2019 INTER-AMERICAN HUMAN RIGHTS MOOT COURT COMPETITION

Case of Gonzalo Belano and 807 Other Wairan Persons v. Republic of Arcadia

I. Background on the Republic of Puerto Waira

1. The Republic of Puerto Waira is a Central American country with a geographical area of 21,410 km2, bordered on the north by the United States of Tlaxcochitlán, on the south by the Republic of Janakoida, on the east by the Republic of Maya and the islands of San Hugo in the Caribbean Sea, and on the west by the Republic of Ipanema (see map). Its total population is 6.4 million people, of which 95% are of African descent and the remaining 5% are mixed race and white.

2. Puerto Waira is a democratic republic with a presidential system of government. In 1954, the democratically elected president was overthrown in a coup d'état by a group of soldiers for promoting land redistribution policies. After the coup, the country was governed by a succession of military governments that remained in power for nearly four decades through hardline policies. From that year until 1996, Puerto Waira experienced a bloody armed conflict between the military and insurgent groups. In 1991, a peace process began, culminating in 1996 with the signing of peace accords and the first democratic elections since 1954.

3. According to the most recent government survey from 2010, the monetary poverty rate was 46.9% and 18% of the population lived in extreme poverty. These figures are outdated because, due to the political and economic crisis and its institutional weakness, the government of Puerto Waira stopped measuring socioeconomic and citizen security indices and rates several years ago.

4. Since the early 2000s, Puerto Waira has faced a serious problem of insecurity and violence from criminal acts committed by gangs, whose regular practices include threats, extortion, the recruitment of children, torture, rape, murder, and forced disappearances. According to information from the Ministry of Interior and Police of Waira, the gangs are estimated to have between 45,000 and 60,000 members, while the National Police has 14,700 officers to ensure safety and public order. In 2014, Puerto Waira was the most violent country in the Western Hemisphere, with 6,592 murders for that year, which meant a homicide rate of 103 per 100,000 inhabitants. Rivalries between the country's two main gangs, in addition to heavy-handed police tactics, contributed to this explosion of violence. However, murder rates had already been rising since the second half of 2013, after the breakdown of the gang truce that began in 2012. Faced with the inability of police to maintain public order and security, the State resorted to heavy-handed policies and the use of military forces in public safety efforts.

5. The gang phenomenon in Puerto Waira is rooted in the policy of mass deportation of young

people of Wairan origin who were members of gangs in the Republic of Drimlandia in the mid-1990s. Gangs tend to have a stronger presence in poor or marginalized places, where economic opportunities are scarce and incomes very low. A common practice of such gangs is the collection of the so-called "protection fees" or "rent," whereby they extort small, medium, and large business owners under the threat of "pay or die." Other common practices involve "express" kidnappings, where people are deprived of their liberty for several hours for the purpose of obtaining a sum of money in exchange for their release. At the same time, gangs ensure their growth by recruiting children and adolescents living in the neighborhoods under their territorial control, focusing mainly on children and adolescents from poor or homeless families.

6. In order to address the serious situation of insecurity and violence, the government of Puerto Waira has implemented a hardline policy that seeks to put an end to the criminal activities of gangs by stopping or eliminating them at all costs. At the same time, "clean-up" groups have emerged that have tried to kill gang members anonymously. According to independent media investigations, "social cleansing" groups or death squads tend to consist of police officers and members of the army. Most of the population is dissatisfied with the insecurity created by gangs, and there is strong support for the implementation of heavy-handed policies and the reinstatement of the death penalty.

7. Impunity is also an endemic problem in Puerto Waira. According to various reports, up to 90% of violent crimes go unpunished. Because of this, it is common for people from Puerto Waira to relocate within the country when they have been victims of gang violence; however, gang control extends to virtually the entire territory, and the possibilities for domestic relocation are very limited. The climate of violence, the inability of the authorities to guarantee the safety of the population, rampant impunity, and high rates of poverty and inequality have meant that in recent years many people—mainly people living in poverty—have had to choose to emigrate from Puerto Waira. Their main destination is the country of Arcadia, which is to the north and has a solid economy.

II. Background on the Republic of Arcadia

8. Arcadia is a developed country with a sound democracy, a clear separation of powers, and strong system of public institutions, which has been progressively consolidated since its independence in 1825. Arcadia's economy, which has been based mainly on tourism and on fossil fuel extraction and refining, is one of the most powerful and diverse in the region. It also relies on livestock and large-scale agriculture, especially sugar cane and African palm plantations, as well as on income from energy mega-projects and, more recently, the development of high-tech companies. Arcadia's unemployment rate has remained around 5% in the last 5 years.

