

June 28, 2018

Dr. Paulo Abrão  
Executive Secretary  
Inter-American Commission on Human Rights  
Organization of American States  
Washington, D.C. 20006

**Re: Ismael Estrada  
Petition No. P-1756-10  
Response to Petition**

Dear Dr. Abrão:

The United States has the honor of addressing the Inter-American Commission on Human Rights in regard to the above-referenced matter concerning Ismael Estrada. By letter dated August 21, 2017, transmitted on August 28, 2017, your office forwarded a number of documents received by the Commission from Mr. Estrada on December 8, 2010 and characterized these documents as a petition. Please find enclosed the United States' response to Mr. Estrada's submission. We trust the information provided is useful to the Commission and thank the Commission for its attention to this matter.

Please accept renewed assurances of my highest consideration.

Sincerely,

Kevin K. Sullivan  
Deputy Permanent Representative

Annexes:

*Selected Domestic Proceedings Relating to Petitioner Ismael Estrada*

- 1) *United States v. Mendoza et al.*, Criminal Indictment, U.S. District Court for the Northern District of Georgia, Atlanta Division, Case No. 1:05-CR-380 (Mar. 21, 2006)
- 2) *United States v. Sellers et al.*, Criminal Indictment, U.S. District Court for the Northern District of Georgia, Atlanta Division, Case No. 1:06-CR-358 (Aug. 22, 2006)
- 3) *United States v. Ismael Estrada*, Criminal Indictment, U.S. District Court for the Northern District of Georgia, Atlanta Division, Case No. 1:06-CR-358-RWS (Mar. 15, 2011)
- 4) *Ismael Estrada v. United States*, Final Report and Recommendation – Motion to Vacate under 28 U.S.C. § 2255, U.S. District Court for the Northern District of Georgia, Civil Action No. 1:14-CV-1897-RWS-CMS, Case No. 1:06-CR-358-2-RWS-CMS (Feb. 24, 2017)
- 5) *United States v. Ismael Estrada*, Order Setting Conditions of Release, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-380-11-RWS (May 12, 2006)
- 6) *United States v. Ismael Estrada*, Arrest Warrant, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-358-2 (Aug. 22, 2006)
- 7) *United States v. Ismael Estrada*, Arrest Warrant, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-358 (Feb. 13, 2007)
- 8) *United States v. Ismael Estrada*, Notice of Filing of Motion to Dismiss at the Specific Request of Defendant Ismael Estrada, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-358-RWS-ECS-1 (Nov. 10, 2010)
- 9) *United States v. Ismael Estrada*, Defendant’s Preliminary Motion to Dismiss, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-358-RWS-ECS-1 (Feb. 8, 2010)
- 10) *United States v. Ismael Estrada*, Order, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-358-2-RWS (Apr. 4, 2011)
- 11) *United States v. Ismael Estrada*, Order, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-358-2-RWS (Apr. 7, 2011)

- 12) *United States of America v. Ismael Estrada*, Appeal from the U.S. District Court for the Northern District of Georgia, Case No. 11-14365 (11th Cir. 2013)
- 13) *United States v. Ismael Estrada*, Judgment, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-358-02-RWS (Sept. 15, 2011)
- 14) *United States v. Ismael Estrada*, Transcript of Sentencing, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-358-RWS-2 (Sept. 15, 2011)
- 15) *Ismael Estrada v. United States*, Denial of Petition for Writ of Certiorari, Case No. 13-6469 (Oct. 21, 2013)
- 16) *Ismael Estrada v. United States*, Order, U.S. District Court for the Northern District of Georgia, Case No. 1:14-CV-1897-RWS-CMS (June 5, 2017)
- 17) *Ismael Estrada v. United States*, U.S. District Court for the Northern District of Georgia, Civil Docket for Case No. 1-10-CV-04213-JEC
- 18) *See Petition for Writ of Habeas Corpus*, U.S. District Court for the Northern District of Georgia, Case No. 1:10-CV-04213-JEC (Dec. 27, 2010)
- 19) *Ismael Estrada v. Larry Rollerson*, Magistrate Judge's Final Report and Recommendation, U.S. District Court for the Northern District of Georgia, Case No. 1:10-CV-04213-JES-SSC (Dec. 27, 2011)
- 20) *Ismael Estrada v. Larry Rollerson*, Order, U.S. District Court for the Northern District of Georgia, Case No. 1:10-CV-4213-JEC (Jan. 18, 2012)
- 21) *Ismael Estrada v. Ronald D. Gooden, Kurt R. Erskine, John/Jane Does, United Mexican States*, Amended Complaint, U.S. District Court for the Northern District of Georgia, Atlanta Division, Case No. 1:14-CV-1030-JEC (Apr. 18, 2014)
- 22) *Ismael Estrada v. Ronald D. Gooden et al.*, Magistrate Judge's Final Report and Recommendation, U.S. District Court for the Northern District of Georgia, Case No. 1:14-CV-1030-WBH-JCF (Sept. 25, 2014)
- 23) *Ismael Estrada v. Ronald D. Gooden et al.*, Order, U.S. District Court for the Northern District of Georgia, Case No. 1:14-CV-1030-WBH (Jan. 7, 2015)
- 24) *Ismael Estrada v. Ronald D. Gooden et al.*, Docket, U.S. District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. 1:14-CV-1030-JEC

- 25) *United States of America v. Ismael Estrada*, Appeal from the U.S. District Court for the Northern District of Georgia, No. 11-14365 (11th Cir. 2013)
- 26) *Ismael Estrada v. Mary Erickson and the Law Office of Mary Erickson*, Complaint, U.S. District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. 1:12-CV-02353-JEC-JCF (Jul. 5, 2012)
- 27) *Ismael Estrada v. Mary Erickson and the Law Office of Mary Erickson*, Order, U.S. District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. 1:12-CV-02353-JEC-JCF (Oct. 31, 2013)
- 28) Extradition Treaty Between the United States of America and Mexico (May 4, 1978), TIAS 9656

**PETITION NO. P-1756-10, ISMAEL ESTRADA  
RESPONSE OF THE UNITED STATES OF AMERICA**

The United States appreciates the opportunity to submit these observations on the documents submitted by Mr. Ismael Estrada to the Inter-American Commission on Human Rights (“Commission”) and forwarded to the United States as Petition No. P-1756-10 (“Petition”). The Petition, which was received by the Commission in December 2010 and forwarded to the United States in August 2017, consists of a number of handwritten communications and other documents that appear to have been filed or issued in certain domestic proceedings in the United States. We use the term “Petition” to refer collectively to these documents in this Response.

