# TO THE HONORABLE MEMBERS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ORGANIZATION OF AMERICAN STATES:

SECOND SUPPLEMENTAL PETITION ALLEGING VIOLATIONS
OF THE HUMAN RIGHTS OF RICHARD S. LEHMAN BY THE
REPUBLIC OF PANAMA WITH A REQUEST FOR AN INVESTIGATION
AND HEARING ON THE MERITS

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Richard S. Lehman, by and through undersigned counsel, respectfully submits this Second Supplement to his Petition against Panama, No. P-243-09, filed March 9, 2009 ("Petition"), and supplemented on May 27, 2009 ("First Supplement"). A Spanish translation from the English original is attached.

Wilson C. Lucom died in Panama in 2006 leaving almost all of his \$50,000,000 fortune to feed the poor children of Panama. But, as a result of Panamanian judicial and political corruption, not one penny will go to feed the poor children of Panama. This is a Petition by Richard S. Lehman, one of the three executors appointed by Mr. Lucom in his will to protect Mr. Lucom's legacy to the poor children. Mr. Lehman petitions this Commission because the rich and influential people of Panama who destroyed Mr. Lucom's legacy did so by at least thirteen violations of Mr. Lehman's human rights and have used the organs of the Panamanian state entrusted with protection of those rights to commit the violations. Mr. Lehman has nowhere else to turn within Panama.

#### I. Introduction

In his Petition and First Supplement, Mr. Lehman detailed the violations of his human rights beginning shortly after he was sworn in by a Panamanian court in July 2006 as Executor of a \$50 million estate in Panama (the Estate of Wilson Lucom). This Second Supplement shows the completion of the pattern of judicial corruption that a wealthy family of Panama has used to deprive Mr. Lehman of his human rights and to silence the legacy of the late Wilson Lucom.

The Lucom Estate, by the clear language of the testator's will, was intended to be used primarily to benefit poor and malnourished children of Panama through the funding of the Wilson C. Lucom Trust Fund. Mr. Lucom named his friend and attorney of 31 years, Richard S.

Because the majority of the value of the estate is in its real estate, the value has varied significantly since 2006.

Lehman, as one of the three Executors of his will and so entrusted to Mr. Lehman the fulfillment of his legacy. To carry out Wilson Lucom's instructions set out in the will, Mr. Lehman dedicated the majority of his professional time from the day he was appointed to defending the will in court and seeking to give effect to its provisions.

At the behest of a few wealthy and well-connected Panamanian citizens motivated by personal gain, however, organs of the Panamanian State participated in and presided over a series of illicit and abusive actions directed at stopping Mr. Lehman from implementing the will. These included at least three sets of actions intended to stop Lehman's defense of the Lucom will and thereby to take all of Lucom's Estate, leaving nothing for the poor children of Panama.

First, the Panama criminal justice system was abused so that prosecutors and judges approved five false criminal indictments against Lehman accusing him of an array of outrageous and unfounded claims, two of which resulted in his false imprisonment under armed guard. All of which were eventually dismissed by the Panama Supreme Court as unconstitutional. Furthermore, he was falsely listed as a dangerous criminal by Panama on the INTERPOL "Red Notice," a listing which was later withdrawn. This same Red Notice alert resulted in the false arrest of Mr. Lehman's principal attorney in Panama. The livelihood of others of Lehman's attorneys was threatened if they continued to represent him. By targeting Mr. Lehman with these documented human rights abuses, the Panamanian State prevented him from carrying out his professional responsibility to the Estate to distribute Lucom's assets to the poor children of Panama and used its imprimatur for the personal gain of a few wealthy Panamanians. Moreover, as a result of the false criminal charges that persisted for over four years, Lehman feared for his safety in Panama, and was effectively prevented from entering Panama almost from the beginning of his appointment as Executor.