9. In the area of human rights, Arcadia has ratified all the treaties of the universal system: the International Covenant on Civil and Political Rights (1966), ratified in 1969; the International

Covenant on Economic, Social and Cultural Rights (1966), ratified in 1969; the International Convention on the Elimination of All Forms of Racial Discrimination (1965), ratified in 1969; the Convention on the Elimination of All Forms of Discrimination against Women (1979), ratified in 1982, and its Optional Protocol (1999), ratified in 2002; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), ratified in 1985, and the Optional Protocol to the Convention against Torture (OPCAT) (2002), ratified in 2004; the Convention on the Rights of the Child (1989), ratified in 1990, and its Optional Protocols (2000), ratified in 2002; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), ratified in 1995; the Convention on the Rights of Persons with Disabilities (2006), ratified in 2010; and the International Convention for the Protection of All Persons from Enforced Disappearance (2006), ratified in 2010. Arcadia also ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, both in 1983. Moreover, Arcadia ratified most of the instruments of the Inter-American Human Rights System, including, among others, the American Convention on Human Rights (1969), ratified in 1971, and the Inter-American Convention to Prevent and Punish Torture (1988), ratified in 1989.

10. Arcadia has traditionally been a destination for migrants, due in large part to its strong economy, political stability, low levels of crime and violence, and the integration policies it has developed for migrants and refugees. However, according to figures from the National Migration Institute (NMI), between 2013 and 2015 there was an 800% increase in asylum seekers from Puerto Waira. Faced with this situation, Arcadia has also increased the number of people it has recognized as refugees by 20 per cent during the same period.

11. The Constitution of the Republic of Arcadia recognizes the right to seek and receive asylum in the following terms:

> Article 48: The right to seek and receive asylum is recognized in accordance with the law and international human rights instruments. Refugees shall enjoy special protection guaranteeing the full exercise of their rights. The State shall respect and guarantee the principle of non-refoulement, in addition to emergency humanitarian and legal assistance.
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> Asylum seekers shall not be subject to criminal penalties for their unlawful entry or stay.
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> The State shall, on an exceptional basis and when circumstances so warrant, grant refugee status to a group in accordance with the law.

12. The Law on Refugees and Complementary Protection provides that:

> Article 12: Refugee status shall be granted to any person who:
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> I. Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his

nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it;

II. Has fled his country because his life, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order, and

III. Owing to circumstances arising in his country of origin or as a result of activities carried out during his stay in the country, has a well-founded fear of being persecuted for reasons of race, religion, nationality, gender, membership in a particular social group or political opinion, or his life, safety, or freedom may be threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

13. The Law on Refugees and Complementary Protection establishes the procedure for the recognition of refugee status, which is determined on an individual basis. However, the law also provides for the following scenario:

Article 30. In the event of a massive influx into the national territory of a group of persons in the circumstances provided for in the Constitution, and when such a situation leads to a substantial increase in applications for refugee status, the Ministry of the Interior may establish the guidelines to be followed in order to deal with them as a group.

Article 40. Refugee status shall not be granted to any person with respect to whom, upon examination of the application, there are reasonable grounds for considering that:

I. He has committed a crime against peace, genocide, crimes against humanity, or war crimes, as defined in the international instruments to which Arcadia is a party.

II. He has committed a serious non-political crime outside the national territory prior to his admission to that territory.

III. He has committed acts contrary to the purposes and principles of the United Nations.

III. Facts of the case: Mass migration of people from Puerto Waira to Arcadia

14. Through announcements on social networks, mainly Facebook, efforts began to be made to organize a caravan so that Wairans who joined the caravan could migrate to Arcadia. The purpose of the caravan was to bring greater attention to the Wairans who were part of it and who, mainly being people living in poverty, would find it difficult to obtain a visa to travel in an orderly, regular, and safe manner to Arcadia or other countries. In addition, traveling by land in a group was seen

as a way to prevent human rights violations in the United States of Tlaxcochitlán (also known as Tlaxcochitlán), where for years there have been multiple and serious violations of the human rights of undocumented migrants who pass through that country with the aim of reaching Arcadia. The people who joined the caravan began to gather in the central plaza of Kogui, the capital of Puerto Waira, on July 12, 2014. The group, numbering more than 7,000 people, began their journey of more than 2,550 kilometers to the southern border of Arcadia, where they expected to enter en masse.