The Petition is inadmissible because Mr. Estrada (“Petitioner”) has not exhausted the domestic remedies available to him in the United States. It is further inadmissible because the Petition does not in any way indicate even a potential failure on the part of the United States to live up to any commitment under the American Declaration of the Rights and Duties of Man (“American Declaration”). Moreover, insofar as it relies on legal arguments submitted to and rejected by courts in the United States, it impermissibly seeks to place the Commission in the position of acting as a fourth instance review mechanism. Accordingly, the United States respectfully requests that the Commission find the Petition inadmissible. Should the Commission nevertheless declare the Petition admissible and examine its merits, the United States urges it to deny the Petitioner’s request for relief, as the Petition is entirely without merit.

**A. FACTS AND PROCEDURAL HISTORY**

Petitioner is currently serving a sentence in U.S. federal prison for his role in a cocaine-trafficking and money-laundering ring. Petitioner’s claims appear to turn on the fact that he was involved in two parallel sets of proceedings in the United States: the criminal proceeding that led to his conviction, and a separate, civil proceeding before a U.S. immigration court. Many of the documents included in the Petition appear to have been submitted in the immigration proceedings, but they do not provide a clear representation of Petitioner’s circumstances in 2010, much less seven years later, following a number of developments relating to Petitioner’s criminal case. The United States therefore provides the following overview of the facts relevant to Petitioner’s claims.

***1. Criminal Trial and Direct Appeals***

Petitioner was indicted<sup>1</sup> in the U.S. District Court for the Northern District of Georgia (“District Court”) in March 2006 for his participation in a criminal enterprise associated with the

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<sup>1</sup> United States v. Mendoza et al., Criminal Indictment, U.S. District Court for the Northern District of Georgia, Atlanta Division, Case No. 1:05-CR-380 (Mar. 21, 2006) (Annex 1). In August 2006, charges against Petitioner and two of his co-conspirators, Leslie Anderson and Lee Sellers, were split

Mexican Gulf Cartel, a major organized crime group.<sup>2</sup> As later demonstrated by prosecutors, Petitioner was responsible for the distribution of hundreds of kilograms of cocaine and marijuana in and around Atlanta, Georgia and throughout the southeastern United States, and the laundering of millions of dollars of proceeds deriving from these trafficking activities.

Petitioner was arrested pursuant to the indictment in March 2006 and was initially ordered to be held in custody pending trial due to the nature and seriousness of the charges against him. In discussions with U.S. Drug Enforcement Administration officials while he was in custody, Petitioner admitted that he had begun distributing cocaine in or around 1997 and that, between 1999 and 2005, he had sold approximately 40 to 50 kilograms of cocaine per month on the U.S. East Coast.<sup>3</sup>

In exchange for Petitioner's willingness to cooperate with prosecutors in developing the case against his co-conspirators, the District Court in May 2006 issued an order for his release, subject to payment of a bond and certain other conditions. Those conditions included his promise to appear at all proceedings as required and to surrender for service of any sentence imposed.<sup>4</sup> He was also required not to change his address and to restrict his travel to the area within the Northern District of Georgia.<sup>5</sup>

However, in July 2006, Petitioner fled the United States for Panama, his country of nationality, in violation of the District Court's order.<sup>6</sup> Federal prosecutors did not seek his extradition from Panama because Panamanian law did not permit Panama to extradite its own nationals.<sup>7</sup>

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into a separate case and a superseding indictment for the three was issued. *United States v. Sellers et al.*, Criminal Indictment, U.S. District Court for the Northern District of Georgia, Atlanta Division, Case No. 1:06-CR-358 (Aug. 22, 2006) (Annex 2). A second superseding indictment naming only Petitioner was issued in March 2011. *United States v. Estrada*, Criminal Indictment, U.S. District Court for the Northern District of Georgia, Atlanta Division, Case No. 1:06-CR-358-RWS (Mar. 15, 2011) (Annex 3). The charges against Petitioner remained the same in each indictment.

<sup>2</sup> See *Estrada v. United States*, Final Report and Recommendation—Motion to Vacate Under 28 U.S.C. § 2255, Civil Action No. 1:14-CV-1897-RWS-CMS, Criminal Action No. 1:06-CR-358-2-RWS-CMS (Feb. 24, 2017) (hereinafter “Final R&R”) at 2 (linking Petitioner to Gulf Cartel) (Annex 4); InSight Crime, “Gulf Cartel,” at <https://www.insightcrime.org/mexico-organized-crime-news/gulf-cartel-profile/> (providing history of Gulf Cartel, described as “one of the oldest and most powerful of Mexico’s criminal groups” and a major cocaine, methamphetamine and heroin trafficking network).

<sup>3</sup> Final R&R, *supra* note 2, at 2.

<sup>4</sup> *United States v. Estrada*, Order Setting Conditions of Release, U.S. District Court for the Northern District of Georgia, Case No. 1:05-cr-380-11-RWS (May 12, 2006) (Annex 5).

<sup>5</sup> *Id.*

<sup>6</sup> Final R&R at 2 (“Before the defendant’s cooperation was complete, however, he jumped bond and fled to Panama.”).

<sup>7</sup> *Id.* at 3.

