WHY INTERNATIONAL LAW SHOULD MATTER TO BLACK LIVES MATTER:
A DRAFT PETITION TO THE INTER-AMERICAN COMMISSION ON HUMAN
RIGHTS
ON BEHALF OF THE FAMILY OF ERIC GARNER*

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The United States consistently fails to provide effective remedies to victims of unlawful
force perpetrated by police departments around the country. Efforts to address this impunity and
underlying systemic racism have met with limited success. Recently, activists and scholars have
begun calling for international review of these practices. This article explains why petitioning the
Inter-American Commission on Human Rights on behalf of black victims of police brutality is a
worthwhile and necessary effort. The Inter-American Commission is the only international arbiter
that has jurisdiction over complaints by individuals against the United States. As such, the
Commission’s complaint mechanism is tailor-made for bringing justice to victims and their families.
It will force the United States to publicly respond to the Commission. Victims and families will have
access to vital facts and evidence that have thus far been lacking. Moreover, adjudication by the
Commission will allow the first in-depth examination of systemic racism in the U.S. justice system
by a neutral authority. This article offers a draft petition to the Commission on behalf of the family
of Eric Garner, whose death at the hands of police officers is but one of many instances of the
systemic racism and impunity that exist in the United States. This draft petition will demonstrate
why U.S. actions constitute substantive international law violations. It will also provide a
procedural template for advocates, victims, and practitioners to follow.

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* This article is dedicated to the memory of Eric Garner, who should be alive today, and to his family, who fight tirelessly
for justice. I would like to thank Professor William J. Aceves for his advice, passion, and mentorship. Thank you also to
Professor Ruth M. Hargrove, who believed in me, always. I would also like to thank the California Western Jessup team and
coaches, who continuously inspire my passion for human rights law. And thank you to the hardworking editors of the
University of Pennsylvania Journal of Law and Social Change. Finally, thank you to Booboo, Memaw, Ben, and the rest of
my amazing family, without whom the world would be a darker place.

https://scholarship.law.upenn.edu/jlasc/vol21/iss1/3
INTRODUCTION

Although the United States has long lauded itself as a defender of human rights, its record of protecting the human rights of its own citizens belies such claims of nobility. Even more glaringly, persistent civil rights violations in its own territory confirm U.S. ambivalence toward affirmatively protecting human rights. Nowhere has this been more obvious in recent years than in the widespread incidents of unjustified police killings of black Americans. In 2014, the killing of Michael Brown, an unarmed black teenager, by Darren Wilson, a white Missouri police officer, ignited tensions, protests, and activism across the United States. Other deaths brought even more attention to an endemic problem. This tragic cycle—police killing, public protest, government

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1 For example, as of this writing, the United States has not ratified the Convention on the Rights of the Child. To put this in perspective, the United States is the only country besides Somalia that has not ratified this treaty. See Bureau of Int’l Org. Affairs, United States: UN Human Rights Council Candidate 2017-2019, U.S. DEP’T OF STATE (Feb. 29, 2016), http://www.state.gov/p/io_/humanrights/ [https://perma.cc/J4L7-HDMC] (documenting the United States’ failure to ratify the Convention on the Rights of the Child).


3 See generally Otis S. Johnson, Two Worlds: A Historical Perspective on the Dichotomous Relations Between Police and Black and White Communities, 42 HUM. RTS. 6 (2016).


promises of justice, and eventual failure to prosecute or even indict—continues to play out like a horror movie reel stuck on the same nightmarish frame. Minority communities, as well as scholars and activists, struggle to identify effective remedies. This article addresses an under-used remedy that would allow American human rights defenders to pivot away from hind-view dissection of repeated tragedies to actual relief and justice.

Individual victims of human rights abuses have limited avenues of adjudication in international law; they are usually only available pursuant to specific human rights treaties that create tribunals optimized for individual complaints. Unfortunately for U.S. citizens, the United States has failed to submit to the jurisdiction of most of these arbiters. Consequently, while the United States has ratified several human rights treaties that could apply to the extra-judicial killings of minorities by police, there is no practical mechanism for individuals to complain of these international law violations. The United States is, however, a member in good standing of the Organization of American States (“OAS”) and, as such, is open to examination through the Inter-American Commission on Human Rights (“IACHR”).

Submitting individual complaints regarding breaches of international law, specifically of the American Declaration on the Rights and Duties of Man (“American Declaration”), to the IACHR can accomplish at least three goals often identified by the Black Lives Matter movement and its supporters. First, victims of racially motivated police brutality and their grieving families have thus far lacked legal and moral satisfaction from the U.S. justice system, which is essential to individual and community healing. Forcing the United States to defend such tragedies, and ultimately to make adequate reparations for them, will go far toward alleviating this painful zeitgeist. Second, consistent adjudication of U.S. human rights violations on the international stage will force the United States to publicly respond to these incidents. Finally, this process will allow for the first in-depth examination by an international arbiter of systemic racism in the United States.

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6 See, e.g., Steven Salky, Lawful Use of Deadly Force by the Police: What’s Wrong in Ferguson and Elsewhere, [2015 May] CHAMPION 20 (discussing the need for reforming state statutes on police use of deadly force, many of which allow the use of deadly force to halt a non-threatening felon).


8 For instance, although the United States has ratified the International Covenant on Economic, Social and Cultural Rights, it has not ratified its Optional Protocol, which would allow individual complaints. The United States has also not declared submission to the complaint mechanism of the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment nor to the complaint mechanism for the Convention on the Elimination of All Forms of Racial Discrimination. See Status of Ratification Interactive Dashboard, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, http://indicators.ohchr.org [https://perma.cc/M9XU-2M7Y] (last visited Jan. 13, 2017) (documenting U.S. failure to ratify all Optional Protocols to human rights treaties that provide a forum for redress against the state).