15. After the 5 weeks of travel it took to leave Puerto Waira and cross the United States of Tlaxcochitlán, the first members of the caravan began to arrive at the southern border of Arcadia on August 15, 2014. A few days later, about 7,000 people from Puerto Waira, who had traveled on foot and in public buses, were waiting at the Arcadia-Tlaxcochitlán border to enter Arcadia to seek asylum. The authorities of Tlaxcochitlán, with support from civil society organizations and international agencies, set up camps in the border town of Ciudad Zapata with tents and spaces for people to have a place to take shelter and rest near the southern border of Arcadia. The caravan was made up of hundreds of families, children, adolescents, pregnant women, and older adults, most of them of African descent. It was clear that many of the people in the caravan were in a very vulnerable state as a result of the harsh conditions they had faced during the more than five weeks of their journey, and also because of the traumatic experiences many of them had endured in their country of origin. Despite the many challenges, most of the people in the caravan appeared very determined to enter Arcadia.

16. In response to the massive influx of Wairans, the Arcadian government arranged to send National Police officers to the southern border to provide support to officials from the National Migration Institute (NMI), the entity responsible for immigration and border management, in trying to organize people to register on a list and apply for asylum by turns. The large-scale arrival of people in Arcadia, particularly in small towns and villages located on its southern border, led many people and organizations in those places to offer humanitarian assistance in the form of food, clothing, shelter, and even health brigades for the Wairans. At the same time, these events also began to create disturbances in these towns, as many people slept in the streets and begged for money, given their need and plight. Likewise, the Wairans who arrived in Arcadia with medical conditions brought on by their long journey, as well as pregnant women and others with pre-existing chronic illnesses, began to turn to the public health services of these communities.

17. Given the number of Wairans wishing to enter the country and the difficulty of ensuring that they would be able to wait under minimum humane conditions, on August 16, 2014, the government of Arcadia held an extraordinary meeting with multiple government institutions at different levels, as well as with agencies of the UN System, including representatives of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and UNICEF, to explore a comprehensive, multisectoral response to the massive influx of Wairans into its territory.

18. On August 20, 2014, the president of Arcadia, Javier Valverde, publicly announced the measures that the State would take to address the situation, including: 1) opening its borders for the orderly and safe entry of people from Puerto Waira, and 2) recognizing all these people as *prima facie* refugees. In his message, the president emphasized that: "In accordance with its international, constitutional, and legal obligations, Arcadia is committed to providing all necessary assistance to the Wairan people, who will always find a safe haven in our country from the dangers they face." These measures would be consistent with the Constitution and the Law on Refugees and Complementary Protection, and therefore the only exceptions provided would be those falling within any of the cases covered by Article 40.

19. Recognition as *prima facie* refugees would guarantee the right of non-refoulement of persons to their country. However, as a consequence of the massive influx of Wairans, Arcadia began to face serious challenges to guaranteeing all the economic, social, and cultural rights of the people of Puerto Waira. For this reason, Arcadia called for the solidarity and shared responsibility of the international community, as well as the support of the Arcadian population and civil society organizations, in order to provide humanitarian assistance and meet the Wairans' basic needs.

20. As a result of that policy, Arcadia announced that the procedure for obtaining *prima facie* refugee status would consist of visiting the offices of the National Commission for Refugees (CONARE), submitting an application for recognition of refugee status, undergoing a brief interview, and

obtaining a refugee document and work permit within no more than 24 hours.

21. Once the interview had been conducted and the asylum-seeker's statement had been received, the Arcadian authorities would use the services of the Ministry of Foreign Affairs and the Intelligence Service of the Ministry of the Interior to ascertain whether the person had a criminal record. If so, in order to guarantee national security and preserve public order, the person would be held in custody pending a decision on his or her immigration status.

22. Arcadia thus began to register and document persons from Puerto Waira, identifying 808 individuals with criminal records. The Arcadian authorities proceeded to detain those individuals, placing 490 of them in the immigration detention center (with a capacity of 400) and the remaining 318 in separate penitentiary units in the border town of Pima, given the inadequate capacity to hold them in immigration detention.