In August 2006, following a decision to separate Petitioner's case from the larger case against others in the Gulf Cartel, a separate indictment for Petitioner and two co-conspirators was issued.<sup>8</sup> A new warrant for Petitioner's arrest was issued at the same time.<sup>9</sup>

At the time that he was arrested in March 2006, Petitioner also happened to be involved in ongoing civil proceedings before an immigration court in Atlanta, Georgia. Petitioner's flight from the United States in July 2006, however, caused him to miss an immigration hearing in October 2006. When he did not appear, the immigration court ordered him removed from the United States *in absentia* under immigration law.<sup>10</sup>

In October 2008, Petitioner traveled to Cancún, Mexico, where he was detained by Mexican authorities. He was held in Mexico for approximately one year while he fought extradition to the United States, but was extradited in October 2009.<sup>11</sup>

Petitioner had retained counsel at the time of his original arrest in 2006 and retained the same counsel following his extradition back to the United States.<sup>12</sup> Throughout the first instance proceedings before the District Court, Petitioner vigorously opposed the charges against him, attacking the indictment, challenging the court's jurisdiction, and moving to exclude certain evidence against him.<sup>13</sup> Of particular relevance here, Petitioner filed a brief challenging the court's jurisdiction on the same basis on which he appears to rely in his Petition, namely, that the United States lacked personal jurisdiction over him because of the order of removal issued by the immigration court.<sup>14</sup> As he appears to do here, Petitioner argued that he had exercised "self-removal" from the United States and that it was unlawful for him to re-enter the United States by means of extradition from Mexico without obtaining the permission of the Attorney General of

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<sup>8</sup> *Id.* at 3.

<sup>9</sup> *United States v. Estrada*, Arrest Warrant, U.S. District Court for the Northern District of Georgia, Case No. 1:05-358-2 (Aug. 22, 2006) (Annex 6). A further updated warrant was issued in February 2007. *United States v. Estrada*, Arrest Warrant, U.S. District Court for the Northern District of Georgia, Case No. 1:06-358 (Feb. 13, 2007) (Annex 7).

<sup>10</sup> Final R&R, *supra* note 2, at 2–3.

<sup>11</sup> *Id.* at 4–5.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *See Estrada v. United States*, Notice of Filing of Motion to Dismiss at the Specific Request of Defendant Ismael Estrada, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-358-RWS-ECS-1 (Nov. 10, 2010) at 7 (Annex 8). Petitioner also filed a motion to dismiss that included an allegation that "[t]he rules of specialty and dual criminality have been violated and bar prosecution of Defendant," but that allegation was not developed in either motion or elsewhere in Petitioner's pleadings in the first instance proceedings. *See United States v. Estrada*, Defendant's Preliminary Motion to Dismiss, No. 1:06-CR-358-RWS-ECS-1 (Feb. 8, 2010) (Annex 9).

the United States.<sup>15</sup> As a result, he argued, his rights under the Fifth and Fourteenth Amendments to the U.S. Constitution had been violated.<sup>16</sup> Both a magistrate judge<sup>17</sup> and the District Court judge reviewed Petitioner's challenges, including his motions for dismissal for lack of jurisdiction, and the District Court dismissed them as meritless.<sup>18</sup>

Shortly before the hearing, Petitioner informed the District Court that he wished to dismiss his attorney.<sup>19</sup> The court questioned Petitioner at some length, on more than one occasion, before determining that he wished to represent himself *pro se*; however, it also requested that an associate of his primary attorney serve as standby counsel for the remainder of the proceedings.<sup>20</sup> She did so, providing assistance for the remainder of the trial proceedings, including with respect to cross-examination of witnesses, admission of exhibits, and Petitioner's decision not to testify.<sup>21</sup>

The trial took place over four days in April 2011 and concerned the same drug-trafficking and money-laundering charges for which Petitioner had been indicted in 2006. The evidence presented at trial included forensic evidence, wiretapping evidence, and testimony from two of Petitioner's co-conspirators, including one who had accompanied him on the flight to Panama.<sup>22</sup> Petitioner was found guilty of one count of conspiracy to possess cocaine and marijuana with intent to distribute it and 13 counts of money laundering.<sup>23</sup>

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<sup>15</sup> See Ann. 9, *supra*, at 5. The United States notes that this pleading misrepresents the timeline of events established by the documentary record, claiming that the original indictment and arrest occurred in August 2006 (rather than March 2006) and that Petitioner returned to Panama only after receiving the order of removal in October 2006 (whereas he actually fled the United States in July 2006, causing him to miss the immigration hearing in October 2006 that resulted in the order of removal).

<sup>16</sup> *Id.* at 12. These same arguments appear in some documents included with the Petition and appear to be the basis for Petitioner's request for relief from the Commission.

<sup>17</sup> A magistrate judge is a judge appointed to assist a district court judge in the performance of his or her duties, as authorized under 28 U.S.C. § 631.

<sup>18</sup> *United States v. Estrada*, Order, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-358-2-RWS (Apr. 4, 2011) (Annex 10); *United States v. Estrada*, Order, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-358-2-RWS (Apr. 7, 2011) (Annex 11).

<sup>19</sup> See *United States v. Estrada*, Appeal from the U.S. District Court for the Northern District of Georgia, No. 11-14365 (11th Cir. 2013) at 3 (Annex 12).

<sup>20</sup> *Id.* at 3-6 (describing District Court's extensive efforts to ensure Petitioner understood risks of proceeding *pro se* and assignment of standby counsel).

<sup>21</sup> *Id.* at 7; Final R&R, *supra* note 2, at 8.

<sup>22</sup> Final R&R, *supra* note 2, at 7.

<sup>23</sup> *United States v. Estrada*, Judgment, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-358-02-RWS (Sept. 15, 2011) ("Judgment") (Annex 13).