Second, the Panamanian civil legal system was abused to deprive Lehman of his rights to serve as the Executor. The Panama Probate Court issued illegal and unconstitutional orders over a four year period that "clouded" Lehman's authority to act even though he was the duly appointed Executor. Every illegal Probate Court Order was overruled eventually. Nevertheless, during the four year period that Lehman was duty-bound to administer the Lucom Estate he was relatively powerless to stop the theft of the estate's assets and other forms of estate waste.

Third, on August 6, 2010 the abuse of Mr. Lehman's human rights by corrupt elements within the Panamanian justice system culminated in a bizarre and indefensible decision by a three-judge panel of the highest court in Panama. The Supreme Court of Panama repudiated Mr. Lehman's status as Executor—and that of Mr. Christopher Ruddy as co-executor—and nullified his efforts since July 2006 to carry out his professional duty to defend the will and implement its provisions. The Supreme Court of Panama upheld the validity of Mr. Lucom's will but then completely rewrote its provisions. The Court retroactively replaced Mr. Lehman—the will's primary defender and Executor—with Ms. Hilda Lucom, the will's primary opponent and the person who tried to nullify Lucom's will from the earliest moment until her appointment as sole Executor. The Court named Hilda Lucom as sole Executor and "universal heir" of the Lucom Estate leaving nothing to the poor children of Panama.

By *retroactively* invalidating Mr. Lehman's July 2006 appointment as Executor, in judicial proceedings that were replete with irregularities, the Panamanian government, through its highest judicial organ, deprived Mr. Lehman of the right to be compensated for the services he rendered to the Lucom Estate and reimbursed for the expenses he incurred in carrying out his

duties as Executor.<sup>2</sup> Panama has thereby expropriated Mr. Lehman's right to compensation in a further fundamental abuse of his human rights.

On October 6, 2010, Dr. Mario Velasquez Chizmar, the Notary Public responsible for preparing the will of Wilson Charles Lucom, filed a criminal complaint ("Chizmar Complaint") with the Legislative Assembly (the National Congress) of Panama, accusing the three Supreme Court Justices who issued the August 6, 2010 decision of violating the Constitution of Panama and various civil and criminal statutes by giving final and binding effect "to a false version of the last will and testament of decedent." The Chizmar Complaint highlights certain of the irregularities in the proceedings and decision of the Panama Supreme Court in the Lucom case. See Ex. 1, Chizmar Complaint at 2. Under Panamanian law, the Legislative Assembly is authorized to begin procedures that may lead to the nullification of the August 6, 2010 decision if it finds the allegations against the three Justices to be well-founded. After more than five months, however, the Legislative Assembly has not taken any action on the Chizmar Complaint and there is as yet no indication that it will do so.

In addition, Dr. Teofanes Lopez Avila filed an Amparo petition on October 6, 2010 with the Supreme Court asking that all nine justices of the Supreme Court review *en banc* the three justices' panel decision issued August 6, 2010. Ex 2, Oct. 6, 2010 Amparo at 4-5, filed by Dr. Teofanes Lopez Avilar. The filing of the Amparo froze the enforcement of the Supreme Court's decision of August 6, 2010. To date, however, no action has been taken on the Amparo and there is no indication that the Supreme Court will act on it.

Mr. Lehman has attempted to work within the Panamanian justice system at all turns. On October 8, 2010, he exercised his right to challenge the Supreme Court's August 6, 2010

Ex. 3, Article 870 of the Panamanian Civil Code.

decision by filing his own criminal complaint ("Lehman Complaint") with the Legislative Assembly of Panama. That Complaint accuses the three Supreme Court Justices who issued the August 6, 2010 decision of "wrongful corruption of justice"—corruption by public employees—as well as abuse of authority and breach of the duties of public employees.<sup>3</sup> Ex.4, Lehman Complaint at 3 (Sec. IV "Crime Charged"). Similar to the Chizmar Complaint, after more than five months the Legislative Assembly has taken no action on Mr. Lehman's Complaint and there is no indication that it will do so.