This article provides the reasons why such actions are crucial and warranted, in addition to primarily demonstrating how to begin achieving the foregoing results through a draft petition to the IACHR. This petition alleges violations of the American Declaration by the United States, on behalf of the family of Eric Garner.12

International law requires all states to provide effective remedies for legal breaches.13 Victims are guaranteed this right to a remedy in both the international arena and in their home state.14 Generally, an effective remedy consists of a procedural and substantive component.15 In the first instance, access to an appropriate tribunal must be granted.16 In the second instance, redress that adequately speaks to and repairs the illegality at issue must be granted.17 Various avenues to fulfilling this duty include restitution, compensation, satisfaction, and guarantees of non-repetition.18 Compensation is considered the last resort of remedies because it is usually the most ineffective at providing real justice.19

The United States has thus far failed to provide such remedies to black victims of police brutality. As a representative illustration, satisfaction, which may include “full and public disclosure of the truth,” “judicial and administrative sanctions against [liable] persons,” and “[restoration] of the dignity, the reputation and the rights of the victim and of persons closely connected with the victim,” will be discussed.20 For example, in the Eric Garner case, advocates and grieving family members have been denied access to the grand jury transcripts, evidence presented at the grand jury, and the grand jury instructions, which are highly relevant to questions about the government’s diligence and bias.21 Further, criminal and civil sanctions directed solely at the individual police officers that killed their black victims are atypical and rarely occur.22 Finally, a survey of recent Black Lives Matter protests and media coverage of grieving communities ably demonstrates the subjective and objective lack of restored dignity, reputation, and rights.23

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12 While details may vary greatly across the cases of the many minority individuals slain by police, Eric Garner’s tragic killing was chosen as a template for purposes of this article, because his death is representative of both police impunity and justice denied.


15 DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 8 (3d. ed. 2015).

16 Id.

17 Id.


19 See Factory at Chorzów (Ger. v. Pol.), Judgment, Claim for Indemnity, Merits, 1928 P.C.I.J. (ser. A) No. 17 (Sept. 13) (discussing the inability of money damages to provide restitution in kind for Poland’s unlawful expropriation of German companies under the Geneva Convention concerning Upper Silesia).

20 Basic Principles, supra note 18, art. 22(b), (d), (f).


22 See Kate Levine, Police Suspects, 116 COLUM. L. REV. 1197 (2016) (discussing the procedural mechanism that protects police officers accused of wrongdoing).

23 See Chuck Henson, Reflections on Ferguson: What’s Wrong with Black People?, 80 MO. L. REV. 1013 (2015); see also The Black Lives Matter Network Advocates for Dignity, Justice, and Respect, BLACK LIVES MATTER,
Moreover, not only has the United States failed at providing effective remedies, it is also wholly unable to provide such remedies due to systemic racism. U.S. judicial history itself is brimming with examples of institutionally-approved racism. In modern times, this systemic discrimination is illustrated in various ways. Firstly, a correlative lack of black leadership in the U.S. government’s halls of power, essential for empathy and democratic representation, guarantees that black needs and concerns are not adequately addressed. Next, a lack of physical presence and grasp of black issues in the criminal justice system galvanizes racial disparity in prosecution of criminals and in criminal sentencing. As of September 2017, federal prisons were 37.9% populated by black inmates and 58.4% by white inmates. This is despite the U.S. population consisting of 13.3% blacks and 76.9% whites. More egregiously, black male federal defendants receive longer sentences than whites arrested for the same offenses and with the same prior records. Further, policing programs such as “stop and frisk” have legitimized racial profiling, a justification long declared unconstitutional.

With such pervasive, government-approved racism replete throughout American history, it is perhaps unsurprising that police who kill black men without justification are seldom held accountable. Walter Scott, Samuel DuBose, Freddie Gray, and Tamir Rice are just a few of the black males whose deaths at the hands of police officers have been left without condemnation by the U.S. criminal justice system. The United States has therefore proven itself utterly incapable of providing the foregoing effective remedies to these victims and their families, and must find an alternate conduit. Hence, domestic advocates looking for systemic change and individual redress should turn to the OAS and IACHR.

As the only international tribunal capable of taking the U.S. to task for its legal breaches, the IACHR is able and obligated to provide justice for victims of racially motivated police brutality.


25 See, e.g., Dred Scott v. Sandford, 60 U.S. 393 (1857); Plessy v. Ferguson, 163 U.S. 537 (1896).
31 Floyd v. City of New York, 959 F.Supp.2d (2013); see also Terry v. Ohio, 392 U.S. 1 (1968) (discussing the reasonable suspicion requirement of the Fourth Amendment’s prohibition on unreasonable search and seizures).
A primary purpose of international law is to provide effectuation of human rights for all people.\(^3\) Logically flowing from this principle, then, is the idea that international law must step in when a domestic legal system fails to protect and honor those rights.\(^4\) Indeed, most frameworks of international liability are only triggered when all avenues of internal state culpability have been exhausted.\(^5\)

Further, the IACHR’s adjudication of police killings will push the United States to at least explain and answer for the systemic racism underpinning these tragedies while simultaneously providing justice for its victims. The following are just some examples wherein domestic litigants have forced the U.S. government to defend and reply to their IACHR complaints:

- **Kevin Cooper v. United States:** The Commission found violations of Cooper’s rights to due process, fair trial, and equality before the law during the murder investigation and trial that landed him on death row. The United States submitted detailed evidence regarding all complaints.\(^6\)
- **Jessica Lenahan (Gonzales), et al. v. United States:** Jessica Lenahan’s children were abducted and murdered by their father after the local police department refused to respond to Lenahan’s repeated reports of a restraining order violation. The Commission found violations of the petitioners’ rights to life, judicial protection, and equal protection before the law in a decision hailed by domestic violence advocates.\(^7\) The United States submitted detailed arguments and evidence in attempts to refute the complaints, even after the U.S. Supreme Court did not find in favor of the government.\(^8\)
- **Wayne Smith, Hugo Armendariz, et al. v. United States:** The petitioners were deported and separated from their families even though they were lawful permanent residents of the United States. The Commission found violations of the petitioners’ rights to due process, judicial protection, and equal protection before the law. The United States submitted detailed arguments and evidence.\(^9\)

The Inter-American Commission, like most international tribunals, does not have an enforcement mechanism.\(^10\) As a practical result of this, its decisions do not always result in

\(^3\) See U.N. Charter, preamble.

