

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**  
**RESOLUTION 24 /2015**  
PRECAUTIONARY MEASURE No. 422-14

Matter of Mustafa Adam Al-Hawsawi regarding the United States of America<sup>1</sup>  
July 7, 2015

**I. INTRODUCTION**

1. On October 8, 2014, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission,” “the Commission” or “the IACHR”) received a request for precautionary measures presented by Walter Ruiz et al. (hereinafter, “the applicants”), requesting that the IACHR require the United States of America (hereinafter, “the State”, “the U.S.” or “the United States”) to adopt the necessary precautionary measures in order to protect the life, health and personal integrity of Mr. Al-Hawsawi, currently deprived of liberty at the U.S. Naval Station at Guantánamo Bay, Cuba.

2. After analyzing the factual and legal arguments set forth by the parties, the Commission considers that the information presented shows *prima facie* that Mr. Al-Hawsawi faces a serious and urgent situation, as his life and personal integrity are presumably at risk due to the alleged conditions of detention. Consequently, in accordance with Article 25 of its Rules of Procedure, the Commission requests that the United States: a) adopt the necessary measures to protect the life and personal integrity of Mr. Mustafa Adam Al-Hawsawi ; b) adopt the necessary measures to guarantee that the detention conditions are adequate in accordance with applicable international standards; c) adopt the necessary measures to ensure access to medical care and treatment; and d) report on the actions taken to investigate the alleged facts that led to the adoption of this precautionary measure in order to avoid the repetition of the alleged circumstances.

**II. SUMMARY OF FACTS AND ARGUMENTS SUBMITTED BY THE APPLICANTS**

3. The applicants indicated that the proposed beneficiary, a 46-year old from Saudi Arabia, has allegedly been deprived of his liberty for 12 years, and since 2006 has allegedly been detained at the U.S. Naval Station at Guantánamo Bay, Cuba. Since his abduction from Rawalpindi, Pakistan, the applicants sustain that the proposed beneficiary has suffered from threats and acts of violence against his life, health and personal integrity as a victim of the U.S. Central Intelligence Agency’s (CIA) Rendition, Detention and Interrogation Program. In this sense the applicants’ allegations are as follows:

A. As background information, the applicants reported that the proposed beneficiary was detained by the U.S. authorities in Pakistan for his alleged involvement in the attacks of September 11, 2001 on U.S. soil. In this context, applicants indicated that the U.S. government has acknowledged that the proposed beneficiary was “a victim of [...] the Torture Program.” In relation to this, applicants reported that the proposed beneficiary had been “detained at undisclosed locations until about September 2006,” when at that time he was allegedly transferred “to a secret prison at Guantanamo Bay.” According to the applicants, the proposed beneficiary had no access to legal representation or access to the courts, and the U.S. government has labeled as classified the information related to the proposed beneficiary’s alleged arrest, torture and all personnel involved in the alleged torture acts. Additionally, the applicants affirmed that information about the proposed beneficiary’s treatment at Guantanamo Bay had been “concealed from public scrutiny.”

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<sup>1</sup> According to Article 17.2 of the Rules of the IACHR, First Vice-President James Cavallaro, a citizen of the U.S., did not participate in the debate or in the decision on the present precautionary measure.

B. In relation to the legal proceedings, in March 2007 the proposed beneficiary was allegedly brought before a Combatant Status Review Tribunal where he was qualified as an “unlawful enemy combatant.” In 2008, the proposed beneficiary was allegedly assigned a military lawyer for his defense and in May 2008 he was allegedly charged with “alleged war crimes before a military commission” and was notified of its “intention to seek the death penalty.” In 2009, the Obama administration allegedly announced “its intention to drop the military prosecution and instead transport Mr. Al-Hawsawi to New York for trial in an established United State federal civil court.” In 2011, the U.S Government allegedly brought charges again against the proposed beneficiary “with a new set of alleged war crimes and added an additional charge in January 2012, but did not send those charges forward to trial until April 2012.” Despite the fact that there are some formal legal reviews before the military commissions, the applicants claim that these military commissions do not offer guarantees to safeguard the proposed beneficiary’s rights and in fact contribute to the abuses against him. The applicants indicated that Mr. Al-Hawsawi lacks effective venues at the domestic level to challenge the possibility of the application of the death penalty in his case. According to the applicants, while these alleged endless proceedings are being advanced, the proposed beneficiary had remained “imprisoned in nearly solitary confinement at Guantanamo Bay.”

