INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 30/2016
PRECAUTIONARY MEASURE No. 297-16

Matter of E.G.S. and A.E.S.G.[1] regarding the United States of America[2]
May 11, 2016

I. INTRODUCTION

1. On March 28, 2016, the Inter-American Commission on Human Rights (hereinafter, "IACHR," "the Commission," or "the Inter-American Commission") received a request for precautionary measures from Mr. Mark Fleming and Mr. Manoj Govindaiah (hereinafter, "the applicants"), in order to safeguard the right to life and personal integrity of Ms. E.G.S. and her daughter A.E.S.G. (hereinafter, "the proposed beneficiaries"), both citizens of El Salvador. According to the request, E.G.S. and A.E.S.G., who fled their country of origin and sought asylum in the United States of America (hereinafter, "the U.S.," "the United States" or "the State"), face an imminent threat of deportation which places their lives and personal integrity at risk. In addition, the applicants filed a petition P-871-16, alleging a series of due process violations in the asylum procedure.

2. After analyzing the legal arguments and facts presented by the applicants, the Commission considers that the information submitted suggests *prima facie* that Ms. E.G.S. and her daughter A.E.S.G. are facing a situation of seriousness and urgency, since their lives and personal integrity would be at risk if they were deported. Consequently, in light of Article 25 of the Rules of the IACHR, the Commission requests the United States to refrain from deporting Ms. E.G.S. and Ms. A.E.S.G., until the IACHR has ruled on the petition pending before the IACHR (P-871-16), in which the applicants allege violations of the American Declaration on the Rights and Duties of Man.

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

3. According to the request for precautionary measures, E.G.S. and her daughter A.E.S.G. (who is 12 years old), are Salvadorian women who lived in the department of Sonsonate, El Salvador, fled their country in March 2016 and entered U.S. territory in the same month, seeking asylum. The relevant authorities processed their applications for asylum through "expedited removal proceedings" under which an asylum officer screens applications by assessing their likelihood of success before an immigration judge. In the meantime, the proposed beneficiaries were kept in immigration detention together at the Karnes County Residential Center, in Karnes City, Texas. The request for precautionary measures is based on the following legal arguments and alleged facts:

A. As background information, the applicants indicate that the Northern Triangle Countries (composed by El Salvador, Honduras and Guatemala) have been subject to some of the most extreme violence in the world, registering a death toll of 17,500, which is higher than four West African countries struggling with the Boko Haram insurgency and even higher than the death tolls in Somalia, Libya and South Sudan. In particular, the violence seems to be disproportionately

[1] In this matter, the applicants requested that the proposed beneficiaries' identities be kept confidential in any document accessible to the public. In this regard, their identity is fully specified in the request and other documents transferred to the State.
[2] According to the Rules of Procedure of the IACHR, President James Cavallaro, a U.S. citizen, did not participate in the debate and decision of this matter.

serious against women and children, who face sexual aggression and forced recruitment. This situation of violence is due mainly to the presence of powerful and highly organized armed criminal gangs (*maras*) who exercise an overall control over entire neighborhoods in El Salvador, and even exert a considerable amount of influence on the judiciary and law enforcement institutions. These gangs (mainly, the Mara Salvatrucha or MS-13 and the Barrio 18) often enter into territorial disputes among themselves, which increases the degree of already serious violence. As of late, these criminal groups have expanded their presence in neighboring countries, such as Honduras and Guatemala.

B. In January 2016, members of the Mara 18 allegedly killed E.G.S.' brother-in-law, Mr. S.G., after he was deported back to El Salvador from the United States in 2015. The night he was killed, the proposed beneficiaries, together with other relatives and neighbors, held a wake at Mr. S.G.'s mother's house, in the patio and on the street. The wake was not over yet when, around 1:00 am, four gang members, who were on the edge of the crowd, grabbed E.G.S. and took her away to an area by a canal. No one saw what happened or heard anything, since there was a lot of noise. The proposed beneficiary knew that they were gang members, because she saw them before near the place where she lived, and recognized them by their tattoos. Then, "[t]he men beat [her] and threw [her] around between themselves asking who was going to be the first. After they each raped [her], they told [her she] already knew who they were [...]. They told [her] not to tell anyone what they had done. The men said that [she] had already seen what they could do – [meaning that they had killed her brother-in-law, even referring to his first name] –, and would kill [her] husband and rape [her] daughter if [she] told anyone what they did to [her] [...]. They said that [her] daughter was pretty and that they wanted the same from her." The proposed beneficiary did not go to the police, since she feared retaliation from the gang members; she did not even go to the hospital, or tell her husband and daughter what happened to her.

C. On January 28, 2016, classes started at school. Apparently, the same four *mareros* (gang members) who raped E.G.S. began to harass her daughter A.E.S.G – they would stand outside of the school and send messages through other young boys during breaks. This happened every day until the proposed beneficiaries left El Salvador.

D. On January 31, 2016, the four *mareros* robbed E.G.S. while she was on her way to her house, after having collected all the money she had made from her small business. They told her to give them the money, and that she already knew what would happen if she did not comply, meaning that they would rape her again.

