

COMPLAINT BEFORE THE
INTERAMERICAN COMMISSION ON
HUMAN RIGHTS
(Article 51 of the Regulation)

1889 F Street, N.W.
Washington, D.C. 20006
USA

RICARDO HECTOR ASCH SCHUFF

Vs.

UNITED STATES OF AMERICA

March 20, 2012

SECTION I. ABOUT THE PETITIONARY VICTIM

1.THE VICTIM

RICARDO HECTOR ASCH SCHUFF, of acquired Mexican nationality while native Argentinian, born in Buenos Aires on October 27th, 1947, male, and health professional graduated at the University of Buenos Aires (1975). Since then, he completes his education in the United States of America with a fellowship in endocrinology and reproductive medicine at the Medical College of Georgia and the University of Texas (Health Science Center) respectively.

Given his high scores he is then successively appointed Assistant Professor, Associate Professor, and Professor of the Jane and Roland Blumberg Founding Chair in the Department of Obstetrics and Gynecology of the latter university.

Between 1984 and 1985 he develops the GIFT method (Gamete Intrafallopian Transfer) an infertility treatment technique through assisted reproduction, which brings him worldwide recognition by societies and medical communities and religions in different countries.

He develops his academic career in the United States of America from 1986 to 1995, in the Department of Obstetrics and Gynecology, University of California - Irvine, where he progresses from grade III to grade VI Professor, being among one of the few who reaches such academic rank through evaluations, and serves as director of UCI (Center for Reproductive Health) at the university. By being appointed, in 1991, Associate Dean of disadvantaged minorities (Latinos, African Americans, Native Americans), he commits to raise the participation of these -

which is only 1% - and in a couple of years, in effect, he accomplishes this and elevates it up to 33%, overcoming stigmatization and present discrimination, managing to be selected as one of the 100 most influential Hispanics in the U.S., which causes social upheaval that focuses on the victim and gives rise to reservations and resistances against him within the American environment.

The victim owns argentinian passport 07606916M and mexican passport 10822689207.

Address: Galileo 7, Dpto. 6

Polanco, Colonia Miguel Hidalgo 11560 México, D.F

México

Phone: 525552812416 (home) 5215533316910 (cel)

Email: drhasch@gmail.com

Web: www.ricardoaschsupport.com

2. PREVIOUSLY REQUESTED PRECAUTIONARY MEASURE

ASDRUBAL AGUIAR, lawyer and doctor of law, resident of Caracas, Venezuela, based on article 44 of the Human Rights American Convention, on behalf of the victim, being deprived of his freedom in the United Mexican States Federal District, filed an application before the Commission for precautionary measures, which he submits by email on December 14th, 2010.

The Commission does not issue any decision on this regard.

SECTION II. ABOUT THE FACTS.

1. OAS MEMBER STATE REPORTED

UNITED STATES OF AMERICA, as a state party to the Organization of American States, whose Charter endorses on April 30th, 1948 and then ratifies by instrument deposited on June 19th, 1951; signs and ratifies the Protocol of Buenos Aires 1967, the Washington Protocol of 1992 and the Protocol of Managua in 1993. Also subscribes but does not ratify the Protocol of Cartagena de Indias in 1985.

2. FACTUAL BACKGROUND

[1] The victim, health professional and renowned academic in the field of assisted reproduction, has for nearly a decade (1986-1995) favored human procreation with his activities and helped infertile couples from around the world, overwhelmed by their legitimate parenting aspiration of giving life to their own children, through the GIFT (Gamete Intrafallopian Transfer) and MESA (Microsurgical sperm aspiration epididymal) methods. In the private practice in which he participates with his colleagues, under the direction of the Director of the University of California-Irvine Obstetrics and Gynecology Department, he helps a number close to 1,000 patients per year.

[2] The GIFT method for assisted reproduction formulated by the victim and his colleagues, motivates a consultation of the former by Catholic lawyers at the

Vatican, giving rise, as indicated by the international press in 1984, to an eventual suspension of Apostolic Instruction looking for an absolute banning of the artificial methods for assisted reproduction. And while the issue is still debated among theologians, ethicists and bioethicists, as shown in the specialized literature, the Asch method - allowing fertilization in vivo but not in vitro - "marks a significant ethical difference" (Scripta Theologica 22, 1990/3, 907-915, "GIFT Ethical Issues by Augusto Sarmiento), or perhaps, while maintaining the controversy among theologians, it is bashfully accepted that it is not totally excluded in church teachings, which, while conclusively questioning extracorporeal fertilization "not necessarily proscribes the use of certain artificial means destined solely to facilitate the natural act or to help the naturally fulfilled act to reach its own goal" (cf. Istruzione Vitae Donum vita sul rispetto of umana nascente and the dell dignità procreazione, February 22nd, 2007, and the work of Angel Rodriguez Luño, Scelti in Christ per essere santi, III: Morale Speciale, Pontificia Università della Santa Croce, Rome 2003).

[3] In light of the above, the victim, given its recognized contribution to world science in such a sensitive area, is or has been located in the center of the hurricane or public controversy between those who condemn and radically persecute artificial breeding methods and those who accept its exceptions. He is additionally placed between different economic medical and pharmaceutical establishments that globally struggle over the matter with those who try to submit it to strict regulation and control.

[4] Being so, after October 16th, 1995, the victim is invited to work in his specialty by the Mexican medical community, providing services as Teacher, Researcher and Professor at the Faculty of Medicine of the Universidad La Salle and AGN Group

of Reproduction and Genetics of Angeles Hospital in Mexico City, DF., and for that the immigration authorities of the United Mexican States gave him a visa as a research scientist, what then leads him to acquire the nationality of that country.

[5] By April 1995, the University of California-Irvine and the victim, as well as the persons with whom (Dr. Jose P. Balmaceda and Sergio Stone) he has a private practice at the university's clinic, all of them latinos, are subject to a media campaign in the United States of America following an accusation formulated by an anonymous informant, and initially collected by the local daily *The Orange County Register*. They were accused - without a proper trial or a DNA biological analysis being performed- of using and implanting a patient's eggs, without her consent, in another patient, whose son acquires the genes of the former. They were also accused of incurring in irregular finance dealings and charges at the university clinic of which supposedly – and falsely - they were in charge.

