---

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**SAN JOSE, COSTA RICA**

---

**GONZALO BELANO *et al.***

**Petitioners**

**v.**

**REPUBLIC OF ARCADIA**

**Respondent**

---

# MEMORIAL FOR THE REPRESENTATIVES OF THE VICTIMS

TABLE OF CONTENTS

## INDEX OF AUTHORITIES

### Articles

**Cases**

**Inter-American Commission on Human Rights**



**Inter-American Court of Human Rights**

**Treaties**

**Advisory Opinions**



**Other Authorities**

## STATEMENT OF FACTS

### Background on the Parties

The Republic of Arcadia ("Respondent State") is a developed country with a sound democracy.[1] It is a member of the United Nations and has ratified all the treaties in the universal system.[2] Additionally, the Respondent State has ratified most of the instruments of the Inter-American Human Rights System including, but not limited to, the American Convention on Human Rights ratified in 1971.[3]

The Republic of Puerto Waira is a democratic republic that was ruled by military governments beginning in 1954 and remained in power through hardline policies until 1996.[4] In 1996, Puerto Waira had its first democratic election.[5] However, Puerto Waira has remained the most violent country in the Western Hemisphere with 6,592 murders in 2014.[6] Additionally, the poverty rate in 2010 was 46.9% and over 18% of the population lived in extreme poverty.[7] Puerto Waira has faced a serious problem with violence from criminal acts committed by gangs

[1] Hypothetical, para. 8.
[2] Hypothetical, para. 9.
[3] *Id.*
[4] Hypothetical, para. 2.
[5] *Id.*
[6] Hypothetical, para. 4.
[7] Hypothetical, para. 3.

since the early 2000s.[8] These gangs have a stronger presence in poor neighborhoods.[9] Gangs recruit children and adolescents from marginalized communities to ensure growth.[10] Many Wairans have lost faith in their government because of its impunity, insecurity and hardline tactics in favor of emigration to Arcadia.[11]

**The Caravan**

A caravan of migrants began to coalesce through social media communications.[12] The purpose of the caravan was to bring attention to issues in Puerto Waira, while simultaneously forming a group to make the trip to the Respondent State, as the trip is long and often dangerous.[13] A caravan of 7,000 migrants, including hundreds of families, children, adolescents, pregnant women, and older adults, all mainly of African descent, commenced their trip to Arcadia on July 12, 2014, with the ultimate goal of seeking asylum.[14] On August 15, 2014, the first members of the caravan reached the Respondent State's southern border with many more arriving by foot and public buses afterward.[15]

**The Respondent State's Detention Policy**

The Wairan's were sheltered at the Arcadia-Tlaxcochitlán border and became inundated with health and safety concerns.[16] On August 20, 2014, President Valverde declared its border open and recognized all of the migrants as *prima facie* refugees.[17] The process for obtaining

[8] Hypothetical, para. 4.
[9] Hypothetical, para. 5.
[10] *Id.*
[11] Hypothetical, para. 7.
[12] Hypothetical, para. 14.
[13] *Id.*
[14] *Id.*
[15] Hypothetical, para. 15.
[16] Hypothetical, para. 16.
[17] Hypothetical, para. 18.

*prima facie* status consisted of visiting the office of the National Commission for Refugees, submitting an application for recognition of refugee status, undergoing a brief interview, and obtaining a refugee document and work permit within twenty-four hours.[18] Once the interview was conducted, their files were reviewed for criminal records.[19] If a criminal record was discovered, the migrant was automatically placed in a detention facility.[20]

The process ascertained that 808 migrants had criminal records.[21] Arcadian authorities proceeded to detain those people placing 490 of them in an immigration detention center (with a capacity of 400) and the remaining 318 in a separate penitentiary located in Pima due to lack of space at the detention center.[22] The Respondent State investigated each migrant and determined that 729 of them would face a "high risk of torture" or that their lives would be in danger if they were returned to Puerto Waira.[23] The remaining 79 migrants were determined to have a "reasonable likelihood" of the same outcome.[24]

**The Lack of Judicial Process**

The Arcadian people displayed growing disproval over the numbers of people being granted refugee status.[25] Political candidates from far-right parties claimed Wairans were responsible for less jobs and higher crime rates as the 2016 election approached.[26] False news became prevalent and tensions skyrocketed.[27] In response, President Valverde's administration concluded the country did not have the capacity to take in all of the migrants and called on the

[18] Hypothetical, para. 20.
[19] Hypothetical, para. 21.
[20] *Id.*
[21] Hypothetical, para. 22.
[22] *Id.*
[23] Hypothetical, para. 23.
[24] *Id.*
[25] Hypothetical, para. 24.
[26] *Id.*
[27] *Id.*

international community to share the load.[28] On January 21, 2015, the Respondent State published an Executive Decree ordering the deportation of individuals excluded from refugee status due to their criminal records.[29] On March 16, 2015, authorities returned the 591 migrants to the city of Ocampo, the capital of Tlaxcochitlán.[30]

Meanwhile, 217 migrants filed a writ of *amparo* to stop deportation, claiming that their lives would be in danger if returned to Puerto Waira.[31] However, on March 22, 2015, the deportation order was upheld.[32] The migrants filed a motion for reconsideration of the decision which was also denied.[33] On May 5, 2015, five days after the denial of the reconsideration, the Respondent State returned the 217 migrants to Tlaxcochitlán.[34] They joined the 591 migrants at the Ocampo Immigration Facility and were deported to Puerto Waira on June 15, 2015.[35]

**Arcadia's Denial of the Claim for Reparation**

In the months after deportation, the family of Gonzalo Belano sought legal advice from the Legal Clinic for Displaced Persons, Migrants, and Refuges of the National University of Puerto Waira ("the Clinic").[36] Belano had been forcibly recruited by a neighborhood gang when he was fourteen years old.[37] He served time in prison from ages 18 to 21 for extortion.[38] Belano decided, after his release from prison, to leave the gang and for his own safety joined the caravan

[28] Hypothetical, para. 26.
[29] *Id.*
[30] Hypothetical, para. 27.
[31] Hypothetical, para. 28.
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] Hypothetical, para. 29.
[36] Hypothetical, para. 30.
[37] *Id.*
[38] *Id.*

headed to Arcadia.[39] On June 28, 2015, Belano was murdered outside his family home only a few days after being deported from the Respondent State.[40]

The Clinic documented 29 other cases of deportees killed within two months of their return and seven other persons who disappeared.[41] The Clinic alleged administrative irregularities and sought reparation of harm.[42] The allegations include: violations of the right to non-refoulment, rights to life, fair trial, and judicial protection to the detriment of Belano, the other 36 named victims, and the remainder of the 771 Wairans.[43] The Clinic's limited resources and the family's interest in the case lead to the decision to file the claim for reparation of direct harm with the Arcadian consulate.[44] The consulate received the complaint and, on December 15, 2015, gave notice to the Clinic that it was dismissed for failure to comply with the requirement of Arcadian law that lawsuits regarding administrative matters be directly filed with the court of competent jurisdiction. [45]