E. In February 2016, the four gang members robbed E.G.S. once again of all of her monthly income. They were waiting for her in the open area near her house.

F. Around March 2, 2016, the four *mareros* forcibly entered E.G.S.' house, while her husband was working on the field and her daughter was at school, and raped her again: "[...] suddenly the same four men showed up. They came in and shut the door. They told [her that she] knew what was coming and not to make noise or do anything. Each one of them raped [her]. They didn't say anything else but laughed."

G. On the next day, E.G.S. started to collect money to go to the United States together with her daughter, not telling anyone about the rape, but rather expressing that she needed to find a safer place for her family and better job conditions. As for the Salvadorian State authorities, the

proposed beneficiary believed that it was a useless, ineffective and even dangerous remedy, according to past experiences. Indeed, she referred to a woman who reported a theft to the police last year; a gang member was detained, but eventually released only a few days later. Then, other *mareros* went to go and kill her. Also, concerning the murdering of Mr. S.G., the police never made any attempt to investigate what happened, although his mother filed a complaint on that regard.

4. On March 21, 2016, E.G.S. and her daughter A.E.S.G. entered U.S. territory. Concerning the expedited removal proceedings, the applicants indicate that:

A. Once on U.S. soil, the Border Patrol authorities immediately apprehended them. An officer asked E.G.S. why she came, and she responded that she had been raped. However, "[t]he officer told her that she needed to solve that problem in El Salvador and it didn't affect anything that he needed to do. Instead of offering protection, the United States placed E.G.S. and her daughter in 'expedited removal' proceedings [...]", with a referral for "credible fears interviews."

B. On March 30, 2016, the proposed beneficiaries were both interviewed, which eventually led to a negative decision on April 2, 2016. In that regard, the applicants state that although E.G.S. and A.E.S.G. were eventually able to consult with attorneys, none of them had legal representation prior or during their credible fears interviews. Also, E.G.S. was prevented from disclosing the rape incidents during the interview (which was too short and failed to ask pertinent questions), both because her trauma was exacerbated by the Border Patrol agent who apprehended her, especially after being detained, and because her daughter A.E.S.G. would not leave the room during the interview. On April 11, 2016 the Immigration Judge denied the appeal, thus upholding the negative fear determination made by the Immigration Officer, and returning the case to the DHS for removal of the aliens. According to the request, neither the Immigration Officer nor the Immigration Judge provided full reasoning, concerning the denial of asylum. On the contrary, they filled out a form which stated that "[...] the Applicant [...] has not established a possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion". On April 19, 2016, a request for reconsideration or re-interview was filed before the Houston Asylum Office, which was denied on April 21, 2016, with no explanation. On April 22, 2016, a complaint was filed before the Office of Civil Rights and Civil Liberties (CRCL), currently pending.

C. In relation to the removal and asylum proceedings, the applicants denounce that: i) the proposed beneficiaries have exhausted the very limited domestic remedies under U.S. law; ii) the authorities failed to consider E.G.S.' and A.E.S.G.'s application under relevant national case-law which addresses similar situations; especially regarding the gender issue (membership in a particular social group); iii) they were denied judicial review or access to the federal courts because of limitations contained within the applicable regulation; among other complaints. Lastly, the applicants indicate that the proposed beneficiaries now have a final order of removal – which was suspended while the request for asylum was being examined –, meaning that E.G.S. and A.E.S.G. will be deported as soon as logistical matters are settled.

5. On May 5, 2016, the IACHR requested information from the State with a five-day deadline. To date, the State has not provided any answer.

6. On May 9, 2016, the applicants submitted additional information, stating that the U.S. Immigration and Customs Enforcement have scheduled Ms. E.G.S. and her daughter A.E.S.G. for deportation to El Salvador on May 12, 2016.

III. ANALYSIS ON THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABLE HARM

7. 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.

8. 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.

9. The Inter-American Commission observes that the State has not replied to the request for information made on May 5, 2016, in which the State was asked to provide its observations on the request for precautionary measures and to indicate whether any protective measures could be implemented in response to the allegations. In this context, although the lack of the response is not enough to grant precautionary measures, it is a factor to consider when making a decision. In this sense, the lack of information from the State makes it impossible for the Commission to know about the possible measures being implemented and the State's view on the alleged facts, in general.

10. The present request for precautionary measures aims to protect the right to life and personal integrity of Ms. E.G.S. and her daughter A.E.S.G., both citizens of El Salvador who fled their country of origin and entered U.S. territory in March 2016. The request for precautionary measures is related to

individual petition P-871-16 in which the applicants allege violations of Articles I (right to life and personal security), VII (right to protection and care of children), XVIII (right to a fair trial), XXIV (right of petition), XXV (right of protection from arbitrary arrest), XXVI (right to due process of law) and XXVII (right to seek asylum) of the American Declaration.