[6] The allegedly improper use of gametes and embryos made by the victim and his colleagues, is never proved or scientifically debated in any venue, neither judicial nor in law. As stated by the victim, they do not have in their possession - except at the time of the patient's intervention - the retention and allocation of those biological elements. Nor depends on them the management financial administration, which rests at the University.

[7] But even so, the media hype continues. *The Orange County Register* publishes over 230 articles on the subject and even gets a Pulitzer Prize for it. Never is any investigation performed nor is it proven through DNA evidence. Rather a California Court of Appeal denies, in protection of the welfare of the children, a petition on the matter, as it is years later stated- in favor of experience and prestige

of the victim - Professor Mary Dodge the University of Colorado and Professor Emeritus of the University of California-Irvine, Gilbert Geis, who furthermore highlights the irresponsibility of the University of California-Irvine authorities, who are involved in many scandals for lack of "control" over its various hospitals and chooses to pay Medicare, among others, 22.5 million dollars for its own billing errors and not of their doctors, and to let public anger be focused on the Reproductive Health Center integrated by the victim.

[8] The film *The Irvine Scandal* is produced and shown throughout the U.S., in it the doctors at the University of California and the victim in a particular way are accused and slandered for improper practices and genetic manipulations. Patients are interviewed in the most popular talk-shows, Tom Borkaw, Oprah Winfrey, Maria Schriver, Maury Povich and Phil Donahue. It is in Winfrey's show where the feeling of mass hysteria is taken to a new level, when in a transmission that took place on September 5th, 1995 she announced the following, "*It's an extraordinary story, having all the characteristics of a dreadful science fiction novel*" and before the audience she wonders: Is this a case of high-tech baby kidnapping too weird and creepy to be real? What is true and accurate, and should be repeated, is that the victim never loses his medical license or his recognized affiliation with the American Board of Obstetrics and Gynecology, nor is the issue scientifically tested or debated beyond the artificial media climate. Given the facts, on September 9th, 1996 the victim's lawyer files a lawsuit for rectification against the Los Angeles based Lifetime Television Channel, attesting the falsehoods and inaccuracies recorded and transmitted in bad faith through their media, warning them of the moral damages caused to the victim.

[9] However, given the media stir, not being any civil accusations nor criminal charges against him, the victim is suspended from his duties by the University of California-Irvine, which chooses, as being said, to reconcile with those who argue to be economically affected. Soon after, the victim receives invitations from countries like Spain, Italy, Israel, Brazil, Argentina and Mexico and their medical communities and scientific research institutions, suggesting him to find a new direction as a world-renowned scientist.

[10] In the same month of September, the home he previously occupied in the city of Newport Beach, California is subject of trespassing; by this point in time he was already residing in Mexico City. FBI agents make themselves present surrounded by an unusual amount of media coverage. The victim's American lawyers, Lloyd Charton and Josephine Walker, gain unofficial information that the U.S. law enforcement agency is trying, by legal or illegal means to make him return to U.S. territory in order to judge him, but now with different facts.

[11] It is argued, afterwards, that a product called hMG Massone, which is sold internationally and even in the same U.S. territory but with different brand names, has been allegedly used by the victim and his colleagues. Such product, is claimed, does not have the approval of the FDA (Federal Drug Agency) and is considered to compete unfairly with the American pharmaceutical establishment.

[12] Thus, in a war unleashed by public opinion - without factual nor medical support - and by the FDA of the United States of America, necessarily induced in the matter, the pharmaceutical company that produces the drug based in Argentina is visited by one of its agents, who lets them know that an inspection on the facilities is to take place for its product to enter the U.S. market; the real purpose,

however, was that by reviewing Massone Pharmaceutical's confidential books the agent alluded to document the sample Massone hMG medication that is given to the victim in 1993. After that, Massone's owner is visited by the INTERPOL, with the sole purpose of investigating details about the victim.

[13] On several occasions, as a Mexican resident, the victim approaches the situation of persecution of which it is subject, which includes a campaign now at the level of Mexican press, before the National Human Rights Commission of the Aztec country. To this effect, he addresses a complaint on May 6th, 1996, which expands and complements with successive writings, following November 13th, January 16th, January 24th, March 4th, November 7th and November 26th, 1997. Later adds a new writing to the record CNDH/121/96/DF/7745, dated January 30th, 2001 and July 27th, 2004.

[14] Finally the victim and his colleagues, are accused, between 1991 and 1993, of incurring in mail fraud in order to acquire the medication via Internet and by illegal means; of committing tax fraud crime in the United States by not declaring their income in an integral way; of causing mail fraud against the insurance system for improperly charging the former for medical activities conducted by the University. These alleged facts are placed by the U.S. prosecutors within the context and while not being part of the charges are the ones acquiring most media attention, as cited above, that is to say, that the victim and his fellow doctors at the University supposedly used for the fertility treatments, other patients' eggs who had not given their permission. But what it is true, is that employed doctors of the University are not responsible for managing the financial and administrative activities of the same, and that these, including the victim, did not have under their care and

disposition the genetic material, which actually is supplied by biologists, also university employees, to use in infertile patients.

[15] The U.S. District Court for the Central District of California of the United States of America, opens three different processes against the victim and his colleagues on the occasion of its activities during 1991-1993 in the clinic they had work, Center for Reproductive Health, University of California-Irvine, specialized in methods to combat infertility. The processes are as follows:

- Process number CR 96-55 SA-C, dated June 18th, 1997 in which the victim is accused of: (1 to 20) in charges 1 to 20 of fraud while using the U.S. mail in violation of the provisions in section 1341 of the 18th Title of the Code of the United States of America, and of being an accomplice to the mail fraud offenses mentioned above in violation of the provisions in section 2 of the 18th Title of the United States of America Code; (21) in the charge 21, of conspiring with others to defraud the United States, by obstructing and impeding the lawful functions of the United States internal Revenue Service, in violation of the provisions in section 371 of the 18th Title of the Code of the United States of America; (22 and 23) in twenty-two and twenty-three charges, of fraud against the United States by filing false tax returns, in violation of the provisions in Section 7206 (1) of the 26th title of the Code of the United States of America.
- Supervening third process, number SA CR-AHS 97-74 dated September 24th, 1997, in which Ricardo Asch, alias Ricardo Hector Asch, alias Ricardo H. Asch, is accused of: (1 to 20) fraud while using of the U.S. mail, in violation of the provisions in section 1341 of the 18th Title of the United States of

America Code, and being accomplice to the offenses mentioned above in violation of the provisions in section 2 of the 18th title of the Code of the United States.

