.* at para. 35]
6. In the *López* case, the state refers to the requirements for filing a petition with the Commission under Article 44 of the American Convention and the need for "full and complete" identification of the victims. [*id.* at para. 33], however the Commission notes that the text of the provision makes no reference to full and complete identification of victims and explains that it was a "deliberate omission, intended to allow the examination of human rights violations, that by their nature, may affect a given individual or group of persons who are not necessarily fully identified (...)" [*id.* at para.34]. The Commission then cited to the case of the *Mapiripán Massacre* [Report 34/01, Inter-Am.C.H.R. (April 16, 2001)] where it admitted the petition even though only 2 of the 49 victims were identified. It explained that "the circumstances of the deaths of most of the victims, whose bodies were dismembered and thrown into

the River Guaviare, had not been ascertained by the judicial authorities and, consequently, the victims were not identified in the petition.” [*Mariripán Massacre* at para. 27]

7. In its analysis of the *López* petition, the Commission noted that “collective claims alleging violations of the rights of particularly vulnerable groups, ... warrant special treatment.” [*Lopez* at para. 38] This statement certainly applies to undocumented immigrants, who have been identified as a particularly vulnerable group by the Inter-American system. In its Advisory Opinion on the Juridical Conditions and Rights of Undocumented Migrants [OC-18/03, Sept. 17, 2003, Inter-Am. Ct. H.R. (Ser. A) No. 18 (2003)], the Inter-American Court stressed the vulnerable situation of migrants who are subject to ethnic prejudices, xenophobia and racism, making it difficult for them to integrate into society and leading to their human rights being violated with impunity [*id* at para. 113] and their denial of access to public resources [*id* at para. 112].
8. The Inter-American Commission has admitted cases in which large classes of individuals are suffering common patterns of human rights abuses even though, as here, it is impossible to name all of the present and future victims. The Commission has understood that to do so would be to turn its attention away from many of the most egregious situations of human rights abuse and to not address those situations in an adequately comprehensive way. Here, the Commission should similarly address the human rights violations of all actual and potential victims of vigilante abuse.

III. Violations of American Declaration

9. The United States government requests that the petition be declared inadmissible because the petitioners failed to allege facts to establish violations of the American Declaration. In its presentation to the Commission, the United States cited Article 28 (d) of the Commission’s Rules of Procedure requiring specification of the places and dates of alleged violations and maintains that the petitioners only provide information on a limited number of incidents. The United States further declared, on more than one occasion, that the migrants were not mistreated and did not press charges or wish to testify in court.

Times and Locations of Violations

10. The places and dates of the incidents are identified in Appendices W1-W17 of the petition; pages 3-26 of the petitioner’s 2005 supplement; and appendices 1 and 2 to the petitioner’s February 2008 update.

Victims Have Suffered Harm

11. The United States assertion that the immigrants are not mistreated during encounters with vigilantes is extremely objectionable. This conclusion is likely based on statements contained in U.S. Border Patrol reports. For example, in the U.S. Border

Patrol report of October 10, 1999 (App. W1 to petition), the officer states that the victims indicated they did not feel threatened and were not harmed, yet in that same report the victims said they felt scared and did not try to run when local rancher Roger Barnett held them at gunpoint.

12. The statements the United States refers to in the U.S. Border Patrol reports must be considered in context. The victims in these cases are usually physically exhausted and dehydrated from walking through the desert, they have just entered a foreign country and may not speak the language. Considering these factors and following a confrontation with vigilantes, it is understandable that many of the victims would not want to report the abuse when approached by the authorities, which in itself is an intimidating experience. An additional deterrent to filing a complaint is the assumption that the complainant will be detained in an immigration holding facility or detention center pending resolution of the matter. One of Border Action Network's recommendations is to stop the practice of detaining immigrant victims who file criminal complaints.

State's Responsibility to Initiate Prosecution

13. The United States further seeks to mitigate the failure of its criminal justice system to prosecute and avert illegal vigilante conduct by pointing out that in some instances the victims have been unwilling to press charges or testify in court. This blame-the-victims argument, too, must be rejected. It is the responsibility of the state to investigate and prosecute criminal activities, and that burden should not fall on the victims or their families. The unwillingness or inability of vigilante victims to press charges is quite understandably due to their status as immigrants who are subject to deportation or who have in fact been deported. The immigration status of vigilante victims should not be allowed to function to absolve the United States of its responsibility for providing them legal protection from criminal activity. The Commission has rejected arguments that the effectiveness of criminal process turns on the cooperation of victims or their families, rather than on the state itself, especially when circumstances place the victims in a position of vulnerability in relation to that process. [*Hernando Osorio Correa*, Report No. 62/00, Case 11.727 (Colombia) Inter-Am. C.H.R. 191 (Oct. 3, 2000) at para 24. *See also, La Granja, Ituango v. Colombia*, Case 12.050, Report N° 57/00, Inter-Am. C.H.R. (Oct. 2, 2000) at paras. 32, 45].

State Responsibility for Private Actions

14. The United States contends that international human rights law provides that violations must involve state action therefore the state is not responsible for acts of private actors acting with no complicity or involvement of the state. [March 7, 2008 Hearing] The Inter-American Court considered this issue in the *Velásquez Rodríguez* case [Inter-Am Ct. H.R. (Ser. C) No. 4 (July 29, 1988)] and held that a state can incur international responsibility for private actions that result in human rights violations when the state fails to respond or act with due diligence. The court stated:

“An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.” [at para. 172]

“The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.” [at para. 176]

“Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.” [at para. 177]

15. Vigilante groups and individuals are acting freely and with impunity to the detriment of immigrants and the overall Hispanic population in southern Arizona. The failure of the United States to seriously investigate and punish vigilante actions and its lack of due diligence to prevent and respond to the violations leads to the international responsibility of the state. Not only is the United States condoning and tolerating civilian vigilante patrols through its failure to criminally prosecute the offences, but it is contributing to an oppressive atmosphere for immigrants by passing anti-immigrant legislation, thereby legitimizing and enabling vigilante actions.