At his sentencing hearing, during which he relied on substantial assistance from the standby counsel appointed by the District Court,<sup>24</sup> Petitioner reiterated his jurisdictional arguments, asserting that the court lacked personal jurisdiction over him due to the order of removal issued by the immigration court.<sup>25</sup> In response, the District Court explained why it had found it had jurisdiction over him and reminded Petitioner that he could appeal this jurisdictional ruling, stating that “the fact that you had been ordered deported does not, in this court’s view, remove this court’s jurisdiction for purposes of the criminal charges that have been brought against you. So you’ve got a ruling from the court, so it’s there for you to appeal if I’m wrong.”<sup>26</sup>

The Court sentenced Petitioner to approximately 30 years’ imprisonment, considerably less than the life sentence he could have received under applicable sentencing guidelines.<sup>27</sup> The Court further ordered that, upon completion of his sentence, Petitioner was to be turned over to U.S. immigration officials for appropriate removal proceedings in accordance with the order of removal against him.<sup>28</sup>

Represented by new counsel appointed by the District Court,<sup>29</sup> Petitioner appealed his conviction to the U.S. Court of Appeals for the Eleventh Circuit. However, the sole issue he raised on appeal was whether the District Court had failed to conduct an adequate inquiry into his decision to proceed *pro se* just before the trial.<sup>30</sup> He did not appeal the District Court’s rejection of his contention that the order of removal deprived the Court of jurisdiction over him, notwithstanding the Court’s express reminder at sentencing that he had that right.

The Eleventh Circuit Court upheld Petitioner’s conviction, finding that he had waived his right to counsel “knowingly, intelligently, and voluntarily,” the standard established by the U.S. Supreme Court.<sup>31</sup> Petitioner appealed the Eleventh Circuit ruling to the U.S. Supreme Court, which declined to hear the case.<sup>32</sup>

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<sup>24</sup> Final R&R, *supra* note 2, at 8 (“At sentencing, Estrada continued to represent himself, albeit with substantial assistance from standby counsel, who spoke on his behalf and presented his objections.”).

<sup>25</sup> United States v. Estrada, Transcript of Sentencing, U.S. District Court for the Northern District of Georgia, Case No. 1:06-CR-358-RWS-2 (Sept. 15, 2011) (Annex 14).

<sup>26</sup> *Id.* at 3 (emphasis added).

<sup>27</sup> See Judgment, *supra* note 23.

<sup>28</sup> *Id.*.

<sup>29</sup> Final R&R, *supra* note 2, at 9.

<sup>30</sup> See Ann. 12, *supra*.

<sup>31</sup> See Ann. 12, *supra*, at 16 (applying standard in *Faretta v. California*, 422 U.S. 806, 835 (1975) and *Fitzpatrick v. Wainwright*, 800 F.2d 1057, 1065 (11th Cir. 1986)).

<sup>32</sup> *Estrada v. United States*, Denial of Petition for Writ of Certiorari, Case No. 13-6469 (Oct. 21, 2013) (Annex 15).

Petitioner has actively pursued other remedies both before and after his conviction by the District Court. One of these proceedings apparently remains ongoing.

## **2. Motion to Vacate, Set Aside or Correct Criminal Sentence Under 28 U.S.C. § 2255**

In 2014, acting *pro se*, Petitioner filed a motion with the District Court to vacate, set aside or correct his criminal sentence under 28 U.S.C. § 2255.<sup>33</sup> This statute permits individuals in custody to seek relief, including potential release, on a limited number of grounds. Such a motion may not be used to re-litigate issues raised and rejected on direct appeal or to raise issues that could have been raised on direct appeal but were not.<sup>34</sup>

However, Petitioner sought to raise several new claims, as well as to revive his claim that the District Court did not have personal jurisdiction over him because of his escape to Panama and the fortuitous order of removal issued by the immigration court caused by his absence.<sup>35</sup> In addition, he claimed that he had received ineffective assistance of counsel at both the trial level—during the pre-trial phase in which he was represented by counsel—and at the appellate level. One of his arguments was that appellate counsel was ineffective because she did not make a specific legal argument concerning Petitioner’s extradition, namely that the extradition from Mexico violated the rule of specialty<sup>36</sup> because of sentencing enhancements applied after his conviction.<sup>37</sup>

In February 2017, the magistrate judge reviewing Petitioner’s claims advised that some were procedurally barred because they had not been raised in Petitioner’s appeal to the Eleventh Circuit.<sup>38</sup> With respect to the claims of ineffective assistance of counsel, the judge noted that, under the jurisprudence of the U.S. Supreme Court, claims of ineffective assistance of counsel must meet a high bar, demonstrating both that counsel was incompetent and that the incompetence led to prejudice.<sup>39</sup> She then reviewed the record in detail and determined that Petitioner’s counsel at the trial level before he opted to proceed *pro se* was not incompetent and did not provide ineffective assistance.<sup>40</sup>

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<sup>33</sup> See Final R&R, *supra* note 2, 10-11.

<sup>34</sup> See *id.* at 14.

<sup>35</sup> *Id.* at 17.

<sup>36</sup> The rule of specialty provides generally that a person may only be prosecuted for those offenses for which s/he was surrendered by the extraditing State.

<sup>37</sup> Final R&R, *supra* note 2, at 24. As noted above, Petitioner raised this argument in a preliminary filing but appeared to abandon it in a subsequent motion objecting to jurisdiction.

<sup>38</sup> *Id.* at 18.

<sup>39</sup> *Id.* at 14.