**Proceedings Before the Inter-American Human Rights System**

On January 20, 2016, the Clinic filed a petition with the Inter-American Commission on Human Rights ("IACHR") on behalf of Gonzalo Belano and the 807 other deportees and alleged violations of various rights enumerated in the American Convention on Human Rights.[46] After the complaint was filed, the IACHR registered the petition under P-179-16 and opened the petition for processing.[47] At the admissibility stage, the Respondent State alleged a failure to exhaust local remedies, failure to individually identify 771 of the alleged victims, and

[39] *Id.*
[40] *Id.*
[41] Hypothetical, para. 31.
[42] Hypothetical, para. 32.
[43] *Id.*
[44] *Id.*
[45] Hypothetical, para. 33.
[46] Hypothetical, para. 34.
[47] Hypothetical, para. 35.

noncompliance with domestic legal requirements when the Clinic failed to file their administrative lawsuit directly with the competent jurisdiction.[48] The IACHR declared the petition admissible on November 30, 2017 and continued processing the petition on its merits, consistent with the procedural guidelines of the AHCR and the IACHR's Rules of Procedure.[49]

On August 1, 2018, the IACHR released its Report on the Merits No. 24/18 which was approved pursuant to Article 50 of the American Convention.[50] Notice of the approval was served to the parties on August 6, 2018.[51] In the report, IACHR declared Arcadia internationally responsible for violation of rights to life, personal liberty, fair trial, to seek and be granted asylum, non-refoulment, family unity, the best interest of the child, equal protection, and judicial protection enumerated in the American Convention on Human Rights, all in relation to Article 1.1 thereof, to the detriment of Gonzalo Belano and 807 other Wairans.[52]

The case was submitted to the jurisdiction of the Inter-American Court of Human Rights on November 5, 2018, alleging the violations established in IACHR's report, after Arcadia failed to comply with the recommendations outlined by the Commission.[53]

## LEGAL ANALYSIS

### I. Admissibility

#### A. Statement of Jurisdiction

The Inter-American Court on Human Rights (hereinafter the "Court") has jurisdiction to hear this case, as the Respondent State ratified the American Convention on Human Rights (hereinafter the "the Convention") in 1971.[54] Therefore, pursuant to Articles 61 and 62 of the

[48] *Id.*
[49] *Id.*
[50] Hypothetical, para. 36.
[51] *Id.*
[52] *Id.*
[53] Hypothetical, para 37.
[54] Hypothetical, para. 9.

Convention, Respondent State has accepted the contentious jurisdiction of the Court to adjudicate all matters concerning the application and interpretation of the Convention.[55]

## B. Exhaustion of Remedies

Pursuant to Article 46(2)(a-c) of the Convention, the petitioners need not exhaust all domestic remedies because they were ineffective and inadequate. The Convention requires that remedies under domestic law be pursued and exhausted with generally recognized principles of international law before filing a petition with the IACHR. However, Article 46(1)(a) of the Convention is not applicable if any provisions of Article 46(2)(a-c) apply. [56]

*1) The 217 Wairans Who Filed Writ of Amparos Were Denied Access to Remedies Under Arcadian Domestic Law.*

The 217 Wairans who filed a writ of *amparo* tried to exhaust their domestic remedies but were prevented by the Respondent State when the Wairans were deported before they could appeal. The IACHR has found that domestic remedies are considered exhausted when the highest court denies a writ of *amparo*.[57] However, if a party has been prevented from exhausting the domestic remedies as required by Article 46(1)(a) then it is not applicable.[58]

On February 10, 2015, 217 Wairans filed a writ of *amparo* to stop their deportation.[59] On March 22, 2015, the Pima Immigration Court denied protection and upheld the deportation orders.[60] The 217 Wairans then filed a motion for reconsideration, which was denied on Thursday, April 30, 2015.[61] Only five days after the reconsideration was denied, the 217 Wairans

[55] Organization of American States (OAS), American Convention on Human Rights (ACHR), "Pact of Sane Jose", *Costa Rica*, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, art. 61 & 62.
[56] *Id* at art. 46(2).
[57] *Dianora Maleno v. Venezuela*, Inter-Am. Comm'n H.R., Case 454-06, Report No. 122/11, ¶ 54 (2011).
[58] ACHR, *supra* note 55, at art. 46(2)(b).
[59] Hypothetical, para. 28.
[60] *Id.*
[61] *Id.*

were deported.[62] Five days is not a sufficient amount of time to prepare for an appeal of a writ of *amparo.* The Philippines gives five working days to file an appeal regarding a writ of *amparo.*[63] Even if the Wairans were held to this standard they were not given five working days; they were given less than four days in total before they were deported and that included a weekend. The 217 Wairans were not given enough time to appeal to a superior court before they were deported, thereby denying them their ability to exhaust domestic remedies.

*2) The 591 Wairans Who Did Not Appeal Did Not Need to Exhaust All Remedies Because the Remedies Were Inadequate and Ineffective.*

The 591 Wairans who did not appeal did not need to exhaust all domestic remedies because the available remedies were inadequate and ineffective. This Court has ruled that only those remedies that are adequate and effective, if pertinent, in resolving the matter in question, must be exhausted.[64] In order to be effective, the remedy must be capable of producing the result for which it was designed.[65] The burden is on the State claiming non-exhaustion to explain the supposed suitability and effectiveness of the remedy[66]

The 591 migrants were exempted from exhausting all remedies because there was no likelihood of success. "The test of effectiveness of a remedy, is to avoid exhaustion becoming a senseless formality, where it has no likelihood of success."[67] In the instant case it is clear that neither constitutional nor administrative remedies would have yielded a successful outcome. It is

[62] *Id.*
[63] The Supreme Court of the Philippines, *The Rule on the Writ of Amparo*, art. 19.
[64] IACHR, Admissibility Report No. 105/09, Petition 592-07, *Hul'Qumi'Num Treaty Group (Canada),* ¶ 31 (Oct. 30, 2009).
[65] *Velasquez-Rodriguez v. Honduras*, Merits, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 66 (July 29, 1988).
[66] *Case of the Expelled Dominicans and Haitians v. Dominican Republic*, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 32 (Aug. 28, 2014).
[67] University of Oslo, *The Principle of Exhaustion of Domestic Remedies in the Inter-American System of Human Rights,* 36 (Nov. 2014).

clear from the 217 migrants that a writ of *amparo* contained no likelihood of success.[68] If the 591 had joined the 217 in availing themselves of the writ of *amparo*, they would have similarly been denied a reasonable ability to seek review. The evidence that there was no likelihood of success for the 591 migrants is the 217 migrants who were not given a reasonable chance to seek fair judicial review. Thus, the 517 are exempted from seeking to exhaust the writ of amparo as a remedy because it was an ineffective remedy.