- Process number SA CR-GLT 97-75, dated October 1st, 1997, in which the victim is accused of: (1 to 10) in the 1 to 10 charges, of fraud when using the mail of the United States, in violation of the provisions in section 1341 of the 18th Title of the United States of America Code and of being complicit in these crimes, in violation of the provisions in section 2 of the 18th title of the U.S. Code; (11 to 20) in charges 11 to 20, of a fraudulent scheme in order to introduce a new drug into interstate commerce that had not been approved by the FDA for sale in the United States, in violation of the provisions in Sections 331 (d) and 333 (a) (2) of the 21st title of the Code of United States of America.

[16] In regard to the previous case, it is worth noting that months before it, on January 30th, 1997, the FDA (Federal Drug Administration) had approved the product's legality, hMG Massone, which is imported to U.S. territory by Ferring Pharmaceuticals Company under the name Repronal.

[17] Due to such legal proceedings and before being formalized, Dr. Sergio Stone, a Chilean native with acquired American residency, one of the victim's colleagues, is arrested on American soil on date April 25th, 1997 and is imposed with a bail of U.S. dollars 3,000,000 for being considered "a danger to society".

Then, once judged, he is absolved of almost all of the charges against him and his colleagues, among them the victim, being only convicted for professional fees

amounting US\$ 5,000. Even so, under complaint of two jurors who do not get clarification from the judge on how to vote on the respective decision, he accepts the request of not releasing the defendant until issued his judgment on February 9th, 1998.

[18] The truth is that, in the meantime, the victim, since his departure from the United States in 1995, long before the "indictments" above mentioned - which take place in 1997 - travels around the world without possibly being marked as a justice's fugitive; it is noteworthy that he attends international medical congresses as a guest and that his participation is outlined in the programs. He openly practices medicine in Mexico and lectures in its University, until he and his lawyer in USA, Ron Brower, learn only through the press, of a judicial initiative of the U.S. Attorney on the alleged case of the University of California-Irvine.

[19] Even more, between 1997 and 2004, without formally being notified nor charges being charged against him, the victim continues his lectures in Mexico and abroad, giving account of his research in the field of assisted reproduction. He is a public figure to whom Mexican authorities give residency by 2001, while actively participating in televised science programs and being interviewed by the press about his experiments.

[20] On August 4, 2004, the victim returns to Mexico City from Europe and Egypt, where he lectures on his scientific research, and just after entering his residence, he is confronted with confusing news left on his voicemail, whose caller he could not identify, regarding the delicate health that supposedly affects his wife's mother, Silvia Daich Asch, a resident of Buenos Aires. Given the news he travels the next day to Buenos Aires and finds himself being detained at Ezeiza International

Airport. Immigration authorities inform him of the existence of international arrest warrants against him. They state that it consists of an Interpol red alert, which points him out –twisting the reality -, as a fugitive from the U.S. justice. And indeed, on May 26th, 2004 an international arrest order is issued, pending by the Argentine authorities that register under number 6338/04 - AG 38117 (Mail Fraud / INTERPOL).

[21] In this state, the Chief on Duty of the National Aeronautical Police, Ezeiza Squadron, addresses, on the arrest date, to the Chief of the Section Embarcaderos INTERPOL Department for the Argentinian Federal Police, forwarding him the victim, given the order of capture. And on the same date this same INTERPOL Department notifies the victim - hosted and isolated on this dependence- that it is affected by verdicts of "International capture, mail fraud, incitement, conspiracy in order to defraud the U.S. among others". Given this, the Federal Court of First Instance for Criminal and Correctional #1 Lomas de Zamora, immediately intervenes for purposes of extradition, being the victim assigned to the order of this Court.

[22] The Argentine government receives the arrest order for extradition purposes against the victim, formulated afterwards – on August 10, 2004- by the United States government, and which refers to the three cases cited and the arrest warrants issued by the Central District Court of California. It is important to highlight that the U.S. government, through its embassy in Buenos Aires in order to manipulate the good faith of the government required, does not limit itself to the judicial elements under discussion, but refers to elements strange to those, which are the motive of controversy in the American public opinion, "fraudulently acquiring

patients' zygotes to then be used in other patients ... without the knowledge or consent [of them]".

[23] On August 17, Chief Assistant Attorney of the Southern Division of the Central District of California, Wayne R. Gross, certifies the existence of the charges and the prepared captures to effect by the corresponding Court of the United States, dated June 18th (Case No. SA CR 96-55 / C), September 24th (Case No. SA CR 97 -74/AHS), and October, 1st 1997 (Case No. SA CR 97-75). With this, the victim is therefore subject to a formal extradition process. Strangely, the same government of the United States of America, requests the United Mexican States, on August 24, the victim's arrest for extradition purposes, who is already under arrest in Buenos Aires and with knowledge of the petitioner, which provides, without the victim ever knowing, the 16th District Court of Federal Criminal Proceedings in the Mexican Federal District, with the file being registered under No. 04/2004-1.

[24] The victim's defense alleges before the Federal Court for Criminal and Correctional Court No. 1 of Lomas de Zamora, under Judge Alberto P. Santa Marina and serving as Secretary Nilda B. Arguello, on the one hand, the "lack of identity" of American criminal law invoked by the requesting government and those contained in the Argentine criminal legislation; and on the other, asks the court to follow the provisions of the Treaty of Extradition valid between the two countries at the time of the alleged events attributed to the victim, which set the stage for the accusations against him before the U.S. judge, and in this way the captures that originate the request for extradition are issued, that is, the treaty of January 21st 1972, ratified by Law 19,764.