As described in his Petition and First Supplement and as further detailed in this Second Supplement, Mr. Lehman's rights to property, work, personal liberty, freedom of movement, judicial protection, equal protection, privacy, and freedom of expression, have been violated unequivocally and repeatedly. The Supreme Court's decision of August 6, 2010 constitutes a denial of justice, unfair and inequitable treatment, and a wrongful taking of Mr. Lehman's property rights by the Panamanian State in violation of international law and applicable conventions, including the 1948 American Declaration of the Rights and Duties of Man, the 1969 American Convention on Human Rights, and the Additional Protocol to the American

The Lehman Complaint challenges the Supreme Court's decision under Article 342 of the Criminal Code of Panama, which provides in relevant part:

Article 342: Any public employee, who, in the performance of his duties as a member of the Judiciary or the Office of the Attorney General, administrative authority, arbiter or any other position entrusted with deciding a matter that he entertains or is competent therefore, who, personally or through a third party, accepts, receives or requests a donation, promise, benefit or advantage to harm or favor one of the parties to the proceeding, or that as a result thereof harmed or favored one of them, shall be penalized with imprisonment for four to eight years. An equal penalty shall be applied to the officer of the Judiciary or the Office of the Attorney General who:

<sup>1.</sup> By collusion or other fraudulent means issues a decision that is overtly contrary to the Constitution or the Law, in such a manner that it causes harm.

<sup>2.</sup> By collusion or other fraudulent means receives or gives legal advice to any of the parties, in such a manner that it causes harm.

<sup>3.</sup> Maliciously delays a process that has been submitted for his decision.

Convention in the area of Economic, Social and Cultural Rights ("the Protocol of San Salvador"). These violations require redress.

In all, the following of Mr. Lehman's human rights have been violated:

### American Declaration of the Rights and Duties of Men

- Article I ("Every human being has the right to life, liberty and the security of his person.")
- Article II ("All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.")
- Article IV ("Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.")
- Article V ("Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.")
- Article XIV ("Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit. Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.")
- Article XVIII ("Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.")
- Article XXV ("No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.")
- Article XXVI ("Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.")

#### American Convention on Human Rights

- Article 7(3) ("No one shall be subject to arbitrary arrest or imprisonment.")
- Article 8 ("Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.")
- Article 13 ("Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.")

- Article 21(2) ("No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.")
- Article 25 ("Everyone has the right to simple and prompt recourse, or any other
  effective 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, even though such violation may have been
  committed by persons acting in the course of their official duties.")

Mr. Lehman renews his request that the Commission investigate fully the violation of his fundamental human rights and make findings as to the pertinent facts and conclusions as to the applicable law. Further, he asks that the Commission recommend that Panama make reparations by paying him just compensation for the harm inflicted on him. If Panama fails to make such reparations, Mr. Lehman asks that the Commission refer the case to the Inter-American Court of Human Rights for public proceedings and the award of damages.

## II. THE AUGUST 6, 2010 SUPREME COURT DECISION SHOWS THE DEPTH OF CORRUPTION WITHIN PANAMA

As discussed in the Petition, Mr. Lehman was appointed Executor of Mr. Lucom's estate under the plain language of the will on July 6, 2006. Ms. Hilda Lucom, the decedent's wife, immediately appealed Mr. Lehman's appointment and sought to nullify both his appointment and the will itself. *See* Ex. 5, Supreme Court Decision of August 6, 2010 at 6. The First Superior Court, the first level of appellate review, upheld the validity of Mr. Lucom's will and added Mr. Christopher Ruddy and Ms. Hilda Lucom as additional Executors. See Ex. 4 to the March 9, 2009 Petition, First Superior Court Decision of May 4, 2007. Ms. Lucom appealed that order to the Supreme Court. Lehman continued to defend the will as the Executor. After three years of silence, the Supreme Court ruled on August 6, 2010 and upheld the validity of the will but

This appeal eventually resulted in the August 6, 2010 decision. For his part, Mr. Lehman petitioned the Supreme Court to validate the will and to confirm him and Messrs. Christopher Ruddy and Hilda Lucom as co-Executors. Ex. 5, Supreme Court Decision of August 6, 2010 at 3.

named Ms. Hilda Lucom as the sole Executor and "universal" heir as noted above. Ex. 5, Supreme Court Decision of August 6, 2010 at 23. The proceeding was highly irregular.

