IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Request for Advisory Opinion

Democracy and its protection before the Inter-American Human Rights System

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I. Introduction

A. Interest in Submitting Written Observations

Amici appreciates the open invitation of the Inter-American Court of Human Rights (the "Court" or "IACtHR") to submit written observations on the Advisory Opinion requested by the Republic of Guatemala (Guatemala) on *Democracy and its protection before the Inter-American Human Rights System* (the "Request"). The petitioners submitted the Request to this Court pursuant to Article 64.1 of the American Convention on Human Rights (the "ACHR") and Article 70 of the Rules of Procedure of the Inter-American Court of Human Rights (the "Rules of Procedure"). We now submit this *amicus* brief pursuant Article 73.3 of the Rules of Procedure.

Amici consists of legal clinics, human rights centers, and academic programs at universities in the United States and Canada that focus on research, study, and experiential learning of International Human Rights Law and Global Law, as detailed below:

The **Center for Global Law and Justice at Northeastern University School of Law** promotes human rights, humanitarianism and democracy through interdisciplinary research and advocacy. The Center's work is guided by Northeastern's distinguished international law faculty, enhanced by collaborations with scholars and practitioners worldwide, and grounded in an appreciation for community leadership. Education is central to this work. The Center is committed to training the next generation of advocates and scholars through experiential learning, and to providing critical human rights information, through the CGLJ Resource Hub, to individuals and organizations around the world.

The **Center for International Law and Policy (CILP) at New England Law | Boston** is a dynamic hub for students and scholars tackling today's global legal challenges. With a focus on transitional justice, business and human rights, and access to justice through international enforcement bodies, CILP offers opportunities to engage deeply with pressing international issues. Through research collaborations, externships, and specialized programming, the Center equips students to become effective lawyers and leaders in both public and private sectors, while advancing the improvement of American, foreign, and international legal systems. By partnering with global institutions, fostering dialogue on fairness and efficacy, and hosting events that spotlight contemporary issues, CILP prepares graduates to make a meaningful impact worldwide.

The **International Human Rights Clinic at Boston University School of Law** immerses students in the practice and substance of international human rights law. Students learn to implement the international and regional human rights mechanisms to advance issues and policy on behalf of institutional clients representing refugees, forced migrants, immigrants, and stateless persons. Students work in all the UN and regional human rights machinery, and they collaborate with non-governmental organizations and other groups around the world to conduct research and advocate for issues on behalf of the client communities. Students write and submit reports and briefs on international human rights issues in the UN, regional mechanisms, and US courts, and design and conduct global advocacy on behalf of human rights victims.

The **International Human Rights Practicum at Boston College Law** is a clinical course that provides second-year and third-year Juris Doctor students and Master of Laws students from various international backgrounds with the opportunity to submit appellate briefs to regional and international courts that address questions of human rights. The Practicum operates under the supervision of human rights legal academics and experts. It is devoted to legal education through experiential learning with respect to defense and advocacy for the international protection of human rights and puts special emphasis on the study of the Inter-American System on Human Rights, its legal framework, State obligations, and relevant principal entities. The Practicum appreciates the global dialogue with respect to human rights and the fundamental importance of human rights as a pillar of constitutional democracy and the rule of law. Thus, the Practicum is committed to teaching advocacy and protection of human rights and collaborating with the Court in the exercise of its jurisdictional functions.

The **International Justice and Human Rights Clinic at the Peter A Allard School of Law, University of British Columbia** gives upper-year law students the opportunity to work on pressing human rights and global justice concerns through hands-on work on international cases and projects. Students gain experience applying international human rights law, international criminal law and/or international humanitarian law working on specific cases with a range of international justice organizations, including international criminal courts and tribunals, United Nations human rights bodies, Inter-American System on Human Rights and non-governmental organizations.

B. General Argument and Purpose of the Amicus

In the Request for an Advisory Opinion, Guatemala asks the Court to interpret several provisions of the American Convention on Human Rights (ACHR), the American Declaration of the Rights and Duties of Man (ADHR), the San Salvador Protocol, the Charter of the Organization of the American States (OAS Charter), the Inter-American Democratic Charter (IADC) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol). Guatemala presents two possible interpretations for the Court to consider:

(i) The right to democracy as an autonomous, individual, and/or collective right, recognized in the ACHR as inherent to every human being, along with the corresponding obligations to respect, protect, and guarantee human rights of the States parties under Articles 1 and 2 of the ACHR, but interdependent with other rights established in the same instrument; or

(ii) Democracy as a social and political organization, so States have the obligation to guarantee and promote democracy as a means to ensure political, social, and economic development and the effective exercise of human rights. This perspective derives from the Preamble of the ACHR, as well as from the OAS Charter and the IADC.

Amici propose that both views are not incompatible; on the contrary, they are complementary, and under either view, all states in the Americas are bound to ensure democracy. In other words, this brief will illustrate how both perspectives of democracy are critical and necessary. Although the Court can conclude that states parties to the ACHR are obliged to guarantee democracy as a human right, the Court can also conclude that the rest of the instruments of the Inter-American *corpus juris* sufficiently determine the right to democracy as an essential principle and binding right for all states parties to the OAS.

Democracy is a form of social and political organization that safeguards other fundamental human rights and is interdependent with the rule of law. According to the OAS Charter and particularly the IADC, democracy is also recognized as a cornerstone right[1]. In other

[1] Charter of the Organization of American States, pmbl., art. 1, 2 and 3, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3 [hereinafter OAS Charter]; Organization of American States, Inter-American Democratic Charter, art. 1, 2 and 3,

words, the right to democracy can be conceived as an autonomous individual and collective right—with the guarantees provided by the ACHR and the ADHR—or as an overall system of rights essential to guarantee other individual rights. Both interpretations present democracy as a collective right: whether independent and co-equal with other fundamental rights in the American panoply of human rights, or a social structure indispensable to ensuring the other foundational rights.

The first interpretation binds all countries within the Inter-American System of Human Rights (IASHR) as part of the OAS Charter, the IADC, and the ADHR. The second interpretation is also critical in terms of the recognition of democracy as an individual right because it is a directly enforceable state obligation based on the ACHR; however, as such, it binds only those countries that have ratified the Convention. The position of *amici* is that whether the Inter-American Court of Human Rights considers the right to democracy as an autonomous right, co-equal and interdependent with other fundamental rights, or a foundational principle or umbrella right that encompasses many rights to be protected in the Inter-American system, it binds *all* member States of the OAS and therefore of the Inter-American Human Rights system. That is because its source is in the OAS Charter and the Inter-Democratic Charter, as well as in the ADHR, which are *a source of obligations for all states of the Americas*, as the Inter-American Court and Commission have consistently and repeatedly established.[2] As the Inter-American Court of Human Rights emphasized in its recent decision in the case of *Capriles v. Venezuela*, the triad of democracy, rule of law, and human rights are foundational principles to the whole IASHR.[3]

As North American academic and human rights advocacy groups, *Amici* aim to illustrate to the Court, through concrete examples, the relevance of recognizing the right to democracy as a binding right for all countries within the IASHR. This holds true regardless of whether it is

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Sept. 11, 2001, OAS Doc. OEA/SerP/AG/Res.l (2001), 28th Spec. Sess., OAS Doc. OEA/Ser.P/AG/Res.l (XXVIII-E/01) (OAS General Assembly) (Sept. 11, 2001), 40 1.L.M. 1289 (2001) [hereinafter IADC].

[2] The Inter-American Court, like the Commission, has repeatedly held that the American Declaration is a source of international obligations for OAS Member States even though it was not adopted as an international treaty. *Cfr. Interpretation of the American Declaration of the Rights and Duties of Man in the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89, Inter-Am. Ct. H.R. (ser. A) No. 10, (July 14, 1989); *Roach & Pinkerton v. United States*, Case 9647, Inter-Am. Comm'n H.R., Report No. 3/87, OEA/Ser.L/V/II.71, doc. 9 rev. ¶¶ 46-49 (1987); *Rafael Ferrer-Mazorra et al. v. United States*, Case 9903, Inter-Am. Comm'n H.R., Report No. 51/01, OEA/Ser.L/V/II.111, doc. 20 (Apr. 4, 2001).

[3] *Case of Capriles v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of Oct. 10, 2024, Inter-Am. Ct. H.R. (ser. C) No. 541, 96 (Dec. 2, 2024).

explicitly acknowledged as an independent right under the ACHR. Given our concerns about the significant democratic regression in the region and particularly in our countries, we provide specific examples of this erosion of democracy and the lack of human rights support in the United States of America. Additionally, we seek to assist the Court by illustrating the comprehensive framework that provides a thick definition of the right to democracy. This framework spans both the universal human rights system and the three major regional systems that have relevance in the IASHR, as well as the contributions of leading academics in the field.

In sum, *Amici* ask the Court to adopt a view that under either perspective of democracy and its link to human rights, democracy involves much more than guarantees of elections—that the Inter-American human rights instruments impel a much more robust, or thicker view of democracy. At minimum, democracy in the Inter-American system requires ensuring democratic *institutions*, democratic *processes*, rule of law, and the respect, protection and guarantee of a set of indispensable individual rights that undergird all of these guarantees. *Amici* ask the Court to find this cluster of rights—with the right to democracy at its core—binding on all States of the Americas, not just those States parties to the American Convention. This brief will illustrate the role the right to democracy plays under either view, and how it is being eroded in the context of the current United States Administration through the undermining of the fundamental human rights that underpin democracy, independently of considerations of election integrity.

II. Amicus Considerations

A. Democracy, Rule of Law and Human Rights: A Triad

The interdependence between and among democracy, the rule of law, and human rights is fundamental to the IASHR. As stated repeatedly by the Inter-American Court of Human Rights (IACtHR), this interdependence forms "the basis of the entire system of which the Convention is a part."[4] The Court has emphasized that "the effective exercise of democracy in the American States constitutes an international legal obligation and they have sovereignly consented that such exercise has ceased to be solely a matter of their domestic, internal or exclusive jurisdiction".[5]

[4] *Indefinite Presidential Re-election in Presidential Systems in the context of the Inter-American System of Human Rights*, Advisory Opinion OC-28/21, Inter-Am. Ct. H.R. (ser. A) No. 28, 46 (Jun. 7, 2021); *Capriles*, Inter-Am. Ct. H.R. (ser. C) No. 541, at 96 (Dec. 2, 2024).

[5] *Indefinite Presidential Re-election in Presidential Systems in the context of the Inter-American System of Human Rights,* Advisory Opinion, OC-28/21, at 55; *Capriles*, Inter-Am. Ct. H.R. (ser. C) No. 541, at 95; The OAS also has established it in several resolutions.

This triad is primarily rooted in the OAS Charter, which prioritizes representative democracy. Similarly, the Preamble and Articles 15, 16, 22, 29, and 32 of the ACHR establish that democracy is the system that guarantees human rights, as the IACtHR has noted.[6] However, the regional instrument that most clearly establishes the direct link between democracy, the rule of law, and human rights is the IADC. This Charter constitutes the first time a regional human rights instrument has explicitly framed democracy as a "right" rather than an implicit principle,[7] as established in Article 1[8] and Article 3.[9] In particular, Article 1 states: "[T]he peoples of the Americas have the right to democracy, and their governments have the obligation to promote and defend it."[10]

The IADC makes clear that periodic elections alone do not guarantee a functioning democracy. Elections must also be authentic, competitive, transparent, and organized by an impartial body to guarantee the right to vote and political participation.[11] Additionally, democracy requires effective legal constraints on the exercise of power– meaning there must be robust and non-arbitrary rule of law. To ensure the rule of law, the separation and independence of powers are crucial, especially regarding the judiciary, which must have the authority to oversee other branches of government.[12] The IACtHR has issued an Advisory Opinion emphasizing the importance of judicial guarantees and how these protections are essential in order to preserve the rule of law.[13] Although the IADC is considered a soft law instrument, in

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[6] *Indefinite Presidential Re-election in Presidential Systems in the context of the Inter-American System of Human Rights,* Advisory Opinion, OC-28/21, at ¶¶ 47-49.

[7] Claudio Grossman, *The Inter‑American System of Human Rights: Challenges for the Future*, 83 Ind. L.J. 1267, 1267-1282 (2008). About the evolution of the democratic principle and the genealogy of a hemispheric "right to democracy" *see* H. Muñoz, *The Right to Democracy in the Americas*, 40 J. Inter-Am. & World Aff., 5, 5-36 (1998), and P. Robert, *Collectively Defending Democracy: The Inter‑American Model*, 62 J. Inter-Am. & World Aff., 125, 125-152 (2021); Darren Hawkins & Carolyn Shaw, *Legalising Norms of Democracy in the Americas*, 48 Can. J.L. Am. & Carib. Stud., 469, 469-495 (2023).

[8] IADC, *supra* note 1, at art.1

[9] IADC, *supra* note 1, at art.3, states: "essential elements of representative democracy include, among others, respect for human rights and fundamental freedoms; access to and exercise of power subject to the rule of law; the holding of periodic, free, and fair elections based on universal and secret suffrage as an expression of the sovereignty of the people; a pluralistic system of political parties and organizations; and the separation and independence of public powers."

[10] IADC, *supra* note 1, at art. 1.

[11] *Capriles*, Inter-Am. Ct. H.R. (ser. C) No. 541.

[12] *Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 266, ¶¶ 52-58 (Aug. 23, 2013); *Constitutional Court (Camba Campos et al.) v. Ecuador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 268, 198 (Aug. 23, 2013).

[13] *Judicial Guarantees in States of Emergency*, Advisory Opinion OC-9/87, Inter-Am. Ct. H.R. (ser. A) No. 9, 38 (Oct. 6, 1987).

cases where any OAS member state fails to comply with its democratic provisions, coercive measures (as outlined in Articles 19 to 22) may be invoked. This has occurred in situations involving Honduras (2009), Venezuela (2002, 2017-2021), and Bolivia (2019), among others.[14]

Democracy under Article 1 of the IADC cannot be realized without its rule‑of‑law components: free elections must be backed by independent courts, accountable legislatures, and transparent administration. Conversely, major rule‑of‑law lapses (e.g., partisan court‑packing, dissolving legislatures, arbitrary prosecutions) are direct assaults on the democratic order, triggering the IADC's collective defense mechanisms. Whenever courts, legislatures, or citizens cannot rely on basic legal safeguards, the "right to democracy" itself becomes illusory.