[25] The victim's defense, contrary to the line intended by the issuing State - United States of America - rejects the application of the rules for the Extradition Treaty of August 4, 1999, approved by Law 25,126, for being the most burdensome and less beneficial to the victim. The treaty of 1972, in contrast, limits the list of crimes subjected to extradition and ties them to the principle of "double incrimination"; allowing the state to analyze the prescription's institute based on their own national legislation, granting the Argentine citizen the option of submitting to the authority of their own court. The 1999 treaty, besides and in contrast to the Argentine constitutional guarantees, does not subject ordinary crimes to any statute of limitation. But, in any case, the defense reiterated that the 1972 Treaty was the one in effect at the time of the facts with which the U.S. authorities charged the victim (1991-1993) and issued the "indictments" delivered against him (1997).

[26] Being so, the acting trial judge, Alberto Patricio Santamarina, Federal Judge of First Instance for Criminal and Correctional Court No. 1 of Lomas de Zamora, on December 1st 2004 requested the issuing State - United States of America - to clarify various aspects and the scope of its legislation cited as the basis for seeking the extradition of the victim; to which end, the Embassy of the United States of America based in Buenos Aires, gives response the following December 20th, after which the judge decides on March 7th, 2005, in spite of the allegations made by the victim, the application of the less favorable treaty to him, in other words, the 1999 Treaty, deferring any consideration of the exceptions opposed to the extradition, providing that they will be treated during the substantiation of the oral and public trial for extradition.

[27] The victim appeals to this decision, for which the Second Division of La Plata's Federal Chamber intervenes, receiving various letters sent in the *amicus curiae* title by the Human Rights Secretary of the Argentina Ministry of Justice and Human Rights, the Human Rights Secretary of the Buenos Aires Province, and the Argentine Human Rights League; entities that, together, advise the judge to keep in mind the close relationship between extradition orders that are not reduced to mere procedural rules, and international obligations assumed by the Argentine state in human rights matters, which have the character of *ius cogens* or peremptory right besides from being part of the block of constitutionality. Meanwhile, the victim presents to the judge through his lawyer the written complaints addressed to the National Human Rights Commission of the United States of Mexico, between May 6th, 1996 and July 27th, 2004, warning it on the relentless persecution unleashed against him by the U.S. authorities and the media, blocking - given the conditioning of public opinion created in USA - any chance for a fair trial before the justice of said nation.

[28] On June 17th, 2008 the decision is issued by the Second Division of La Plata's Federal Court, Buenos Aires Province, in view of the provisions for extradition treaties signed by the Republic of Argentina with the United States of America in their relationship with the provisions of the Constitution and the Law on International Cooperation in Criminal Matters, concluding that (a) the provisions of the 1972 treaty cited above must be applied (b) the provisions on possible prescription according to the Argentine law should be reviewed (c) it is applicable the *aut dedere aut iudicare* principle, therefore the victim should be judged by the his nation's court, and (d) in virtue of it, disabling the possibility for delivering of the victim and being denied his extradition.

[29] For the purposes of performing bilateral obligations agreed between the Argentine Republic and the United States of America, regarding the victim's issue, on date September 2nd, 2008 the Justice Department of this nation is notified through its accredited representative in the American Embassy in Buenos Aires, on the content of the Federal Court's decision.

[30] Subsequently tied the judge - the Federal Criminal and Correctional Court No. 1 of Lomas de Zamora, Buenos Aires - by the decision of the appeal Federal Court, he proceeds to meet and judge the victim with respect to all existing charges against him and identified by the United States of America authorities; with which none of them remains pending of judicial resolution. And by judgment dictated on September 25th, 2008 acquiring force of firm decision on March 25th, 2009, orders the dismissal of the case and full freedom of the victim, once concluded by the judge the "lack of action by prescription of criminal action and lack of action by inexistent crime". In particular he decides (1) To accept the defense of lack of action by prescription of penal action regarding charges 1-20 of the first case (mail fraud), 1-20 of the second case (mail fraud), 1-10 of the third case (mail fraud), of illegal conspiracy (charge 21 of the first case) and of the charges 22 and 23 of first case (subscribe statements of rents false) and consequently dismiss such charges against Ricardo Asch; (2) To accept the defense of lack of action by inexistent offense for the charges 11-20 of the third case (introduction of a new drug to interstate commerce) and consequently dismiss such charges against Ricardo Asch.

[31] On March 25th, 2009, given its judgment, the Federal Judge of First Instance on Criminal and Correctional of Lomas de Zamora, addresses immigration authorities and Argentine security and lets them know the lifting of all freedom restrictive measures that weigh over the victim, on the matter of the extradition

cause coursing against him under the n ° 4521. And on the following April 13th, at the request of the quoted judge, the Ministry of Foreign Affairs, International Cooperation and Cults of the Argentine Republic notifies the court proceedings to the United States of America Embassy in Buenos Aires. Nevertheless, Mr. Rodolfo Orjueles, legal advisor of the diplomatic representation and representative of the Justice Department, informs the victim's lawyers that no information will be sent to the American government in Washington, in the understanding that the resolution of Argentine justice is not of their concern; reason why, to their regard and in violation of the obligations imposed on the United States of America by the extradition treaty signed bilaterally, as well as other related international *ius cogens* standards, the victim's capture orders for prosecution are still in place. It is in this way that the mentioned authorities assume a position of contempt despite being them who drove the extradition process, who asked to be properly informed by the requested State, and despite having had the possibility - through the General Attorney or counsel appointed for this purpose - to submit appeals and complaints against the decision of the Argentine judge.

[32] In that order, knowing that the extradition process is fully accomplished under the *aut dedere aut iudicare* principle, and obviously, with the purpose of ignoring it, on November 27th, 2009 the State Department of the United States of America, in a note that runs through its embassy in Buenos Aires, reports to the Ministry of Foreign Affairs, International Cooperation and Cults of the Argentine State, its decision to withdraw the extradition request of the victim previously petitioned. It had done the same, on May 26th, 2009, regarding the victim's detention request addressed to the United Mexican States for extradition purposes. This is done with the perverse effect of keeping the victim subject to the jurisdiction of its courts *sine die*, contrary the universal principle of human rights of *non bis in idem*.