Pattern of non-investigation

16. The Commission restated the United States' position that in many cases the perpetrators were not charged because of prosecutorial discretion. The petitioners were then asked to identify the concrete elements of the pattern of impunity and non-investigation which they are alleging.
17. Based on the information contained in the law enforcement reports, vigilantes are committing crimes under state and federal law [*see* Petition para. 39, and Appendix to Petitioners Observations of June 16, 2006]. Of the 17 incidents recorded by the U.S. Border Patrol and the Cochise County Sheriff's Department [Petition Appendices W1-W17], the 65 incidents recorded by the Mexican Consulate in Douglas [Petition Appendix X] and the 6 most recent incidents recorded by the Border Action Network

[Petitioners Observations of March 2008 Appendices 1 and 2], there has only been one instance in which vigilantes in southern Arizona have been prosecuted and convicted in recent years. [2003 incident in Yuma, AZ p. 6-7 of U.S. Response] In many cases, law enforcement officials determined that vigilante behavior violated Arizona state law, and reported this information to the U.S. Attorney's office, yet state prosecutors routinely failed to press charges against the vigilantes [Petition paras. 31-37]. Prosecutorial discretion may provide justification in some instances but it does not explain the overall lack of response by the criminal justice system. Considering the large number of incidents reported, and the limited follow-up, the United States' reaction to vigilante violence can only be described as a pattern of impunity. This climate of tolerance is fueled by the attitudes and actions of public officials and law enforcement who indicate support for vigilante groups by attending their rallies, organizing posses and passing anti-immigrant legislation [see Petitioners Observations of June 16, 2006 at pp. 7-8 and March 2008 pp. 6-14]]

18. A recent report by the Southern Poverty Law Center found the escalating number of hate groups in the United States "attributable to the exploitation by hate groups of the continuing debate about immigration." [David Holthouse & Mark Potok, *The Year in Hate: Active U.S. Hate Groups Rise to 888 in 2007*", *Southern Poverty Law Center Intelligence Report*, Spring 2008 <http://www.splcenter.org/intel/intelreport/article.jsp?aid=886>] The study cited FBI statistics suggesting a 35% rise in hate crimes against Latinos between 2003 and 2006 which experts believe are "typically carried out by people who think they are attacking immigrants".[*Id*] The report goes on to state that the "growth of these groups is being helped by conspiracy theories and other racist propaganda about immigrants that is being spread by mainstream politicians and pundits." [*Id*] Among the organizations identified as hate groups is the American Border Patrol, the vigilante organization involved in many of the abuses identified in the petition. [Petitioner's Supplement of August 19, 2005 p. 3-16]

IV. Exhaustion of Domestic Remedies

19. The United States maintains that civil remedies are available as an avenue of redress and that the petitioners have not exhausted domestic remedies as most of the victims have either not filed lawsuits or not let the cases run their course. The Commission also asked for further clarification from the petitioners as to why they think civil remedies are inadequate and therefore need not be exhausted.
20. Civil remedies are inadequate as a matter of law to fully redress human rights violations that constitute criminal acts. The Inter-American Commission has held that "a state's obligation to respect and to ensure respect for the rights under the Convention entails the obligation to prevent, investigate and punish any violations of those rights." [*Michael Gayle*, Report No 8/03 (Admissibility), Petition 191/02(Jamaica), Inter-Am. C.H.R., at para. 40 (Feb. 20, 2003)] Civil litigation is not an adequate substitute for criminal prosecutions because it does not involve the State in the prevention, investigation and punishment of human rights violations.

21. In several cases the Inter-American Commission and Court have determined that civil remedies were not adequate to redress human rights violations involving criminal behavior and hence need not be exhausted. Accordingly, civil remedies need not be exhausted here. In *Gayle* the Commission agreed with the petitioner's assertion that a civil claim was not an adequate remedy for the victim's death because the outcome was limited to monetary compensation [*id* at paras. 15, 17]. The Commission went on to state, "it is this [criminal] process, initiated and pursued by the State, that should be considered for the purposes of determining the admissibility of the claim, as opposed to, for example, civil remedies for monetary and other damages". [*Id.* at para. 41]. Similarly, in *Christian Daniel Domínguez Domenichetti* [Report No 51/03 (Admissibility), Petition 11.819, (Argentina) Inter-Am. C.H.R. (Oct. 22, 2003), at paras. 46, 47)] the victim's parents had civil proceedings pending against the state for the torture and death of their son. In response to the Argentine government's argument that the civil proceedings rendered the petition moot, the Commission noted that "while an award of civil damages may form an important component of reparation, it is but one of several aspects." [*Id.*]
22. A civil judgment for damages is insufficient to denounce this unlawful behavior and would have limited effect in deterring future incidences of vigilante violence. This is not an effective remedy to address violations of the victims' rights to physical integrity and security of the person, or to put an end to the vigilantes' violence and their widespread public anti-immigrant campaign. Civil litigation may be an appropriate remedy in addition to criminal proceedings but it does not on its own provide adequate resolution of the human rights violations which have occurred and are ongoing and does not absolve the state of its criminal prosecutorial duties, therefore, it can be pursued in addition to, but not in place of, criminal remedies.

Conclusion

23. For the reasons stated above and in previous submissions, the Petitioner respectfully requests the Commission to declare its petition of April 28, 2005 admissible, to proceed to find the United States in violation its human rights obligations, and to make appropriate recommendations.