The IACtHR has further determined the scope and significance of the IADC. In its Advisory Opinion 28/21, the Court established that "this legal instrument is a norm of authentic interpretation of the treaties it refers to, reflecting how the OAS member States, including those parties to the Convention, interpret the norms related to democracy in both the OAS Charter and the American Convention."[15]

The Inter-American Commission on Human Rights (IACHR) has also emphasized the direct relationship between democracy, the rule of law, and human rights, highlighting the crucial role of the IADC in promoting these values. The IACHR has affirmed that it is clear from the text of Articles 3 and 4 of the Charter that "OAS Member States, by adopting the IADC, recognized that representative democracy is the system through which stability, peace, and development are achieved in the region, and it is essential for the full exercise of fundamental rights."[16]

In the IASHR, the right to democracy has a collective dimension. Prominent scholars consider that this collective aspect ensures that democracy functions effectively to express the sovereignty of the people by upholding human rights and fundamental freedoms, constraining

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[14] Francesca Muñoz, *Enforcing Peoples' Right to Democracy: Transnational Activism and Regional Powers in Contemporary Inter‑American Relations*, 29 Glob. Governance, 487, 487-512 (2023); The mechanisms of the Inter-American Democratic Charter, however, lack judicial enforcement. That is why it has been argued that the "right to democracy" remains a political rather than a strictly legal remedy. Stefano Palestini & Erica Martinelli, *Between Commitment and Compliance: The Role of the United States in Inter‑American Democracy Enforcement*, 12 J. Hum. Rights Prac., 391, 391-412 (2020).

[15] *Id.* 94; *San Miguel Sosa et al. v. Venezuela*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 348, 114 (Feb. 8, 2018); *Indefinite Presidential Re-election in Presidential Systems in the context of the Inter-American System of Human Rights,* Advisory Opinion, OC-28/21, at 53.

[16] Inter-Am. Comm'n H.R., *Compendium: Democratic Institutions, Rule of Law, and Human Rights: Inter-American Standards*, OEA/Ser.L/V/II/doc. 318/23, 360-61 146 (Nov. 30, 2023).

access to power within the rule of law, and guaranteeing that this occurs through representatives elected in periodic, free, and fair elections based on universal and secret suffrage. This collective right includes several components: (1) separation of powers; (2) vertical distribution of power to ensure political participation; (3) term limits and the guarantee of alternating power-holders; (4) political pluralism and free participation; (5) competent and accountable administration; and (6) effective judicial remedies to control power and defend rights.[17]

There must be a balance maintained between democracy, the rule of law and human rights, as conceptualized in the *Inter-American democratic test.*[18] That balance requires that all OAS States comply with the standards derived from the entirety of the Inter-American *corpus juris*, including the IADC– bearing in mind the principles of indivisibility and interdependence of human rights and the differentiated and gendered approach to conditions of vulnerability.

a) <u>The right to democracy binds all member States of the IASHR</u>

This Request raises the question for the IACtHR of whether or not the right to democracy can be considered an autonomous right and what the obligations of States would be to respect, protect, and guarantee that right. Whether it is considered an autonomous human right or a principle or umbrella right that encompasses other rights to be protected in the IASHR, the source of the right to democracy is in the OAS Charter and the IADC. As such, it binds all member countries of the IACHR, not only the signatories of the ACHR.

As noted above, it is the IADC that establishes in Article 1 the concept of the right to democracy of "[t]he peoples of the Americas," and the consequent obligation of their governments to promote and defend it. Although the IADC is not an international treaty, all OAS member countries approved it in 2001, reflecting the consensus of all the governments of the hemisphere to respect the right to democracy and the commitment to seek collective action when democracy is at risk.

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[17] Allan R. Brewer-Carías, Derecho a la Democracia y Reelección Presidencial Indefinida: Tres Estudios [Right to Democracy and Indefinite Presidential Re-Election: Three Studies], 27 (2021). *See also*, Asdrúbal Aguiar, El Derecho A La Democracia, La Democracia En El Derecho Y La Jurisprudencia Interamericanos, La Libertad De Expresión, Piedra Angular De La Democracia [The Right To Democracy, Democracy in Inter-American Law and Jurisprudence, Freedom of Expression, Cornerstone of Democracy] (2008).

[18] Mariela Morales Antoniazzi & Alina Maria Ripplinger, *Democracy in Latin America under COVID-19, The Inter-American Democratic Test For Impeding a Human Rights Backsliding*, Völkerrechtsblog (Oct. 10, 2020), https://voelkerrechtsblog.org/democracy-in-latin-america-under-covid-19/ [https://perma.cc/T25T-M6AW].

In Advisory Opinion OC-26/20, the Court interpreted these norms in conjunction with the Preamble and Articles 29, 30 and 32 of the ACHR, establishing that the principle of democracy inspires the entire Convention as both a guiding principle and an interpretive reference.[19]

In that Opinion, the Court also reiterated that representative democracy and its interdependence with the rule of law and human rights are a foundational principle of the IASHR and for that reason obligatory on all the member States of the OAS, not only those signatories of the ACHR.[20] The Court concluded in the same decision that "[t]he relationship between human rights and representative democracy is likewise established in the Inter-American Democratic Charter. Thus, the effective exercise of democracy in the Americas is an international legal obligation to which States have consented, in exercise of their sovereignty, and is no longer solely a matter of domestic, internal or exclusive jurisdiction."[21]

Therefore, the rule of law and human rights, along with the recognition of a right to democracy as interdependent rights, bind all member States of the OAS and the IASHR. This obligation applies not only to those States that have ratified the ACHR, but also to States parties to the OAS Charter and the IADC. We respectfully encourage the Court to address this in its Advisory Opinion on the Request from Guatemala.

b) <u>Right to democracy as an autonomous right under the ACHR</u>

Guatemala's Request presents two possible perspectives for the Court to consider in interpreting several relevant provisions of the ACHR, ADHR, the San Salvador Protocol, the Charter of the OAS, and the IADC.

It is the opinion of *Amici* that both interpretations are mutually inclusive; they are compatible and complementary. Democracy is indeed a form of social and political organization that safeguards human rights and is interdependent with the rule of law. According to the OAS Charter and particularly the IADC, democracy is also independently recognized as a right: the right to democracy. Under the latter conceptualization, democracy is an autonomous individual and collective right that brings with it the guarantees under the ACHR. Both interpretations

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[19] *Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the Consequences for State Human Rights Obligations (Interpretation and scope of Articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*, Advisory Opinion OC-26/20, Inter-Am. Ct. H.R. (ser. A) No. 26, 72 (Nov. 9, 2020).
[20] *Id.* 72.
[21] *Id.*

present democracy as a collective right. They are mutually compatible, though with differing scope and breadth.

The first interpretation is crucial because it is based on the OAS Charter, the IADC, and the ADHR and thus binds all countries within the IASHR.[22] The second interpretation is significant in terms of individual rights, as it is based on the ACHR and, though directly enforceable as state obligation, it only binds those countries that have ratified the Convention. Therefore, it is essential for the Court to consider these two interpretations as compatible, complementary, and foundational, re-emphasizing that the first binds all OAS countries, while the second binds the signatories of the ACHR.

c) <u>The international human rights system, and other regional systems support the Inter-American system's 'thick' definition of democracy</u>

Across the international system, including the regional human rights systems in Europe and Africa, there has been increasing consensus on the interdependence of democracy with human rights and fundamental freedoms. This interdependence has long been recognized in international law, but it has strengthened over time with the recognition of the symbiotic relationship between democracy and the rule of law, with the latter increasingly informed by human rights to prevent tyranny of the majority (or minority). The 1993 Vienna Declaration was the first authoritative statement to affirm that "democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing." Since then, this formulation has been reaffirmed by the United Nations General Assembly (UNGA) in over 70 resolutions since 1996, including more than 20 under the title *Promotion of a democratic and equitable international order*.[23]

[22] *See Cfr. Interpretation of the American Declaration of the Rights and Duties of Man in the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89, Inter-Am. Ct. H.R. (ser. A) No. 10, (July 14, 1989); *Roach & Pinkerton v. United States*, Case 9647, Inter-Am. Comm'n H.R., Report No. 3/87, OEA/Ser.L/V/II.71, doc. 9 rev. ¶¶ 46-49 (1987); *Rafael Ferrer-Mazorra et al. v. United States*, Case 9903, Inter-Am. Comm'n H.R., Report No. 51/01, OEA/Ser.L/V/II.111, doc. 20 (Apr. 4, 2001).

[23] GAOR Resolution 19/36 on *Human rights, Democracy, and the Rule of Law* affirms that a "functioning democracy…is essential for a legitimate and effective Government that is respectful of human rights," and that "respect of human rights and the rule of law are essential for the stability of democratic societies." Human Rights Council Res. 19/36, U.N. Doc. A/HRC/RES/19/36 at 3 (Apr. 19, 2012); UNGA Resolution 2000/46 of the Commission on Human Rights furthers this logic, asserting that "fundamental freedoms and human rights…can only take place within democratic systems." G.A. Res. 2002/46, U.N. Comm'n on Human Rights, U.N. Doc. E/CN.4/RES/2002/46 (Apr. 23, 2002); On April 25, 2000, the UN High Commissioner for Human Rights issued Resolution 2000.47, in which it offered the following core elements of democracy: institutional arrangements, accountability and governance, and equality and justice. G.A. Res. 2000/47, U.N. Comm'n on Human Rights, U.N. Doc. E/CN.4/RES/2000/47 (Apr. 25, 2000); GAOR Resolution 59/201 supports this interpretation. G.A. Res. 59/201, U.N. Doc. A/RES/59/201 (Dec. 20, 2004).

The UN High Commissioner has highlighted three core dimensions of democracy, which support the definition we propose above as an individual and collective right: (1) institutions and procedures through which citizens make meaningful decisions about public affairs; (2) a system of governance in which rulers are held accountable by citizens, and; (3) a political norm of participation predicated upon equality and justice.[24] Notably, while the first criterion aligns more closely with the concept of electoral democracy, the second two align with the 'thicker' definition of democracy that includes the rule of law and human rights.

This interpretation is supported by the UNGA's Resolution 59/201 which identifies the essential elements of democracy to include:

> [R]espect for human rights and fundamental freedoms, inter alia, freedom of association and peaceful assembly and of expression and opinion, and the right to take part in the conduct of public affairs . . . genuine periodic free elections by universal and equal suffrage . . . respect for the rule of law, the separation of powers, the independence of the judiciary, transparency and accountability in public administration, and free, independent and pluralistic media.[25]

The European Court of Human Rights likewise recognizes a more robust conception of democracy, as expressed in its landmark decisions, *Democracy and Human Rights Resource Center and Mustafayev v. Azerbaijan*,[26] and *Case of Karacsony and Others v. Hungary*.[27] Similarly, the African Court on Human and People's Rights has highlighted the importance of

[24] Human Rights Council, *Study on Common Challenges Facing States in Their Efforts to Secure Democracy and the Rule of Law from a Human Rights Perspective*, U.N. Doc. A/HRC/22/29 7 (Dec. 21, 2012).
[25] G.A. Res. 59/201, 1 (Dec. 20, 2004).
[26] The European Court adopted the UN's framework for protection of human rights defenders and activists, and found that punitive actions against human rights defenders with no criminal charges was a violation of the equality and justice guarantees of democracy under Article 1 of the European Convention of Human Rights,and mirrors the American Convention. *See Democracy and Human Rights Resource Ctr. and Mustafayev v. Azerbaijan*, Nos. 74288/14, 64568/16, Eur. Ct. H.R. (Judgment Oct. 14, 2021).
[27] The European Court looked to the European Commission for Democracy through the Law (The Venice Commision) and stated that "although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of peoples from minorities and avoids abuse of a dominant position. *See Karácsony and Others v. Hungary*, Nos. 42461/13 & 44357/13, 145, Eur. Ct. H.R. (Grand Chamber), May 17, 2016.

human rights and their relationship to democracy as essential to a functioning society in its decisions *XYZ v. Republic of Benin*,[28] and *Boubacar Sissoko and 75 Others v. Republic of Mali*.[29]

B. Democracy, Rule of Law and Human Rights: A triad under threat in the hemisphere that requires strong regional protection standards

Amici identify and discuss some of the rights essential to preserving a thick definition of democracy: the right to humane treatment; due process; judicial independence; and freedom of expression, association, and assembly. In the following sections, *Amici* illustrate how these rights have been diminished in the United States, and consequently eroded the right to democracy itself.

1. Right to Humane Treatment

a) Interpretation of the right to humane treatment in the Inter-American Framework

The human right to democracy depends on the protection of the right to humane treatment, enshrined in Article 5 of the ACHR. The undermining of the right to humane treatment often occurs within a larger framework of systemic abuse of power, restricted access to justice, and arbitrary actions that disregard the principles of the rule of law.

Article 5 of the ACHR recognizes that all individuals have the right to "have [their] physical, mental, and moral integrity respected" and that "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."[30] The Court has interpreted degrading treatment as treatment that is "characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking [their] physical and moral resistance," considering both the vulnerability of an individual—such as sex, age,

[28] The African Court found a violation of Article 13 of the African Charter on Human and Peoples' Rights, due to the fact that impartiality is essential to a fair democracy and the lack of impartiality in a decision-making body is a violation of the Charter. *See XYZ v. Republic of Benin*, No. 059/2019, Decision, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.] (Nov. 27, 2020).

[29] The African Court interpreted the meaning of equal protection in the African Charter on Democracy, Elections and Governance and observed that equal protection is guaranteed by Article 3 as every individual shall be equal before the law and every individual shall be entitled to equal protection of the law. *See Boubacar Sissoko & 74 Others v. Republic of Mali*, No. 037/2017, Afr. Ct. H.P.R. (2020).