Additionally, the remedies were ineffective because the available constitutional and administrative remedies was a senseless formality due to the conditions of Arcadia. "Remedies that are denied for trivial reasons, or if there is proof of the existence of a practice or policy ordered or tolerated by the government, the effect of which is to impede certain persons from invoking internal remedies that would normally be available to others" becomes a senseless formality and the exceptions of Article 46(2) would be fully applicable in those situations.[69] The migrants in the caravan were all initially given *prima facie* refugee status and there was no discussion of deportation until after the public became upset that 808 Wairans had criminal records.[70] The political climate was tense because elections were approaching and candidates blamed the Wairans for taking jobs and crime spikes.[71] The Wairans were being described as "criminals" and "cockroaches".[72] With such a tense political climate, President Valverde issued an Executive Decree ordering deportation of Gonzalo Belano and the 807 other Wairans.[73] The Executive Order was issued without merit due to the increasing political pressure. It also had the full support of the government. The effect was to deport Wairans with criminal records without

[68] Hypothetical, para. 28.
[69] *Velasquez-Rodriguez*, *supra* note 65, at ¶ 68.
[70] Hypothetical, para 18, 25.
[71] Hypothetical, para 24.
[72] *Id.*
[73] Hypothetical, para 26.

any due process. This is demonstrated by the 217 Wairans who appealed, and the Pima Immigration Court who consistently denied the petitions.[74] Thus, any attempt at filing a writ or appealing would have been ineffective for the 591 Wairans due to the political climate.

*3) The Petitioners Noncompliance with Domestic Legal Requirements Was Due to Ineffective Procedural Requirements.*

Furthermore, the Respondent State claims noncompliance with domestic legal requirements when filing the lawsuit. The Court has found that procedural requirements can make remedies ineffective because exhaustion should not be understood to require mechanical attempts at formal procedures.[75] Initially the Clinic filed for reparations for direct harm with the Arcadian Consulate on November 15, 2015.[76] However, the Clinic received notice that the consulate dismissed the claim for failure to comply with Arcadia's procedural requirement of filing with the court of competent jurisdiction.[77] The Respondent State claimed that if it were a criminal matter legal assistance would be provided, but the procedural requirements are clear.[78] The lack of legal assistance in complying with the procedural requirements of domestic remedies made it impossible for the clinic to act effectively.

## C. Failure to Individually Identify 771 Others

Failing to name all petitioners in a case does not bar admissibility. Article 46(1)(d) requires that the petition contain the name of the person of the legal representative of the entity lodging the complaint.[79] The policy is intended to allow the Court to protect the rights and freedoms of specific individuals rather than resolve abstract questions that have not yet

[74] *Velasquez-Rodriguez*, *supra* note 65, at ¶ 55.
[75] *Id.* at ¶ 66.
[76] Hypothetical, para. 32.
[77] Hypothetical, para. 33.
[78] Hypothetical, para. 35.
[79] ACHR, *supra* note 55, at art. 46(1)(d).

occurred.[80] The Court has granted admissibility to cases where petitioners are unnamed because there has been a specific harm to a group of people.[81]

The Court can hear this case because there have been concrete violations of the 808 Wairan's freedoms and rights. There is no abstract question of what happened and there is no dispute about the correlation of the Respondent State's actions and Gonzalo Belano and the 807 other Wairans treatment while in Arcadia. Instead, there are 808 Wairans who were all detained and then deported and Gonzalo Belano, the 29 murdered and 7 disappeared serve as the representatives of those victims. In this case, the Respondent State has all 808 Wairan's information from conducting background checks.[82] Furthermore, the location of the 771 Wairans is not a mystery since they were deported back to Puerto Waira.[83] This is not a case of abstract harm, but rather specific harms that happened to a large group of people within the Respondent State's borders. Therefore, this case is admissible.

[80] International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights), Advisory Opinion OC-14/94, Inter-Am. Ct. H.R. (ser. A) No. 14, ¶ 49 (Dec. 9, 1994).
[81] *Compare* Feria et al. v. Peru, Case 12.404, Inter-Am. Comm'n H.R., Report No. 51/02 (2002) (finding that persons individually identified as victims represented the unnamed group of victims) *with* Sanchez et al. v. United States, Inter-Am. Comm'n H.R., Report No. 104/05, (2005) (finding there was insufficient information to evaluate the unidentified person's claims).
[82] Hypothetical, paras. 21–22.
[83] Hypothetical, para 29.

## II. Arguments on the Merits

### A. Respondent Arcadia violated Articles 7, 8, 19, and 24 of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia implemented and enforced a detention policy.

*1) Respondent State violated Article 7 of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia implemented and enforced a detention policy.*

The Respondent State failed to ensure that the detention of the 808 Wairans was reasonable, necessary and proportionate consistent with the duty triggered by restrictions of personal liberty. Article 7 of the Convention protects individuals from deprivation of their personal liberty that is arbitrary and without due process.[84] The IACHR has found that the detention must stringently conform to relevant provisions of the Convention as well as domestic law (if consistent with the Convention).[85] In this case, it is the Court's responsibility to evaluate Arcadia's domestic provisions that provide for asylum.[86]

The relevant Arcadian provision of law is Section 30 of the Law on Refugees and Complementary Protection[87] and Section 111 of the General Immigration Act.[88] In the event of a massive influx of refugees, the Ministry of Interior may establish guidelines to provide for a response to the migrant group.[89] Section 111 provides that detention may be imposed against refugees who cannot prove their legal presence in the country as long as the detention is

[84] ACHR, *supra* note 55, at art. 7.
[85] Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico, Inter-Am. Comm'n H.R., OEA/Ser.L/V/IL, doc 48/13 ¶ 434 (2013).
[86] *Id.* at ¶ 438.
[87] Hypothetical, para. 13.
[88] Clarifications, para. 11.
[89] Hypothetical, para. 13.

appropriate and proportional.[90] This Court and the International Covenant on Civil and Political Rights ("ICCPR") requires administrative detentions to be "reasonable, necessary, and proportionate."[91] The relevant Arcadian law may be facially consistent with international law, but the guidelines promulgated by the Ministry of Interior are not consistent with international law because they are not reasonable, necessary, or proportionate.[92]

*i. The detention of Gonzalo Belano and the 807 other Wairans was unreasonable.*

The detention must be reasonable.[93] The concept of reasonableness must be "interpreted more broadly to include elements of irregularity, injustice and unpredictability."[94] The issue of reasonableness may therefore be measured by a comparison between normal detention policy and the detention policy at issue.[95] The atypical detention process must continue norms of typical detention policy to ensure compatibility with international law.[96] Aversion from these norms implicate irregularity, injustice and unpredictability.