\(^4\) See *Barcelona Traction, Light and Power Company, Ltd. (Belg. v. Spain)*, Judgment, 1964 I.C.J. 4, 114 (July 24) (dissenting opinion by Morelli, J.) (discussing international law’s ability to step in only when a state has failed to effectively adjudicate legal breaches).

\(^5\) This rule of exhaustion of domestic remedies will be discussed in greater detail in the appended draft petition.


immediate, if any, action in the United States. For instance, while some petitioner complaints regarding their capital convictions have resulted in sentence commutations, other petitioners, such as Kevin Cooper, remain on death row. Even if the adjudication of black killings by U.S. police does not result in immediate change, the suggested process remains a worthwhile and imperative one.

Notably, international adjudication has a consistently recognized normative force. International courts themselves view this force, “to determine issues on public policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence” as an important function. Specifically, the Inter-American Commission often looks ahead to the power its decisions have to publicly air grievances and prevent future human rights violations. While immediate U.S. respect of IACHR decisions is the ultimate goal of any litigation, such normative power can operate as consolation in the gap.

Moreover, IACHR intercession will ensure that a voice is given to the heartrending human dimension of these offenses. Just the amplification of each victim’s story through a global platform will make great strides in allowing victims and families to heal. In fact, many individuals affected by racially motivated police killings declare the ability to air potential injustice, such as by permitting cameras in courtrooms, is of utmost priority. Such motivation as a pathway to justice is a likely explanation for why international law holds declarations of wrongdoing, statements of apology, and assurances of non-repetition so dear. Following the arguments in this article, these ideals of international law can and will begin to salve the injustices of the U.S. legal system.

Scholars and activists have already embarked on fitting international law into U.S. domestic policy:

The human rights framework, which places human dignity at the center of policymaking and governance, provides a pathway towards realizing the vision of a just, equal, and open democratic society. It is in this spirit that the family of

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46 See DANIEL W. VAN NESS & KAREN H. STRONG, RESTORING JUSTICE: AN INTRODUCTION TO RESTORATIVE JUSTICE (5th ed. 2014) (discussing the theory of restorative justice, which allows victim healing through involvement in the criminal justice process).
Mike Brown, Jr. and young Black leaders that emerged through the demonstrations in Ferguson chose to air their grievances before the United Nations Committee Against Torture in the fall of 2014.49 What has thus far been lacking, though, is concrete adjudication in the international arena. While the United States has consistently failed to provide appropriate and effective redress to black victims of excessive and unwarranted police force, the OAS and IACHR are able to remedy this. What follows is an example of what this process may look like. This draft petition will not only demonstrate why the foregoing U.S. actions constitute substantive international law violations, but will also provide a procedural template for advocates, victims, and practitioners to follow.

DRAFT PETITION TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON BEHALF OF THE FAMILY OF ERIC GARNER

I. INTRODUCTION

This petition is brought against the United States by Eric Garner’s mother, widow, and children on behalf of their deceased son, husband, and father, Eric Garner, for violating the rights guaranteed to him under the American Declaration on the Rights and Duties of Man (“American Declaration”).

In 2014, a U.S. police officer killed Eric Garner—without provocation or justification of any kind—partly through the use of a prohibited chokehold.50 Mr. Garner, a black U.S. citizen, was stopped by police and accused of selling loose cigarettes.51 Some of Eric Garner’s final words were denials of this charge, but even so, he was sentenced to a painful death.52 “I can’t breathe, I can’t breathe, I can’t breathe, I can’t breathe, I can’t breathe, I can’t breathe, I can’t breathe, I can’t breathe.”53 These were Eric Garner’s last words as Officer Daniel Pantaleo choked him and shoved his face into the concrete sidewalk.54 These were

52 Eric Garner’s Final Words, HISTORY IS A WEAPON (last visited Oct. 29, 2017), http://www.hiaw.org/gamer/ (transcribing an audio file of Garner’s last words, which included, “everyone standing here will tell you I didn’t do nothing. I did not sell nothing.”).
53 Id.
his last words as four N.Y.P.D. officers piled on him and he lay on the pavement dying.\textsuperscript{55} Only after Eric Garner lost consciousness did an officer turn him on his side to give him access to air.\textsuperscript{56} He was pronounced dead one hour later.\textsuperscript{57}

The New York City medical examiner declared Mr. Garner’s death the result of homicide.\textsuperscript{58} Former president Barack Obama condemned the death, citing the larger American problem of systemic racism in police forces.\textsuperscript{59} Even former president George W. Bush found Eric Garner’s senseless killing “hard to understand.”\textsuperscript{60} None of the involved officers and emergency medical technicians were permanently suspended or fired\textsuperscript{61}—with the exception of the black supervising officer present at the scene—and the district attorney declined to prosecute Pantaleo without the go-ahead from the grand jury.\textsuperscript{62} Even though there was a video detailing the sad escalation of violence committed upon Eric Garner, of him begging for air, and of an illegal chokehold, the grand jury failed to indict.\textsuperscript{63}

Eric Garner’s family suffered greatly as a result of this extra-judicial killing. Above all, they seek to eliminate the racially discriminatory abuse of black men by the U.S. police and police brutality in general.\textsuperscript{64} Eric Garner’s family repeatedly turned to U.S. courts to seek redress for the violations of their son, husband, and father’s rights and an affirmation that the police’s inhumane treatment of him resulted in his tragic death; however, the courts have failed this litmus test in all respects.\textsuperscript{65}