[30] Organization of American States, *American Convention on Human Rights* art. 5, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention]; *Velásquez Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 155-156 (Jul. 29, 1988).

health, race, immigration status—and the circumstances of each case.[31] This right encompasses much more than physical acts. For example, racial profiling practices may amount to inhumane or degrading treatment.[32]

In *Velásquez Rodríguez v. Honduras* (1988)[33], the Court codified disappearances as a specific human rights violation and developed the relevant evidentiary standards. The Court also "helped further the goals of human rights and *democracy* in the region" by rejecting repression and authoritarian practices while exposing Honduras' responsibility for inhumane practices, such as enforced disappearances.[34]

Since then, the Court has further elaborated on the right to humane treatment in the context of disappearances, noting that family members of the disappeared are themselves victims of inhumane treatment because they are denied access to justice, and live with the uncertainty of the whereabouts of their loved ones.[35] This holding extends to situations where individuals are unlawfully detained or deported, as in the context of family separations.[36] In situations where individuals are unlawfully detained, the Court has noted that detention alone places the individual "in a state of greater vulnerability," while the State "places itself in the unique position of guarantor of [their] right to life and to humane treatment."[37] Moreover, the Court has regularly held that when children are deprived of liberty, States have a heightened obligation to ensure protection.[38]

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[31] *Loayza Tamayo v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 33, 57 (Sept. 19, 1997) (explaining that "[t]he violation of the right to physical and psychological integrity of persons is a category of violation that has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by endogenous and exogenous factors which must be proven in each specific situation."); *Mendoza et al. v. Argentina*, Inter-Am. Ct. H.R. (ser. C) No. 260, ¶¶ 201-03 (May 14, 2013); *Benito Tide Méndez et al. v. Dominican Republic*, Case 12.271, Inter-Am. Comm'n H.R., Report No. 64/12, 209 (Mar. 29, 2012).

[32] *African Americans, Police Use of Force, and Human Rights in the United States*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.Doc. 156/18 ¶¶ 233, 311 (2018); *see generally*, *Benito Tide Méndez et al.*, Report No. 64/12.

[33] *Velásquez Rodríguez*, Inter-Am. Ct. H.R. (ser. C) No. 4, at 187.

[34] Grossman, *supra* 7, (emphasis added).

[35] *See 19 Tradesmen v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109, 229 (July 5, 2004); *Juan Humberto Sánchez v. Honduras*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 99, 101 (June 7, 2003); *Blake v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 48, ¶¶ 37-38, 114 (Jan. 22, 1999); *Bamaca-Velasquez v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 70, 160 (Nov. 25, 2000).

[36] *Benito Tide Méndez et al.*, Report No. 64/12, at ¶¶ 210-13 (explaining that family members who are separated in the context of deportations themselves suffer a violation of their right to humane treatment).

[37] *Baldeón-García v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 147, ¶¶ 119-20 (April 6, 2006); *see Minors in Detention v. Honduras*, Case 11.491, Inter-Am. Comm' H.R., Report No. 41/99, OEA/Ser.L/V/II.106, doc. 6 (1999).

[38] *See e.g.*, *Mendoza et al.*, Inter-Am. Ct. H.R. (ser. C) No. 260, at ¶¶ 188, 191.

b) Examples of the recent erosion of this right in the U.S.

In recent years, the United States has become a case study for such violations, particularly in the area of migration management. Family separations[39] have "been normalized in U.S. immigration policy, extending across administrations" and continue today.[40] The recent detentions, deportations, and disappearances of non-citizens and citizens in the United States continue to exacerbate family separations, and compound violations of the right to humane treatment. For example, on March 15, 2025, President Trump published a Presidential Proclamation titled "Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua" (Proclamation), which sought to authorize removal of noncitizens from Venezuela deemed to be "enemy aliens" under the Alien Enemies Act (AEA).[41] On that same day, the U.S. government removed 261 noncitizens to El Salvador, where they were detained in the Terrorism Confinement Center (CECOT).[42]

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[39] The family separation policy was heavily propagated during the first Trump Administration, as confirmed by then-acting Secretary of Homeland Security, John Kelly, stating that "[children]" will be well cared for as we deal with their parents." *See* Daniella Diaz, *Kelly: DHS Is Considering Separating Undocumented Children from Their Parents at the Border*, CNN (Mar. 7, 2017), https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html [https://perma.cc/6MX5-MD82]. The cumulative actions became known as the "Zero Tolerance" policy, which led to the separation of over 1,150 children from their parents between July 2018 and December 2019. *See* Human Rights Watch, *"We Need to Take Away Children" Zero Accountability Six Years After "Zero Tolerance,"* (2024), https://www.hrw.org/sites/default/files/media_2024/12/us_familyseparation_1224web.pdf.

[40] UCLA Ctr. for Immigr. L. & Pol'y, *Cruel Indifference: Family Separation at the U.S.-Mexico Border Before and After Zero Tolerance,* 21-27 (2024) (identifying the Biden Administration's failure to meaningfully protect family units and CBP's culture of cruel indifference as reasons that allow family separation to persist). https://law.ucla.edu/sites/default/files/PDFs/Center_for_Immigration_Law_and_Policy/Cruel_Indifference.pdf. The former Trump Administration retreated from the "Zero Tolerance" policy, but replaced it with other measures, including the "Remain in Mexico" program, which continued under the Biden Administration. *See* Human Rights Watch, *supra* note 39, at 51. The Family Reunification Taskforce that the Biden Administration launched to remedy the former Trump Administration's family separations has now been disbanded. *See* Exec. Order No. 14148, 90 Fed. Reg. 8237 (Jan. 20, 2025) (rescinding Exec. Order No. 14011, *Establishment of Interagency Task Force on the Reunification of Families,* 86 Fed. Reg. 8273 (Feb. 2, 2021)).

[41] *Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Agua*, Proclamation No. 10903, 90 Fed. Reg. 13033 (2025).

[42] Camilo Montoya-Galvez, *Trump Invokes 1798 Alien Enemies Act, Orders Deportation of Suspected Venezuelan Gang Members*, CBS News, https://www.cbsnews.com/news/trump-invokes-1798-alien-enemies-act/ (last updated Mar. 16, 2025 6:09 PM EDT). Among those removed was Kilmar Armando Abrego Garcia, who was removed despite an earlier court order barring his removal due to his well-founded fear of persecution in El Salvador. On June 6, 2025, he was returned to the custody of the United States, whereupon his return, the United States government immediately detained and filed new charges against him in Tennessee. *See* Order Unsealing Indictment, *United States v. Abrego Garcia*, No. 3:25-cr-00115 (M.D. Tenn. June 6, 2025). Abrego Garcia was released, but subsequently detained in Baltimore, Maryland. *See* Defendant Kilmar Armando Abrego Garcia's Status Report, *United States v. Abrego Garcia*, No. 3:25-cr-00115 (M.D. Tenn. July 19, 2025). He was transferred and is currently detained in Philipsburg, Pennsylvania. *See* Status Update Regarding Defendant Kilmar Armando Abrego Garcia's Access to Counsel, *United States v. Abrego Garcia*, No. 3:25-cr-00115 (M.D. Tenn. Sept. 26, 2025).

The removals to El Salvador and the detentions at CECOT were carried out without notice, through abusive means, and in violation of the principle of *non-refoulement,* constituting a grave erosion of the right to humane treatment. Detainees at CECOT were denied contact with relatives or legal counsel.[43] Some of the 261 detainees removed from the U.S. and held at CECOT have been released, and have since described brutal treatment they received, including sexual abuse by prison guards, denial of adequate food and medical care, and other inhumane conditions.[44] Detainees have reported that they were forced to sleep on metal planks, and endured other deplorable living conditions.[45] Human rights organizations have initiated litigation and advocacy in the Inter-American Commission and other venues to obtain relief for the detainees, and to prevent the United States and El Salvador from continuing to undermine the right to humane treatment.[46]

Unfortunately, instead, the United States government has indicated that it intends to increase its agreements to pressure third states to accept individuals removed from its territory. Throughout 2025, the United States government has expanded its efforts to send individuals removed from the country to additional regions of the world, including African countries such as

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[43] Tabby Wilson, *Migrants Tortured in El Salvador, Venezuela Says*, BBC NEWS (July 21, 2025), https://www.bbc.com/news/articles/ckg358vxx4ro [https://perma.cc/J892-LVLC]; William Brangham, *Interview with* Noah Bullock, *The Conditions Inside the Infamous El Salvador Prison Where Deported Migrants Are Held*, PBS NewsHour (Apr. 8, 2025), https://www.pbs.org/newshour/show/the-conditions-inside-the-infamous-el-salvador-prison-where-deported-migrants-are-held [https://perma.cc/NF2P-2P7T]; *Human Rights Watch Declaration on Prison Conditions in El Salvador for the* J.G.G. v. Trump *case*, HUM. RTS. WATCH (Mar. 20, 2025), https://www.hrw.org/news/2025/03/20/human-rights-watch-declaration-prison-conditions-el-salvador-jgg-v-trump-case [https://perma.cc/V7PT-CUWZ].

[44] Wilson, *supra* note 43; *See* Julie Turkewitz, et al., '*You are all Terrorists:' Four Months in a Salvadoran Prison*, N.Y. TIMES (Nov. 8, 2025), https://www.nytimes.com/2025/11/08/world/americas/el-salvador-prison-migrants.html?nl=The+Morning [https://perma.cc/PF7H-MFCR].

[45] Sergio Martínez-Beltrán & Manuel Rueda, *'Hell on Earth:' Venezuelans Deported to El Salvador Mega-Prison Tell of Brutal Abuse*, NPR (July 27, 2025), https://www.npr.org/2025/07/27/nx-s1-5479143/hell-on-earth-venezuelans-deported-to-el-salvador-mega-prison-tell-of-brutal-abuse#:~:text=Since%20their%20release%2C%20NPR%20has,forced%20to%20endure%20inhumane%20conditions [https://perma.cc/UKG4-4PCJ]; Human Rights Watch Decl., *supra* note 43.

[46] In May 2025, four leading human rights organizations–Boston University School of Law's International Human Rights Clinic, the Center for Gender and Refugee Studies (CGRS), the Global Strategic Litigation Council (GSLC), and Robert F. Kennedy Human Rights (RFKHR)–filed a request for precautionary measures before the Inter-American Commission on Human Rights, challenging the forcible and unlawful detention of individuals illegally removed from the United States to El Salvador. *See* Robert F. Kennedy Human Rights, *US Transfers to CECOT (El Salvador): Hundreds Forcibly Disappeared to El Salvadoran Mega-Prison* (May 9, 2025), https://rfkhumanrights.org/litigation/hundreds-forcibly-disappeared-to-el-salvadoran-mega-prison/#overview [https://perma.cc/6QME-GPA6].

South Sudan, Eswatini, Ghana, Rwanda, and Uganda.[47] These third-party removals to African nations intentionally circumvent the United States' human rights obligations. Individuals are ordered removed with little to no notice of their destinations, no opportunity to contest their removal, and are sent to countries where the United States knows or has reason to know that they face a high risk of persecution, torture, or serious harm.[48] These actions deny individuals basic due process, clearly violate the bedrock principle of non-refoulement, and mark a profound regression in the protection of human dignity and the right to humane treatment.

These actions exemplify a broader trend in U.S. immigration policy involving measures taken in the name of security that erode due process and fair treatment under the law.[49] Moreover, deportees and detainees in extraterritorial sites face additional violations of their rights to humane treatment and access to justice and due process, reflecting a weakened rule of law.[50] Given that the right to humane treatment under Article 5 is non-derogable, judicial remedies that safeguard this right remain imperative even in times of emergency.[51] As the IACtHR affirmed in its Advisory Opinion on habeas corpus, remedies such as habeas and amparo are essential to protecting non-derogable rights and "to preserve legality in a democratic society"—a principle inseparable from democratic governance and the rule of law.[52]

2. Denial of Due Process and Judicial Independence

Democracy is not exclusively defined by the free and fair election of leaders and representatives, but requires a robust system of laws, judges, and lawyers working in tandem to

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[47] *US/Africa: Expulsion Deals Flout Rights,* HUM. RTS. WATCH (Sept. 23, 2025), https://www.hrw.org/news/2025/09/23/us/africa-expulsion-deals-flout-rights [https://perma.cc/4732-BUTJ].

[48] *Id*. The removals to African countries have received heightened attention due to a nationwide injunction issued on April 18, 2025, barring removals not explicitly listed on their removal order without written notice and an opportunity to contest. *See D.V.D. v. Dep't of Homeland Sec.*, 778 F.Supp.3d 355 (D. Mass. 2025). This injunction was stayed by the United States Supreme Court on June 23, 2025. *See Dep't of Homeland Sec. v. D.V.D.*, 606 U.S.1 (2025). This effectively allowed the United States government to continue its removal efforts and form new third-country agreements. These agreements are concerning because removals to these African countries would likely violate the United States' non-refoulement obligations due to the human rights records of South Sudan, Eswatini, Ghana, Rwanda, Uganda, as well as other nations the individuals may subsequently be removed. *See US/Africa: Expulsion Deals Flout Rights*, HUM. RTS. WATCH (Sept. 23, 2025), https://www.hrw.org/news/2025/09/23/us/africa-expulsion-deals-flout-rights [https://perma.cc/4732-BUTJ].

[49] *See, e.g.*, *Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1138 (S.D. Cal. 2018), *modified*, 330 F.R.D. 284 (S.D. Cal. 2019) (concluding that under the Zero Tolerance policy, "children are not accounted for with the same efficiency and accuracy as *property*. Certainly, that cannot satisfy the requirements of due process.").

[50] *See, e.g.*, *D.V.D. v. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640 (D. Mass. May 21, 2025), clarifying *D.V.D. v. Dep't of Homeland Sec.*, 778 F.Supp.3d 355 (D. Mass. 2025); *D.A. v. Noem*, No. 25-cv-3135, 2025 WL 2646888 (D.D.C. Sept. 15, 2025).

[51] *Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*, Advisory Opinion OC-8/87, Inter-Am. Ct. H.R. (ser. A) No. 8, ¶¶ 27–30 (Jan. 30, 1987).