Gonzalo Belano and the 807 other Wairans were treated irregularly, unjustly and unpredictably by the Respondent State because they were detained for ten months without individual evaluation. The caravan arrived August 15, 2014.[97] They were not released from detention until they were returned to Puerto Waira on June 15, 2015, exactly ten months later.[98] 490 people were detained at an immigration detention center by Arcadian officials, while the remaining 318 people were placed in penitentiary units in Pima.[99] The ten month period did not

[90] Clarifications, para. 11.
[91] Human Rights of Migrants, *supra* note 85, at ¶ 434.
[92] Hypothetical, para. 13.
[93] Human Rights of Migrants, *supra* note 85, at ¶ 434.
[94] *Dorzema et al. v. Dominican Republic*, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 251, ¶ 133 (Oct. 24, 2012) (citing *Alvarez and Iniquez v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 170 (Nov. 21, 2007).
[95] *Dorzema et al., supra* note 94, at ¶ 133.
[96] *Id.*
[97] Hypothetical, para. 15.
[98] Hypothetical, para. 29.
[99] Hypothetical, para. 22.

result in any individual consideration or a case-by-case analysis.[100] The group's cases were treated collectively. Additionally, it is clear that this process is not the norm. The process itself is reactionary and is not utilized for normal immigration circumstances.[101] It is the length of time detained, lack of any individual consideration and novelty of the process itself that make this detention irregular, unjust and unpredictable. Therefore, the Respondent State's policy of detaining Wairans was manifestly unreasonable.

*ii. The detention of Gonzalo Belano and the 807 other Wairans was unnecessary.*

The detention must be necessary.[102] A detention is necessary when "it is absolutely essential to achieve the purpose sought and that, among all possible measures, there is no less burdensome one in relation to the right involved."[103] Thus, to be necessary, detention must be an unavoidable aspect of achieving the stated purpose. If the detention is not necessary, alternatives are considered less burdensome and should be implemented.[104] In terms of immigration detention, there must be "sufficient indicia to persuade an objective observer that the migrant will not report for the administrative immigration proceeding or will take flight to avoid his or her deportation."[105] Alternatives to detention allow individuals at risk of immigration detention to live in non-custodial, community-based settings while their immigration status is being resolved.[106]

The detention of the Wairans was not necessary because they did not pose a threat to national security and there was no reason to believe that they would evade their deportation

[100] Hypothetical, para. 21.
[101] Hypothetical, para. 20.
[102] Human Rights of Migrants, *supra* note 85, at ¶ 434.
[103] *Vélez Loor v. Panama*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 218, ¶ 166 (Nov. 23, 2010).
[104] International Detention Coalition, *Alternatives to Detention,* https://idcoalition.org/alternatives-to-detention/.
[105] Human Rights of Migrants, *supra* note 85, at ¶ 442.
[106] International Detention Coalition, *supra* note 104.

hearings.[107] The Respondent State made no observations that would prove the Wairans would not appear to court for immigration status hearings. Additionally, after the Wairans were detained, they were never given any court dates to attend. The detention of the migrants is unnecessary to achieve Arcadia's stated purpose, but even if held to be necessary, the Respondent State could have implemented alternatives to detention that would ensure national security and appearance at court dates.

*iii. The detention of Gonzalo Belano and the 807 other Wairans was not proportionate.*

The detention must also be proportionate.[108] The detention of immigrants is proportionate when "the relationship between the measure and the end sought is reasonable, such that the sacrifice inherent in the instruction of the right to liberty is not exaggerated or excessive compared to the advantages obtained from the restriction."[109] The proportionality requirement also demands immigration detention end when the duration has exceeded what can be considered reasonable.[110] The detention lasted for ten months and the Wairans did not have any hearings during that time frame.[111] Additionally, the only evidence proffered that implicate national security or public order concerns are the criminal records which themselves do not solely indicate these people will be a threat to national security. Clearly, no relationship exists between the Respondent State's goals and the measure taken against the Wairans. The restriction of liberty here is a disproportionate response to a manufactured crisis.

[107] Clarifications, para. 11.
[108] Human Rights of Migrants, *supra* note 85, at ¶ 445.
[109] *Id.*
[110] *Id.*
[111] Hypothetical, paras. 22–29.

*2) Respondent State violated Article 8 of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia implemented and enforced a detention policy.*

The administrative process provided by the Respondent State violated Article 8 of the Convention when the Wairans were not afforded the right to a hearing or the ability to present evidence that refutes their designation as a person with a criminal record. Article 8 of the Convention imbues each person with the right to a fair hearing.[112] This court has held that Article 8 guarantees are applicable in judicial trials and also administrative procedures.[113] In *Ivcher Bronstein v. Peru,* this Court decided that the Migration and Naturalization Directorate of the Peruvian Government was required to provide Article 8 protections when it decided to annul Ivcher's citizenship.[114] The Court believed not holding administrative process constrained by Article 8 would allow for a flood of due process violations.[115]

*i. The Respondent State violated Article 8 because there was no hearing within a reasonable time about Gonzalo Belano and the 807 other Wairans designation as criminals.*

"Every person has the right to a hearing… within a reasonable time."[116] There are two elements to this requirement: (1) the hearing and (2) within a reasonable time. First, the Wairans were entitled to a hearing about their criminal history. However, there was no hearing. The Wairans were interviewed and once the Respondent State identified the people with criminal

[112] ACHR, *supra* note 55, at arts. 8(1) & 8(2).
[113] *Ivcher Bronstein v. Peru*, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 102–105 (Feb. 6, 2001).
[114] *Id.* at ¶ 101–102.
[115] *Id.* at ¶ 102–105.
[116] ACHR, *supra* note 55, at art. 8(1).

records they were detained.[117] Second, the hearing must be within a reasonable time.[118] To determine if a hearing is held within a reasonable time, the Court must look into the complexity of the matter, the judicial activity of the interested party, and the behavior of the judicial authorities.[119] In the instant case, Gonzalo Belano and the other 807 Wairans remained in detention without any hearing from their arrival in August 2014 until their deportation in June 2015.[120] Ten months in detention without a hearing to dispute their criminal records was too long due to the lack of complexity of the issue and the fact that the detention was due to the influx of Wairans.[121]

*ii. The Respondent State violated Article 8 because Gonzalo Belano and the 807 other Wairans were not allowed to defend themselves against the charge of having a criminal record.*

The Respondent State violated Article 8 when it failed to investigate the Wairans criminal charges and refused to allow the Wairans to refute the charges. When determining if a State provided effective administrative remedies, the state is bound by the duty to investigate "in a serious manner, not as a mere formality."[122] Additionally, Article 8.2(d) provides for each person's right to defend themselves during trial.[123] The Court has found administrative process to be insufficient where a petitioner "was prevented from intervening, fully informed, in all the stages, despite being the person whose rights were being determined."[124] Absence of the ability

[117] Hypothetical, para. 22.
[118] ACHR, *supra* note 55, at art. 8(1).
[119] *Hugo Oscar Arguelles et al. v. Argentina*, Case 12.167, Inter-Am. Comm'n H.R., Report No. 135/11 ¶ 122 (2011).
[120] Hypothetical, paras. 15, 29.
[121] Hypothetical, para. 18.
[122] *Albán Cornejo et al. v. Ecuador*, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser C) No. 171, ¶ 62 (Nov. 22, 2007).
[123] ACHR, *supra* note 55, at art. 8(2)(d).
[124] *Ivcher Bronstein*, *supra* note 113, at ¶ 107.

to intervene is shown by the inability to present witnesses to refute the charge of illegally adulterating his citizenship file.[125]

The Respondent State used the services of the Ministry of Foreign Affairs and the Intelligence Service of the Ministry of the Interior to ascertain whether an individual had a criminal record.[126] Little is known about how criminal records were discovered and the record only briefly addresses it.[127] All that is known is that the Respondent State conducted an interview, took a statement and then proceeded to conduct a "file review" to discover any documentation of a criminal record.[128] Whether the search consisted of an in-depth compilation of an individual's history or was merely a google search is not known. This does not meet the standard of proof for exhausting all steps and inquiries especially when any investigation would have to rely on the record keeping and bureaucratic credibility of the Puerto Wairan government.