<sup>40</sup> *Id.* at 20. In fact, as pointed out by the magistrate judge reviewing Petitioner’s sentencing reduction motion, the trial court praised the work of counsel before Petitioner opted to release him (“[Q]uite

The judge also rejected Petitioner’s claim concerning ineffective assistance of appellate counsel. In particular, she rejected the argument that appellate counsel should have challenged Petitioner’s extradition based on the rule of specialty, noting that the Supreme Court has held that appellate counsel are not required to raise every possible claim, but ““may select from among them in order to maximize the likelihood of success on appeal.””<sup>41</sup> Upon review of the record, she observed that Petitioner had not identified any limitations placed by Mexico on his extradition that the United States was alleged to have violated. Moreover, he did not have standing to assert a treaty breach; only Mexico, as a party to the treaty, had standing to make such an assertion.<sup>42</sup> She concluded that Petitioner’s appellate counsel “did not render ineffective assistance by omitting this meritless issue from Estrada’s appellate brief.”<sup>43</sup> She recommended that Petitioner’s § 2255 motion be dismissed<sup>44</sup> and the District Court, presided over by the same judge who heard Petitioner’s criminal case, accepted the recommendation.<sup>45</sup>

Petitioner filed a notice to appeal the ruling to the Eleventh Circuit.<sup>46</sup> On February 23, 2018, the Eleventh Circuit denied Estrada’s Certificate of Appealability, since this was a successive § 2255 motion. Petitioner has not appealed this ruling.

### 3. Habeas Corpus Proceedings

In 2010, while in custody awaiting his criminal trial and a few weeks after submitting his Petition to the Commission, Petitioner—acting *pro se*—filed a petition for a writ of *habeas corpus* before the U.S. District Court for the Northern District of Georgia, some documents from which appear to be included with the Petition.<sup>47</sup> A *habeas corpus* proceeding permits a detained person to request release from a court unless lawful grounds for the detention are shown. In his *habeas* brief, Petitioner requested immediate removal to Panama, arguing that the United States

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honestly, one of the reasons that I have not ruled on the Report and Recommendation is the excellent job your attorneys did in opposing that and filing objections to it. It is one of the most thorough objections I have ever had to a Report and Recommendation”).

<sup>41</sup> Final R&R, *supra* note 2, at 15.

<sup>42</sup> *Id.* at 24–25.

<sup>43</sup> *Id.* at 25.

<sup>44</sup> *Id.* at 29–30.

<sup>45</sup> Estrada v. United States, Order, U.S. District Court for the Northern District of Georgia, Case No. 1:14-CV-1897-RWS-CMS (June 5, 2017) (Annex 16).

<sup>46</sup> Estrada v. United States, Civil Docket for Case No. 1-10-CV-04213-JEC (Annex 17).

<sup>47</sup> See Petition for Writ of *Habeas Corpus*, U.S. District Court for the Northern District of Georgia, Case No. 1:10-CV-04213-JEC (Dec. 27, 2010) (Annex 18). The judge hearing Petitioner’s *habeas corpus* case was not the same one hearing the criminal case against him.

did not have personal jurisdiction over him due to the order of removal issued in October 2006.<sup>48</sup> However, a federal magistrate judge reviewing Petitioner’s claim concluded that, while his argument effectively was that he was unlawfully being held in immigration detention, he was not in the custody of immigration authorities and that, as a result, a favorable decision on the merits “would not entitle him to be removed to Panama before he has served his drug trafficking and money laundering sentences in federal prison.”<sup>49</sup> The District Court agreed and dismissed the case as moot.<sup>50</sup> Petitioner did not appeal the final judgment dismissing his appeal.

#### 4. *Claims for Damages*

In 2014, acting *pro se*, Petitioner filed a claim for damages against Mexico; the Mexican authorities who detained him; and two U.S. government officials, alleging human rights abuses and other abuses and violations arising under a variety of international instruments.<sup>51</sup> Petitioner alleged that he was kidnapped and mistreated by law enforcement in Mexico and that his extradition to the United States from Mexico violated Panamanian law (which he argued was the only law pursuant to which he could be extradited because he was a Panamanian citizen). Petitioner also claimed that the United States had deported him “per order of deportation entered on October 19, 2006 ... thereby abandoning any claims that may have arisen for criminal prosecution.”<sup>52</sup> He sought compensation in excess of \$100 million.<sup>53</sup>

A magistrate judge reviewed Petitioner’s case in detail and recommended that all claims be dismissed. The Court did not have jurisdiction to hear claims against Mexico, and Petitioner’s claims allegedly arising under international legal instruments invoked did not provide for private rights of action under U.S. law.<sup>54</sup> Other claims were similarly barred.<sup>55</sup> The District Court

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<sup>48</sup> Estrada v. Rollerson, Magistrate Judge’s Final Report and Recommendation, U.S. District Court for the Northern District of Georgia, Case No. 1:10-CV-04213-JES-SSC (Dec. 27, 2011) at 3 (Annex 19) (“Final R&R – habeas”).

<sup>49</sup> *Id.* at 4-5.

<sup>50</sup> Estrada v. Rollerson, Order, U.S. District Court for the Northern District of Georgia, Case No. 1:10-CV-4213-JEC (Jan. 18, 2012) (Annex 20).

<sup>51</sup> See Estrada v. Gooden et al, Amended Complaint (Apr. 18, 2014), U.S. District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. 1:14-CV-1030-JEC (“Amended Complaint”) at 12–14 (Annex 21).

<sup>52</sup> Amended Complaint, *supra* note 51, ¶ 59. The United States notes, again, that Petitioner was not deported in 2006, but that the District Court has ordered him to be remanded to immigration authorities following completion of his criminal sentence for deportation proceedings as appropriate.

<sup>53</sup> *Id.*

<sup>54</sup> See Estrada v. Gooden et al., Magistrate Judge’s Final Report and Recommendation, U.S. District Court for the Northern District of Georgia, Case No. 1:14-CV-1030-WBH-JCF (Sept. 25, 2014) at 15-18 (Annex 22).