The Supreme Court began its analysis with a discussion of the will and two successive addendums ("codicils") by Mr. Lucom. As is undisputed, Mr. Lucom first executed his will on June 20, 2005. In that will Mr. Lucom delineated his intent that three Executors be appointed to manage execution of all aspects of his will upon his death, including paying all expenses of his final care, funeral and all inheritance and capital taxes. Mr. Lucom further provided that Mr. Lehman, his long-time attorney, would be entitled to compensation for his services as Executor: "[i]f Mr. Lehman reaches three hundred hours of work in executing this will, then Mr. Richard Lehman must receive payment pursuant to his regular fee schedule."

Four months later, on October 29, 2005, Mr. Lucom added the first codicil to replace one of the earlier-appointed Executors with Mr. Christopher Ruddy. Ex. 5, at 4. Three months later, on February 3, 2006, Mr. Lucom's second codicil added an additional bequest to a longtime employee, Mr. Israel Del Carmen Tejada Cuervo, giving him one of Mr. Lucom's houses if Mr. Tejada remained employed by Mr. Lucom until Mr. Lucom's death. Ex. 5,. In other words, a short time after executing his will, Mr. Lucom made two short and straightforward codicils, the first undisputedly modified the named Executors, the second added a bequest to Mr. Tejada. 6

Mr. Lucom's intent with respect to the distribution of his assets was clear. He established a foundation whose "main objective . . . is to feed needy children in Panama." Almost every asset Mr. Lucom owned was specifically left to the Foundation. To his wife Hilda, Mr. Lucom

Ruben Carles, one of the originally appointed Executors, withdrew because he was uninterested in the amount of work required to act as an executor given the circumstances. Mr. Ruddy was originally named in Lucom's will as a replacement Executor in the event Mr. Carles was unable to act as Executor. Ex. 6, Will at 1.

The first codicil started "First: . . . . As Executors I appoint . . . ." Ex. 7, First Codicil at 2. The second codicil started "First Clause: . . . . I bequeath to . . . ." Ex. 8, Second Codicil at 2.

left a 50% interest in a multimillion dollar apartment; the use of his furniture, art and antiques while she lives; and a lifetime annuity of "US \$20,000.00 per month." Upon her death, the will provided that "what was given to her must be returned to the Wilson C. Lucom Trust Fund Foundation . . . No principal or interest account shall go to the estate of Hilda Piza Lucom." Ex. 6, Lucom Will at 2.

Under Panamanian law, courts are required to give effect to Mr. Lucom's intent as set out in his will and codicils. The Supreme Court did exactly the opposite. It held that because the second codicil (which made a bequest to Mr. Tejada) did not mention Executors, Mr. Lucom must have intended to remove altogether the panel of named Executors from his will. Ex. 5, Supreme Court Decision of August 6, 2010 at 11, 16-17. The Court then named Ms. Hilda Lucom as sole Executor, and "universal heir." In other words, the Supreme Court rewrote Mr. Lucom's will to give everything to Ms. Hilda Lucom, and it empowered her as sole Executor to exercise control over all of the assets in the estate. Mr. Lucom's intent that Mr. Lehman serve as Executor was nullified, and the foundation established in his name to help the needy children of Panama was left with nothing. This decision is so totally contrary to the law, the facts, and the structure of the will that it can only be the result of collusion and fraud.