\textsuperscript{57} Id.
\textsuperscript{59} See generally Igor Bobic, Obama Reacts to Eric Garner Decision: ‘This is an American Problem’, HUFFINGTON POST (Dec. 3, 2014), http://www.huffingtonpost.com/2014/12/03/obama-eric-garner-decision_n_6264762.html [https://perma.cc/R9WQ-RZZK].
\textsuperscript{63} Id.
\textsuperscript{65} See generally Marc Santora, Eric Garner’s Family to Sue New York City Over Chokehold Case, NEW YORK TIMES (Oct. 7, 2014), https://www.nytimes.com/2014/10/08/nyregion/eric-garners-family-to-sue-new-york-city-
The United States’ killing of Eric Garner constitutes multiple violations of the American Declaration. First, the refusal to relent in choking Mr. Garner, despite his desperate pleas, coupled with his placement in an illegal chokehold that resulted in death, places the United States in violation of Mr. Garner’s rights under Article I of the American Declaration.66 Second, the denial of immediate and appropriate emergency health services as Mr. Garner fell unconscious violated his rights under Article XXV of the American Declaration.67 Finally, the foregoing conduct, due, at least implicitly, to racial bias, also violated Mr. Garner’s rights under Article II of the American Declaration.68

Eric Garner’s family—the Petitioners on behalf of their son, husband, and father—respectfully requests that the Commission investigate this matter and hold a hearing on the merits.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Seizure and Killing of Eric Garner

Eric Garner was a 43-year-old black man; a “gentle giant” that worked as a horticulturist before retiring for health reasons.69 His death left a mother without her son; a wife without her husband; and six children—including a 3-month-old newborn—without their father.70 Mr. Garner, according to his friends, would have been the first to admit that he was no angel.71 He was, instead, a man on a mission to better himself, his family, and the world around him.72 Mr. Garner had been arrested several times for selling untaxed, loose cigarettes in New York.73 Due to these arrests, however, he was planning on taking the New York Police Department to trial (with the help of Legal Aid) to plead not guilty,74 and had filed a 2007 lawsuit to protest the violation of his civil rights.75

On the sunny afternoon of July 17, 2014, Eric Garner was approached by a police officer

over-chokehold-case.html [https://perma.cc/9YUL-PFMD].

66 American Declaration of the Rights and Duties of Man art. 1, O.A.S. Res. XXX, O.A.S. Doc. OAS/Ser.L/V/1.4 Rev.9 (1948) [hereinafter American Declaration].
67 Id. at art. 25.
68 Id. at art. 2.
70 Id.
72 Id.
74 Goldstein, supra note 69.
and, again, accused of selling loose cigarettes. According to bystanders, Garner had drawn police attention to himself by breaking up a fight. Mr. Garner told police that he was sick and tired of being harassed by them, and that it needed to stop that day.

Mr. Garner asked the officers, softly and in keeping with his “gentle giant” persona, to “please just leave me alone.” That is when Pantaleo put Mr. Garner in a chokehold and several officers tackled him to the ground and attempted to handcuff him. Mr. Garner swatted his arms away, saying, “don’t touch me, please.” Pantaleo then choked Mr. Garner from behind, using a technique that is banned by the NYPD, and yanked him toward the concrete sidewalk. Five officers surrounded Mr. Garner, Pantaleo pulled back his arm and shoved his face into the pavement. Mr. Garner told them he couldn’t breathe eleven times, each instance more desperate than the last.

Although Mr. Garner quickly fell unconscious, the police supervisors standing by failed to intercede. One supervisor later reported, before knowledge of the eyewitness video, that she did not respond to Mr. Garner’s calls for help because his condition never deteriorated and was not serious. Garner lay, unattended and unresponsive, for several minutes before the ambulance arrived. No police officer ever made an attempt to resuscitate Mr. Garner and even the four emergency medical personnel who arrived with the ambulance did not dispense any medical aid or immediately transfer him to a stretcher. Eric Gamer had a fatal heart attack while being transported

76 See generally Karni, supra note 51.
79 Capelouto, supra note 78.
81 Chung, supra note 80.
82 Id.
85 Fessenden, supra note 83.
86 Sanburn, supra note 84.
89 Id.
90 Roberts, supra note 61, at 11.
B. Domestic Legal Proceedings

1. Criminal Proceedings

On August 1, 2014, it was determined that Eric Garner’s death was caused by compression of the neck, compression of the chest, “[…] and prone positioning during physical restraint by police.” On August 1, 2014, a medical examiner for the State of New York announced that Mr. Garner had been killed intentionally, and his death was ruled a homicide.

Despite the medical examiner’s findings, the Staten Island District Attorney submitted Mr. Garner’s case to a grand jury. On December 3, 2014, the grand jury announced that it would not return an indictment.

While the U.S. Department of Justice is currently reviewing the possibility of civil rights violations in Eric Garner’s death, the investigation has languished for over two years.

2. Civil Proceedings

On October 7, 2014, reeling from the death of their son, husband and father, Eric Garner’s family filed a 75-million-dollar claim for wrongful death against the City of New York. On July 13, 2015, the dejected family of Mr. Garner announced a 5.9-million-dollar settlement with the City of New York, meanwhile proclaiming that “a settlement is not justice,” and it does not serve to right the civil rights violations endured by Eric Garner, and other blacks like him. As the government’s failure to impose criminal consequences on anyone involved in Mr. Garner’s death was cemented, the family also reached a pre-litigation settlement with Richmond University Medical Center, the employer of the involved emergency medical technicians.