C. In regards to the conditions of detention, the applicants affirmed that “the U.S Government’s treatment of Mr. Al-Hawsawi during his detention and interrogation has caused lasting damage to Mr. Al-Hawsawi’s health.” In particular, applicants argued that “Mr. Al-Hawsawi now suffers from injuries and deteriorating chronic conditions [...], as well as a general neglect for his health since his arrival at Guantanamo Bay.” The applicants contended that “the medical care offered to address his health issues is not adequate, instead the medical care offered is sporadic, with lack of continuity, lack of equipment and it is inadequate to treat his myriad conditions.”

D. Additionally, applicants report that the proposed beneficiary has been prohibited from practicing his Islamic faith and from having contact with his family. Moreover, the applicants affirmed that the proposed beneficiary is currently held at Camp 7, where “ongoing and systematic violations of international humanitarian law confinement standards” occur.

4. On November 4, 2014, the IACHR requested information from the State, without receiving a response. The procedure remained inactive due to the lack of further information presented by the petitioners and State.

5. In view of the lack of response from both parties, on May 15, 2015, a letter was sent to both, the State and the applicants, in order to reiterate the request for information.

6. On June 25, 2015, the applicants presented their response. The applicants indicate that:

A. Since the submission of this petition the proposed beneficiary’s poor health had steadily continued to deteriorate as a result “of a combination of revolving door medical care, inadequate facilities and unwillingness to administer adequate diagnostic tests and provide necessary medical procedures to treat these chronic conditions and injuries.” The applicants contend that “these injuries conceived in torture remain unresolved and have been inadequately treated.” According to the applicants, the proposed beneficiary continues to suffer from chronic presence of blood in his urine, an episode which first happened in July 2014 and still remains undiagnosed. The last urine

sample taken in May 2015 allegedly showed that Mr. Al-Hawsawi still has blood in his urine and cancer has not been properly ruled out although he has the common symptoms. Moreover, the applicants claim that the U.S. government is aware that the proposed beneficiary tested positive for Hepatitis C in September 2006. According to the communication, Hepatitis C can result in liver failure, cirrhosis of the liver and cancer among other symptoms. In addition, the proposed beneficiary allegedly continues to suffer from tearing within his rectum, a rectal prolapse and chronic hemorrhoids and he has to "manually re-insert the prolapsing tissue back into his rectal cavity with his fingers when he defecates or strains." According to a report made by the Senate Select Committee on Intelligence regarding the CIA Rendition, Detention and Interrogation Program (hereinafter, "Torture Report"), the treatment that the processed beneficiary received included "sodomy with a foreign object under the guise of rectal exams conducted with excessive force," which resulted in the medical conditions that he is currently suffering. Additionally, the proposed beneficiary continues to suffer from chronic and debilitating headaches and migraines, degenerative disk disease which causes pain in his back and neck and tinnitus.

B. Based on this current scenario, the applicants filed an emergency motion for medical attention, but the military judge ruled that he had no jurisdiction to provide relief to Mr. Al-Hawsawi. The applicants contend that the proposed beneficiary only receives minimal symptomatic treatment such as over the counter pain medicine. Moreover, applicants claim that there is no true patient-doctor relationship, the proposed beneficiary has not been informed of his medical condition and treatment options, he has been denied the results of his medical tests, and he is only treated by U.S. military personnel. A military physician recommended a diagnostic MRI in May 2013 but the portable MRI machine allegedly purchased by the Department of Defense was never delivered to Guantanamo. The applicants claim that they had attempted to speak to Mr. Al-Hawsawi's doctors and had requested access to medical records, but they had either been denied or the medical records sent are sporadic and incomplete.