Alternatively, even if the investigation was conducted in a serious manner, the investigation's outcome must be related to the stated purpose of the investigation.[129] It is not rational to suggest that merely because a person has a criminal record that they are a threat to Arcadia. This is contrary to the fundamental precept of incarceration, in that, people are sentenced for their crimes and then released when rehabilitated. In the case of many Puerto Wairans, such as Gonzalo Belano, they are recruited as children and commit these crimes under great social and economic pressure.[130] Puerto Waira's judicial system lacks the nuanced capability of distinguishing between legitimate threats to society and individuals caught up in tough situations. Puerto Wairan criminal records are not reliable enough to make an accurate

[125] *Id.* at ¶ 106.
[126] Hypothetical, para. 21.
[127] Hypothetical, para. 22.
[128] Hypothetical, para. 21.
[129] *Albán Cornejo et al.*, *supra* note 122, at ¶ 62.
[130] Hypothetical, para. 30.

determination as to whether a Wairan may be a threat to national security or the public order. Thus, it is evident that the investigatory steps utilized by Arcadian officials is insufficient to comply with the duty to investigated mandated by Article 8.

*3) Respondent State violated Article 19 of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia implemented and enforced a detention policy.*

The Respondent State violated Article 19 of the Convention when a number of families were separated after parents were detained and children forced into the custody of a relative or, in some circumstances, the State. Article 19 states, "Every child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."[131] States have a special obligation to children to do what "is in their best interest."[132]

The Respondent State excluded children from detention and deportation, which has resulted in family separations.[133] Family separation may only be justified if it is in the child's best interest and, even then, the separation should be "insofar as possible, temporary."[134] It is well-known and undisputed that family separation can impact a child's development, health and general well-being.[135] In the instant case, the parents remained in detention for the entirety of their stay in Arcadia and then were collectively expelled to Puerto Waira, where a great many of them faced torture and death.[136] These facts indicate that the Respondent State is uninterested in the best interest of the child, family unity, and keeping any family separations as temporary as possible. The damage to the child and the permanence of the separation are evidence that the

[131] ACHR, *supra* note 55, at art. 19.
[132] *Pacheco Tineo Family v. Bolivia*, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 272, ¶ 226–227 (Nov. 25, 2013).
[133] Clarifications, para. 21.
[134] *Pacheco Tineo Family*, *supra* note 132, at ¶ 226–227.
[135] *Id.*
[136] Hypothetical, paras. 27–31.

Respondent State did not meet their Article 19 obligations and, therefore, the Respondent State violated Article 19 when it separated the children from their parents.

*4) Respondent State violated Article 24 of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia implemented and enforced a detention policy.*

The Respondent State violated Article 24 when it failed to guarantee equal protections to Gonzalo Belano and the 807 other Wairans. Article 24 demands all people be equal under the law.[137] Article 24 of the Convention has been granted broad coverage to apply to instances of deliberate discrimination as well as cases involving discrimination in effect, but without intent.[138] Advisory Opinion OC-18/03 states "any measures that promotes a harmfully different treatment for persons or groups of persons … are contrary to the acknowledgment of equality before the law that prohibits any discriminatory treatment established by law."[139] This court has declared that in cases of discriminatory effect the test shall be whether the policy predicated on a distinction is reasonable, necessary and proportional.[140]

The criminal record distinction is not reasonable under international law. The Court maintains that some rights may be reasonably restricted when the restriction: (1) is established by law, (2) responds to a legitimate interest of the State (which has been explicitly stated), (3) has a reasonable relationship to a legitimate objective, and (4) there is no other means to achieve the objective that are less onerous.[141] It is the State's burden to show that the category of persons having their rights restricted or denied is permissible.[142] Under the facts of the instant case,

---

[137] ACHR, *supra* note 55, at art. 24.
[138] *Case of the Expelled Dominicans and Haitians, supra* note 66, at ¶ 32.
[139] Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser A) No. 18, ¶ 47 (Sept. 17, 2003).
[140] *Case of the Expelled Dominicans and Haitians, supra* note 67, at ¶ 401-402.
[141] Juridical Condition and Rights of Undocumented Migrants, *supra* note 139, at ¶ 47.
[142] *Id.*

detaining the Wairans based on criminal records is not reasonable. The distinction is not reasonable because it is was predicated on xenophobic political pressure.[143] It is the false news' inflammatory claims that Wairans were causing crimes and stealing jobs that motivated the distinction between those with and without a criminal record.[144] The racist political pressure's effect on policy is evidenced by the difference between the first Executive Decree granting *prima facia* status and the second Executive Decree making first mention of the criminal record distinction.[145] Therefore, the distinction is a product of racist rhetoric and political capitulation rather than logic or reason.

The criminal record distinction is neither a necessary nor proportionate means to reach a legitimate state goal. Article 40 of the Law on Refugees and Complementary Protection provides that, if it is reasonable to believe an individual has a criminal record, it is certainly within the realm of a legitimate state interest to protect its borders, the public order, and public safety.[146] However, the criminal record distinction is not reasonably related to the objective. To start, the Respondent State has claimed a number of supposedly legitimate state goals achieved by the detention of the Wairans, including: ensuring Gonzalo Belano and the 807 other Wairans attend their court dates; concerns over national security; the public order; and that managing the massive influx of immigrants was too great a burden and should be borne by the international community.[147] The breadth of the state goals President Valverde's administration cited to justify this practice are numerous, but none of them justify the distinction. The distinction is based on criminal record designations that have not been vetted by a thorough investigation or any sort of

[143] Hypothetical, paras. 23–31.
[144] Hypothetical, para. 25.
[145] Hypothetical, paras. 18, 26.
[146] Hypothetical, para. 13.
[147] Hypothetical, para. 26.

meaningful judicial or administrative process.[148] Even if they had, the Respondent State disregarded the reality that Puerto Wairan justice is not commensurate with the international standard or Arcadia's domestic standards.[149] The criminal record distinction is an unnecessary and dipropionate response to illusory and, ambiguous policy goals manufactured after a period of substantial xenophobic political pressure.