[33] Consequently and given the events, on August 10th, 2010 the victim's attorney in the United States of America, Eliel Chemerinski, raises three motions before the District Court of California's Central District Southern Division, demanding to dismiss the pending cases (Case No. SA CR-GLT 97-95, Case No. SA CR-AHS 97-74, and Case No. SA CR-GLT 96-55) against the victim, that lead to the process of extradition, given that the former has been judged by the Argentine judiciary based on the principle *aut dedere aut judicare*, for which purpose it is affirmed the United States obligation under the terms of Article 14, paragraph 7 of the International Covenant for Civil and Political Rights as well as the principles of the general and imperative International Public Law which enshrines the human right to *non bis in idem*.

[34] The victim, enjoying full freedom, then travels to Mexico City, Federal District. However, through a diplomatic note dated October 22nd, 2010, the government of the United States of America again requests the Mexican State, through its Ministry of Foreign Affairs, the arrest of the victim for extradition purposes and in order to process him for the crimes already judged. The arrest warrants issued by the U.S. District Court for the Central District of California against Ricardo Asch, alias Ricardo Hector Asch, alias Ricardo H. Asch, on June 18th, 1997, September 24th, 1997 and October 1st, 1997, respectively, are asserted, alleging that they remain valid and enforceable to apprehend the victim on charges against him.

[35] On Wednesday, November 3rd, 2010, the victim is arrested at his Mexican home and taken this time to Northern Prison, Ingresos Section, Mexico City, according to the extradition order mentioned above and under the dictated

providence on the previous October 25th by the Second District Court of Federal Criminal Proceedings in the Mexican Federal District, the respective file being marked under No. 5/2010-V.

[36] After two months of being deprived of his liberty again, on December 29th, 2010 the victim is finally informed of the Formal Extradition Request submitted *ex novo* by the United States of America. At this moment, the victim's attorney opposes the exceptions to the extradition procedures, which are only answered by the Public Ministry on January 25th, 2011.

[37] The competent Mexican judicial authority, namely, the District Court of Federal Criminal Proceedings Second Judge, Graciela Malja Aguirre, issues her legal opinion on February 11th, 2011 before the Ministry of Foreign Affairs, responsible for determining according to federal law on whether or not the extradition request presented by the government of the United States of America should proceed. In this regard, the judge for the cause states the following:

a) That at the time of the provisional detention of the victim, the extradition request was not accompanied by the arrest warrants issued by the United States of America; these only came with the Formal Extradition Request on a later date and show to have different dates from the announced orders. The United States of America, in effect, requests the arrest of the victim according to the arrest warrants issued on June 18th, September 24th and October 1st, 1997, while the arriving orders are dated November 30th – two of them - and a third one December 8th, 2010; these orders are requested by the Assistant Prosecutor of the United States Central District of California, Douglas F. McCorminck to the U.S. Judge that same November 30th, once understood that the original arrest

orders that underpin the victim's new detention are no longer valid on the detention date. Trying, therefore, that the newly issued orders become retroactively applied to February 1998.

- b) That the position expressed in one of three processes – fraud while using the mail - is not criminalized in the Mexican criminal law, being the judge's opinion limited to the fraud charges and fiscal misrepresentation, and introduction of a drug to U.S. territory without FDA's authorization.

[38] The Mexican judge, after her analysis and according to the points mentioned, dismisses the request for extradition by the United States of America. The reason is that, according to Article 7 of the Extradition Treaty between the United States of Mexico and the United States of America, in force at the time when events occurred, the extradition cannot take place when "the criminal action or the penalty for which extradition is requested has prescribed", under the laws of the requesting State or the requested Party. And to that end, analyzing the crimes attributed to the victim and considering that of the highest punishment, the judge observed that between the year 1997 and the date of the request for extradition, thirteen (13) years have elapsed and the prescription for the highest felony - having introduced the drug hMG Massone 1992 [650 ampules] without federal permission for use and distribution - is four (4) years and six months.

[39] In addition, the Mexican judge cited notes that even doubling the term of limitation stated - if we consider the legal standard that applies to those outside of the country - or increasing it by one half, when there are prescription disruptions, none of them reaches the thirteen (13) years that have passed until the victim's detention.

[40] The Judge appreciates, finally and in order to declare the dismissal of the extradition request, that while in the diplomatic note sent by the United States of America on December 27th, 2010 - which contained the Extradition Formal Petition – is accompanied by three different warrants with new dates which corresponded to the year 2010, the petitionary State does not meet the ends of the 10th Article of the Extradition Treaty applicable. It is not noted that the same - the warrants dated in 2010 - possibly correspond to new offenses nor, in different scenarios, does it justify why the warrants have been changed being that they correspond to the same crimes, facts and evidence which gave rise to the same three orders agreed in 1997. And adjusts, at the end, that the American claim according to their law (Section 3290 of title 18, United States Code concerning "fugitives of the law") "No statute of limitations shall be extended to any person who shall flee from Justice" it is patently unfair because the victim had been in Mexican territory since before the issue of the warrant orders for his arrest in 1997".

[41] The Mexican judicial authority argues, moreover, the nature of international public policy that covers the principle of *non bis in idem*, which in turn affirms in the Mexican International Extradition Act and the invoked Extradition Treaty itself, which Article 6 states that "extradition shall not be granted when the person sought has been prosecuted or has been tried and convicted by the required party for the same offense for which the extradition request supports." It is added that the previous formal constraint - that "has been tried and convicted by the required party" - could not be admitted on a systematic and harmonious interpretation of the rules and that having the victim already been judged - even in a third country, such as the Argentine Republic - on the same facts giving rise to the extradition request,

such request cannot be admitted without infringing the international public order forcing the Mexican state.

[42] As a conclusive data, the Mexican judge notes that - as evidenced by the certification issued by the District Judge of the Eleventh Federal District of Amparo - the government of the United States makes an extradition request on the same facts and against the same victim on August 24th, 2004, and by another note of May 26th, 2009 the same government withdraws and then resubmits it on equal terms in 2010, which affects the principle of legal certainty on which all international extradition proceedings must be based.