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91 Id.
92 Calabresi, supra note 58, at 2.
93 Id.
94 Timeline, supra note 62, at 12.
95 Id.
97 See Santora, supra note 65, at 12.
99 See Marcus, supra note 64, at 12.
100 Joshua S. Moskovitz, one of the attorneys working on behalf of the Garner family, graciously provided this information. E-mail from Joshua S. Moskovitz to Laura Goolsby (Jan. 27, 2017, 06:38 PST) (on file with author).
III. ADMISSIBILITY

A. The Commission has the Jurisdiction and the Competence to Hear this Complaint

As a member of the Organization of American States (“OAS”) and a signatory to the Charter of the OAS, the United States is subject to the jurisdiction of the Inter-American Commission on Human Rights (“IACHR” or “Commission”). Additionally, in accordance with Article 23 of the IACHR Rules of Procedure, Petitioner has standing to petition the Commission. As an individual U.S. citizen, Eric Garner (and his family in his stead) is owed the respect and surety of the U.S., as described in the OAS Charter and the American Declaration. Finally, the Commission has consistently affirmed its jurisdiction and competence to hear cases with the United States as a party when cases also allege violations of the American Declaration.

The Commission’s competence is thus avowed through ratione loci and ratione temporis; this petition alleges human rights violations that occurred in the U.S. territory of New York in 2014. The United States ratified the OAS charter in 1951, many decades before the death of Eric Garner, thus affixing this petition in the proper time and place for consideration by this Commission. Therefore, by virtue of the United States’ membership in the OAS and ratification of the American Declaration, the Commission has the jurisdiction and competence to admit the complaint of petitioner against his state of citizenship, the United States.

B. The Petitioners Have Exhausted Domestic Remedies

The Commission requires the pursuit and subsequent exhaustion of all available domestic legal remedies according to international law. The IACHR Rules of Procedure, however, explicitly provide for exceptions to this prerequisite where domestic law lacks due process, when unnecessary delays prevent a reasonable provision of remedies, or where the petitioner has been denied access to remedies, or otherwise prevented from exhausting them. Moreover, the Commission has long recognized that, in order for a domestic remedy to be subject to the exhaustion requirement, it must be an “available, appropriate, and effective [remedy] for solving the presumed

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102 OAS Charter, supra note 10, art. 23, at 2.

103 Id.; see also American Declaration, supra note 66.


105 Ratione loci is the Commission’s competence over the location whereas ratione temporis is the Commission’s competence at the time the incident occurred. See Virgilio Maldonado Rodriguez v. United States, Pet. 1762-11, Inter-Am. Comm’n H.R., Report No. 63/12, OEA/Ser.L/V/II.147, doc. 1 rev. ¶ 45-46 (2012).

106 Calabresi, supra note 58, at 12.

107 OAS Charter, supra note 10, at 3.

108 IACHR Rules of Procedure, supra note 101, art. 31(1), at 18.

109 Id. art. 31(1)(2).
violation of human rights."

Additionally, the IACHR acknowledges that "in cases . . . concerning alleged criminal acts by the public force, the appropriate recourse is usually investigation and criminal prosecution," not civil suits that provide only monetary damages. Criminal prosecution is the preferred recourse because the Commission has established that, while domestic legal systems may contain multiple routes to some remedies, not all remedies are effective and applicable when viewed in light of the particular facts of each case.

In the U.S. legal system, particularly in the state of New York where the alleged violations took place, all felony cases must be presented to a Grand Jury. A Grand Jury is empowered to hear evidence and possible charges presented only by the state prosecutor. Thus, all charges, witnesses, and evidence are submitted at the discretion of that prosecutor. If a Grand Jury fails to indicted an alleged perpetrator, criminal prosecution is effectively impossible, as this decision cannot be appealed. The New York Grand Jury failed to indict in Mr. Garner’s death, and the district attorney granted all other state actors involved in the death of Mr. Garner, including five other police officers, immunity to any criminal action. Petitioners are now estopped from obtaining any criminal remedy for the death of their father due to the New York Grand Jury’s failure to green light the trial by jury that constitutes one of the most basic, traditional protections of due process in the United States.

The Garner family’s civil claim against the police department that settled for 5.9 million dollars does not preclude petitioners from satisfying the exhaustion requirement. Although the claim was willingly settled pre-litigation, compensation is not an effective remedy in the context of systemic civil rights injustices. An appropriate remedy for such wrongs, committed through the inevitable power imbalance between citizens and the public force, requires criminal prosecution and broad rehabilitation, as suggested by petitioners and this Commission. Accordingly, petitioners have satisfied the Commission’s exhaustion requirements by meeting at least two of the exceptions recognized by Article 31(2) of the Rules of Procedure: prevention of due process and

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114 N.Y. CRIM. PROC. § 190.55.

115 Id. § 190.75(3).


117 Timeline, supra note 62.

118 Marcius, supra note 64.

119 Antonio Tavares Pereira et al. v. Brazil, supra note 111; see also Marcius, supra note 64.
lack of an effective, appropriate remedy.  

C. Submission of this Complaint is Within the Appropriate Timeframe

Although a submission to the IACHR is generally required within six months of final domestic adjudication, in those cases wherein exhaustion exceptions apply, the Commission is tasked with determining a reasonable timeframe as applicable to the circumstances of each case. Here, it has been less than three years since the violations of the American Declaration occurred. During the last three years, petitioners have continuously engaged in efforts to pursue additional, extraordinary remedies at the state level; this has included efforts to unseal the Grand Jury transcripts and to convince the District Attorney to resubmit Mr. Garner’s case to that Grand Jury. The failure of these efforts is the impetus for the petitioners’ submission of this complaint, which is timely and reasonable in light of the surrounding legal conditions.

IV. LEGAL ARGUMENT

A. The United States Violated Eric Garner’s Right to Life Under Article I of the American Declaration

The United States violated Eric Garner’s right to life by using a brutal chokehold technique, holding Mr. Garner’s face into the pavement despite his stated lack of oxygen, and handling his person with callousness and excessive force, all of which resulted in his untimely death.