**B. Respondent Arcadia violated Article 22.7, 24, and 25 of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia ordered the deportation of the Wairans without judicial process.**

*1) Respondent Arcadia violated Article 22.7 of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia ordered the deportation of the Wairans.*

"Every person has the right to seek and be granted asylum…"[150] The right of asylum is an individual right that must be based in domestic and international laws. The Constitution of the Republic of Arcadia recognizes the right to seek and receive asylum through Article 48.[151] The right to asylum is also based in international law through the 1951 Convention Relating to the Status of Refugees ("1951 Convention") and it's 1967 Protocol.[152] Arcadia ratified the 1951 Convention and its subsequent 1967 Protocol in 1983.[153]

Article 22(7) of the Convention is to be read in conjunction with Articles 8 and 25 of the Convention to ensure that the person applying for refugee status is heard by the State to which he

[148] *See supra* Sec. II(A)(2).
[149] Hypothetical, para. 4.
[150] ACHR, *supra* note 55, at art. 22.7.
[151] Hypothetical, para. 11.
[152] UN High Commissioner for Refugees (UNHCR), *UNHCR Submissions to the Inter-American Court of Human Rights in the Framework of Request for an Advisory Opinion on Migrant Children Presented by MERCOSUR,* 2 n.7 (Feb. 17, 2012).
[153] Hypothetical, para. 9

applies, with due guarantees and in the corresponding proceeding.[154] The guarantees of due process are applicable and any proceeding that relates to the determination of refugee status entails an assessment of the possible risk of affecting the refugees most basic rights.[155] The Court has determined that the following procedural rights apply when seeking asylum: (1) the request must be objectively examined by a competent and clearly identified authority and requires a personal interview, (2) if the applicant is denied refugee status, he should be provided with information on how to file an appeal, and (3) an appeal for review must have suspensive effects.[156]

In order for a request to be examined the Court has held that it is a two-step process; (1) verification of facts and (2) application of the 1951 Convention and the 1967 Protocol to the facts.[157] The Court has found that the right to asylum is violated when "a summary decision is made without hearing the applicant by interview, hearing or other mechanism, without receiving evidence, without assessing the circumstances of the applicants, and without granting them the possibility of contesting."[158] In this case, the Respondent State interviewed all of the Wairans seeking asylum when they first entered Arcadia.[159] However, once the Respondent State determined that the Wairans had a criminal record, they were denied asylum.[160] No hearing or interview was ever conducted to determine the circumstances of the criminal record and the Wairans could not introduce evidence or contest the charges. It is widely known that people are involved with gangs from a young age in order to survive, but that does not make the person a

[154] *Pacheco Tineo Family, supra* note 132, at ¶ 154.
[155] *Id.* at ¶ 157.
[156] *Id.* at ¶ 154; *see also The Haitian Centre for Human Rights et al. v. United States*, Case 10.675, Inter-Am. Comm'n H.R., Report No. 51/96, OAE/Ser.L/V/II.95, doc. 7 rev. ¶ 144 (1997).
[157] *Pacheco Tineo Family, supra* note 132, at ¶ 171.
[158] *Id.* at ¶ 174.
[159] Hypothetical, para. 20.
[160] Hypothetical, para. 22.

danger to society.[161] Thus, relying solely on a criminal record is unreliable. Therefore, the Respondent State did not do an objective investigation of facts before applying the factor of a criminal record for serious non-political crimes to Article 1(F) of the 1951 Convention.

*2) Respondent Arcadia violated Article 24 of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia ordered the deportation of the Wairans.*

The administrative process granted to Gonzalo Belano and the 807 other Wairans did not treat them equally under the law. Article 24 guarantees that participating states shall provide equal protection under the law.[162] This was articulated by the Court when it asserted, "states are obliged to take affirmative action in order to reverse or change any discriminatory situations in their societies that prejudice a specific group of persons."[163] The Respondent State violated its duty to take affirmative action to provide equal protection under the law.[164] Instead, it allowed xenophobic political pressure to characterize their response against this influx of Wairan people.[165] The caravan was comprised mainly with persons of African descent.[166] President Valverde's initial order to accept all of the Wairan migrants as *prima facie* refugees indicates a typical response to massive influx events.[167] The announcement of a more stringent form of border management occurred after a prolonged period of false news, political protest and racial animus.[168] The policy shift represents an uneven application of the law. Other immigrants did not have to go through the prolonged detention and extra process the 808 Wairans had to endure.

---

[161] Hypothetical, para. 5.
[162] ACHR, *supra* note 55, at art. 24.
[163] *Norin Catriman et al. v. Chile*, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 279, ¶ 200 (May 29, 2014).
[164] *Id.*
[165] Hypothetical, para. 26.
[166] Hypothetical, para 15.
[167] Hypothetical, para. 18.
[168] Hypothetical, paras. 25–26.

Policy shifts based on politically expedient discrimination do not qualify as a reasonable, necessary, or proportionate ways to distinguish among groups of migrants. Therefore, the discriminatory effect of the policy is enough to reveal a significant equal protection violation.

*3) Respondent Arcadia violated Article 25 of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia ordered the deportation of the Wairans.*

Arcadia violated Article 25 of the Convention when it failed to provide adequate judicial protection for the Wairans. Article 25 provides that all people have the right to judicial recourse when their fundamental rights have been violated, even if violated by persons acting in their official capacity.[169] The Court has established that in order to comply with the right to judicial protection, the State must not only have remedies, but remedies that are effective.[170]

International law has enshrined these fundamental rights into treaty text. In the Convention for Migrant Workers and Families, Article 22(4) prohibits the State from collective expulsion of migrant workers and clearly provides that, in cases of expulsion, each shall be examined and decided individually.[171] This sentiment is echoed in Article 16 of the Convention Relating to the Status of Refugees, which states that refugees be granted the same access to legal assistance and judicial recourse as the participant State's inhabitants.[172] Lastly, Article 2 of the ICCPR requires that a State undertake the duty to provide an effective remedy, competent authority, and ensures enforcement of remedies delivered by competent authorities to those who

[169] ACHR, *supra* note 55, at art. 25.
[170] *Cabrera Garcia and Montiel Flores v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 220, ¶ 142 (Nov. 26, 2009).
[171] U.N. General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMWF)* Dec. 1990, United Nations, Treaty Series, vol. 2220, art 22(4).
[172] U.N. General Assembly, *Convention Relating to the Status of Refugees*, July 1951, United Nations, Treaty Series, vol. 189, art. 16.

have had their rights violated.[173] These treaties underscore the importance judicial recourse holds in international law and may be used by the Court to measure whether the Respondent State has failed its international obligation to provide adequate judicial protection.

International law requires judicial protection to provide for an "effective remedy" and "competent authority."[174] Both of these prongs have not been satisfied in the instant case. These people were not given the possibility of effective remedy because they never had the opportunity to defend themselves or assert their rights. They were immediately labeled criminals and the remainder of the process given was for the delay of deportation, not for the merits of their case. As for competent authority, no authority ever heard the case. All proceedings were determined with an eye toward a politically palatable solution to this issue in lieu of a solution that hears the victims on the merits. Therefore, it is clear that these individuals were denied the right to judicial protection.