[52] *Id.* ¶¶ 24, 42.

safeguard the core foundational rights and protections that sustain a liberal democracy.[53] *Yatama v. Nicaragua* is illustrative. There, the legislature restricted candidates in the YATAMA political party from participating in municipal elections while simultaneously preventing challenges to this legislation. The Court found that this legislation failed to provide individuals effective recourse for protection against fundamental rights violations.[54] In its Advisory Opinion, the IACtHR stressed that Article 8 and Article 25 cannot be suspended in times of emergency, as these rights safeguard democracy itself.[55] Central amongst the protections preserving democracy is the independence of judges and lawyers to ensure governments adhere to publicly-promulgated laws and judicial authority. This section illustrates how the right to a fair trial and judicial protection—guaranteed by Articles 8 and 25 of the ACHR and ensured by the U.S. Constitution's Due Process Clause[56]—have been rapidly eroding in the United States.

a) Procedural Protections: The Right to a Fair Trial

Article 8 of the ACHR provides for the right to a fair trial.[57] It states, in relevant part, that "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal."[58] The article stipulates that those accused of a criminal offense will be presumed innocent and provided minimum due process guarantees that non-exhaustively include: prior notification of charges; adequate time and means to prepare for defense; the right to counsel; and the right to appeal one's judgment to a higher court.[59]

In *Claude Reyes v. Chile*, the Court opined that Article 8 "ensure[s] that the State bodies called on to determine an individual's rights and obligations . . . will do so using a procedure that

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[53] *Yatama v. Nicaragua*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 127, 152 (June 23, 2005).
[54] *See generally Yatama v. Nicaragua*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 127 (June 23, 2005).
[55] *Judicial Guarantees in States of Emergency*, Advisory Opinion OC-9/87, Inter-Am. Ct. H.R. (ser. A) No. 9, 38 (Oct. 6, 1987). ("The Court holds that the judicial guarantees essential for the protection of the human rights not subject to derogation, according to Article 27(2) of the Convention, are those to which the Convention expressly refers in Articles 7(6) and 25(1), considered within the framework and the principles of Article 8, and also those necessary to the preservation of the rule of law, even during the state of exception that results from the suspension of guarantees."); *see e.g.*, *Baena Ricardo et al. v. Panama*, Merits, Reparations and Costs, Judgment Inter-Am. Ct. H.R. (ser. C) No. 72, ¶¶ 106, 124 (Feb. 2, 2001). Here, the Court links due process and judicial protection to democratic participation, noting that democracy is undermined when these rights are denied.
[56] U.S. Const. amend. XIV.
[57] American Convention, *supra* note 30, at art. 8.
[58] American Convention, *supra* note 30, at art. 8, 1.
[59] *Id.* 2.

provides the individual with the necessary means to defend his legitimate interests."[60] Procedural protections facilitate due process, allowing an individual to "obtain duly reasoned and justified rulings, so that he is protected by the law and safeguarded from arbitrariness."[61] As such, Article 8 guarantees are not limited to judicial actions, but rather, they govern the actions by any State body in order to ensure that the rights and freedoms of all individuals are protected from any arm of government, which is an essential element of rule of law.

b) <u>Denial of Due Process</u>

In the United States, the erosion of democracy is directly linked to the systematic undermining of vital due process guarantees enshrined in Article 8.[62] The Trump Administration's efforts to deny due process wholesale is evidenced in the systematic purging of judges and attorneys, both *en masse* and through specifically targeting those it perceives as non-conforming to its immigration law agenda, as well as invoking the Alien Enemies Act and other repressive policies designed to deport individuals without hearings.

(1) Firing of Immigration Judges and Attorneys

The United States Executive Office of Immigration Review (EOIR), housed in the Department of Justice, is responsible for adjudicating immigration cases in removal proceedings.[63] As of September 2025, the EOIR announced the pending caseload of immigration cases is approximately 3.75 million.[64] Despite the immense backlog in the immigration system, the Trump Administration has steadily fired immigration judges throughout the first ten months of its second term in office.[65] The diminished number of immigration judges exacerbates the

[60] *Claude Reyes et al. v. Chile*, Merits, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 151, 4 (Sept. 19, 2006).
[61] *Id.*
[62] *American Convention*, *supra* note 30.
[63] EXEC. OFF. OF IMMIGR. REV., *About the Office*, JUSTICE.GOV (last visited Nov. 12, 2025), https://www.justice.gov/eoir/about-office [https://perma.cc/7CMD-BY4G].
[64] EXEC. OFF. OF IMMIGR. REV., *EOIR Announces Significant Immigration Court Milestones*, JUSTICE.GOV (last visited Nov. 12, 2025), https://www.justice.gov/eoir/pr/eoir-announces-significant-immigration-Court-milestones [https://perma.cc/9JM6-TELH].
[65] In February 2025, the Department of Justice fired an additional twenty immigration judges. Eileen Sullivan, *Trump Administration Fires Immigration Judges*, N.Y. TIMES (Feb. 15, 2025), https://www.nytimes.com/2025/02/15/us/politics/trump-administration-continues-immigration-court-crackdown-with-judge-firings.html [https://perma.cc/S8WE-96V6]. Furthermore, the DOJ summarily terminated the entire December 2024 cohort of newly-appointed immigration judges. *First Amended Reduction-in-Force Appeal and Request for Processing as a Class or Consolidated Appeal*, U.S. Merit Sys. Prot. Bd., Atlanta Reg'l Off., Apr. 9, 2025, https://democracyforward.org/wp-content/uploads/

already existing backlog in adjudication by further delaying cases and hindering the ability of individuals in immigration proceedings to receive fair and impartial trials and due process.[66]

The Trump Administration's layoffs also raise impartiality concerns both in and out of the immigration court system. At the outset of his second term, President Trump ordered the Department of Justice to terminate the remaining Biden-era U.S. attorneys.[67] The thirteen judges fired in December 2024 were "highly experienced immigration attorneys appointed under the [Biden] Administration after an extensive application process."[68]

(2) Invocation of the Alien Enemies Act

The Trump Administration has also stripped immigrant due process rights by invoking the AEA and deporting individuals without hearings.[69] The AEA, by its terms, is limited to the extraordinary event of an invasion by a foreign nation: it grants the President the "power to detain and remove foreign citizens of a 'hostile nation or government' when 'there is a declared war' with such nation or when a 'foreign nation' threatens 'invasion or predatory incursion' against the territory of the United States."[70] The Fifth Circuit Court of Appeals held in early September 2025 that, "[a] country's encouraging its residents and citizens to enter this country illegally is not the modern-day equivalent of sending an armed, organized force to occupy, to disrupt, or to otherwise harm the United States."[71] Despite this decision, the Trump

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2025/04/Redacted-2025-04-09-Immigration-Judges-Amended-Appeal.pdf [https://perma.cc/LS69-CM5F]. Shortly thereafter, in March 2025, "[a] total of 85 employees, including 18 judges, at the [EOIR] accepted the government's deferred resignation offer or early retirement." Eileen Sullivan, *Immigration Judges and Court Staff Take Payout Offers to Leave*, N.Y. Times (Mar. 6, 2025), https://www.nytimes.com/2025/03/06/us/politics/immigration-judges-payouts-trump.html [https://perma.cc/T8XQ-9K7X]. In September 2025, nearly twenty additional immigration judges were informed of their termination, constituting the largest firings since February 2025. Ximena Bustillo, *Trump Administration fires more immigration judges*, NPR (Sept. 23, 2025), https://www.npr.org/2025/09/23/nx-s1-5550915/trump-immigration-judges [https://perma.cc/PM56-W9UX].

[66] Ximena Bustillo, *Trump Fires More Immigration Judges Even as He Aims to Increase Deportations*, NPR (Apr. 22, 2025), https://www.npr.org/2025/04/22/nx-s1-5372681/trump-immigration-judges-fired#:~:text=How%20does%20deportation%20work%2C%20and,only%20666%2C177%20initial%20case%20decisions [https://perma.cc/V95P-AZCM].

[67] Jasper Ward, *Trump Says He Has Instructed DOJ to Terminate All Remaining Biden-era US Attorneys*, Reuters (Feb. 19, 2025), https://www.reuters.com/world/us/trump-says-he-has-instructed-doj-terminate-all-remaining-biden-era-us-attorneys-2025-02-18/ [https://perma.cc/S2KD-7ML7].

[68] *First Amended Reduction-in-Force Appeal*, *supra* note 65.

[69] Luke Broadwater, *Trump Challenges Migrants' Due Process Rights, Undercutting Bedrock Principle,* N.Y. Times (Apr. 24, 2025), https://www.nytimes.com/2025/04/23/us/politics/trump-immigrants-trials-deportation.html#:~:text=While%20some%20of%20those%20arrested,a%20recent%20White%20House%20visit [https://perma.cc/A3LF-SLEE].

[70] *Trump v. J.G.G.*, 604 U.S. 670 (2025), citing Rev. Stat. § 4067 (1875), 50 U.S.C. § 21 (2018).

[71] *W.M.M. v. Trump*, 154 F.4th 207 (5th Cir. 2025), *reh'g en banc granted, opinion vacated*, 154 F.4th 319 (5th Cir. 2025).

Administration continues to invoke the AEA to target those it deems members of the Venezuelan criminal gang, Tren de Aragua (TdA).[72] Academic experts who have researched gang activity in the United States have concluded that TdA's presence in the United States is overstated by federal officials.[73] The Department of Homeland Security reports that it is committed to continuing to remove "confirmed" TdA members, despite widespread concerns of lack of evidence that those removed are members of TdA.[74] These actions taken by various bodies of the U.S. Executive Branch betray the very core of Article 8—without due process protections basic rights and freedoms cannot exist at all.

c) Judicial Independence: The Right to Judicial Protection

Article 25 of the ACHR stipulates that all individuals possess the right to "simple and prompt recourse . . . to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention."[75] Article 25 requires State parties to take necessary measures: "(1) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; (2) to develop the possibilities of judicial remedy; and (3) to ensure that the competent authorities shall enforce such remedies when granted."[76]

(1) Requirement of an Adequate and Effective Remedy

The IACtHR has also elaborated upon what constitutes "adequate and effective" recourse, finding that it is "not sufficient that [an effective remedy] is established in the Constitution or the law, or that it is formally admissible; rather, [adequate and effective recourse]

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[72] Allison Sherry & Martin Kaste, *What Is Tren de Aragua's Footprint in the U.S.? Experts Say Smaller Than Federal Officials Say*, NPR (Apr. 8, 2025), https://www.npr.org/2025/04/08/g-s1-58849/tren-de-aragua-presence-reality-Check [https://perma.cc/24SH-SWJT]. On March 15, 2025, the Trump Administration blatantly disregarded due process guarantees when it invoked the AEA to bypass the immigration court system in order to deport hundreds of men, mainly Venezuelan nationals, to El Salvador without hearings. *Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Agua*, Proclamation No. 10903, 90 Fed. Reg. 13033 (2025); Clinic Legal, *What is Happening With the Alien Enemies Act, Kilmar Abrego Garcia, and the Salvadoran Prison Known as CECOT?*, Clinic Legal (Apr. 29, 2025), https://www.cliniclegal.org/resources/removal-proceedings/what-happening-alien-enemies-act-kilmar-abrego-garcia-and-salvadoran [https://perma.cc/N6N5-PX26]; *Trump v. J.G.G.*, 604 U.S. at 679.

[73] Sherry & Kaste, supra note 72 (highlighting federal agencies' lack of sufficient gang data and proof of membership being identified through tattoos of popular Venezuelan symbols).

[74] *See* Dep't of Homeland Security, *DHS Deports Tren de Aragua Gang Members, Sexual Predators, and Violent Criminals from the United States to Venezuela*, (Oct. 24, 2025), https://www.dhs.gov/news/2025/10/24/Dhs-deports-tren-de-aragua-gang-members-sexual-predators-and-violent-criminals [https://perma.cc/4XAN-GCN6].

[75] *American Convention*, *supra* note 30, at art. 25.

[76] *Id.; Yatama v. Nicaragua* (Judgment of June 23, 2005) 153 (explaining how the Court emphasizes that judicial guarantees and protection are indispensable for genuine democratic participation).

must be truly appropriate to establish whether a human rights violation has been committed and stipulate what is required to redress this."[77] As such, it is not enough to merely implement safeguards to protect a right, but mechanisms must exist that effectively implement the ruling.[78] This is consistent with the definition of democracy and the thick rule of law that *Amici* here urge the IACtHR to adopt.

The right to an effective remedy is based on political accountability, as well as the enumerated rights that operate in conjunction with one another to guarantee democratic institutions. In *Lopez Lone and Others v. Honduras,* the IACtHR held that an "illusory" remedy does not meet the standard of an effective remedy.[79] A remedy is illusory when the Judiciary "lacks the necessary independence to rule with impartiality."[80] Impartiality is particularly relevant in guaranteeing judicial independence, as it is evident that a democracy can only fully function with robust judicial protection underpinning the rule of law.