1. Article I of the American Declaration Recognizes the Prohibition Against the Excessive Use of Police Force

Article I guarantees that “every human being has the right to life, liberty, and the security of his person.” Although the prohibition against the excessive use of police force is not explicitly set forth in the American Declaration, it is guaranteed implicitly throughout many Articles that establish the sacrosanct nature of human life. Specifically, Article I of the American Declaration addresses an individual’s presumed physical inviolability, the protection of which becomes even more imperative when a person is in direct conflict with State authority in the guise of police action.

120 IACHR Rules of Procedure, supra note 101, art. 31(2).
121 While this petition addresses what would be a unique issue in the Eric Garner case, such argument will be unnecessary in other, more timely-filed instances.
122 IACHR Rules of Procedure, supra note 101, art. 32(2).
124 While Eric Garner’s killing evidences more than the enumerated violations of rights, the gravest were chosen for the sake of this article’s brevity.
125 American Declaration, supra note 66.
126 “Excessive force” is force that exceeds what is objectively reasonable and necessary in the circumstances confronting the officer, as in Article 3 of the U.N. Code of Conduct for Law Enforcement Officials, which provides that: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.” G.A. Res. 34/169, ¶ 23 (Dec. 17, 1979).
To this end, wider international law recognizes very few instances of legitimate reduction or removal of the right guaranteed in Article 1.\(^\text{127}\)

This Commission, through synthesis of judgments from the European Court of Human Rights and the Inter-American Court of Human Rights, has affirmed that the interpretation and application of the right to life must be done with an eye to feasible, effectual safeguards.\(^\text{128}\)

In that regard, even in the framework of police operations that seek a legitimate objective, such as the apprehension of a person who has just committed a criminal offense, international law imposes a series of requirements that derive from the protections afforded by the rights protected by the [American Declaration], among them, the right to life.\(^\text{129}\)

Subsequently, states must adopt and abide by regulations that are adequate to ensure that any use of force inherently deters an illegitimate deprivation of life.\(^\text{130}\) In this way, all states have an immutable duty to “see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.”\(^\text{131}\)

Additionally, when state police use lethal force, the American Declaration, as interpreted by the Inter-American Court, requires that the state agents have first attempted other, less final intervention methods that were deemed fruitless.\(^\text{132}\) The subsequent use of force must have been necessary and proportionate to the demands of the circumstances, specifically to the level of danger the victim posed.\(^\text{133}\) In order to fairly and consistently evaluate police behavior, as regulated and permitted by the state, the IACHR and the Commission appraise police use of force through application of the UN Basic Principles on the Use of Force and Firearms, and the UN Code of Conduct for Law Enforcement Officers,\(^\text{134}\) which serve as an ethical mandate for police, codifying the norms of international law and state practice.\(^\text{135}\)

\(^{127}\) American Declaration, \textit{supra} note 66, at art 1; \textit{Anthony Aust, Handbook of International Law} 228-229 (2d. ed. 2010).


\(^{130}\) Zambrano Velez et al., \textit{supra} note 128, ¶ 79; Montero Aranguren et al. (Detention Center of Catia) v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 150 ¶ 66 (July 5, 2006).

\(^{131}\) Zambrano Velez et al., \textit{supra} note 128, ¶ 79.


\(^{133}\) Nadege Dorzema et al., \textit{supra} note 132, ¶ 85.

\(^{134}\) \textit{Id.} ¶ 80; see also Luis Jorge Valencia Hinojosa, \textit{supra} note 129, ¶ 170.

WHY INTERNATIONAL LAW SHOULD MATTER TO BLACK LIVES MATTER

2. Police Agents Killed Eric Garner with an Excessive Use of Force

Police officers detained Eric Garner with a disproportionate use of force that led to Mr. Garner’s death. Furthermore, Eric Garner’s homicide was an indirect result of the state’s failure to adequately regulate the use of a chokehold technique that has been deemed excessive and illegal.

a. Police Use of an Illegal Chokehold did not Adequately Safeguard Eric Garner’s Right to Life

The New York City Police Department [NYPD] banned the use of chokeholds by its employees over 20 years ago. Despite this bar, however, chokeholds have been used consistently by this police force, often without any consequence to the culprits. The restraint used on Mr. Garner, and documented in a bystander video, was an illegal application of pressure on his throat that reduced his access to air. Moreover, the abandon with which this technique was used on July 17, 2014 and the decade leading up to that day evidences a clear lack of consideration of the right to life of detainees. This implicit encouragement of illegitimate force violates American standards that oblige a state to adopt any and all measures to avert threats to this right.

The Inter-American Court, relying on a wealth of international judgments, has held that states have an affirmative responsibility to adapt their domestic laws and review of such laws to ensure that police forces do not arbitrarily and excessively employ force. Here, the United States, specifically the state of New York, provided a clear framework for curtailing chokehold use, but failed to implement this framework and failed to curtail the banned behavior. This absence of state regulation and control “created the right climate for the policemen involved in the operation to engage in improper and excessive use of force” which inevitably contributed to the death of Eric Garner.

136 A “chokehold,” as defined by the N.Y.P.D., is any technique that applies pressure to the throat or windpipe and subsequently prevents breathing or reduces the intake of air. Rory I. Lancman & Daniel Pearlstein, Clamping Down on Chokeholds, N.Y. LAW JOURNAL (July 25, 2014), http://www.newyorklawjournal.com/id=1202664405714/Clamping- Down-on-Chokeholds?slreturn=20151117194306 [https://perma.cc/5N6Y-HCWU].


139 Lancman, supra note 136.

140 A Mutated Rule, supra note 138.

141 Montero Aranguren et al. (Detention Center of Catia), supra note 130, ¶ 66.


143 See A Mutated Rule, supra note 134.

144 Luis Jorge Valencia Hinojosa, supra note 129, ¶ 174.
b. Police Use of Lethal Force was Unnecessary and Disproportionate

Eric Garner was overweight and unarmed on the day that police killed him. He did not fight back against the police’s physical detention, was not physically aggressive, and did not attempt to escape police custody. The Commission has recognized that the lethal use of force is only justified if employed to protect the lives of police and others. Moreover, United States domestic law has the same requirement, which is predicated on balancing individual rights with public policy. Here, the police’s use of lethal force violated both international and municipal law because it was an excessive and unnecessary reaction to the non-existent threat posed by Mr. Garner.