<sup>55</sup> *Id.* 19–27.

reviewed the report, taking into account Petitioner’s objections, and dismissed the case.<sup>56</sup> Petitioner appealed this decision to the Eleventh Circuit, which denied the appeal as frivolous; he then appealed to the U.S. Supreme Court, which declined to hear the appeal.<sup>57</sup>

In 2012, again acting *pro se*, Petitioner filed a claim for damages against his appellate attorney, asserting that she had conspired with the U.S. Attorney’s Office to deprive him of his right to effective counsel.<sup>58</sup> However, the magistrate judge reviewing the case noted that in order to establish legal malpractice, Petitioner was required to demonstrate that he would have prevailed but for the negligence of his appellate attorney. Noting that his appeal to the Eleventh Circuit had failed, the judge indicated that the appropriate course was to appeal the Eleventh Circuit’s affirmation of his conviction and sentence or to seek relief pursuant to 28 U.S.C. § 2255<sup>59</sup>—both of which Petitioner subsequently did. Based on the magistrate judge’s recommendation, the District Court dismissed the claim.<sup>60</sup>

### ***5. Facts Alleged in Petition to the Commission***

On December 1, 2010, while he was still awaiting trial and shortly before he filed his *habeas corpus* petition, Petitioner filed his Petition before the Commission, which the Commission received on December 8, 2010. As noted above, the United States did not receive any communications from the Commission in this matter until August 28, 2017. The Petition reflects the fact that it is now more than seven years old, focusing on Petitioner’s immigration circumstances with little information about the criminal charges against him and of course no information about the subsequent criminal trial and appeals, or the various collateral proceedings Petitioner has initiated since 2010.

The Petition appears to be squarely based on Petitioner’s immigration status and, in particular, the existence of the 2006 order of removal from the immigration court. The “Facts

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<sup>56</sup> See Estrada v. Gooden et al., Order (Jan. 7, 2015), Civil Action No. 1:14-CV-1030-WBH (Annex 23).

<sup>57</sup> Estrada v. Ronald D. Gooden et al., Docket, U.S. District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. 1:14-CV-1030-JEC (items 23, 24) (Annex 24).

<sup>58</sup> Estrada v. Erickson & the Law Office of Mary Erickson, Complaint, U.S. District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. 1:12-CV-02353-JEC-JCF (Jul. 5, 2012) (Annex 25). Petitioner’s claim seems to have been based on the attorney’s efforts to withdraw from representing him based on U.S. Supreme Court jurisprudence permitting such withdrawal if there are no issues of arguable merit for appeal. See Estrada v. Erickson & the Law Office of Mary Erickson, Magistrate Judge’s Final Report and Recommendation, U.S. District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. 1:12-CV-02353-JEC-JCF (Sept. 12, 2013) at 3-4 (Annex 26).

<sup>59</sup> Ann. 26, *supra* note 58, at 6.

<sup>60</sup> Estrada v. Erickson & the Law Office of Mary Erickson, Order, U.S. District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. 1:12-CV-02353-JEC-JCF (Oct. 31, 2013) (Annex 27).

Denounced” by Petitioner are indicated with reference to a copy of a request to reopen his immigration case in order to enforce the 2006 order of removal. The evidence listed under “Available Evidence” includes the order of removal and pleadings from a proceeding in which Petitioner sought to reopen and enforce the order of removal. Similarly, he lists the United States Attorney’s Office for the Northern District of Georgia and the Department of Homeland Security as those responsible for the facts denounced.

It therefore appears that the crux of Petitioner’s claim before the Commission is the same one he relied on in both the criminal and civil proceedings in the United States: *i.e.*, that his criminal conviction and sentence were unlawful because of the immigration court’s order of removal, issued incidentally as a result of Petitioner’s escape to Panama to avoid prosecution in the United States. In reliance on this theory, Petitioner claims that his conviction violated “the right to life, the right to personal liberty, the right to a fair trial, the right to compensation for having been sentenced by a final judgment through a miscarriage of justice, the right of equal protection of the law, the right to judicial protection against violation of fundamental rights, etc.”<sup>61</sup> He appends to his application an assortment of documents that appear to come from his immigration proceedings; a docket sheet for the criminal proceeding; a complaint filed by Petitioner with the Office of the Inspector General of the Department of Justice asserting a “legal right[] not to be in the United States of America, nor in any of it’s [sic] jails, courts, nor any of it’s [sic] jurisdictions;” and other documents relating to his efforts to be released from jail and returned to Panama.

As the foregoing summary of the facts demonstrates, the Petition provides a misleadingly narrow picture of Petitioner’s circumstances, even as they stood in 2010. Petitioner did not “self-deport” pursuant to the order of removal, and he was not deported by the United States. He absconded from the United States in violation of a court order, and he did so for one reason: to avoid the criminal charges pending against him. He now seeks to leverage that same unlawful conduct to argue that his extradition to the United States and subsequent criminal trial and conviction violated his human rights.

## **B. THE PETITION IS INADMISSIBLE AND SHOULD BE DISMISSED**

The matter addressed by the Petition is not admissible and must be dismissed because it fails to meet the Commission’s established criteria in Articles 31 and 34 of the Rules of Procedure (“Rules”). Petitioner has not exhausted the domestic remedies available in the United States, as required by Article 31 of the Rules. The Petition is also plainly inadmissible under Article 34 of the Rules. In particular, the Petition fails under Article 34(a) to state facts that tend

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<sup>61</sup> See generally Petition.

to establish violations<sup>62</sup> of rights set forth in the American Declaration; it is manifestly groundless under Article 34(b); and its consideration would be inappropriate in light of the Commission's fourth instance formula.

### ***1. Petitioner Has Not Pursued or Exhausted Domestic Remedies***

The Commission should declare the Petition inadmissible because Petitioner has not satisfied his duty to demonstrate that he has “invoked and exhausted” domestic remedies under Article 20(c) of the Commission's Statute and Article 31 of the Rules.