The IACtHR has emphasized that independent and impartial decisionmakers are crucial to an Article 25 analysis.[81] In *Supreme Court of Justice (Quintana Coello et al.) v. Ecuador,* the Court found that the arbitrary and politically motivated dismissal of twenty-seven Supreme Court of Justice of Ecuador judges was a violation of Article 25 because under the Ecuadorian constitution, an "unconstitutionality suit" would not have led to simple and prompt recourse.[82] As such, a thick, robust concept of the rule of law that guarantees individuals adequate and effective recourse also depends on the application of this principle to the members of the judiciary to allow for judicial independence and impartial decision-making.[83]

(2) Defiance of Judicial Orders

Article 25 also operates as an enforcement mechanism to safeguard judicial remedies.[84] In the absence of enforcement, judicial remedies required by the Convention would be rendered moot. In the current U.S. context, there are myriad examples illustrating how enforcement of

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[77] *López Lone et al. v. Honduras*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 302, 245 (Oct. 5, 2015); *Velásquez Rodríguez*, Inter-Am. Ct. H.R. (ser. C) No. 4, 63; *Granier et al. (Radio Caracas Televisión) v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 293, 282.
[78] *López Lone et al.*, Inter-Am Ct. H.R. (ser. C) No. 302, 245.
[79] *Id.*
[80] *Id.* 247.
[81] *Quintana Coello et al.*, Inter-Am. Ct. H.R. (ser. C) No. 266, at 135.
[82] *Id.* 137-138.
[83] *Id.*
[84] *American Convention*, *supra* note 30 at art. 25(2)(b).

judicial remedies must be ensured for Article 25 to be respected. In *J.G.G. v. Trump*, a U.S. federal district court issued a temporary restraining order ("TRO") to prevent the U.S. government from removing alleged members of TdA to El Salvador without a hearing under the government's invocation of the AEA.[85] The TRO prevented the U.S. government from transferring the individuals anywhere, and required any planes carrying individuals to El Salvador be returned to U.S. airspace.[86] The Court forbade turning the individuals into the custody of a foreign government.[87] Despite the TRO, two planes that had already departed U.S. airspace but had not yet arrived in El Salvador continued their journey, and a third plane departed even after the Court's order was issued.[88]

Kilmar Armando Abrego Garcia, an El Salvadoran national who was wrongfully detained and deported, had previously been granted withholding of removal in an immigration proceeding and thus could not legally be removed to El Salvador.[89] In response to his unlawful removal to El Salvador in March 2025, the U.S. Supreme Court ordered that the U.S. government "facilitate and effectuate the return" of Abrego Garcia.[90] The Trump Administration ignored this judicial order until June 2025,[91] during which time Abrego Garcia was subjected to human rights abuses including "severe beatings, severe sleep deprivation, inadequate nutrition, and psychological torture" in the notorious El Salvadoran prison, CECOT.[92]

(3) Impeachment of Judges & Selective Prosecution of Lawyers and Law Firms

Article 25(1) ensures that everyone has a right to a hearing before an impartial court or tribunal prior to the deprivation of a right or benefit, as an integral feature of any democratic

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[85] *J.G.G., et al. v. Trump*, 778 F.Supp.3d 24, 30 (D.D.C. 2025).
[86] Clinic Legal, *What is Happening With the Alien Enemies Act, Kilmar Abrego Garcia, and the Salvadoran Prison Known as CECOT?*, Clinic Legal (Apr. 29, 2025), https://www.cliniclegal.org/resources/removal-proceedings/What-happening-alien-enemies-act-kilmar-abrego-garcia-and-salvadoran [https://perma.cc/N6N5-PX26].
[87] *Id.*
[88] *J.G.G., et al.,* 778 F.Supp.3d, at 34.
[89] Alan Feuer and Karoun Demirjian, *What to Know About the Deportation of Abrego Garcia to El Salvador*, N.Y. Times (Apr. 21, 2025), https://www.nytimes.com/article/abrego-garcia-trump-deportations-el-salvador.html [https://perma.cc/E4EV-RT5D].
[90] *Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025); Adam Liptak, *Supreme Court Sides With Wrongly Deported Migrant*, N.Y. Times (Apr. 13, 2025), https://www.nytimes.com/2025/04/10/us/politics/supreme-court-trump-deported-migrant.html [https://perma.cc/M95H-V6P6].
[91] Ben Finley, *An 'Administrative Error' Sent a Maryland Man to an El Salvador Prison, ICE Says*, Associated Press (Apr. 1, 2025), https://apnews.com/article/el-salvador-deportation-maryland-man-trump-error-818a0fa1218de714448edcb5be1f7347 [https://perma.cc/S7YB-E689].
[92] First Amended And Supplemental Complaint For Injunctive Relief And Declaratory Judgment at 115-116, Abrego Garcia v. Noem, No. 25-cv-00951-PX (D. Md. July 2, 2025).

society.[93] Without the right to a hearing, fundamental rights could be trampled without recourse. Article 25 also ensures judicial impartiality and access to justice, both of which are essential components of any democratic state.

This aspect of democracy is also under threat in the United States. Several members of Congress have initiated the impeachment of Chief Judge James E. Boasberg, the judge who issued the TRO preventing the government from deporting migrants without due process to El Salvador under the AEA.[94] The congressional effort to impeach Judge Boasberg was ostensibly for "high crimes and misdemeanors," but the sole reason provided was that his order went against the Trump Administration's program of mass removal of migrants from the U.S.[95] The Trump Administration's measures targeting federal judges that have ruled in opposition to its policies have created a hostile atmosphere, resulting in increased threats of violence against federal judges. Since President Trump began his second term "more than 500 threats were against federal judges as of September 2025."[96] This has a chilling effect on other judges whose rulings challenge the Administration's actions, severely undermining judicial independence.

The U.S. Department of Justice (DOJ), the principal government entity meant to uphold and promote the rule of law,[97] has also targeted lawyers who have worked on past prosecutions against President Trump. In fact, many DOJ lawyers have resigned from the Agency when pressured to violate their ethics in pursuing President Trump's goals without legal foundation.[98] As of September 29, an unprecedented 107 career DOJ senior lawyers have left the Justice Department both voluntarily and involuntarily, "with the divisions enforcing civil rights,

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[93] *American Convention, supra* note 30, at art. 25(1).
[94] Clinic Legal, *supra* note 86.
[95] H.R. Res. 229, 119th Cong. (2025).
[96] Suzanne Monyak, *Federal Judges Got Over 500 Threats Since October, Marshals Say,* Bloomberg L. (Sept. 10, 2025), https://news.bloomberglaw.com/us-law-week/federal-judges-got-over-500-threats-since-october-marshals-say [https://perma.cc/EE8U-CTJB].
[97] U.S. Dep't of Just., *About DOJ*, https://www.justice.gov/about [https://perma.cc/JZ3G-E7JT] (last visited Nov. 12, 2025).
[98] Alanna Durkin Richer, *White House Abruptly Fires Career Justice Department Prosecutors in Latest Norm-Shattering Move*, AP News (Mar. 31, 2025), https://apnews.com/article/prosecutor-firings-justice-Department-white-house-25226702173e7b0aa86633d6c471c37e [https://perma.cc/RA5D-VHLT]; Ryan Lucas and Carrie Johnson, *Justice Department Moves to Fire At Least 12 Officials Who Investigated Trump*, NPR (Jan. 28, 2025), https://www.npr.org/2025/01/27/nx-s1-5276334/justice-department-firings-trump-special-counsel-jack-smith [https://perma.cc/3MUZ-8MK4].

immigration, and environmental laws amongst the hardest hit."[99] The DOJ's actions demonstrate that judicial independence and impartiality are being eroded in the U.S., as lawyers and judges are being persecuted based on their perceived lack of support of the administration's agenda, in an effort to ensure loyalty to the Trump Administration.

3. Freedom of Assembly, Association, and Expression

The Court has noted the close relationship between the rights to freedom of expression, assembly, and association with ensuring a democratic society. The Inter-American system has traditionally recognized the inter-connection of these rights, enumerated in Articles 13, 15 and 16 of the ACHR. The Court has stated, "although each of the rights contained in the Convention has its own sphere, meaning and scope, it sometimes becomes necessary to analyze them together," reasoning that "these rights are of fundamental importance under the Inter- American system, because they are closely interrelated and, together, make democracy possible."[100] In the past few months, these rights have been rapidly eroding in the United States, as described in this section. The erosion of these rights– and hence, democracy– is best exemplified by the threats and restrictions placed on universities and students across the United States. Since taking office, President Trump has signed executive orders restricting practices related to diversity initiatives, LGBTQ rights, and support for Palestinian rights and freedom. Under the guise of enforcing these orders, the president has threatened and revoked federal funding for universities, detained international students and revoked their visas, and restricted students from engaging in peaceful demonstrations where they express their opinions. These actions have serious consequences on the right to freedom of expression, association, and assembly, and are causing severe harm to democratic institutions within the United States.

a) <u>Interpretation of these rights in the Inter-American Framework</u>

The right to freedom of thought and expression has been broadly recognized by the Inter-American Court and Commission as one of the fundamental rights of a democratic

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[99] Suzanne Monyak, *Justice Department Loses a Third of Career Leaders Under Trump,* BLOOMBERG L. (Sept. 29, 2025), https://news.bloomberglaw.com/us-law-week/justice-department-loses-a-third-of-career-leaders-under-trump [https://perma.cc/Z8PU-BT3B].

[100] *Manuel Cepeda Vargas v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 213, 171 (May 26, 2010); *see also Movilla Galarico et al. v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 452, 304 (Jun. 22, 2022); *López Lone et al.*, Inter-Am Ct. H.R. (ser. C) No. 302, at 160.

society.[101] Freedom of expression allows for the broad sharing of information, open public debate, and the ability to disagree with government policies without fear of retribution. Without this, a democracy cannot fully function: elections cannot truly be free and fair when the public is not given access to a wide range of information.[102] The Commission's 2003 Report on the Situation of Human Rights in Venezuela stated succinctly, "…without freedom of expression and information, full democracy cannot exist…clearly, there is a direct relationship between the exercise of free expression and opinion and democratic existence."[103] The Commission has recognized the importance of freedom of expression in bringing other governmental abuses to light, by exposing human rights violations within government institutions that may otherwise be ignored.[104] Therefore, protecting the right to freedom of expression is necessary to preserve democratic governance.

In parallel with freedom of expression, freedom of association and assembly are widely recognized as fundamental to the functioning of democratic governments.[105] The IACHR has emphasized that public demonstrations and social protests are protected associational freedoms, and that these are important tools to petition public authorities and publicly condemn abuses and violations of human rights.[106] The right to demonstrate and protest, the Commission has stated, are "essential elements of the functioning and very existence of the democratic system and,

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[101] *See American Convention*, *supra* note 30, at art. 13; *Movilla Galarico et al.*, Inter-Am. Ct. H.R. (ser. C) No. 452, at 310 (freedom of expression is "a cornerstone in the very existence of a democratic society" without which "the democratic system is weakened."); *see also "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 73, 68 (Feb. 5, 2001); Report on the Situation of Human Rights in Venezuela, Inter-Am. Comm'n H.R., OEA/Ser.L/V/ II.118. Doc. 4 rev. 1, 367 (Oct. 24, 2003); *see also Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts.13 and 29 of the American Convention on Human Rights)*, Advisory Opinion OC-5/85, Inter-Am. Ct. H.R. (ser. A) No. 5, 69 (Nov. 13, 1985) ("[f]reedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard.").

[102] *See Third Report on the Situation of Human Rights in Paraguay*, Inter-Am. Comm'n H.R., OEA/Ser./L/VII.110, doc. 52, 39 (Mar. 9, 2001) ("when [freedom of expression and information] is restricted, citizen control over public officials is prevented or constrained and democracy is transformed into a system where authoritarianism finds fertile ground to impose itself on the will of society.").

[103] *Report on the Situation of Human Rights in Venezuela*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/ II.118. Doc. 4 rev. 1, 367 (Oct. 24, 2003).

[104] *Report on Terrorism and Human Rights*, Inter-Am. Comm'n H.R, OEA/Ser.L/V/ll.116. Doc. 5 rev. 1 corr, 267 (Oct. 22, 2002).

[105] *Antonio Tavares Pereira et al. v. Brazil*, Case 12.727, Inter-Am. Comm'n H.R., Report No. 6/20, OEA/Ser.L/V/II.175, Doc. 12 (Mar. 3, 2020).

[106] Edison Lanza (Special Rapporteur for Freedom of Expression), *Protest and Human Rights: Standards on the Rights Involved in Social Protest and the Obligations to Guide the Response of the State*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II, ¶¶ 21, 25 (2019).

therefore, should not be interpreted restrictively."[107] The Commission has also noted that "[p]olitical and social participation through the exercise of freedom of assembly is critical to the consolidation of democratic life in societies."[108] In the United States, increasing repression of protests and harsh penalties for protestors have contributed to a narrowing of these rights.

The Inter-American bodies have emphasized that any restrictions on these rights must be minimal, and strictly construed.[109] The limited circumstances that allow for these restrictions are the protection of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.[110] As the Court has recognized, the rights to freedom of expression, assembly and association are necessary for human rights defenders, who use organizing and protest to encourage a fully democratic society.[111] The IACtHR has noted that inhibiting the right of assembly has a serious chilling effect on the future exercise of that right (and thus the exercise and protection of other individual rights).[112] As such, States are under a strict obligation not to attribute sporadic violence of some protestors to other peacefully assembled individuals.[113] Restrictions based on a threat to public order must be shown to have "real and objectively verifiable" causes presenting a "certain and credible threat."[114] Moreover, the Inter-American Legal Framework regarding the Right to Freedom of Expression explicitly

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[107] *Antonio Tavares Pereira et al.*, Inter-Am. Comm'n H.R., Report No. 6/20; *see also Movilla Galarico et al.*, Inter-Am. Ct. H.R. (ser. C) No. 452, at 316 ("[Freedom of association] is the right to associate with the purpose of seeking the common realization of a lawful end, and the correlative negative obligation of the State not to pressure or interfere in such a way as to alter or distort said purpose.... freedom of association also gives rise to positive obligations to prevent attacks against it, to protect those who exercise it, and to investigate violations of this freedom…").

[108] *Second Report on the Situation of Human Rights Defenders in the Americas*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II. Doc. 66, 128 (Dec. 31, 2011).

[109] *See* Inter-Am. Comm'n H.R., *Libertad de Expresión en las Américas: Los Cinco Primeros Informes de la Relatoría para la Libertad de Expresión* [*Report on Freedom of Expression in the Americas: the First Five Reports of the Office of the Rapporteur for Freedom of Expression*] (2003); *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts.13 and 29 of the American Convention on Human Rights)*, Advisory Opinion OC-5/85, at 42.

[110] *American Convention*, *supra* note 30, at arts. 13, 15, 16

[111] *Escaleras Mejía et al. v. Honduras*, Sentencing, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 361, 207 (Sept. 26, 2018) ("the organized work of human rights defenders is an essential component in constructing a solid and lasting democracy, in fully assuring the rule of law, and in upholding the fundamental guarantees of all persons.").

[112] *Women Victims of Sexual Torture in Atenco v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 371, 172 (November 28, 2018); *see López Lone et al.*, Inter-Am Ct. H.R. (ser. C) No. 302, at ¶¶ 160-164.

[113] *Women Victims of Sexual Torture in Atenco*, Inter-Am. Ct. H.R. (ser. C) No. 371, at 175.