For example, in perhaps the greatest irregularity of the proceeding, the Supreme Court disregarded the most basic rule of interpretation of wills in order to achieve the result it sought. When interpreting codicils under Panamanian law, a court must presume that the codicil leaves the prior will untouched with respect to all property and subjects not addressed in the codicil. In

Article 707 of the Panamanian Civil Code states: "All testamentary provisions must be construed literally unless it is clearly apparent that the will of the testator was different. In the event of doubt, what appears to be closest to the intent of the testator shall be observed, according to the tenor of the will itself." Article 707 of the Panamanian Civil Code (quoted in Ex. 5, Supreme Court Decision of August 6, 2010 at 10).

this case, the presumption is directly supported by the express language of the Second Codicil, which states:

FIRST: It is my will that the nuncupative will granted by me in Public Deed No. six thousand six hundred forty-six (6646) on June twentieth (20) two thousand five (2005) before the Second Notarial Office in and for the Circuit of Panama, remain in force and effect for all legal purposes, in its entirety, that is, that at this time I expressly reiterate all clauses in the referenced document, with the only exception I am stating hereunder...

### Ex. 8, Second Codicil at 2.

Neither is the Supreme Court's decision supported by the structure of the will. As the Supreme Court noted, there are four clauses to Mr. Lucom's original will. The first appoints the Executors, the second contains instructions for the Executors, the third contains his bequests, and the fourth revokes any previous wills or codicils. In the first codicil Mr. Lucom modified the appointment of Executors to substitute Mr. Ruddy for Mr. Carles. The second codicil, which the Supreme Court found removed the named Executors from the will, merely added one additional bequest to Mr. Lucom's will. In the Supreme Court's revision of the will, the will now has four parts, a bequest, instructions to the (now unnamed) Executors, more bequests, and the revocation of all prior wills. Therefore, despite recognizing that Mr. Lucom's legacy to the needy children of Panama would "require[] management" and that fulfillment of his legacy would be impossible without active Executors, the Supreme Court "interpreted" all of this out of the will. Instead, the Supreme Court appointed Ms. Lucom as "universal heir" entrusting an 88 year-old woman to manage and fulfill Mr. Lucom's legacy. Contrary to the Supreme Court's highly irregular opinion, it is simply impossible that this reading is "closest to the intent of the testator" or "according to the tenor of the will itself." Ex. 5, Supreme Court Decision of August 6, 2010 at 10. There is no doubt Mr. Lucom intended to provide for his wife; there is equally no doubt he did not intend to leave her as the sole Executor and "universal heir" of his far-reaching legacy.

Moreover, the Supreme Court's exclusion of Mr. Lehman as lawful Executor of the will is contrary to the above-noted clause in the will that "[i]f Mr. Lehman reaches three hundred hours of work in executing this will, then Mr. Richard Lehman must receive payment pursuant to his regular fee schedule." Ex. 6, Lucom Will at 13. Not only did Mr. Lucom specifically appoint Mr. Lehman as one of the Executors, Mr. Lucom expressly provided for compensation for Mr. Lehman's services "in executing this will." Furthermore, in all clauses of the will where the Executors are mentioned, it is always in the plural. *See, e.g.*, Ex. 6, Lucom Will at 1, 6, 7. If Mr. Lucom truly intended by his Second Codicil to eliminate the panel of named Executors that he included in the first clause of the will then he surely would have corrected the remainder of the will that referred to this panel. But clearly that was not his intention, as is evident from the fact that he included in the Second Codicil the proviso that his will "remain in force and effect for all legal purposes, in its entirety, that is, that at this time I expressly reiterate all clauses in the referenced document, with the only exception I am stating hereunder. . . ." Ex. 8, Second Codicil at 2. Thus, by its revisions the Supreme Court made Mr. Lucom's will internally inconsistent.