The Commission has repeatedly emphasized that a petitioner has the duty to pursue all available domestic remedies. Article 31(1) of the Rules states that “[i]n order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.” As the Commission is aware, the requirement of exhaustion of domestic remedies stems from customary international law, as a means of respecting State sovereignty. It ensures that the State on whose territory a human rights violation allegedly has occurred has the opportunity to redress the allegation by its own means within the framework of its own domestic legal system.<sup>63</sup> It is a sovereign right of a State conducting judicial proceedings for its national system to be given the opportunity to determine the merits of a claim and decide the appropriate remedy before resort to an international body.<sup>64</sup> The Inter-American Court of Human Rights has remarked that the exhaustion requirement is of particular importance “in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction.”<sup>65</sup> The Commission has repeatedly made clear that the petitioner has the duty to pursue *all* available domestic remedies.<sup>66</sup>

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<sup>62</sup> As the American Declaration of the Rights and Duties of Man is a non-binding instrument and does not create legal rights or impose legal duties on member states of the Organization of American States, the United States understands that a “violation” in this context means an allegation that a country has not lived up to its political commitment to uphold the American Declaration. The United States respects its political commitment to uphold the American Declaration. For an elaboration of the United States' longstanding position on the non-binding nature of the American Declaration, *see* Request for an Advisory Opinion Submitted by the Government of Colombia to the Inter-American Court of Human Rights Concerning the Normative Status of the American Declaration of the Rights and Duties of Man, Observations of the United States of America, 1988, *available at* <http://www1.umn.edu/humanrts/iachr/B/10-esp-3.html>.

<sup>63</sup> *See, e.g.*, Interhandel Case (Switzerland v. United States) [1959] I.C.J. 6, 26–27; Panevezys-Saldutiskis Railway Case (Estonia v. Lithuania), 1939 P.C.I.J., Ser. A/B, No. 76.

<sup>64</sup> THOMAS HAESLER, THE EXHAUSTION OF LOCAL REMEDIES IN THE CASE LAW OF INTERNATIONAL COURTS AND TRIBUNALS (1968), at 18–19.

<sup>65</sup> Velásquez Rodríguez Case, Judgment of July 29, 1988, ¶ 61, Inter-Am. Ct. H.R. (Ser. C) No. 4 (1988).

<sup>66</sup> *See, e.g.*, Páez García v. Venezuela, Petition No. 670-01, Report No. 13/13, Mar. 20, 2013, Analysis § B(1) & Conclusions ¶ 35 (finding petition inadmissible for failure to exhaust because petitioner did not avail himself of remedies available to him in the domestic system).

Petitioner chose not to appeal the District Court’s denial of his objection to jurisdiction predicated on the immigration court’s order of removal when he appealed his conviction to the Eleventh Circuit. The fact that Petitioner later apparently came to regret this litigation decision does not entitle him to pursue before the Commission a claim he failed to exhaust domestically.

For these reasons, Petitioner has failed to exhaust his local remedies and the Petition is inadmissible under Article 31.

## ***2. The Petition Fails to Establish Facts that Could Support a Claim of Violation of the American Declaration***

The Petition is also inadmissible under Article 34 because it does not establish facts that even arguably could establish a violation of the American Declaration and it is manifestly groundless. Petitioner does not specify which provision or provisions of the American Declaration he alleges the United States to have violated, though he lists the rights he believes to have been violated as “the right to life, the right to personal liberty, the right to a fair trial, the right to compensation for having been sentenced by a final judgment through a miscarriage of justice, the right to equal protection of the law, the right to judicial protection against violation of fundamental rights, etc.”<sup>67</sup> On Petitioner’s theory, his conviction allegedly violated these rights because he had a “right” not to be in the United States at all based on the immigration court’s order of removal. In other words, Petitioner seeks to transform his own wrongdoing – his evasion of justice for drug trafficking and money laundering – into the source of a “right” not to be held accountable for his criminal activities. Petitioner apparently seeks relief in the form of being released from prison and returned to Panama in lieu of serving his sentence for drug trafficking and money laundering.<sup>68</sup>

However, nothing in the American Declaration recognizes a human right to evade criminal prosecution by fleeing a State in which one has committed a crime. On the contrary, the American Declaration affirms that “[i]t is the duty of every person to obey the law and other legitimate commands of the authorities of his country and those of the country in which he may be.”<sup>69</sup> It is also a general principle of law recognized by international courts and tribunals that an unlawful act cannot serve as the basis for a claim under international law.<sup>70</sup> Petitioner nevertheless seeks to use his own wrongful flight from the United States in violation of U.S. law

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<sup>67</sup> See Petition.

<sup>68</sup> See Petition (“1) Estrada has a clear right to the relief requested. 2) The Government has a clear duty to perform the Act in question; and 3) there no other adequate remedy is available.”). The United States assumes that the “act in question” to which Petitioner refers is his return to Panama, which is requested in what appear to be documents from other proceedings and included with the Petition.

<sup>69</sup> American Declaration. Art. XXXIII.

<sup>70</sup> See, e.g., BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS (2006) 149–57 (discussing principle that *nullus commodum capere de sua injuria propria*).



as the basis for asserting that he has an alleged “right” not to be in the United States and that his subsequent extradition to face criminal charges for drug trafficking violated his human rights. The Commission should not allow itself to be used for such a purpose.

### ***3. The Commission Cannot Review the Merits of the Petition Without Running Afoul of the Fourth Instance Formula***

Furthermore, the Petition plainly constitutes an effort by Petitioner to use the Commission as a “fourth instance” body to review claims already heard and rejected by U.S. courts. The Commission has repeatedly stated that it may not “serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction,” a doctrine the Commission calls the “fourth instance formula.”<sup>71</sup>

The fourth instance formula recognizes the proper role of the Commission as subsidiary to States’ domestic judiciaries,<sup>72</sup> and indeed, nothing in the American Declaration, the Organization of American States Charter, the Commission’s Statute, or the Rules gives the Commission the authority to act as an appellate body. As the Commission has explained, “The Commission...lacks jurisdiction to substitute its judgment for that of the national courts on matters that involve the interpretation and explanation of domestic law or the evaluation of the facts.”<sup>73</sup>

The United States’ domestic criminal process, including the availability of appellate and collateral review of trial and sentencing proceedings, affords those convicted of serious crimes the highest level of internationally recognized protection. Petitioner has availed himself of this legal framework to challenge his conviction and his sentence in multiple proceedings over a number of years, including on the basis of his claim of a purported “right” not to be in the United States to face criminal charges. He asserted this claim not only in the primary criminal proceedings—in which he pursued an appeal to the Supreme Court—but also in the variety of collateral claims and challenges he has pursued. In each of these proceedings, the courts carefully reviewed the evidence and rejected Petitioner’s jurisdictional argument as either meritless or procedurally barred due to his own litigation choices.