C. When tackling new episodes of harassment, threats or acts of violence against the proposed beneficiary's life and personal integrity, the applicants contend that the "very injuries sustained during the original acts of torture, is a continuation of the original torture of the individual." The applicants point out that in December 2014 the proposed beneficiary was subjected to a "rough takedown by the guard force while inside his classified prison facility." He was allegedly tackled and roughly pinned down by eight U.S. military personnel while being in shackles. The applicants convey that, at that time the proposed beneficiary was 5' 4 ½ tall and weighed 117 pounds and that since then his weight dropped to approximately 100 pounds.

### **III. PRELIMINARY CONSIDERATIONS ON THE PRESENT SITUATION**

7. The Commission has been closely monitoring the situation of the Guantánamo Bay detainees since it first issued precautionary measures in their favor in 2002. The measures were initially issued to request that the United States ensure that a competent tribunal would determine their legal status. The measures have been extended multiple times in light of allegations of abuse and mistreatment, prompting the Commission to request that the United States investigate alleged cases of torture and ill treatment, and prosecute and punish those found responsible. The Commission has also requested that the United States give due attention to the human rights of any person transferred to a home or third country in order to avoid transfer to a situation of risk and ensure respect for the principle of non-refoulement.

8. The Commission has also devoted attention to the situation of the Guantánamo Bay detainees through its other mechanisms. The Commission issued Resolution 2/06 in July 2006 on the situation of the detainees, and among other considerations, it indicated that the United States' failure to give effect to the precautionary measures had resulted in irreparable harm to their fundamental rights. The Commission called upon the Government to close the detention facility and transfer the detainees through a process carried out in compliance with its obligations under international law. In its Resolution 2/11 of July 2011 on the situation of the detainees, the Commission reviewed the evolution of the situation and detailed specific concerns with respect to the prolonged detention, conditions of detention and inadequate judicial protection. The Commission reiterated that the failure to comply with the precautionary measures had resulted in irreparable harm to the rights of the detainees and urged the United States to close the facility without delay and release the detainees or try them in accordance with due process guarantees.

9. On July 22, 2013, taking into account the human rights obligations of the United States as a Member State of the OAS, and given the ongoing risk of irreparable harm to the rights of detainees that is aggravated with the continuation of their detention, the Inter-American Commission decided to extend the scope of these precautionary measures and require the Government of the United States: a) to proceed to immediately close the detention facilities at the Naval Station at Guantánamo Bay; b) that the detainees be transferred to home or third countries in observance of human rights guarantees, mainly the obligation of *non-refoulement*; c) that the release of those who have already been cleared for transfer be expedited; d) that any detainees subject to trial be housed in appropriate conditions and accorded applicable due process rights.

10. Although all detainees including Mr. Mustafa Adam Al-Hawsawi are covered by those measures, taking into account the particular situation of Mr. Al-Hawsawi, the detailed information presented by the applicants, and the opportunity to evaluate his specific situation, the IACHR considers it pertinent to give specific consideration to the present request.

#### **IV. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABLE HARM**

11. 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 Article 106 of the Charter of the Organization of American States. These general oversight functions are set forth in Article 41 (b) of the American Convention on Human Rights and Article 18 of the Commission's Statute. The mechanism of precautionary measures is set out 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.

12. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding their protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR. Their precautionary nature aims at preserving 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 ordered reparations. As

such, for the purposes of making a decision, and in accordance with Article 25.2 of its Rules of Procedure, 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 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.