11. In the present matter, the IACHR considers that the requirement of seriousness is met, in both its precautionary and protective aspects, since the rights implicated relate primarily to the right to life under Article I of the American Declaration in connection with the alleged risks involved in the deportation to El Salvador. In this regard, it has been alleged that E.G.S.' family was targeted by criminal gangs during the past months, and that the alleged persecution included repeated extortions, death threats and acts of aggression, including sexual attacks. In this sense, it must be stressed that in January 2016, E.G.S. has reportedly been raped by four gang members, who again attacked her in March 2016, forcibly entering her own residence. In addition, the same gang members constantly harassed her daughter, A.E.S.G., threatening to rape her as well. In this context of violence, E.G.S. and her daughter had to flee from their country to seek asylum.

12. As for the asylum procedure in the United States, the applicants denounce a series of alleged flaws in the response to E.G.S.' and A.E.S.G.'s application for asylum. In particular: i) the proposed beneficiaries have exhausted the very limited domestic remedies under U.S. law; ii) the authorities failed to consider E.G.S.' and A.E.S.G.'s application under relevant national case-law which addresses similar situations; especially, regarding the gender issue (membership in a particular social group); iii) they were denied judicial review or access to the federal courts because of limitations contained within the applicable regulation; among other complaints.

13. Within the framework of this requirement, the IACHR notes that the alleged elements are consistent with general information collected through its other mechanisms, as well as statements issued by other international human rights bodies. In this regard, the United Nations High Commissioner on Refugees (UNHCR) stated that "[i]n the territories where the gangs operate, sexual and gender-based violence against women and girls is reportedly widespread, as is the recruitment of girls to carry out tasks for the gangs. Women and girls perceived as being linked with a particular gang are reportedly also a target for rival gangs and they and other women and girls are reportedly abused, raped and killed as part of gang initiation rites, or if they try to leave the gang to which they belong or with which they are affiliated, or if they are seen to resist its authority in other ways, including by rejecting the sexual advances of a gang."[3] Moreover, concerning the asylum procedure, the IACHR declared that "[...] in order to comply with Article XXVII [of the American Declaration on Rights and Duties of Man], domestic procedures by which a refugee seeks asylum must be adequate and effective. At a minimum, the Commission has held that Article XXVII ensures an asylum seeker a hearing that complies with basic due process standards to determine refugee status. The Commission has previously expressed that the 'act of hearing the person," who claims to be at risk of persecution, is "the most fundamental element of the right to seek asylum [...]. The Inter-American Commission reaffirms that, under international law, States must have effective substantive and procedural safeguards in place to identify and protect the rights of individuals eligible for asylum. To this end, the Commission has outlined the contours of the *principle of non-refoulement* to require that States do not return persons at risk of persecution to the country of persecution, as well as to ensure that State

[3] See: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador, March 15, 2016, p. 37-38, available at: http://www.refworld.org/docid/56e706e94.html

policies and practices provide sufficient mechanisms to identify such claims and make the relevant administrative and judicial determinations with the corresponding due process guarantees."[4]

14. Regarding the requirement of urgency, the IACHR sustains that it is satisfied, given that Ms. E.G.S. and her daughter A.E.S.G. currently face imminent deportation. According to the applicants, Ms. E.G.S.' and A.E.S.G.'s asylum applications were denied on April 2, 2016. Said denial was upheld by the immigration judge on April 11, 2016, without any possibility of challenging the decision. The applicants also mentioned that the U.S. Immigration and Customs Enforcement have scheduled Ms. E.G.S. and her daughter A.E.S.G. for deportation to El Salvador on May 12, 2016. Additionally, it must be stressed that, to date, the State has not replied to the request for information sent by the IACHR, despite the high urgency of the matter. Furthermore, apart from the risk faced by Ms. E.G.S. and her daughter A.E.S.G. in the event that they are returned to El Salvador, the execution of the deportation order will eventually prevent the Inter-American Commission from properly assessing the merits of the petition.

15. 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 highest irreparable situation. Regarding the precautionary nature, the Commission considers that if Ms. E.G.S. and her daughter A.E.S.G. are deported before the Commission has an opportunity to fully examine this matter, any eventual decision would be rendered moot in respect of the efficacy of potential remedies, resulting in irreparable harm.

V. BENEFICIARIES

16. The request has been presented in favor of Ms. E.G.S. and her daughter A.E.S.G., who are fully identified within the documents submitted to the IACHR.

VI. DECISION

17. In view of the above-mentioned information, the Commission considers that this matter *prima facie* meets the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests that the United States of America refrain from deporting Ms. E.G.S. and her daughter A.E.S.G., until the IACHR has ruled on the petition pending before the IACHR (P-871-16), in which the applicants allege violations of the American Declaration on the Rights and Duties of Man.

18. The Commission also requests that the Government provide information within a period of 10 days from the date that the present resolution is issued on the adoption of precautionary measures and provide updated information periodically.

19. The Commission wishes to point out that in accordance with Article 25(8) of its Regulations, 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.

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

[4] See: IACHR. Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America, p. 46-48, available at: http://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf

21. Approved on May 11, 2016, by: Francisco Eguiguren Praeli, First Vice President; Margarette May Macauley, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda Arosemena de Troitiño, Enrique Gil Botero, members of the IACHR.

Emilio Álvarez Icaza Longoria
Executive Secretary