[43] On March 14th, 2011, the Ministry of Foreign Affairs of the United Mexican States, considering the arguments of the court which is in knowledge of the extradition process and that according to its orders the victim is arrested, orders to lift the restrictive freedom measures on the victim and declares the petition for extradition as not adjusted to the Extradition Treaty signed with the United States.

[44] Notwithstanding all of the above, in the *Perfil* newspaper, published in Buenos Aires, Argentina's federal capital, it is informed on May 8th, 2011, of a scientific conference dictated by the victim on "New horizons of human reproduction" under the auspices of the AMIA (Argentine Jewish Community) and the Embassy of Israel, that "the Argentine Ricardo Asch is wanted by the U.S. justice system" and states that "instead of being touring the world garnering awards and applause, he is a fugitive of justice". The argument for public opinion remains the same, but having nothing to do with the reasons for the relentless persecution to which the victim is subjugated by the United States of America serving as background, knowingly - as supposedly related by the paper in question, that "a

dozen children were born to women who received eggs from others who were not aware of it". And without mentioning sources, it is said, in order to demonize the victim and to grow the rejection of the same, legitimizing the illegality and illegitimacy of the persecution in which the U.S. authorities do not give up, that the victim "believed himself as God", by helping couples through scientific knowledge, to achieve the most extraordinary gift of human life, such as childbearing. And all true is that, at the date of the filing of this complaint, the U.S. justice system remains in contumaciously silence before the dismissal request, and supports the harassment of the victim, causing him legal, material and moral damages as well as that of his wife and children, objects of discriminatory treatment.

[45] As stated in the Argentine newspaper edition cited above, an official from the U.S. Attorneys Office based in California, expresses, despite international obligations incumbent on the United States of America, that "Mr. Asch still continues with criminal charges in the United States". To which he adds, to greater insecurity and uncertainty of the victim and his family, "I cannot comment on which actions are being taken at this time or will be taken in order to arrest him and secure his return to this country."

3. RESPONSIBLE AUTHORITIES

- (a) United States District Court for the Central District of California of the United States of America

- (b) Department of State of the United States of America

- (c) Department of Justice of the United States of America and the Federal Bureau of Investigation (FBI)
- (d) Wayne R. Gross, Chief Assistant Attorney of the Southern Division of the Central District of California
- (e) Douglas F. McCorminck, Chief Assistant Attorney of the Southern Division of the Central District of California
- (f) Rodolfo Orjueles, Legal Advisor to the Embassy of the United States of America in Buenos Aires, Argentina, and representative of the Department of Justice

4. HUMAN RIGHTS VIOLATED

(a) Premises

In light of the events described in this complaint and which sufficiently prove the documented actions that complement it, the victim suffers an arbitrary persecution sustained by the United States of America authorities, which treat him, distorting reality, as a fugitive. On the occasion of the same persecution - forwards and then removes their first extradition request addressed to Mexico, causing the victim and his family, legal uncertainty. And after being arrested and duly tried by Argentine judicial authorities according to international principle *aut dedere aut judicare*, is unlawfully deprived of his freedom and in violation, by the cited U.S. authorities, of the international obligations in extradition matter and of human rights, as determined by the Mexican justice. Resultantly, in continuity the United States

incur in internationally wrongful conduct, causing the victim, a deep moral state of anguish, of legal uncertainty, of disorder in his working life, affecting his transit freedom, harming his reputation and undermining his family; the damages caused to the victim unfairly extend to his wife and children.

(b) American Declaration of Human Rights (1948)

The American Declaration of Human Rights enshrines in Articles I, V, VI, VIII, XVII, XVIII, XXIV, XXV and XXVI, successively, the rights to personal integrity, protection of honor and personal reputation, to family protection, to freedom of movement, to legal certainty and joy of the basic civil rights, to justice, to obtain timely response of own requests, to protection from arbitrary detention and to a fair trial.

It is about the same rules enshrined in the International Covenant on Civil and Political Rights - in which are States Parties the United States of America, the Republic of Argentina, and the United Mexican States - and that in various of its articles collects the rights set out above; also, in particular and as a development of the right to justice and the effective protection of rights, Article 14, in clause 7, preserves the principle of *non bis in idem*, meaning "no one shall be prosecuted or punished for a crime for which he has already been finally convicted or acquitted by a final judgment in accordance with the law and criminal procedure of each country." It is, in short, the respect and guarantee of *res judicata*, as established by the *Guidelines for the specific document on the International Covenant of Civil and Political Rights to be submitted by States parties under article 40 of the Covenant* (CCPR/C/2009/1 of November 22nd, 2010).

(c) Extradition Treaties

Extradition Treaties identified in the complaint and that force the United States before the Republic of Argentina and the United Mexican States enshrine, also, legal principles or axioms of general international law *aut dedere aut judicare*, as state law required that the victim can also claim as a right when being national of such State, and the *non bis in idem*, as a human right of the victim himself; founded the latter as a right to *res judicata* in the constitutional standards of the required states - Argentina and the United States of Mexico - and in the American Declaration of Human Rights in relation to the International Covenant on Civil and Political Rights, which oblige them and even the United States of America.

- The principle *aut dedere aut judicare* is a legal axiom strongly recognized by the same general international law and international criminal law in particular, whose realization frees the accused of remaining haunted by the same events in other states. Said maxima comes from the teachings of the father of international law, Hugo Grotius, who in his *De iure belli ac pacis* (1624), notes that "States are obliged either to prosecute the offender or concede his extradition to whoever claims it "(Apud. M. Cherif Bassiouni, "International extradition and world public order" in *Aktuelle Probleme des Internationalen Strafrechts*, ed. D. Oehler and PG Potz, 1970, p. 10-15). This principle or obligation to extradite or to judge is, therefore, the subject of extensive study by the International Law Commission of the UN, which finds it based on the general or customary international law and that, in view of certain crimes, is likely to assume the character of standard *ius cogens* or imperative provisions (see *Report of the International Law Commission to the UN General Assembly*, 2011, p. 269 ff.). The question, in any case, is still

pending jurisprudential treatment by the International Court of Justice, based in The Hague, to which the subject attends *Questions concernant l'obligation de poursuivre ou d'extrader* (Belgique c. Senegal).