13. In the current situation, the Commission considers that the requirement of seriousness is met, in view of the dire detention conditions alleged by the applicants that threaten the life and personal integrity of Mr. Mustafa Adam Al-Hawsawi. In this sense, the information submitted by the applicants suggests that this person, who has been deprived of his liberty for twelve years and apparently remains detained at the U.S. Naval Station at Guantánamo Bay with charges pending against him, is held in severe circumstances which include alleged solitary confinement and lack of adequate medical care. According to the applicants, Mr. Mustafa Adam Al-Hawsawi continues to suffer from chronic presence of blood in his urine, which has not yet been diagnosed, and from Hepatitis C which can result in liver failure, cirrhosis of the liver and cancer, among other things. One situation reported by the applicants is that Mr. Al-Hawsawi has rectal prolapse and chronic hemorrhoids, without proper medical treatment, which has left him to deal with this problem in unhealthy and precarious conditions. In this regard, despite several requests made by the applicants, and his current health situation, a military judge allegedly refused to grant relief to the proposed beneficiary on medical issues based on jurisdictional grounds. In this sense, the Commission considers that the possible absence of medical treatment and integral measures in his favor could cause unnecessary physical and mental suffering to Mr. Mustafa Adam Al-Hawsawi.

14. In this regard, the allegations presented by the applicants appear to be consistent with contextual and general information reviewed by the IACHR, which indicates that detainees have allegedly been subject to cramped confinement ("placement of the individual in a confined space [usually dark], the dimensions of which restrict the individual's movement"); wall standing (the individual's "arms are stretched out in front of him, with his fingers resting on the wall. His fingers support all of his body weight. The individual is not allowed to move or reposition his hands or feet"); stress positions ("designed to produce the physical discomfort associated with muscle fatigue"); sleep deprivation; and waterboarding.<sup>2</sup> In addition, the Inter-American Commission received information regarding reported sensory deprivation, severe beatings, electric shocks and induced hypothermia during interrogations,<sup>3</sup> as well as force-feeding processes,<sup>4</sup> which is described to be as 'having a dagger shoved down your throat'<sup>5</sup>, among other extremely concerning information.

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<sup>2</sup> Memorandum for John Rizzo, Acting General Counsel of the Central Intelligence Agency, Re: Interrogation of al Qaeda Operative, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, August 1, 2002, pp. 2-3.

<sup>3</sup> Stephen Lendman, Torture As Official US Policy, Global Research, July 18, 2008. Available at: <http://www.globalresearch.ca/torture-as-official-us-policy/9610>

<sup>4</sup> IACHR's hearing, Situation of the detainees in Guantánamo, 147 Period of Sessions of the IACHR, March 12, 2013.

<sup>5</sup> IACHR's Expert Meeting on the situation of detainees held at the U.S. Naval Base at Guantánamo Bay, Washington DC, October 3, 2013. See also, Poems from Guantánamo, Amnesty International Magazine, Fall 2007, by Mark Falcoff. Available at: <http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/prisoner-testimonies/poems-from-guantanamo>

15. Additionally, as part of its ongoing efforts to monitor the precautionary measures, the IACHR has held 2 working meetings and 11 hearings on the matter from 2002 to 2015. It has published 9 press releases specifically concerning the situation of the detainees held at Guantánamo Bay and the serious human rights concerns raised by their ongoing detention.<sup>6</sup> Moreover, the Commission has twice requested permission to carry out an onsite visit to the Guantanamo Bay detention facility in order to observe the conditions first hand and freely interview the detainees. Because the Government has conditioned such a visit on restricted access to interview those present in the facility, the Commission has been unable to carry out such a visit. To date, the IACHR continues to be interested in conducting a visit to the U.S. detention center in Guantánamo, including direct and private access to the detainees, and without any other conditions. For its part, the United Nations Committee against Torture has condemned prisoners' treatment at Guantánamo, noting that indefinite detention constitutes *per se* a violation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>7</sup> In addition, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, has reiterated that "all detentions that take place away from the field of battle should be covered by the international law of human rights --which prohibits prolonged arbitrary detention-- even if they are carried out under a rhetorical "war on terror.""<sup>8</sup> The Special Rapporteur finds that the U.S. practice of holding detainees indefinitely if it is determined that they pose a significant threat to the security of the United States is a violation of the prohibition of torture and ill-treatment under Article 7 of the ICCPR and CAT Articles 1 and 16, as well as of relevant provisions of the American Declaration, as incorporated in the Charter of the Organization of American States.<sup>9</sup>