On July 17, 2014, law enforcement officers approached Eric Garner. He was suspected of selling loose cigarettes, even though it is unclear whether police witnessed Mr. Garner selling a cigarette or decided to approach him based on his previous misdemeanors. Mr. Garner expressed frustration at what he described as ongoing harassment, he denied that he was breaking the law, he verbally objected when an officer placed his hands on him, but he did not ever threaten officers physically. For reasons that are unclear, the officer then put his arms around Eric Garner’s neck and applied pressure. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials prohibit the use of any force unless it is necessary to protect public safety. Here, Mr. Garner did not pose a threat to an officer or anyone else. He was not even suspected of committing a violent crime. Finally, the officers did not first attempt any other less violent method of detaining Mr. Garner, as required by the Commission. Choking Eric Garner was unjustified in every legal and moral sense. Tragically, this extreme application of force quickly progressed to lethal intensity.

B. The United States Violated Eric Garner’s Right to Humane Treatment Under Article XXV of the American Declaration

Article XXV of the American Declaration, which operates coextensively with Article I,

145 See Timeline, supra note 62.
146 Id.
147 Luis Jorge Valencia Hinojosa, supra note 129, ¶ 188.
148 See Tennessee v. Garner, 471 U.S. 1, 1 (1985) (holding that police officers may only use lethal force if they reasonably believe that the suspect is an immediate danger to the life of the police officer or to others, in deference to the need to uphold public safety and protect individual rights).
149 In New York City, selling loose cigarettes is illegal, see N.Y.C., N.Y., ADMIN. CODE § 17-704 (2017).
151 See Capelouto, supra note 78.
152 See Goldstein & Schweber, supra note 69, at 1; but cf. Zambrano Velez, supra note 124, ¶ 108; see also Nadege Dorzema, supra note 128, ¶ 85.
153 See Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, supra note 131, art. 15.
154 Zambrano Velez, supra note 128, ¶ 108; see also Nadege Dorzema, supra note 132, ¶ 85.
guarantees that every person “also has the right to humane treatment during the time he is in custody.” This right requires that the state adopt any necessary measures to preserve the life of a detained individual. As such, “[l]aw enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.” Not only should medical attention be hastened when urgently needed, it should also be provided if and when requested by any individual whose liberty has been restricted pursuant to state authority. Therefore, the Commission has held that the absence of prompt and adequate medical assistance on the part of the state constitutes cruel, inhuman, or degrading treatment.

More precisely, this Commission has articulated that special attention must be paid to protecting the health of a police detainee because of the unique relationship that exists in such circumstances:

The foregoing is the result of the special relationship and interaction of subordination between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate his or her rights and obligations, and by the inherent circumstances of imprisonment, where the prisoner is prevented from satisfying, on his own account, a series of basic needs that are essential for leading a decent life.

In order to determine whether the lack of timely and appropriate medical attention violates the right to humane treatment, the Commission has set forth the following factors to be balanced and considered: the individual’s state of health or particular ailment, the amount of time that has elapsed without treatment, and its cumulative effects both physically and mentally. Further, the medical treatment must be “appropriate, timely, specialized, and suited to the special care that the persons deprived of liberty in question might require.”

155 American Declaration, supra note 66, art. XXV.
156 Villagrá Morales et al. v. Guatemala, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 139 (Nov. 19, 1999) (discussing the Commission’s ruling that Article 25 contains a positive obligation to “take all necessary measures to protect and preserve the right to life.”).
157 G.A. Res. 34/169, supra note 126, art. 6.
159 G.A. Res. 34/169, supra note 126, art. 6(a).
162 Montero Aranguren et al. (Detention Center of Catia), supra note 130, ¶ 103; see also Maria Ines Chinchilla Sandoval, supra note 161, ¶ 129.
163 Maria Ines Chinchilla Sandoval, supra note 161, ¶ 131; see also Edwards and Others v. United Kingdom,
The United States violated Mr. Garner’s right to humane treatment by disregarding Mr. Garner’s need for immediate medical assistance while being detained.\textsuperscript{164} As multiple officers piled onto Eric Garner and brought him to the ground, the first officer continued to apply force to Mr. Garner’s airways.\textsuperscript{165} He begged the officers to release him and told them he could not breathe eleven times.\textsuperscript{166} As officers held his body prone against the concrete, further restricting his airway, Mr. Garner fell unconscious within seconds.\textsuperscript{167} None of the officers on the scene performed resuscitation techniques\textsuperscript{168} and emergency medical officers failed to administer aid to Garner for seven minutes while he lay unconscious.\textsuperscript{169} Any reasonable observer would know that Mr. Garner’s life was in immediate danger, not only because he was not breathing but also because his poor state of health was apparent from his appearance and his protestations that he could not breathe. All state personnel present on July 17, 2014 had the duty\textsuperscript{170} and ability to provide Eric Garner with the timely and appropriate\textsuperscript{171} medical attention that would have saved his life.\textsuperscript{172} Eric Garner’s death was the inevitable consequence of the use of force that progressed to lethality through the state’s utter failure to treat Mr. Garner humanely, as required by law.\textsuperscript{173}

C. The United States Violated Eric Garner’s Right to Equality Before the Law Under Article II of the American Declaration

United States violated Eric Garner’s right to equality before the law because Eric Garner, as a black man, felt the disproportionate effects of discriminatory policing.\textsuperscript{174} Under Article II of the American Declaration, any practice that is implemented or embraced by a state, and has a disparate impact on a protected group of individuals\textsuperscript{175} may constitute unlawful discrimination.