- The *non bis in idem*, or *ne bis in idem*, on its own, of ancient Greece and Roman law tradition, also contemplated in the 1791 V Amendment of the Constitution of the United States, a constitutional dogma and international general law axiom and *ius cogens* - for being in the human rights treaties - is referred by the Inter-American Court in its case law, stating that "this principle seeks to protect the rights of individuals who have been processed for specific facts in order to not be prosecuted again for the same offense" (Case Tamayo v Loaiza. Peru, Judgment of September 17th, 1997, para. 66, Series C, No. 33). In turn, the Human Rights Committee of the United Nations, while appreciating that the provision of Article 14, paragraph 7 of the International Covenant on Civil and Political Rights that enshrines it is a cause of conflict between states, they make relations, only with stocks of these to the resumption of a trial justified by exceptional circumstances" - v.gr. when there are crimes against humanity whose authors have benefited from amnesty laws or end point, as indicated by the Court in the *Bulacio Cases* (2003) and *Barrios Altos* (2001) - but not with the banned "submit of a new process" by virtue of the *non bis in idem* (United Nations, *Compilation of general Comments and general Recommendations adopted by bodies of human rights treaties*, HRI/GEN/1/Rev.9 (Vol. I), May 27th 2008, p. 223). And while it may be argued that human rights treaties oblige each State to respect and ensure the *res judicata* within its own jurisdiction and before those subject to it, but not among its States parties, the situation changes when the international obligation source mentioned comes reinforced by particular international

standards such as those contained in the extradition treaties, which bind the States parties amongst each other *-bis a bis-* and in a direct way. The *non bis in idem* is thus the counterpart of *aut dedere aut judicare* (Vid. In extensu, Paul D. Eiroa, "The guarantee of *ne bis in idem* in the context of extradition" *In Jura Gentium*, Journal of Philosophy of International Law and Global Politics, Vol VI, n. I, 2009, p. 70 et seq.).

It is not unnecessary to mention, that both the principle of *non bis in idem* as *aut dedere aut judicare*, are part of the international legal tradition of the American republics – independently of any change on the States parties in the formation of it - and also universal, as shown in the following instruments:

- Lima Treaty on Extradition (1879), which enshrines the right to be tried by national courts in your country and the *non bis in idem*.
- Bolivarian Congress Agreement on Extradition (1911), enshrining the prohibition of double jeopardy.
- Convention on international private law or Bustamante Code (1928), enshrining the prohibition of double jeopardy and prosecution of the suspect by the requested State if national.
- Montevideo Convention on Extradition (1933), enshrining the prohibition of double jeopardy and prosecution of the suspect by the requested State if national.

- International Criminal Law Treaty of Montevideo (1940), enshrining the prohibition of double jeopardy and accepting the *aut dedere aut judicare* if so provided by the required state constitutional standards.
- Inter-American Convention on Extradition (1981), that by in addition of enshrining the principles mentioned above, establishes the required state's obligation to communicate the judicial decision to the requesting State, and the power to declare the prescription of the criminal action in accordance with its domestic law.

The same principles - *non bis in idem* and *aut dedere aut judicare* - are also traditional in European and Arabic international law, as revealed by their standards, respectively the European Convention on Extradition (1957) and its Additional Protocol (1975), and the Convention among Arab League States on extradition of fugitive offenders (1952).

SECTION III. LEGAL ACTION SUBMITTED

The victim, as stated in the narrative of events, exercised the last available resource in the Argentine and Mexican laws and in the extradition treaties, regarding the extradition procedures to which he is subjected, being all of them resolved in his favor, by firm decisions adopted by the Argentine justice with *res judicata* force on March 28th, 2009 and the Mexican Ministry of Foreign Affairs on March 14th, 2010. However, what matters is that in the light of the above, the victim, on August 10th, 2010 raises three petitions before the District Court Central District of California, Southern Division, demanding it to dismiss the legal proceedings against him (Case No. SA CR-GLT 97-95, Case No. SA CR-AHS 97-74, and Case

No. SA CR 96-55-GLT), arguing on his behalf as provided by Article 14, paragraph 7 of the International Covenant on Civil and Political Rights and the principles of public international law and imperative that enshrine the human right to *non bis in idem*. By May 8th, 2011, as it is recorded in the narrative of the facts, the U.S. tax authorities maintain their efforts to apprehend the victim in order to bringing him before the Justice of the United States of America. So, as of the date of filing of this complaint, it is contumaciously omitted the request for dismissal, silence is kept, and the persecution against the victim is maintained, with clear risk - without diminishing of the aforementioned violated rights – to his right of personal freedom as well as his right of not being persecuted by facts and allegations that have already been resolved in a court of law, according to the Extradition Treaties subscribed by the United States of America; and finally to his right of no longer be subject to stigmatization, read, discriminatory treatment by the public opinion.

Given the above, it is obvious the exhaust of internal resources that demand as a requisite the articles 28 literal h; 31 number 2, literal c; and 32, number 2, of the Rules of the Inter-American Commission on Human Rights.

SECTION IV. EVIDENCES

1. EVIDENCES

Attached, in electronic format, without prejudice of further promoted or subsequently added evidence, the following documents:

- (a) Curriculum vitae of the victim.

- (b) Copies of Argentine and Mexican passports of the victim.
- (c) Augusto Sarmiento's essay on, "Ethical aspects of GIFT, in *Scripta Theologica* 22 (1990/3), 907-915.
- (d) Chapter V (Justice with human life / II: Bioethical problems), from the work of Angel Rodriguez Luño, *Scelti in Cristo per essere santi, III, Morale Speciale*, Rome, Pontificia Università della Santa Croce, 2008.
- (e) Press release of Juan Arias (Rome, September 30th, 1986), inserted in *El Pais*, Section Sociedad, Madrid, Spain, Tuesday September 30th, 1986.
- (f) "A commentary on the case of Ricardo Asch" article by Professors Mary Dodge, PhD (Graduate School of Public Affairs at the University of Colorado at Denver & Health Sciences Center) and Gilbert Geis, PhD (University of California - Irvine).
- (g) Communication dated September 9th, 1996, addressed from Law Offices of Gary L. Bostwick to Sheri Singer, Life Time Television Channel.
- (h) Information sent by the victim to his attorney Ron Brower, on March 11th, 1997, reporting the FDA approval of hMG Massone product under the name Repronal.
- (i) Writings addressed by the victim to the National Human Rights Commission of the United States of Mexico, on May 6th and November 13th, 1996,

January 16th, January 24th, March 4th, November 7th and November 26th1997, January 30th, 2001 and July 27th, 2004.