16. Taking into consideration the information provided and the particular context in which it is presented, the Commission considers *prima facie* that the rights to life and physical integrity of Mr. Al-Hawsawi are at serious risk.

17. Regarding the requirement of urgency, the IACHR is satisfied that is met, given that the Mr. Mustafa Adam Al-Hawsawi remains deprived of liberty at the U.S. Naval Station at Guantánamo Bay under allegedly extreme detention conditions for an indefinite period of time. In this sense, the information provided by the applicants suggests that the proposed beneficiary's life and personal integrity are subject to constant risk as there is apparently no available mechanism to effectively remove or mitigate the above-stated risk factors. Moreover, the proposed beneficiary's health may rapidly deteriorate since he is reportedly not receiving adequate medical treatment for his symptoms and diseases and is allegedly held in isolation. In addition, to date, the State has not submitted its observations before the Commission so as to determine whether internal measures have been adopted in light of the situation of risk.

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<sup>6</sup> A list of the public hearings and working meetings, press releases, and requests to conduct a visit is available at: <http://www.oas.org/en/iachr/pdl/decisions/Guantanamo.asp#Resol>.

<sup>7</sup> UN Committee Against Torture (CAT), *UN Committee against Torture: Conclusions and Recommendations, United States of America*, 25 July 2006, CAT/C/USA/CO/2, para 22.

<sup>8</sup> Statement of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, IACHR's Expert Meeting on the situation of detainees held at the U.S. Naval Base at Guantanamo Bay, Washington DC, October 3, 2013, p. 4.

<sup>9</sup> Statement of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, IACHR's Expert Meeting on the situation of detainees held at the U.S. Naval Base at Guantanamo Bay, Washington DC, October 3, 2013, p. 5.

18. Regarding the requirement of irreparable harm, the Commission considers that it is fulfilled, to the extent that the possible effect on the right to life and physical integrity represents the most severely irreparable harm.

#### **V. BENEFICIARIES**

19. The request has been presented in favor of Mr. Mustafa Adam Al-Hawsawi.

#### **VI. DECISION**

20. Taking into account that despite the IACHR's request to immediately close the detention facilities at the Naval Station at Guantánamo Bay, Mustafa Adam Al-Hawsawi is still deprived of liberty in that detention center, in accordance with Article 25 of the Rules of Procedure, the Commission requests that the United States of America:

- a) Adopt the necessary measures to protect the life and personal integrity of Mustafa Adam Al-Hawsawi;
- b) Adopt the necessary measures to guarantee that the detention conditions are adequate in accordance with applicable international standards;
- c) Adopt the necessary measures to ensure access to medical care and treatment; and
- d) Report on the actions taken to investigate the presumed facts that led to the adoption of this precautionary measure in order to avoid the repetition of the alleged circumstances.

21. The Commission also requests that the Government of the United States provide information within a period of 15 days from the date that the present resolution is issued on the adoption of precautionary measures and provide updated information periodically.

22. The Commission wishes to point out that in accordance with Article 25(8) of its Rules of Procedure, the granting of precautionary measures and their adoption by the State shall not constitute a prejudging of any violation of the rights protected in the American Declaration on the Rights and Duties of Man or any other applicable instrument.

23. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the United States of America and to the petitioners.

24. Approved on July 7, 2015 by: Rose-Marie Belle Antoine, President; Felipe González, Rosa María Ortíz, Tracy Robinson, Paulo Vannuchi, members of the IACHR.



Elizabeth Abi-Mershed  
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