[114] Catalina Botero Marino (Special Rapporteur for Freedom of Expression), *The Inter-American Legal Framework Regarding the Right to Freedom of Expression*, Inter-Am. Comm'n H.R. OEA/Ser.L/V/II., 82 (Dec. 30, 2009); *see Report on Freedom of Expression in the Americas, supra* note 109.

state that "[i]t is not sufficient to invoke mere conjecture regarding possible disturbances of public order, nor hypothetical circumstances derived from the interpretations of the authorities in the face of events that do not clearly present a reasonable threat of serious disturbances ("anarchic violence")."[115]

The U.S. government has increasingly been claiming a "threat to public order" as a reason to place restrictions on protest, and arrest and punish people who are exercising these rights. The examples below demonstrate how the U.S.'s restrictions on the right to freedom of expression, assembly, and association contravenes the human rights framework set out by this Court, hence weakening the public's ability to exercise democracy.

b) Examples of how these rights have been restricted recently in the U.S.

In January 2025, the Trump Administration passed several executive orders with the goal of compelling universities and institutions to change their policies to align with the presidential Administration's values. The orders demanded that private institutions receiving federal funding end their diversity, equity, and inclusion ("DEI") programs, and conform to the Administration's definitions of sex and gender, which are discriminatory against LGBTQ individuals.[116] They further directed federal agencies to investigate what enforcement tactics and tools within their agencies could be used to ensure private institutions comply.[117] Not long after, the federal government sent a letter to all universities and educational institutions receiving federal funds, threatening to cut federal funds or open criminal and civil investigations into institutions which do not comply.[118] In March, the government launched investigations into forty-five universities for their use of DEI programs and other race-based initiatives– which the administration claimed did not align with their political views– and threatened to revoke federal funding.[119]

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[115] Botero Marino, *Inter-American Legal Framework*, *supra* note 113, at 82.
[116] Exec. Order No. 14168, 90 Fed. Red. 8615 (Jan. 20, 2025); Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025).
[117] Exec. Order No. 14168, *supra* note 116; Exec. Order No. 14173, *supra* note 116; *see also* Off. Of Att'y Gen., *Ending Illegal DEI and DEIA Discrimination and Preferences* (Feb. 5, 2025), https://www.justice.gov/ag/media/1388501/dl?inline [https://perma.cc/LP7C-NHFA] (Department of Justice announces it will "investigate, eliminate and penalize illegal DEI and DEIA preferences, mandates, policies, programs and activities in the private sector and in education institutions that receive federal funds").
[118] Letter from Craig Trainor, Acting Ass. Sec. for C.R.., U.S. Dep't of Educ., to Colleagues of U.S. Dep't of Educ., Off. for C.R. (Feb. 14, 2025), available at https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf [https://perma.cc/98HG-V5QU].
[119] Press Release, U.S. Dep't of Educ., Office for Civil Rights Initiates Title VI Investigations into Institutions of Higher Education (Mar. 14, 2025), https://www.ed.gov/about/news/press-release/office-civil-rights-initiates-title-vi-Investigations-institutions-of-higher-education-0 [https://perma.cc/QE9V-8LZQ].

Congressional committees and representatives have also sent letters to hundreds of nonprofit organizations whose work does not align with the Administration's values, threatening investigations and enforcement actions.[120]

Perhaps the greatest recent threat to freedom of expression has manifested through executive actions targeting a wide range of speech expressing solidarity with Palestine. The U.S. government has implemented these policies in the name of combating anti-semitism; while this goal is important, it has been used as a pretext for restricting a broad range of speech and expression which is definitively not antisemitic. In 2019, the first Trump Administration passed an executive order titled "Combating Anti-Semitism" which directs agencies to use a definition of antisemitism which includes certain speech targeting or criticizing Israel,[121] making it more difficult to speak out against the actions of the State of Israel without being labeled antisemitic. When President Trump took office in 2025, he reaffirmed the 2019 executive order while including additional measures his office would take to "combat anti-Semitism."[122] The order directs federal agencies to target antisemitism on university campuses, and report on cases alleging antisemitism on campuses after October 7th, 2023.[123] It also directs federal agencies to encourage universities to monitor and report disfavored activities of noncitizen students and

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[120] *See generally,* "Congressional Investigations: Investigations into US Nonprofits," Int'l Ctr. for Not-For-Profit Law (ICNL) (last updated Nov. 10, 2025), https://www.icnl.org/congressional-investigations [https://perma.cc/H86R-PUAM]; *see also* Press Release, Comm. on Homeland Sec. Chairman Andrew Garbarino, "Chairmen Green, Brecheen Launch Probe into 200+ NGOs Over Their Use of Taxpayer Dollars During the Biden-Harris Border Crisis" (Jun. 11, 2025), https://homeland.house.gov/2025/06/11/chairmen-green-brecheen-launch-probe-into-200-ngos-over-their-use-of-taxpayer-dollars-during-the-biden-harris-border-crisis/ [https://perma.cc/27GW-DLC8] (launching probe into organizations providing immigration services); Letter from Lance Gooden, Member of Cong., to Pamela Bondi, U.S. Att'y Gen. (Oct. 16, 2025) https://gooden.house.gov/_cache/files/d/2/d26a8206-b28b-45f9-a625-7945dec024ca/66943302A87178B208D975A926606CA3CE035EF64203ADA0C6DC52C9D27D3F86.nlg-letter-to-bondi-10.16.25-v5-final.pdf [https://perma.cc/KE28-NLBV] (requesting the Department of Justice investigate the National Lawyers Guild for providing legal assistance and support to protestors); Letter from Jason Smith et al., Chairman, H. Comm. on Ways and Means, *Letters from Chairman Smith to the IRS Recommending Revocations of Tax-Exempt Status of Organizations Fueling Chaos, Illegal Conduct, and Antisemitic Activity in U.S., Including those with Possible Ties to Terrorist Networks*, to Scott Bessent, Acting Comm'r, IRS, and Frank Bisignano, CEO, IRS (Oct. 6, 2025), https://waysandmeans.house.gov/wp-content/uploads/2025/10/10.6.25-Letter-to-IRS.pdf [https://perma.cc/M38Y-P6S7] (requesting a federal agency revoke the tax-exempt status of several nonprofits supportive of Palestinian liberation).

[121] *See* Exec. Order No. 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019); Int'l Holocaust Remembrance All., *Working Definition of Antisemitism*, available at https://holocaustremembrance.com/resources/working-definition-antisemitism [https://perma.cc/QQ27-EPC7] (last visited Nov. 12, 2025).

[122] Exec. Order No. 14188, 90 Fed. Reg. 8847 (Jan. 29, 2025).

[123] *Id.*

staff.[124] Federal agencies requested certain universities provide the names and nationalities of students involved in campus protests,[125] presumably in order to target them for removal. Another executive order proposed to ensure that admitted noncitizens "do not bear hostile attitudes toward [U.S.] citizens, culture, government, institutions, or founding principles…" and directs agencies to evaluate visa programs and recommend measures to "promote a unified American identity."[126] These orders began a targeted campaign against universities and their noncitizen students based on their political speech and actions.

In March, President Trump publicly threatened to revoke funding from universities which allow protests and deport noncitizen protestors. [127] A week later, the Department of Education sent a letter to sixty universities warning of "potential enforcement actions" based on their handling of campus protests, even in instances where universities used sound policy and supervision to ensure peaceful protests.[128] The federal government is aiming to compel universities' compliance with its directives and policy agenda– based only on an arbitrary preference not corresponding to the need to preserve order[129]– through cancellations of federal grants, threats of federal investigations, and revocation of certain universities' ability to enroll international students.[130]

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[124] *Id.*

[125] Laura Meckler, *New Trump Demand for Colleges: Name Protestors - And Their Nationalities*, WASH. POST (Mar. 25, 2025), https://www.washingtonpost.com/education/2025/03/25/trump-administration-campus-antisemitism-investigations/ [https://perma.cc/BLN7-79PA].

[126] Exec. Order No. 14161, 90 Fed. Reg. 8451 (Jan. 20, 2025).

[127] Donald J. Trump (@realDonalTrump), TRUTH SOCIAL (Mar. 4, 2025, 4:30 AM), https://truthsocial.com/@realDonaldTrump/posts/114104167452161158 [https://perma.cc/HG4H-VSX2] ("All Federal Funding will STOP for any College, School, or University that allows illegal protests. Agitators will be imprisoned/or permanently sent back to the country from which they came. American students will be permanently expelled or, depending on the crime, arrested.")

[128] Press Release, U.S. Dep't of Educ., U.S. Department of Education's Office for Civil Rights Sends Letters to 60 Universities Under Investigation for Antisemitic Discrimination and Harassment (Mar. 10, 2025), https://www.ed.gov/about/news/press-release/us-department-of-educations-office-civil-rights-sends-letters-60-universities-under-investigation-antisemitic-discrimination-and-harassment [https://perma.cc/8MAJ-B7U4] (stating that government funding was a "privilege" and contingent on the universities' adherence to federal antidiscrimination laws); *see also* Press Release, U.S. Dep't of Educ., U.S. Department of Education Probes Cases of Antisemitism at Five Universities (Feb. 3, 2025), https://www.ed.gov/about/news/press-release/us-department-of-education-probes-cases-of-antisemitism-five-universities [https://perma.cc/BKM3-7Z2P] (announcing investigations into five universities due to protests in support of Palestine on their campuses).

[129] *See* Botero Marino, *Inter-American Legal Framework*, *supra* note 114, at 82.

[130] *See e.g.*, Press Release, U.S. Dep't of Health and Human Services, DOJ, HHS, ED, and GSA Announce Initial Cancellation of Grants and Contracts to Columbia University Worth $400 Million (Mar. 7, 2025), https://www.hhs.gov/press-room/task-force-cancels-columbia-university-grants.html#:~:text=WASHINGTON%20—%20Today%2C%20the%20Department%20of,Columbia%20University%20due%20to%20the [https://perma.cc/L979-JL6E]; Letter from Josh Gruenbaum, Comm'r of the Fed. Acquisition, Sean R. Keveney,

Recognizing the harm threats and actions such as this can cause, the Office of the Rapporteur for Freedom of Expression stated that "the imposition of economic or political pressures by sectors of economic and/or State power with the aim of influencing or limiting the expression of individuals and the media is unacceptable."[131] The government's use of federal agencies, like the Departments of Education and Homeland Security, to further political goals is an attempt to impose state power to restrict freedom of expression. As the Rapporteur has stated, "silencing unpopular or critical ideas and opinions restricts the debate that is fundamental for the effective functioning of democratic institutions."[132]

In furtherance of their restrictions on freedom of expression and association, the federal government is targeting noncitizen activists as well, with the Secretary of State announcing he would revoke the visa of anyone who "become[s] a social activist that tears up our university campus" or "create[s] a ruckus."[133] The Department of Homeland Security announced it would screen visa applicants' social media posts for evidence of antisemitism.[134] In August, the agency announced it will consider whether the noncitizen has supported or engaged in "anti-American" activities when conferring immigration benefits.[135] The U.S. State Department claims to have

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Acting General Counsel U.S. Dep't Health & Human Servs., and Thomas E. Wheeler, Acting General Counsel U.S. Dept. of Education, to Dr. Katrina Armstrong, Interim Pres. of Columbia University, David Greenwald, Co-Chair of Columbia Board of Trustees (Mar. 13, 2025), available at https://static01.nyt.com/newsgraphics/documenttools/6d3c124d8e20212d/85dec154-full.pdf [https://perma.cc/EKK7-WGHF]; Letter from Josh Gruenbaum, Comm'r of the Fed. Acquisition, Sean R. Keveney, Acting General Counsel U.S. Dep't Health & Human Servs., and Thomas E. Wheeler, Acting General Counsel U.S. Dept. of Education, to Dr. Alan M. Garber, President of Harvard University, and Penny Pritzker, Lead Member, Harvard Corporation (Apr. 11, 2025), available at https://www.harvard.edu/research-funding/wp-content/uploads/sites/16/2025/04/Letter-Sent-to-Harvard-2025-04-11.pdf [https://perma.cc/P2G4-ZSRL]; Letter from Tim Walberg, Chairman, Comm. on Educ. and Workforce, and Burgess Owens, Chairman, Subcomm. on Higher Educ. and Workforce Dev., to Michael Schill, President of Nw. Univ., and Peter J. Barris, Chair, Board of Trustees, Nw. Univ. (Mar. 27, 2025), https://edworkforce.house.gov/uploadedfiles/ltr_to_northwestern_3.27.25.pdf [https://perma.cc/HCY5-Y5BY]; Press Release, U.S. Dep't of Homeland Sec., Secretary Noem Terminates $2.7 Million in DHS Grants; Orders Harvard to Prove Compliance with Foreign Student Requirements (Apr. 16, 2025), https://www.dhs.gov/news/2025/04/16/secretary-noem-terminates-27-Million-dhs-grants-orders-harvard-prove-compliance [https://perma.cc/Q7RD-DE6S]; *President and Fellows of Harvard College v. U.S. Dep't of Homeland Sec.,* 788 F.Supp.3d 182 (D. Mass. 2025).

[131] *Report on Freedom of Expression in the Americas*, *supra* note 109, at 64.

[132] *Id.*

[133] *Id.*

[134] Press Release, U.S. Citizenship and Immigr. Serv., DHS to Begin Screening [noncitizens'] Social Media Activity for Antisemitism (Apr. 9, 2025) https://www.uscis.gov/newsroom/news-releases/dhs-to-begin-screening-aliens-Social-media-activity-for-antisemitism [https://perma.cc/2NT8-PXEN].

[135] Press Release, U.S. Citizenship and Immigr. Serv., USCIS to Consider Anti-Americanism in Immigrant Benefit Requests (Aug. 19, 2025) https://www.uscis.gov/newsroom/news-releases/uscis-to-consider-anti-americanism-In-immigrant-benefit-requests [https://perma.cc/S2H6-WRXH].

revoked over 300 student visas due to the students' alleged involvement in protests in support of Palestine.[136] In March, the government detained several noncitizen students and activists and commenced deportation proceedings against them.[137] U.S. courts have agreed these arrests violate due process and appear to be based on the students' political opinions.[138] The Office of the United Nations High Commissioner of Human Rights expressed concern over the administration's actions, urging the U.S. to "cease repression and retaliation, including in the form of arbitrary detention of U.S. lawful permanent residents, and removal of international students who have participated in university protests in solidarity with Palestine."[139]

This repression has occurred through other means as well. From June and October 2025, the "No Kings" protests across the United States mobilised mass support as a direct response to the Trump administration's increasing centralisation of power.[140] Protestors invoked the principle that no individual or branch of government could act as sovereign to suppress dissent and punish political speech, practices that actively undermine democracy and U.S. Constitutional rights. Further public outrage followed the response to late-night television host Jimmy Kimmel's September 2025 condemnation of the political exploitation of the assassination of conservative

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[136] *Secretary Rubio Defends Revoking Turkish Student's Visa,* CSPAN (Mar. 27, 2025), https://www.c-span.org/clip/news-conference/secretary-rubio-defends-revoking-turkish-students-visa/5158479 [https://perma.cc/4CWT-BKFS].