**C. Respondent Arcadia violated Articles 4, 17, and 22.8 of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia deported the Warians.**

*1) Respondent Arcadia violated Article 4 of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia deported the Wairans.*

The Respondent State violated Article 4 by deporting Gonzalo Belano and the 807 other Wairans to Puerto Waira, where there was a genuine and foreseeable risk of death. The Court has established that the right to life plays a fundamental role in the Convention as it is essential for

[173] U.N. General Assembly, *International Covenant on Civil and Political Rights (ICCPR)* December 1966, United Nations, Treaty Series, vol. 999, Art. 2.
[174] *Cabrera Garcia and Montiel Flores, supra* note 170, at ¶ 142.

the exercise of the other rights protected in the Convention.[175] When the right to life is not respected, all the other rights are meaningless.[176] Article 4 requires an active protection of the right to life.[177] States must adopt all necessary measures to prevent the deprivation of life by criminal acts and ensure the full and free exercise of all rights.[178]

*i. The Respondent State violated Article 4 regarding Gonzalo Belano and the 29 others who were killed.*

The Respondent State violated the right to life when it deported Gonzalo Belano and the 29 other Wairans to Puerto Waira where Arcadian officials knew the Wairans had a reasonable likelihood of death. The Respondent State had a responsibility to actively protect the right to life.[179] It failed this obligation when Gonzalo Belano and the other Wairans were deported without any attempt to maintain their presence or find an alternative country for them to stay.[180] They deported Gonzalo Belano and the other Wairans to a place they knew each person would stand a reasonable chance of being harmed.[181] On June 28, 2015, 13 days after being deported back to Puerto Waira, Gonzalo Belano was killed outside of his family's home.[182] Within the next two months the remaining 29 Wairans were reported murdered.[183]

*ii. The Respondent State violated Article 4 regarding the 7 disappeared persons.*

Forced disappearances have been used to silence political or social dissents, target vulnerable groups, and intimidate the larger community from which the person was

[175] *19 Merchants v. Colombia*, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 153 (July 5, 2004).
[176] *Id.*
[177] *Id.*
[178] *Id.*
[179] *Id.*
[180] Hypothetical, para. 27.
[181] Hypothetical, para. 23.
[182] Hypothetical, para. 29.
[183] Hypothetical, para. 31.

disappeared.[184] The hallmarks of a forced disappearance is uncertainty as to the location of the person, whether the person is still alive, and whether the person has been or is being subjected to torture.[185] Disappearances have been considered by the Court to violate a person's Article 4 right to life.[186] In this case, there is no concrete proof of who forced the disappearances of the 7 Wairans, however, it is well known that forced disappearances are rampant in Puerto Waira.[187] The Respondent State knew that if they returned the Wairans to Puerto Waira they would become targets and faced either a high risk or reasonable likelihood of danger.[188] Therefore, the Respondent State violated Article 4 by deporting the Wairans knowing they were in danger.

*iii. The Respondent State violated Article 4 regarding the remaining 771 Wairans.*

The Respondent State violated Article 4 for the remaining 771 Wairans when they were returned knowing their lives were in danger. The Court previously found that the United States violated the right to life when it returned Haitians to Haiti knowing that the Haitian's lives were at risk if returned.[189] In that case, the United States exposed the Haitians to a genuine and foreseeable risk of death, violating their right to life.[190] In this case, Arcadia also exposed the Wairans to a genuine and foreseeable risk of death, thereby violating the right to life. Arcadia identified that 729 of the Wairans would face a "high risk" of torture and that their lives would be in danger and that the remaining 79 Wairans would face a "reasonable likelihood of the same".[191] When Arcadia returned the Wairans, they had the above information. Furthermore, it is widely known that Puerto Waira faces problems with gang violence and has thus turned to

---

[184] Alexandra R. Harrington, *Life as We Know It: The Expansion of the Right to Life Under the Jurisprudence of the Inter-American Court of Human Rights*, 35 LOY. L.A. INT'L & COMP. L. REV. 313, 319–20 (2013).
[185] *Id.* at 320.
[186] *Id.*
[187] Hypothetical, para. 4.
[188] Hypothetical, para. 23.
[189] *The Haitian Centre for Human Rights et al., supra* note 156, at ¶ 167.
[190] *Id.*
[191] Hypothetical, para. 23.

heavy-handed policing and involving the military.[192] By returning the Wairans, the Respondent State knew that they would be at risk of death or serious harm, thereby violating Article 4 of the Convention.

*2) Respondent Arcadia violated Article 17 of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia deported the Wairans.*

The Respondent State violated Article 17 of the Convention when their deportation policy resulted in family disunity. Family is the natural and fundamental element of society.[193] As the Court stated in the *Case of Chitay Nech et al. v. Guatemala*, "due to the importance of the right to the protection of the family, the Court has established that the State is obligated to favor the development and strengthening of the familial nucleus."[194] This importance is evidenced by references to special family and children protections in Article 12(1) of the Universal Declaration of Human Rights[195], Article V of the American Declaration of the Rights and Duties of Man[196], and Article 17 of the International Covenant on Civil and Political Rights.[197] This Court, in the Consultative Opinion No. 17 relating to the Legal Condition and Human Rights of Children, recognized that the mutual enjoyment of the coexistence between parents and children constitutes a fundamental element in the life of the family.[198] Furthermore, the Court has

[192] Hypothetical, para. 4.
[193] *Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 156 (May 25, 2010).
[194] *Id.* at ¶ 157.
[195] U.N. General Assembly, *Universal Declaration of Human Rights*, Dec. 1948, United Nations, art. 12(1).
[196] Organization of American States (OAS), *American Declaration of the Rights and Duties of Man*, May 2, 1948, U.N.H.R., art. V.
[197] *ICCPR*¸ *supra* note 173, at art. 17.
[198] *Chitay Nech et al., supra* note 193, at ¶ 158.

acknowledged the right of family protection to apply to "family units" and not solely parent/child relationships.[199]

In the instant case, the Respondent State arbitrarily disrupted family unity by the categorically deportating Gonzalo Belano and the 807 other Wairans. This obligation is heightened when children are involved because children are owed enhanced protections that bind States to satisfy "all of the rights of the child."[200] The Wairan convoy comprised "hundreds of families, children, adolescents, pregnant woman."[201] Additionally, the deportation of the 808 Wairans caused some families to be separated.[202] The Respondent State remained apathetic given the inevitable family disruptions bound to occur as a product of its deportation policy. Therefore, the Respondent State failed its obligation to provide special protections for families when it deported the 808 Wairans.