- (j) Subscribed Extradition Treaties between Argentina and the United States of America, January 21st, 1972 (Law 19,764) and August 4th, 1999 (Law 25.126).

- (k) Request of preventive detention for purposes extradition, presented by the Embassy of the United States of America in Buenos Aires before the Ministry of Foreign Affairs, International Trade and Cults of Argentina, on August 10th, 2004.

- (l) Provision of Federal Judge of First Instance for Criminal and Correctional Court No. 1 of Lomas de Zamora, requiring the United States of America clarification of the rules of its law related to Case No. 4521 case "ASCH Ricardo Hector s/EXTRADITION", dated December 1st 2004.

- (m) Note from the United States of America Embassy in Buenos Aires, on December 20th, 2004, clarifying the Federal Judge of First Instance for Criminal and Correctional Court No. 1 of Lomas de Zamora, aspects of American law.

- (n) Decision of the Federal Court of First Instance for Criminal and Correctional no. 1 Lomas de Zamora, Buenos Aires Province, from March 7th, 2005, which orders the application of the 1999 Extradition Treaty signed between Argentina and the United States of America.

- (o) Judgment of the Second Division of the Federal Court of La Plata, Province of Buenos Aires, on June 17th, 2008, which grants the appeal filed by the victim's defense and orders the trial judge to process it according to the principle *aut dedere aut judicare*, according to the rules of the 1972 Extradition Treaty, signed between Argentina and the United States of America.
- (p) Judgment of the Federal Court of First Instance for Criminal and Correctional no.1 of Lomas de Zamora, Buenos Aires Province, on September 25th, 2008 that obtains force of res judicata on March 25th, 2009, to which effect the victim is fully released and several causes that give rise to its judgment are dismissed.
- (q) Notice dated March 25th, 2009 to the immigration authorities and Argentine security waged by the Federal Judge of First Instance for Criminal and Correctional no. 1 Lomas de Zamora, Buenos Aires Province, letting them know that the victim enjoys full freedom.
- (r) Notice dated April 13th, 2009 to the United States of America Embassy based in Buenos Aires, issued by the Ministry of Foreign Affairs, International Trade and Cults of Argentina, in which the former is made aware of the proceedings in court in relation to the victim and which motivates the request for extradition.
- (s) Notes from the United States of America Embassy based in Mexico City, on May 26th, 2009, addressed to the Ministry of Foreign Affairs, and from the same Embassy based in Buenos Aires, on November 27 2009, to the

Ministry of Foreign Affairs, International Trade and Cults of Argentina, notifying them on the decision of the United States of America State Department to withdraw pursuing extradition orders against the victim.

- (t) Motions dated August 10, 2010, for which the defense of the victim, being in the United States of America and given the actions of the Argentine judiciary, requests the District Court Central District of California / South Division, to dismiss the causes against the victim. (Cases n ° SA CR 97-95, AHS 07-74, and 96-55 GLT).
- (u) Extradition Treaty signed between the United States of Mexico and the United States of America, May 4th, 1978.
- (v) Legal opinion issued by Judge Second District of Mexico Federal Criminal Proceedings addressed to the Ministry of Foreign Affairs on February 11th, 2011, expressing his disagreement with the extradition request made ex novo United States of America against the victim.
- (w) Decision of the Ministry of Foreign Affairs of the United Mexican States, on March 14th, 2011, rejecting the extradition of the victim and giving him his full freedom.
- (x) Press release written by Luciana Diaz on May 8th, 2011, inserted in the newspaper *Perfil*, published in Buenos Aires, where he realizes that "the U.S., is still looking for him", referring to the victim.

2. WITNESSES

At the appropriate time, testimonies will be offered in order to explain in depth the attached evidences as well as the damages caused to the victim.

SECTION V. ADDITIONAL COMPLAINTS

Under the provisions of Article 33 of the Regulations of the Commission, it is noted that the victim has not petitioned or processed any parallel proceedings on the same facts, in any governmental international body.

SECTION VI. REQUEST FOR PRECAUTIONARY MEASURES

Under the provisions of Article 25, paragraph 1 of the Rules of the Commission, it is hereby requested an injunction demand addressed to the United States of America, allowing the removal of the red alert international manhunt kept on the victim, through the International Police Organization (INTERPOL).

In effect, it is noted that the victim, despite having categorical pronouncements by both Argentina and Mexico Courts, which decided to legally clear him of any restrictions affecting his freedom and movement, decisions timely informed to the immigration authorities, still lacks any security to travel with peace which leads to the impossibility of fulfillment of the academic and scientific obligations demanded by his activity from which he depends for his own development as a health professional as to his own subsistence and his family's.

The context of blatant disregard by the United States of America of its international obligations regarding extradition; the insistence of its authorities on

an illegal and arbitrarily sustained and active behavior; leading to the capture of the victim despite the decisions already taken by the Justice and the damage it immediately entails, and given the tangible and sustained complaint by the victim regarding the dangerous situation in which he lives and has lived - as stated in the described events - for almost three decades which prevents him of having the necessary calm for the spiritual, moral and material being of his family, makes valid and essential -as requested by the Commission- the award on behalf of the victim, RICARDO HECTOR SCHUFF ASCH of the injunction in question, in accordance with paragraph 4 of Article 25 of the Rules of the Commission cited above.

Washington DC, on the date of submission, via mail. Original and electronic support are inscribed personally. Signature, by proxy, on behalf of the victim,

A handwritten signature in black ink, appearing to read 'Asdrúbal Aguiar A.', written in a cursive style. The signature is positioned above a horizontal line.

Asdrúbal Aguiar A.

Lawyer and Doctor of the Law

Colegio de Abogados del DF, Venezuela, N° 4873

Inpreabogado, N° 7745