[137] *See e.g., Mass Deportation: Analyzing the Trump Administration's Attacks on Immigrants, Democracy, and America*, AM. IMMIGR. COUNS. (July 23, 2025), https://www.americanimmigrationcouncil.org/report/mass-deportation-trump-democracy/ [https://perma.cc/K6HS-2WRU] (demonstrating how students are being targeted for work product containing opinions against the current administration and are therefore being subjected to immigration proceedings because of their protestful work within their universities).

[138] *Mahdawi v. Trump*, 781 F. Supp. 3d 214, 228 (D. Vt. 2025) (finding Mahdawi raised a substantial claim that "the government arrested him to stifle speech with which it disagrees"); *see also Ozturk v. Trump*, 783 F. Supp. 3d 801, 811 (D. Vt. 2025) ("Ms. Ozturk argued that her detention is punishment for her [published opinion article], and that her punishment is intended to serve as a warning to other non-citizens who are contemplating public speech on issues of the day. The Court found that Ms. Ozturk has presented credible evidence to support her argument…"); *Suri v. Trump*, No. 25-1560, 2025 WL 1806692, at *8 (4th Cir. July 1, 2025) ("The district court concluded—and the government *does not contest*—that ICE unconstitutionally *detained* Suri in retaliation for posting on social media in opposition to the war in Gaza and for his familial associations"); *Khalil v. Trump*, 786 F. Supp. 3d 871 (D.N.J. 2025), *opinion clarified*, No. 25-CV-01963 (MEF)(MAH), 2025 WL 1981392 (D.N.J. July 16, 2025), and *opinion clarified*, No. 25-CV-01963 (MEF)(MAH), 2025 WL 1983755 (D.N.J. July 17, 2025); *see also Kordia v. Noem*, 3:25-cv-01072-L-BT (N.D.Tex. June 27, 2025) (finding that Kordia has suffered prolonged detention and recommending her release).

[139] Press Release, Off. of the High Comm'r for Hum. Rts, Deporting International Students Involved in Protests will Escalate Trauma and Polarisation on U.S. Campuses: UN Experts (Mar. 17, 2025), https://www.ohchr.org/en/press-releases/2025/03/deporting-international-students-involved-pro-palestinian-protests-will [https://perma.cc/A9AX-GHXK].

[140] Nik Popli, *Millions Expected to Rally Across U.S. in 'No Kings Day' Protests Against Trump*, TIME (Oct. 17, 2025), https://time.com/7325683/no-kings-protests-oct-18/ [https://perma.cc/NC6L-LQC3].

activist and founder of Turning Point USA, Charlie Kirk.[141] Within hours, his program was suspended following direct intervention by the Chair of the Federal Communications Commission, who threatened to penalise networks "the easy way or the hard way."[142] The State Department announced that they revoked at least six student visas over their social media comments on Charlie Kirk's death.[143] State power-wielding censorship and intimidation tactics as a tool to restrict the freedom of expression demonstrate how democracy can be infringed under the guise of maintaining public order or morality.

The suppression of dissenting opinion through coercive regulation or intimidation narrows the scope of public debate and creates a climate of conformity and self-censorship. The European Court of Human Rights has affirmed that freedom of expression protects ideas that "offend, shock or disturb the State or any sector of the population,"[144] as such ideas are necessary in a democratic society to ensure free public debate. When speech is restricted and assembly constrained, the state and media are emboldened to replace pluralism with obedience, transforming democratic institutions into instruments of control rather than accountability. The assassination of Kirk further revealed how political polarisation can be exploited as justification to silence opposition, as public fear and outrage are leveraged to legitimise restrictions on freedom of expression, assembly, and association.

The IACHR has explicitly recognized that "the fact that demonstrations cause a certain degree of disturbance to daily life (for example, disruptions to traffic and commercial activities) must be tolerated so as to not deprive the right to peaceful assembly of its essence."[145] Universities have requested law enforcement to come onto campuses and break up demonstrations, causing repressive and violent tactics to be used on their students, justifying these actions by claiming the peaceful protests were disrupting campus activities.[146] The

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[141] Nardine Saad, *Jimmy Kimmel Calls Out 'Anti-American' Threats to Free Speech in Tearful TV Return*, BBC (Sept. 24, 2025), https://www.bbc.com/news/articles/c9dx6dlelw8o [https://perma.cc/MXE5-F6DR].
[142] Jeremy Barr, *FCC Chair Claims He Never Threatened TV Networks Over Jimmy Kimmel,* The Guardian (Sep. 30, 2025), https://www.theguardian.com/us-news/2025/sep/30/fcc-brendan-carr-jimmy-Kimmel-networks [https://www.theguardian.com/us-news/2025/sep/30/fcc-brendan-carr-jimmy-kimmel-networks, archived at https://perma.cc/HF2J-5LDG].
[143] Brandon Drenon, *US Revokes Visas Over Comments Made About Charlie Kirk's Death*, BBC (Oct. 16, 2025), https://www.bbc.com/news/articles/cz0x4e3zn2jo [https://perma.cc/YHN2-FYEA].
[144] *Handyside v. United Kingdom*, App. No. 5493/72, 1 Eur. H.R. Rep. 737, 49 (1976).
[145] *Observations and Recommendations Working Visit to Colombia*, Inter-Am. Comm'n H.R., 156 (June 2021).
[146] Jay Ulfelder, *Crowd Counting Consortium: An Empirical Overview of Recent Pro-Palestine Protests at U.S. Schools*, Ash Ctr. for Democratic Governance (May 30, 2024), https://ash.harvard.edu/

President has deployed the National Guard, an arm of the U.S. military, to multiple cities in response to protests, despite laws which limit the ability to use the military as law enforcement.[147] Federal agents have reportedly committed numerous acts of force and violence against protestors.[148] The Commission has cautioned against the use of force to break up protests, noting that "breaking up a demonstration can only be justified by the duty to protect persons. The Commission considers that merely breaking up a protest is not, in itself, a legitimate aim that justifies that use of force by the security forces."[149] Frequently in demonstrations, the protests have been peaceful until the police arrive and begin forcefully disbanding and arresting protestors.[150] Restrictions on the rights to assembly and association must be limited, as "the criminalization of legitimate social mobilization and protest through the direct repression of demonstrators is incompatible with a democratic society."[151] Although arrests for protesting in the United States usually results in minor criminal charges, charges against pro-Palestinian protestors have often been more severe, leading to serious consequences for demonstrators.[152] The criminalization of peaceful protestors restricts the right to assembly and association

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articles/crowd-counting-blog-an-empirical-overview-of-recent-pro-palestine-protests-at-u-s-schools/ [https://perma.cc/UV4Q-PY6X]; Daniel Arkin, Maura Barrett, Alicia Victoria Lozano, and Daniella Silva, *More than 2,000 People Arrested Nationwide in Pro-Palestinian Campus Protests*, NBC News (May 2, 2024), https://www.nbcnews.com/news/us-news/2000-People-arrested-nationwide-palestinian-campus-protests-rcna150446 [https://perma.cc/V56U-SMHZ]; Anna Betts, Lazaro Gamio, Alex Lemonides, and Isabelle Taft,, and, *Campus Protests Led to More Than 3,100 Arrests, but Many Charges Have Been Dropped*, N.Y. Times (Jul. 21, 2024), https://www.nytimes.com/2024/07/21/us/campus-protests-arrests.html [https://perma.cc/9HR5-DQA9] (reporting on the more than 3,100 students arrested for participation in Palestine solidarity encampments).

[147] Democracy Docket, *Mapped: Trump's Deployment of National Guard Troops*, Democracy Docket (Oct. 20, 2025), https://www.democracydocket.com/news-alerts/mapped-trumps-deployment-of-national-guard-troops/ [https://perma.cc/E26G-FJWZ]; *see also Gavin Newsom, Governor of the State of California, et al. v. Donald Trump, et al.,* No. 3:25-cv-04870 (N.D. Cal. Sept. 2, 2025).

[148] *See Illinois v. Trump*, No. 25-CV-12174, 2025 WL 2886645 (N.D. Ill. Oct. 10, 2025).

[149] Inter-Am. Comm'n H.R., *Annual Report, Chapter IV.A The Use of Force* (2015), 67.

[150] Arkin, Barrett, Lozano, Silva,, *supra* note 146.

[151] Inter-Am. Comm'n H.R., *Democratic Institutions, the Rule of Law and Human Rights in Venezuela*, OEA/Ser.L/V/II. Doc. 209 222 (Dec. 31, 2017), https://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf [https://perma.cc/Q9SX-XHH8].

[152] Palestine Legal, *A New Generation for Liberation, Historic Student Protests Defy University Crackdowns, 2024 Year-In-Review* (Apr. 2025), https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/67fe79259066a5210ae06fad/1744730460662/Palestine+Legal+2024+Year+in+Review+Report [https://perma.cc/97EA-27GG]; Meg O'Connor, *Prosecutors Have Levied Serious Charges Against Pro-Palestine College Protesters*, The Appeal (Nov. 4, 2024), https://theappeal.org/pro-palestine-college-protesters-face-serious-charges/ [https://perma.cc/VH76-SMR6].

protected under the ACHR. As the IACHR succinctly put it, "[i]n a democratic State, repression and violence are no way to respond to the demands of its citizens."[153]

4. Obligation to respect, protect, and guarantee rights of all persons in a democratic system

Full democracy cannot be achieved without safeguarding the rights of all persons under the law. Article 1 of the ACHR mandates that States Parties to the Convention "undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination…"[154] The right to equal protection ensures that "all persons are equal before the law" and are thus "entitled, without discrimination, to equal protection of the law."[155] Equal protection has proved to be a pillar in various human rights systems, reflected through the IACHR's jurisprudence as a "fundamental axis of the Inter-American human rights system."[156] The IACtHR has repeatedly held that equal protection is a right that safeguards other Convention rights, and without nondiscriminatory treatment, other Convention rights could not be fulfilled.[157]

Equal protection has been interpreted by the Court in a wide range of cases, ensuring that States have the obligation to: (1) refrain from introducing regulations which are discriminatory or have discriminatory effects; (2) eliminate discriminatory regulations; (3) combat discriminatory practices; and (4) establish norms and adopt measures to recognize and ensure the effective equality of all persons before the law.[158] The U.S. government's recent actions have eroded equal protection for all persons, introducing policies and regulations which discriminate, or allow for discrimination, against people of color, LGBTQ individuals, and other religious and ethnic minorities.[159] This attack on long-respected principles of equal protection creates a

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[153] Inter-Am. Comm'n H.R., *Gross Human Rights Violations in the Context of Social Protests in Nicaragua,* OEA/Ser.L/V/II. Doc. 86 138 (June 21, 2018), https://www.oas.org/en/iachr/reports/pdfs/Nicaragua2018-en.pdf [https://perma.cc/EQ45-HVNT]

[154] *American Convention*, *supra* note 30, at art. 1.

[155] *American Convention*, *supra* note 30 at art. 24.

[156] Inter-Am. Comm'n H.R., *Compendium*, OEA/Ser.L/V/II/doc. 318/23, at 83.

[157] *Espinoza Gonzáles v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 289, 216 (Nov. 20, 2014); *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, 100 (Sept. 17, 2003).

[158] Inter-Am. Comm'n H.R., *Compendium*, OEA/Ser.L/V/II/doc. 318/23, at 40.

[159] *See e.g., Noem v. Vasquez Perdomo,* No. 25A169, 2025 WL 2585637, at *16 (U.S. Sept. 8, 2025)(allowing for immigration enforcement agents to seize people based on their race, the language they speak, or the types of jobs they're working); Exec. Order No. 14168, *supra* note 116 (implementing federal policies to recognize only two sexes and eliminating certain protections for trans and nonbinary individuals); Exec. Order No. 14173, *supra* note

situation in which some participants in a democracy have less status than others, preventing the full participation of all members of society.

C. Conceptual Framework for Adopting a Thick Definition of Democracy and Its Intrinsic Link to the Rule of Law and Human Rights

While *Amici* urges the Court to consider recognizing that democracy is itself a human right, we also urge the Court to adopt a more robust definition of democracy that includes the rule of law and human rights. *Amici* provide a philosophical and legal foundation to justify this approach, as is also supported by jurisprudence discussed in the sections above.

1. Legal and Political Theorists on the Definition of 'Thick' Democracy

There has been no absolute consensus on the definition of democracy.[160] At minimum, it refers to a system of periodic, free and fair elections through which the governed select representatives to an organized government.[161] However, critics of this "thin" or purely procedural definition highlight its central weakness: authoritarian rulers may be duly and legitimately elected, yet subsequently repress the very people who gave them this power.[162] In this vein, "thinner" notions of democracy do not necessarily guarantee or protect human rights.[163]

Thus, legal and political theorists have offered "thicker" definitions based on liberalism and constitutionality.[164] These more expansive definitions recognize the importance of fully realizing fundamental rights, especially as they form both a precondition and ongoing requirement for electoral democracy to succeed.[165] When viewed more broadly, democracy may

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116 (ending diversity, equity, and inclusion programs in the federal government and encouraging the private sector to do the same).

[160] David Held, MODELS OF DEMOCRACY (3rd ed. 2006).

[161] *Id.*

[162] Fareed Zakaria, THE FUTURE OF FREEDOM: ILLIBERAL DEMOCRACY AT HOME AND ABROAD, 1–27, 96–101 (2003).

[163] Guillermo O'Donnell, *The Quality of Democracy: Why the Rule of Law Matters,* 15 J. of Democracy 32, 32-46 (2004). In addition, Luigi Ferrajoli argues that a purely procedural definition is incoherent as it could provide the means to revoke "the very democratic process itself." *See* Luigi Ferrajoli, *The Normative Paradigm of Constitutional Democracy*, 17 Res Publica 355, 357 (2011).