23. Arcadia examined each of the asylum claims of detainees alleged to have criminal records. Within the 45 business day period established by law, it determined that, in 729 of the 808 cases, the individuals would face a "high risk" of torture and that their lives would be in danger if they were returned or deported to Puerto Waira; the remaining 79 cases had a "reasonable likelihood" of the same, according to the analysis. Thus, it was decided that these individuals had a well-founded fear of persecution, but were excluded from protection, in accordance with the Law on Refugees and Complementary Protection and the 1951 Convention Relating to the Status of Refugees.

24. At the same time as these events were taking place, there was growing pressure from the public and the media due to discontent over the number of people from Puerto Waira entering the country. Presidential and congressional elections were to be held in 2016, and candidates from nationalist-oriented parties began to say that Wairans were responsible for taking jobs away from Arcadian citizens and causing crime rates to spike in the towns where they were arriving. False news about Wairans quickly began to spread, and it was common to see them referred to in some media outlets, on social networks, and through WhatsApp as "gang members," "criminals," "illegals," and even, in more extreme cases, as "cockroaches," or "scum."

25. When the news became public of Arcadia's determination that the lives of 808 persons with criminal records would be at risk if they were returned, several marches were organized demanding their deportation and publicizing the main criminal activities of the gangs in Puerto Waira; detailed accounts were provided of gang murders, recruitment, kidnappings, and sexual violence against women. The three largest newspapers in Arcadia covered the marches and public condemnations for at least 5 days. The marches and discourse created an atmosphere of widespread tension against the people of Puerto Waira. In response to these events and as part of its policies to promote integration and prevent racism and xenophobia, Arcadia launched awareness-raising campaigns to ensure that these measures did not affect other people in the caravan who had already been recognized as refugees.

26. The combination of these events led President Javier Valverde's administration to conclude that the country did not have the capacity to take these people in. The administration called upon the other countries of the region to help accommodate the migrants, in keeping with the principle of shared responsibility and non-refoulement. After two months with no reply from the States of the region, on January 21, 2015, Arcadia published an Executive Decree ordering the deportation of the individuals who had been excluded from refugee status because they had committed crimes in their country. The decree established:

> In view of the mass exodus of Wairan persons, the Republic of Arcadia opened its borders and granted refugee status to any person who had not committed a crime in his or her country. Consequently, Arcadia identified 808 individuals who had reportedly committed criminal offenses and would be excluded from obtaining refugee status. Arcadia acknowledges that these people would be at risk if returned to their country, and therefore called upon the international community to, based on the principles of shared responsibility, international cooperation, and the right not to be returned, admit these individuals into their countries. Nevertheless, two months later, Arcadia has received no reply. Arcadia has limited resources and it is unable to support all of the people who have been forced to flee Puerto Waira, for which reason it must take the following measures: 1) prioritize the cases of the most vulnerable persons who do not have criminal records; and 2) prevent crime within its borders, especially against the significant number of individuals who have already been recognized *prima facie*, for which reason granting status to these other persons could further weaken the social fabric. In view of the foregoing, notice is hereby given that if another State does not send word that it will guarantee their protection within one month of the publication of this decree, persons with a criminal record will have to be returned to Puerto Waira.

27. Once the deadline specified in the decree had expired, and in the absence of any response from other States, on March 2, 2015, authorities from Arcadia's Ministry of Foreign Affairs and Ministry of the Interior convened a meeting with their counterparts from the United States of Tlaxcochitlán. At that meeting, an agreement was signed to allow Arcadian authorities to return to the United States of Tlaxcochitlán persons who had attempted to enter the country illegally. In return, Arcadia pledged to increase its support for migration control activities and its contributions to development cooperation for the United States of Tlaxcochitlán. Two weeks later, on March 16, 2015, the Arcadian authorities proceeded to return to Tlaxcochitlán the 591 people who had been excluded for having a criminal record and who had not filed any kind of judicial or administrative appeal. The authorities of Arcadia's National Migration Institute (NMI) returned these people by bus to the city of Ocampo, the capital of Tlaxcochitlan.

28. On February 10, 2015, 217 people filed a writ of *amparo* [petition for a constitutional remedy] to stop the deportation, alleging that their lives were in danger and that they should not be returned

to Puerto Waira. On February 20, 2015, the Pima Immigration Court ordered their deportation to be suspended until the merits of the case were adjudicated. Subsequently, on March 22, 2015, the court denied protection and upheld the deportation orders. The people filed a motion for the reconsideration of the decision, which was also denied and resulted in the deportation orders being affirmed on April 30, 2015. Finally, on May 5, 2015, the government of Arcadia proceeded to return the remaining 217 people to Tlaxcochitlán.