*3) Respondent Arcadia violated Article 22.8 of the Convention, read in conjunction with Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia deported the Wairans.*

If the asylum is denied, the State must ensure that the migrant is not at risk of being persecuted or being denied rights because of his social status before returning him to the country of origin.[203] Known as non- refoulement, the principle is the bedrock of international law.[204] Non-refoulement is also recognized in Article 33(1) of the 1951 Convention and provides that no

---

[199] *Atala Riffo and Daughters v. Chile*, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 239, ¶ 158 (Feb. 24, 2012).
[200] *"Las Dos Erres" Massacre v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 184 (Nov. 24, 2009).
[201] Hypothetical, para. 15.
[202] Clarifications, para. 21.
[203] Inter-Am. Comm'n H.R., *Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, doc. 40 rev. ¶ 111 (2000).
[204] Inter-Am. Comm'n H.R., *Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System*, OEA/Ser.L/V/II, doc. 46/15 rev. ¶ 438 (2015).

State shall expel a refugee to the territory where his life or freedom is threatened on account of membership of a particular social group.[205] A State may only deny asylum based on national security or the community of the country.[206] National security refers to the interest of the state, meanwhile the community interests evaluates the safety and well-being of the population in general.[207]

Deciding if a refugee is a threat to national security cannot be based only on past conduct.[208] It must include a future threat.[209] This must be an individual assessment on whether there are reasonable grounds for considering a refugee a danger to national security based on the principles of necessity and proportionality.[210] Factors to consider include: "the seriousness of the danger for national security; the likelihood of the realization of the danger and its imminence; whether the danger to the security would be diminished significantly or eliminated by the removal of the individual; the nature and seriousness of the risks to the individual from refoulement; and whether other avenues may be found whether in the country of refuge or in a third safe country."[211]

The Respondent State could not have determined if Gonzalo Belano and the 807 other Wairans were a threat to national security because Arcadian officials did hold any interviews or hearings with the Wairans once it was determined that they had criminal records. So, it would be impossible to determine if there was a future threat to the Respondent State. In the alternative, if the Court finds that the interviews conducted before the detention satisfied the individual

---

[205] *Convention Relating to the Status of Refugees*, *supra* note 172, at art. 33(1).
[206] International Commission of Jurists, *Migration and International Human Rights Law*, 111 (2014).
[207] *Id.*
[208] *Id.*
[209] *Id.*
[210] *Id.*
[211] U.N. High Commissioner for Refugees (UNHCR), *The Scope and Content of the Principle of Non-Refoulement (Opinion) [Global Consultations on International Protection/Second Track]*, ¶ 178 (2001).

assessment requirement, the interviews did not properly determine if the refugees are a threat to national security. The only factor that was determined was the seriousness of the risks to the individual from refoulement. The Respondent State examined each of the claims and determined that 729 of the 808 refugees would face a high risk of torture and the remaining 79 refugees would face a reasonable likelihood of the same.[212] If only this factor was considered, it would weigh in favor of the Wairans to not be returned to Puerto Waira.

The second reason to deny asylum is based on the danger to the community.[213] There are two elements to this requirement: (1) danger and (2) community.[214] The word danger is construed by the Court to mean a "very serious danger".[215] To satisfy the danger element the asylum seeker cannot simply be convicted of a serious crime, but rather a state must also look to the issues surrounding the crime such as the circumstances of the crime, when the crime was conducted, evidence of recidivism, and other relevant factors.[216] "Thus, it is unlikely that a conviction for a crime committed in the distant past, where there may have been important mitigatory circumstances, and where there is no evidence of recidivism could justify recourse to the exception."[217]

The Respondent State denied asylum without accurately determining the threat to the community, thus violating the principle of non-refoulement. The Respondent State denied asylum solely on the criminal record and did not determine that the 808 Wairans were actual dangers.[218] There was no inquiry into the background of the crimes. Once the Respondent State

[212] Hypothetical, para. 23.
[213] International Commission of Jurists, *supra* note 206, at 111.
[214] U.N. High Commissioner for Refugees (UNHCR), *supra* note 211, at ¶ 191.
[215] *Id.*
[216] *Id.*
[217] *Id*.
[218] Hypothetical, para. 22.

saw that it was a serious non-political crime; they were detained and denied asylum.[219] If the Respondent State would have looked into the issues surrounding the crimes, they would have learned that people like Gonzalo Belano were forced into gangs at a young age, were forced to commit crimes, and were seeking asylum to escape perpetual violence and instability.[220]

The community element references the safety and well-being of the population in general.[221] The Respondent State cites preventing crime as a reason for the denial of asylum.[222] However, there is no evidence to suggest Gonzalo Belano and the other 807 Wairans were going to commit crimes.[223] There were no threats to existing citizens and the Respondent State even recognized that the "crime rates spike" was false news.[224] The denial of asylum was not to protect the community, but rather to ensure political stability. Therefore, danger to the community exception to asylum is not applicable.

Finally, in order for non-refoulement to be applicable there must be a real (foreseeable consequence) of personal risk upon return.[225] Non-refoulement has been applied to risks of "violations of the prohibition of torture or punishment; violations of the right to life; or flagrant denial of justice and of the risk to liberty."[226] Risk of serious human rights abuses does not necessarily have to come from State agents in order to trigger the protection of non-refoulement.[227] In order to demonstrate a risk the standard of proof is "substantial grounds have

[219] Hypothetical, para. 21.
[220] Hypothetical, para. 30
[221] U.N. High Commissioner for Refugees (UNHCR), *supra* note 211, at ¶ 192.
[222] Hypothetical, para. 26.
[223] Hypothetical, paras. 24–25.
[224] Hypothetical, para 24.
[225] International Commission of Jurists, *supra* note 206, at 112.
[226] *Id.*
[227] *Id.* at 113.

been shown for believing that the person risks being subject to a serious violation of his rights."[228]

The Respondent State conducted analysis of each detainee and found that 729 of the asylum seekers would face a high risk of torture and that their lives would be in danger if they were returned to Puerto Waira.[229] Furthermore, the remaining 79 would face a similar fate.[230] The Respondent State concluded that Gonzalo Belano and the 807 other Wairans had a well-founded fear of persecution, but still returned them.[231] In fact, the Respondent State was correct in their analysis because Gonzalo Belano and 29 others were murdered and 7 are missing.[232] The Respondent State had ample information to determine that the 808 Wairans would face serious violation rights and still proceeded to deny asylum and return them to Puerto Waira.

## REQUEST FOR RELIEF

Wherefore, based on the foregoing submissions, the Representatives for the Victims respectfully request this Honorable Court declare the instant case admissible and:

(1) Adjudge and declare that the Republic of Arcadia violated Articles 7, 8, 19, and 24 of the Convention, in relation to Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia implemented and enforced a detention policy.

(2) Adjudge and declare that the Republic of Arcadia violated Articles 22.7, 24, and 25 of the Convention, in relation to Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia ordered the deportation of the Wairans without judicial process.

---

[228] *Id.* at 114.
[229] Hypothetical, para. 23.
[230] *Id.*
[231] *Id.*
[232] Hypothetical, para. 31.

(3) Adjudge and declare that the Republic of Arcadia violated Articles 4, 17, and 22.8 of the Convention, in relation to Article 1(1), to the detriment of Gonzalo Belano and the 807 other Wairans when Arcadia deported the Warians.