[164] For example, liberal democracy rests on the principle that elected leaders are limited in their actions because they must not intrude on the fundamental freedoms of citizens. *See* Steven Levitsky, Lucan A. Way, *Elections Without Democracy: The Rise of Competitive Authoritarianism*, 13 J. of Democracy 51, 51 (Apr. 2002). Constitutional democracy operates within a normative framework that ensures a check on government actors through recognition of basic civil rights and a system to check the actions of represented officials. *See* Michel Rosenfeld, *The Rule of Law and the Legitimacy of Constitutional Democracy*, 74 S. CAL. L. REV. 1307 (Jul. 2001).

[165] Robert A. Dahl, ON DEMOCRACY, 167, 170 (1998). Furthermore, Amartya Sen explains that democracy certainly involves voting and respecting election results, but "also requires the protection of liberties and freedoms, respect for legal entitlements, and the guaranteeing of free discussion and uncensored distribution of news and fair comment." Amartya Kumar Sen, *Democracy as a Universal Value*, 10 J. of Democracy 3 (Jul. 1999).

begin with elections but then continues as a mode and method of governance.[166] Proponents of a more robust definition also tend to incorporate basic civil and political rights.[167]

Generally, the assertion that substantive democracy includes civil and political rights does not per se rest on human rights treaty law. Rather, it is presented as a logical basis for democracy to function correctly and effectively.[168] Nevertheless, the very rights they refer to can be located in international human rights law, including treaties and jurisprudence.

While only offering a brief overview, we argue that the conceptual foundation for a thick definition of democracy has consensus in the theoretical literature, in addition to its grounding in the Inter-American instruments. Significantly, this more robust approach to democracy has also come to be adopted and promoted by international human rights institutions.

2. Thick Rule of Law

Assuming democracy includes the obligation to respect and protect rights and liberties, then a people should be able to hold elected officials accountable should they fail to protect these rights.[169] While "thin" definitions of democracy rely on periodic elections for accountability, a more robust definition depends on the rule of law. However, the definition of the rule of law has been contested.[170] In contemplating the rule of law and its relation to democracy, philosophers recognize at its basic level it restrains rule *by* men, to ensure clear, consistent rules and a judiciary to interpret and apply such rules.

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[166] Gerado Munck reconceptualizes democracy to focus on its substantive attributes, while determining the *quality* of a system of governance that includes values of freedom and equality. *See* Gerardo L. Munck, *What is Democracy? A Reconceptualization of the Quality of Democracy*, 23 Democratization 1, 10 (2014).

[167] Larry Diamond, Leonardo Morlino, *The Quality of Democracy*, 15 J. of Democracy, 20, 21 (2004) ("[T]he three main goals of an ideal democracy [are] political and civil freedom, popular sovereignty (control over public policies and the officials who make them), and political equality (in these rights and powers) . . . ."). Ronald Dahl similarly considers civil rights to be "an essential part of the very conception of the democratic process itself." *See* Dahl, *supra* note 170, at 167, 170.

[168] Alternatively, Dworkin locates these civil liberties in the moral equality of every individual who deserves equal regard from the state. *See* Ronald Dworkin, Sovereign Virtue: The Theory and Practice of Equality, 212 (2000).

[169] Paul W. Kahn, *What Is Democracy?*, 1 Pub. Human. e16, 3 (2025) (As Kahn asserts, democracy includes the rule of law and equal respect and dignity for each individual although popular opinion often reduces it to mere elections); Martin Krygier, *Tempering Power*, *in* The Appeal to Constitutionalism and the Rule of Law: Bridging Idealism and Realism, 34-59 (M. Adams, A. Meuwese, and E.H. Ballin eds., 2017); Guillermo O'Donnell, *Horizontal Accountability in New Democracies*, 9 J. of Democracy 112 (1998); Guillermo O'Donnell, *The Quality of Democracy: Why the Rule of Law Matters*, 15 J. of Democracy 32 (2004).

[170] Jeremy Waldron, *Rule by Law: A Much Maligned Preposition*, (NYU Sch. of L., Pub. L. Rsch. Paper No. 19, 2019); Brian Z. Tamanaha, *The Primacy of Society and the Failures of Law and Development*, 44 Cornell Int'l. L. J. 209 (2011).

Some adopt a "thin" definition of the rule of law.[171] Brian Tamanaha offers a simple definition for this approach: "The rule of law means that government officials and citizens are bound by and abide by the law."[172] Notably, this definition is content-neutral, refers to a procedural aspect of the rule of law, and thus accountability. Therefore, scholars are quick to recognize that this approach "renders it open to a range of ends," making "the rule of law amenable to abuse as it may give rise to a rule of bad law."[173] Therefore, many have pushed for a more robust, substantive version of the rule of law that includes fundamental rights and freedoms. This approach protects against the risk of a majority failing to protect or even repressing minorities and other marginalized groups.

While the relationship between democracy and the rule of law becomes essential when considering the protection of human rights, there is debate about the exact relationship. Some argue they are separate concepts that are complementary and even interdependent; however, Jürgen Habermas posits that democracy and the rule of law are "mutually constitutive."[174] Indeed, a human rights-driven definition of both democracy and the rule of law requires including a substantive version of the rule of law.[175]

O'Donnell presents a coherent vision of the "democratic rule of law," stating that a "legally based rule of a democratic state" (1) upholds the political rights, freedoms, and guarantees; (2) upholds civil rights; and (3) establishes networks of responsibility and

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[171] Paul Craig, *Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework*, Public Law 467 (1997). The thin approach is often associated with Lon Fuller and Joseph Raz. *Also see*, John Rawls, *The Law of Peoples*, *in* Collected Papers, 118, 159 (Samuel Freeman ed., 1999). Furthermore, Lon Fuller lists eight legal principles which create an "internal morality of law": generality, publicity, prospectivity, intelligibility, consistency, practicability, stability, and congruence. *See* Lon Fuller, The Morality of Law: Revised Edition (1969).

[172] Brian Z. Tamanaha, *The History and Elements of the Rule of Law*, Singapore J. of Legal Stud. 232, 233 (2012). Tamanaha explains that this definition requires a system of law that is set forth in general terms, in advance, and that "[t]he law must be generally known and understood. The requirements imposed by the law cannot be impossible for people to meet. The laws must be applied equally to everyone according to their terms. There must be mechanisms or institutions that enforce the legal rules when they are breached."

[173] Vasileios Adamidis, *Democracy, Populism, and the Rule of Law: A Reconsideration of Their Interconnectedness*, 44 Politics 386 (2021); *See also*, Fuller, *supra* note 171, at 153; Joseph Raz, *The Rule of Law and its Virtue*, 93 L. Q. Rev. 195, 197, 214 (1977). Additionally, Tamanaha acknowledges, "when the laws are unjust, formal legality can actually bring about greater evil because the system is dedicated to carrying out these unjust laws." *See* Tamanaha, *supra* note 172, at 232, 242.

[174] Jürgen Habermas, On the Internal Relation Between the Rule of Law and Democracy, 3 Eur. J. of Phil. 12 (1995).

[175] O'Donnell argues that "[t]he rule of law is among the essential pillars upon which any high-quality democracy rests. But this kind of democracy requires not simply a rule of law in the minimal, historical sense…" Rather, "a truly democratic rule of law that ensures political rights, civil liberties, and mechanisms of accountability which in turn affirm the political equality of all citizens and constrain potential abuses of state power. *See* O'Donnell, *supra* note 169, at 32.

accountability.[176] Waldron concurs on the basic norms that arise out of a substantive approach to rule of law, including a right to be present at all critical stages of the proceeding and a right to confront witnesses against the detainee, among others.[177] Notably, these protections correspond with recognized human rights provisions, such as in the ACHR.

A substantive rule of law also requires infrastructure to function effectively. For example, the rule of law must also include an independent, unbiased, easily accessible judiciary.[178] This view also recognizes the importance of ensuring that the independence of a well-trained judiciary, as well as lawyers, is at the heart of the rule of law, and is therefore necessary for democracy. Thus, human rights form the foundation of the "thick" approach to the rule of law, which in turn is required for protecting human rights in democracies. In adopting a "thicker" definition of democracy incorporating the rule of law, it is imperative that the Court offer guidelines about the rights that preserve and fortify the rule of law. In addition to recognizing that elections be transparent and organized by an impartial body to guarantee the right to political participation,[179] the Court has recognized that democracy requires that the exercise of power adhere to legal frameworks–meaning it must operate under the rule of law and without arbitrariness. To ensure this, the separation and independence of powers are crucial, especially concerning the judiciary, which must have the authority to oversee other branches of government.[180]

Advocates of a more robust, substantive version of the rule of law recognize that its basic definition must include fundamental rights and freedoms. This approach guards against the risk of a majority failing to protect, or even repressing, minorities or traditionally marginalized members of a society, such as women, people of color, LGBTQ, differently-abled, indigenous

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[176] *Id.*, at 36. (O'Donnell explains that for responsibility and accountability, it "must entail that all public and private agents, including the highest state officials, are subject to appropriate, legally established controls on the lawfulness of their acts."). O'Donnell also includes the following rights recognized in this system: "[t]he rights of associating, expressing opinions, moving freely." among others. *Id*.

[177] Jeremy Waldron, *The Rule of Law and the Importance of Procedure*, 4 (NYU SCH. OF L., PUB. L. RSCH. PAPER NO. 10-73, 2010).

[178] Id. at 9. As Tamanaha recognized, "[t]he operation of law cannot be sequestered from human participation," and the inevitability of human participation in the application and interpretation of rules provides the opening for the reintroduction of the very weaknesses sought to be avoided by resorting to law in the first place." He further states that the "standard solution to this problem is to identify the judiciary–the legal experts–as the special guardians of the law," and that "[i]n this ideal, the judge must be unbiased, neutral between parties, free of passion, prejudice and arbitrariness, loyal to the law alone." *See* Tamanaha, *supra* note 172, at 244.

[179] *Capriles*, Inter-Am. Ct. H.R. (ser. C) No. 541, at 94.

[180] *Quintana Coello et al.*, Inter-Am. Ct. H.R. (ser. C) No. 266, at ¶¶ 52-58; *Camba Campos et al.*, Inter-Am. Ct. H.R. (ser. C) No. 268, at 198.

and other historically marginalized people and communities. Whereas the procedural definition of democracy relies on periodic elections to ensure accountability, more robust definitions of democracy recognize the indispensable nature of the rule of law with independent judiciaries and fair and just rules that recognize fundamental rights to provide this protection.[181]

III. Conclusion

This Request for Advisory Opinion allows the Inter-American Court of Human Rights to determine the scope of the indivisible triad of democracy, the rule of law, and human rights as the foundation of the entire IASHR. There cannot be democracy without adherence to the rule of law and respect for human rights. At the same time, it is impossible to demand respect for human rights while neglecting the requirements for democratic and lawful regimes, where fundamental freedoms are upheld, non-discrimination against particularly vulnerable groups is enforced, elections are free, political pluralism is guaranteed, the separation of powers is maintained, and judicial independence is assured.

Additionally, this Request enables the Court to emphasize that this triad originates from the founding instruments of the IASHR, namely the ADHR and the OAS Charter, as well as from the IADC. Therefore, beyond an autonomous right to democracy, viewed both individually and collectively, as inherent to every human being protected under the ACHR, the right to democracy binds all OAS member States, as part of the IASHR, who are obliged to uphold representative democracy attributes while respecting, protecting, and guaranteeing human rights.

We respectfully ask the Court to consider that this principle also holds the status of a *jus cogens* rule, meaning it is fundamental and universally binding on all the OAS member States. The Court should consider this in a similar way -*mutatis mutandis*- as it recently established in its landmark Advisory Opinion 32/2025 on climate change and human rights, regarding the obligation not to cause irreversible damage to the climate and environment, as a *jus cogens* norm. Similarly, in the framework of this new Advisory Opinion Request on the right to democracy, there are critical rules that must be considered to be of a *jus cogens* nature. It is clear that democracy is the cornerstone of the OAS. The OAS recognizes that "representative democracy is indispensable for the stability, peace, and development of the region." One of its key purposes is to promote and consolidate representative democracy. Consequently, respect for democracy as a fundamental value and right, along with the indivisible triad of democracy, rule

[181] Jean Hampton, *Democracy and the Rule of Law*, 36 Nomos 13, 38 (1994).

of law and human rights, should be considered as constituting another *jus cogens* rule that binds all countries within the IASHR, and must guide their actions.

The correct interpretation of the rules of the Inter-American *corpus juris*, considering Article 29.c of the ACHR and grounded in a comprehensive definition of democracy and its intrinsic link to the rule of law and human rights, underscores the role of the Inter-American system, which is committed to democracy across all OAS member States. This commitment is essential for promoting and protecting human rights in the face of increasing democratic backlash across the region—in particular, as illustrated in this brief, concerning the United States. The evidence of democratic erosion presented here highlights serious issues such as inhumane treatment and discrimination against vulnerable populations due to deportations, disappearances, and detentions of immigrants, non-citizens, and citizens alike. Moreover, the use of force against vulnerable groups and expanding deportation policies compromise respect for rights such as a fair trial, access to justice, judicial protection and independence, as well as fundamental freedoms like thought and expression, protest, academic freedom, assembly, and association. Given these issues, it is imperative that the human rights obligations of the States Parties be interpreted in light of democratic principles and that Inter-American mechanisms provide effective regional protection against these ongoing and accelerating human rights violations.

As expressed in this brief, the robust definition of democracy is becoming universally recognized, not only in the Inter-American system, but also in all regional systems and the international human rights system, which fosters jurisprudential dialogue in defense of a right to democracy at the global level. We respectfully request the Court to adopt a robust view of democracy in the Americas, as presented in this brief.

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Notifications

Following the indications of the IACtHR in the open invitation to submit written observations to this Request for an advisory opinion, we indicate the following address for any notification by physical or electronic means that may arise:

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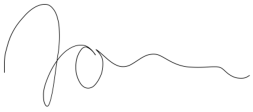
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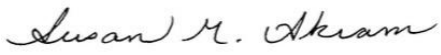
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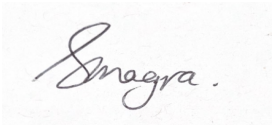
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Boston, Massachusetts, November 17, 2025