29. Following their arrival in Tlaxcochitlán, the two groups of persons who were returned from Arcadia were detained at the Ocampo Immigration Facility. They were held there until June 15, 2015, when the immigration authorities of Tlaxcochitlán deported them to Puerto Waira.

30. During the months following the deportations of individuals with criminal records, family members of Gonzalo Belano, one of the Wairans who had been deported, sought legal advice from the Legal Clinic for Displaced Persons, Migrants, and Refugees of the National University of Puerto Waira, based in Kogui, Puerto Waira. Gonzalo Belano had been forcibly recruited by a neighborhood gang in Kogui when he was 14 years old. He served time in prison for extortion from age 18 to 21. In early July 2014, after his release from prison, he decided that he could not return to the gang, and to be safe he had to leave the country. That was how he decided to join the caravan bound for Arcadia. On June 28, 2015, a few days after being deported, Gonzalo Belano was murdered outside his family's home.

31. Along with the case of Gonzalo Belano, the Legal Clinic documented 29 other cases of deportees who were killed within two months of their return to Tlaxcochitlán, as well as 7 cases of disappeared persons. The Legal Clinic was also aware, through the media and official information published by the National Migration Institute (NMI), that a total of 808 Wairans had been returned from Arcadia.

32. The lawyers from the Legal Clinic decided to bring a legal action alleging administrative irregularities and seeking comprehensive reparation of the harm in Arcadia. They alleged violations of the principle of non-refoulement and of the rights to life, a fair trial, and judicial protection, to the detriment of Mr. Gonzalo Belano and 36 other named victims (29 murder victims and 7 disappeared persons), as well as the other 771 Wairans who had been returned from Arcadia to Tlaxcochitlán and later deported to Puerto Waira. Due to the Legal Clinic's limited resources and the families' interest in pursuing the case, the decision was made to file the claim for reparation for direct harm with the Arcadian consulate on November 15, 2015.

33. The consulate received the complaint and forwarded it to the capital of Arcadia for processing and an answer. One month later, on December 15, 2015, the Legal Clinic received notice through the consulate that the complaint had been dismissed for failure to comply with the requirements set forth in Arcadian law, specifically that lawsuits in administrative matters must be filed directly with the court of competent jurisdiction.

IV. Proceedings before the Inter-American Human Rights System

34. In view of this situation, on January 20, 2016, the Legal Clinic filed a petition with the Inter-American Commission on Human Rights (IACHR) on behalf of the 808 deportees, alleging violations of various rights contained in the American Convention on Human Rights.

35. Once the complaint was filed with the IACHR, the individual petition procedure was triggered and the IACHR gave notice of the registration of the petition under number P-179-16. The IACHR opened the petition for processing. At the admissibility stage, the State of Arcadia alleged the failure to exhaust domestic remedies, in particular with respect to the 591 persons who did not file an appeal in Arcadia; as well as the failure to individually identify 771 of the alleged victims in the case before the IACHR. In addition, Arcadia alleged noncompliance with the domestic legal requirements, which consist of filing the administrative lawsuit directly with the competent court; if it were a criminal matter, it argued, free legal assistance would have been provided and another proceeding would have taken place, but the procedural requirements of Arcadia's laws are clear. The IACHR declared the petition admissible on November 30, 2017, and continued its processing at the merits stage under the procedural guidelines of the ACHR and the IACHR's Rules of Procedure.

36. Subsequently, on August 1, 2018, the IACHR issued Report on the Merits No. 24/18, approved pursuant to Article 50 of the American Convention, notice of which was served on the parties on August 6, 2018. In its merits report, the IACHR attributed international responsibility to the State of Arcadia for the violation of the rights to life (Article 4), personal liberty (Article 7), a fair trial (Article 8), to seek and be granted asylum (Article 22.7), non-refoulement (Article 22.8), family unity (Article 17), the best interests of the child (Article 19), equal protection (Article 24), and judicial protection (Article 25) of the American Convention on Human Rights, all in relation to Article 1.1 thereof, to the detriment of Gonzalo Belano and 807 other Wairans.

37. Once the deadline and the requirements of the American Convention and the Commission's Rules of Procedure were met, and because Arcadia failed to comply with any of the recommendations made by the Commission, the case was submitted to the jurisdiction of the Inter-American Court of Human Rights on November 5, 2018, alleging the violation of the same articles established in the IACHR's report on the merits.