If the Commission were to accept a petition based on the same argument that Petitioner has litigated and lost in U.S. courts, it would be acting precisely as the type of fourth instance review mechanism it has consistently refused to embody. For this reason as well, it should dismiss the Petition.

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<sup>71</sup> See *Marzioni v. Argentina*, Case No. 11.673, Report No. 39/96, Inadmissibility, Oct. 15, 1996, ¶ 51.

<sup>72</sup> See *Castro Tortrino v. Argentina*, Case No. 11.597, Report 7/98, Admissibility, Mar. 2, 1998, ¶ 17.

<sup>73</sup> *Macedo García de Uribe v. Mexico*, Petition No. 859-03, Report No. 24/12, Inadmissibility, Mar. 20, 2012, ¶ 40.

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For all of the foregoing reasons, the Petition is inadmissible and should be dismissed.

### **C. THE PETITION IS MERITLESS**

Even if the Commission could overcome these many barriers and proceeded to examine Petitioner’s allegations—which it plainly lacks the competence to do—it should find the allegations without merit and deny Petitioner’s request for relief.

Petitioner provides no legal argument for the premise on which his Petition is based. It would appear that his theory is that U.S. immigration law, in the form of a court order that he should be removed from the United States, renders unlawful the operation of the U.S.–Mexico Extradition Treaty (“Treaty”).<sup>74</sup> On this theory, he asserts a right—which he argues rises to the level of a human right—not to be in the United States or in its prison system and to be returned to Panama.

However, as explained above, there is no human right to avoid criminal prosecution based on due process of law, and an immigration court’s order that an individual is subject to removal from the United States cannot serve to nullify the operation of the U.S. criminal justice system. Indeed, the District Court that convicted and sentenced Petitioner took due notice of the order of removal by ordering that Petitioner be turned over to immigration authorities for appropriate deportation proceedings after he completed his sentence.

Nor can U.S. immigration law displace international law in the form of the Treaty. Equally meritless is Petitioner’s assertion that U.S. immigration regulations required permission from the U.S. Attorney General in order for him to enter the United States by means of extradition.<sup>75</sup> This assertion relies on flawed reasoning concerning the relationship between immigration regulations and criminal laws; the former cannot, and do not, displace the latter.

It also ignores the fact that the Attorney General supervises the Department of Justice, and it was the Department of Justice that sought and accepted Petitioner’s extradition from Mexico and prosecuted him for his crimes. When individuals are extradited to the United States to face criminal charges, they are typically not admitted into the United States after inspection by an immigration officer, as Petitioner’s claim seems to imply; rather, they are paroled into the

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<sup>74</sup> See Extradition Treaty Between the United States of America and Mexico (May 4, 1978), Treaties and other International Acts Series 9656 (“Treaty”) (Annex 28).

<sup>75</sup> See Petition, Estrada v. United States Attorney General and Immigration Court, “Motion Requesting to Reopen Case, and that Final Order of Removal will be Re-Enforced Pursuant to 1241.1(e),” U.S. Department of Justice Executive Office for Immigration Review, Immigration Court, Atlanta, Georgia, Case No. A35-196-017 (Oct. 20, 2010) at 6–7.

United States for purposes of prosecution pursuant to INA section 212(d)(5).<sup>76</sup> As such, it can hardly be argued that the Attorney General did not consent to Petitioner's return to the United States to stand trial for his crimes and serve the sentence he received.

#### **D. CONCLUSION**

For the foregoing reasons, the Petition fails to pass the threshold for consideration under Articles 31 and 34 of the Rules, as well as under the Commission's fourth instance doctrine. Should the Commission nevertheless find the Petition admissible and proceed to examine its merits, it should find the Petition meritless in light of what is explained above. While the United States reserves the right to provide further views on the merits in such an eventuality, it reiterates that none of the conduct alleged in the Petition implicates—much less violates—any of the rights set forth in the American Declaration. The criminal justice system in the United States embodies the protections set forth in the American Declaration, and Petitioner manifestly has benefited from these robust protections throughout his criminal and civil proceedings in the United States.

Finally, as one of the strongest supporters of the Commission and by far its largest financial contributor, the United States continues to have concerns about the efficient management of the Commission's resources. It is unclear why this Petition was forwarded to the United States despite its obvious inadmissibility. In any event, further consideration of the present matter would not be a prudent use of the Commission's limited resources.

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<sup>76</sup> Matter of Badalamenti, 19 I&N Dec. 623, 626 (BIA 1988) (confirming that Attorney General has discretion to parole into the United States temporarily any alien but such parole shall not be regarded as admission of alien and when purposes of such parole have been served, alien must return or be returned to custody from which he was paroled); *see also* Matter of Accardi, 14 I&N Dec. 367 (BIA 1973) (rejecting the contention that only an applicant for admission can be paroled). Thus, the Petitioner's argument that he did not have permission to "re-enter the gates of the United States" fails because parole does not constitute "entry."

Drafted: Marguerite Walter, L/HRR, x74078

Approved: Kevin K. Sullivan, Deputy Permanent Representative, USOAS

Cleared:

USOAS:	DCento	(ok)
L/HRR:	JBischoff	(ok)
L/WHA:	JKovar	(ok)
L/LEI:	KJackson	(ok)
DOJ:	RHigginbotham	(ok)
DHS/CRCL:	EFeroz	(ok)
DHS/OGC:	LGold	(ok)