# III. IRREGULARITIES IN THE PROCEEDINGS LEADING UP TO THE SUPREME COURT'S DECISION DEMONSTRATE PANAMA'S VIOLATIONS OF MR. LEHMAN'S HUMAN RIGHTS

The Supreme Court's decision also sheds light on other irregularities in the judicial proceedings leading up to the August 6, 2010 Decision. For example, on June 10, 2009 the Fifth Civil Circuit Court for the First Judicial Circuit of Panama (the "Probate Court") decided a motion by Christopher Ruddy to confirm his appointment as co-Executor. The court, Judge Molina, held that it did not have jurisdiction to decide who should be appointed as Executor of Mr. Lucom's will. The court reasoned that because the earlier decision appointing Mr. Lehman

<sup>&</sup>lt;sup>8</sup> Under Panamanian law a testator may set remuneration for executors. Ex. 3, Article 870 of the Panamanian Civil Code.

as Executor was on appeal, the court was "prevent[ed] from deciding on any motion relating to the said succession. . . ." Ex. 9, Probate Decision of June 10, 2009.

Similarly, the Supreme Court reasoned in its August 6, 2010 decision that Panamanian law holds that "[d]uring substantiation of the appeal, no motions other than for recusal shall be admitted and no incidental proceeding is appropriate, except for a recusal." Ex. 5, Supreme Court Decision of August 6, 2010 at 3 (quoting Article 1191 of the Panamanian Judicial Code). Applying this law in its August 6, 2010 decision, the Supreme Court "flatly reject[ed]" a motion filed by the Mayo Clinic, one of the additional beneficiaries of the Lucom Will, for reversal of the December 7, 2007 intermediate appeal. Ex. 5, at 3.

But the pending appeal to the Supreme Court by Ms. Lucom did not stop the Probate Court from ruling against Mr. Lehman. That court declared Mr. Lehman's appointment as Executor a nullity and "rendered without effect all which [Mr. Lehman] might have done" while Executor. Ex. 10, Probate Decision of August 29, 2008. In so doing, the Probate Court undermined Mr. Lehman's entitlement to recover from the Estate his authorized fees for carrying out his duties as Executor and the legitimate expenses he incurred in the process. The Supreme Court's decision, together with the August 29, 2008 decision of the Probate Court, constitutes a wrongful taking of Mr. Lehman's property, namely his entitlement to receive the compensation provided for in the Lucom will and under applicable Panamanian law.

Prior to this, the Panama Probate Court tried to interrupt Lehman's administration of the Estate by acting totally contrary to Panama law and having a court-appointed administrator supplant Lehman as the Executor of the Estate. Even before this, the Panama Probate Court issued highly irregular rulings in attempts to cloud Lehman's authority to act. Illegal and

unconstitutional orders "suspending" Lehman's authority were issued when the Probate Court had no jurisdiction whatsoever to do so.

### IV. CONCLUSION

The decision of the Supreme Court of Panama on August 6, 2010 ended the realistic possibility that Mr. Lehman's human rights would be fully restored by the courts of Panama, notwithstanding the pending, and most likely futile, Amparo and criminal complaints against the three justices involved. The Supreme Court of Panama's highly irregular decision foregoes logic and disregards long-standing principles of fairness and legal interpretation. It is evident that Panama's highest legal organ has trampled Mr. Lehman's human rights by a corruption of the legal process for the benefit of a few wealthy Panamanians who are in the process of stealing Mr. Lucom's inheritance. This decision of the Panamanian Supreme Court expropriates from Mr. Lehman his right to more than \$7,500,000 he has spent in professional time, legal fees paid to other lawyers, and other legitimate expenses incurred to defend the will of Mr. Lucom. Indeed, this action is simply the capstone to the years of human rights violations by Panama against Mr. Lehman.

Based on the entirety of the record now before this Commission, Petitioner respectfully renews his request that the Commission declare this Petition to be admissible, mediate a settlement and, if no settlement can be reached, investigate the situation, declare that Panama violated Mr. Lehman's human rights, and recommend appropriate remedies, including compensation. If Panama fails to make such reparations, Mr. Lehman asks that the Commission refer the case to the Inter-American Court of Human Rights for public proceedings and the award of damages.

### Respectfully submitted,

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