\textsuperscript{164} Police “detention” or “seizure” occurs when a police agent has restrained the liberty of a citizen through a show of force or authority. United States v. Mendenhall, 446 U.S. 544, 553-54 (1980).
\textsuperscript{165} Id.
\textsuperscript{166} Id.
\textsuperscript{167} Id.
\textsuperscript{169} Roberts, Sullivan, and Italiano, supra note 61.
\textsuperscript{170} Maria Ines Chinchilla Sandoval, supra note 161, at ¶ 131; see also Edwards and Others, supra note 163, at ¶ 54.
\textsuperscript{171} Montero Aranguren, supra note 130, at ¶ 103; Maria Ines Chinchilla Sandoval, supra note 161, at ¶ 129.
\textsuperscript{172} Alfred Ng, Eric Garner Could have been Saved by Proper Medical Care: Dr. Cyril Wecht, NY DAILY NEWS (July 21, 2104, 1:18 AM), http://www.nydailynews.com/new-york/nyc-crime/eric-garner-saved-proper-medical-care-dr-cyril-wecht-article-1.1874246.
\textsuperscript{173} American Declaration, supra note 66, at arts. I, XXV.
\textsuperscript{174} P.C. Bolger, Just Following Orders: A Meta-Analysis of the Correlates of American Police Officer Use of Force Decisions, 40 AM. J. CRIM. JUST. 466, 492 (2015) (demonstrating that black males are more likely to be subdued with an excessive use of force).
\textsuperscript{175} See American Declaration, supra note 66, at art. II; see also International Covenant on Civil and Political
Accordingly, the level of force applied to Eric Garner as an individual and as a racial minority violated his right to equal protection and his right to be free from discriminatory practice.

1. Article II Recognizes that Discrimination in Police Practice is Prohibited

Article II states that “[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.” International law, unlike U.S. domestic law, provides that, in addition to intentional discrimination, “any distinction, exclusion, restriction or preference which has a discriminatory effect” is prohibited. The doctrine of equal protection before the law is thus predicated on the equal application of substantive rights, regardless of whether those rights are proscribed deliberately. In order to determine if a legal, public, or social function of the state is being applied in a discriminatory manner, the Commission considers the particular circumstances in which alleged discrimination takes place, as well as prevailing standards. The Commission has historically looked to evidence of minority populations that are more likely to be suspected, detained, arrested, and convicted than other groups and to evidence of racial profiling to establish racial discrimination. With this manner of evidence, this petition will establish that Eric Garner was the victim of racial discrimination through police practice.

2. Eric Garner’s Killing Evidences at Least Implicit Discrimination Based on Race

Being black in the United States, as was Eric Garner, is a dangerous thing, both historically

Rights, Mar. 23, 1976, 999 U.N.T.S. 171 (1966) (showing that international standards provide that discrimination based on race, sex, language, politics, national or social origin, property, birth, or status is prohibited).

American Declaration, supra note 66, art. II.


When a crime suspect is black, he is more likely to receive violent treatment and more likely to be arrested. In fact, a perception of blackness has been found to be a statistically significant predictor of police decision to use force. Further, black men tend to populate impoverished and high-crime areas at a much higher rate than white men, and this sociological fait accompli leaves those black men more vulnerable to police who willingly accept the use of brutality and even lethality.

Recently, several international legal and human rights organizations have expressed concern over these very facts, as evidenced by the response to the police killing of Mr. Garner and other black men. The UN Special Rapporteur on contemporary forms of racism, Mutuma Ruteere, even cited evidence that “African-Americans are 10 times more likely to be pulled over by police officers for minor traffic offences than white persons” as a reason for concern. Similarly, the UN Special Rapporteur on minority issues, Rita Izsák, stated that many in the international legal community have “legitimate concerns relating to a pattern of impunity [in the United States] when the victims of excessive use of force come from African-American or other minority communities.” In fact, this Commission stated that the killing of Eric Garner was a disturbing continuation of the “pattern of excessive force on the part of police officers towards African-Americans and other persons of color.”

The global community is condemning the discriminatory practices of U.S. law enforcement because these very practices are what led to the death of Eric Garner and men like him. The Commission has been presented with more than enough evidence to consider the correlation between discriminatory police practice and the detention and killing of Eric Garner. He was a black man in a state that consistently and repeatedly adopts effects-based discrimination. More specifically, Mr. Garner was the victim of the most pervasive explicit and implicit discriminatory effects: police brutality and racial profiling. This Commission must hold the United States responsible for failing to uphold a “a system of individual liberty and social justice based on respect for the essential rights of man.”

186 See generally Bolger, supra note 174.
189 Legitimate Concerns, supra note 188.
190 Id.
192 OAS Charter, supra note 10, preamble.
V. CONCLUSION AND PRAYER FOR RELIEF

The facts alleged herein establish that the United States of America violated Eric Garner’s rights under Articles I, II, and XXV of the American Declaration. Accordingly, Petitioners—the mother, widow, and children of Mr. Garner on his behalf—respectfully request that the Inter-American Commission on Human Rights perform the following:

1. Declare this petition admissible;
2. Investigate—with hearings, witnesses, and evidence as necessary—the allegations in this petition;
3. Declare that the United States of America is responsible for the violation of Eric Garner’s rights under the American Declaration of the Rights and Duties of Man; including, *inter alia*, his right to life and his right to be free from the excessive use of force by state agents under Article I, his right to humane treatment and his right to timely and appropriate medical intervention under Article XXV, and his right to equal protection before the law under Article II;
4. Declare that U.S. police forces have a widespread, systemic problem with the excessive and lethal use of force as well as the disproportionate targeting of racial minorities, specifically black men;
5. Request that the U.S. government and those individually responsible for the violations of Mr. Garner’s rights, including all officers and paramedics present at his death, publicly acknowledge their involvement and publicly apologize for those violations;
6. Request that the United States reform and regulate its police forces, pursuant to any recommendations the Commission feels are necessary;
7. Any other such remedies that the Commission feels are effective and adequate to address the violations herein.