

Amicus Curiae Brief

Presented to the Primer Juzgado Penal con Reos Libres
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PART I: INTRODUCTION

1. Request to Present an Amicus Curiae Brief

1. Distinguished Justice of the Primer Juzgado Penal con Reos Libres: we, Charis Kamphuis, Assistant Professor at the Faculty of Law at Thompson Rivers University (TRU) and Brandy Falkevitch, law student at TRU, are both Canadian citizens and members of the Justice & Corporate Accountability Project (JCAP), headquartered in Canada. We respectfully submit this *amicus curiae* brief with the objective of offering international law analysis that we believe will be useful for this Court's consideration of Canadian citizen Jennifer Moore's *habeas corpus* claim against the Ministry of the Interior, the Peruvian National Police (PNP), the PNP's Department of State Security of Cusco, and the Cusco Regional Headquarters of the Superintendent of National Migration (“**the Defendants**”).
2. JCAP is a non-governmental organization composed of Canadian lawyers, law professors and law students. Its membership has knowledge and expertise with regard to the international human rights law regimes that apply to human rights defenders (“HRDs”), Indigenous peoples, Campesino Communities and their relationship with extractive industry projects owned by transnational corporations.

2. Summary of the Intervention

3. In this *amicus curiae* brief we offer the Court information about instruments of international law and policy that are relevant to the human rights aspects of Moore's claim. In order to identify the applicable body of international human rights law, we have reviewed official documents pertaining to the actions of the Defendants to apprehend Moore and subsequently prohibit her from re-entering Peru.
4. On the basis of the information reviewed, we conclude that the actions and decisions of the Defendants violate the rights to free expression (Article 13), free association (Article 16) and free mobility (Article 22) as protected by the *American Convention on Human Rights*. Additionally, we note that the Defendants' rationale for the ban on Moore in the

circumstances of this case has the potential to adversely affect the human rights of anyone who visits Peru on a tourist visa and shares information or expresses views that are critical of the PNP or foreign mining companies. This highlights the international importance of this case.

5. Referring to Article 13, we conclude that the Defendants' actions are not justified on the basis of public order but rather constitute a reprisal against Moore for her role in disseminating a documentary film that is critical of the PNP and Canadian mining company Hudbay Minerals Inc. On this basis, we conclude that the Defendants' actions infringe Moore's right to free expression by limiting her ability to share information and express herself in Peru. These same actions violate the free expression rights of all Peruvians who seek to receive information and communicate with Moore in person.

6. Referring to Article 16, we conclude that the Defendants' decision to ban Moore from Peru prevents her from associating directly with her Peruvian collaborators, including HRDs, organizations and communities. This violates Moore's right to free association and the rights of all Peruvian's who wish to associate with her. Referring to Article 22, we observe that the Defendants' actions generated a climate of fear that caused Moore to flee the country. We also conclude that the decision to issue the migratory alert against Moore was not made in accordance with law, including basic principles of procedural fairness and the respect for human rights. For these reasons, we believe the Defendants have also violated Moore's freedom of movement as protected by the *American Convention*.

PART II – Summary of the Material Facts

7. We have identified the facts that underpin Moore’s *habeas corpus* claim by carefully reviewing the official Peruvian State documents that we cite throughout this *amicus curiae* brief. We have also reviewed other publicly available materials including those produced to date in the legal proceedings related to Moore’s *habeas corpus* claim. Finally, we have viewed the documentary film at the centre of this case. This section will summarize and synthesize the relevant facts that we have identified in all of these materials and that form the basis of our legal analysis.
8. Jennifer Moore is a Canadian citizen and has been the Latin America Program Coordinator for MiningWatch Canada since 2010. With respect to her work in relation to Peru, Moore supports communities, organizations, and networks struggling with mining conflicts.¹ Moore’s work focuses on documenting human rights violations and helping those affected to seek remedies. This qualifies Moore as a human rights defender (“**HRD**”).
9. On April 15, 2017, Jennifer Moore and John Dougherty arrived in Peru with tourist visas. The purpose of their trip was to publicly screen the documentary *Flin Flon Flim Flam (Hudbay’s Hoax) (El Fraude de Flin Flon)*.² Dougherty is an American citizen and the documentary film maker. The documentary examines the worldwide operations of Toronto-based mining company Hudbay Minerals Inc.³ It features a number of testimonials and interviews that describe community dissatisfaction with Hudbay’s mining projects in Canada, Peru, Guatemala and the United States.⁴ The documentary also depicts some of the community and Indigenous protests that have occurred in Canada, Peru and Guatemala due to unresolved human rights and environmental concerns with Hudbay.

¹ *MiningWatch Canada*, online at <<https://miningwatch.ca/users/jen>>.

² La demanda de hábeas corpus preventivo e innovatio de Jennifer Moore at 5 [*Habeas Corpus Moore*].

³ John Dougherty, “InvestigativeMEDIA releases online version of Hudbay Minerals documentary “Flin Flon Flim Flam”” (31 December 2015) InvestigativeMEDIA (website), online <<http://www.investigativemedia.com/investigativemedia-releases-online-version-of-hudbay-minerals-documentary/>> [*Documentary*].

⁴ *Ibid.*

10. The documentary includes footage of Hudbay’s Constancia mine, located in the districts of Velille, Livitaca and Chamaca in the province of Chumbivilcas in the Cusco region of Peru.⁵ In its coverage of the Constancia mine, the documentary is critical of Hudbay’s relationship with local communities and of the company’s contractual relationship with the Peruvian National Police (“**PNP**”) force. The documentary is also critical of PNP officers’ treatment of Campesino protesters and it records their allegations of police brutality.⁶ In viewing the documentary, we conclude that its depiction of protests does not incite violence. Rather, the documentary categorically condemns violence and expresses concern for human rights and the environment.
11. Moore and Dougherty facilitated and supported screening the documentary in Peru in order to inform Peruvians and those directly impacted by Hudbay’s Constancia mine of widespread concerns with the company’s record on community consultation and consent, the environment, and relationship with security forces.
12. Prior to Moore’s arrival in Peru, a Peruvian online media site personally named Moore and published unfounded allegations that the anticipated screenings of *Flin Flon Flim Flam* represented a new strategy and ambush by a so-called “radical anti-mining movement” against mining investments in Peru.⁷ According to Police Report N° 13, these allegations led the PNP to begin inquiring into Moore’s presence in Peru and PNP officers undertook to surveil her activities while in the country and while screening the documentary.⁸

⁵ CONVENIO INTERINSTITUCIONAL QUE CELEBRAN HUDBAY PERÚ SAC – “PROYECTO CONSTANCIA” Y LA POLICÍA NACIONAL DEL PERÚ – (REGION POLICIAL SUR ORIENTE) at 2 [*Hudbay-PNP Contract*].

⁶ *Documentary*, *supra* note 3.

⁷ *El Montonero*, “Preparan emboscada contra Hudbay Constancia”, April 10, 2017, <<http://elmontonero.pe/politica/preparan-emboscada-contra-hudbay-constancia>>.

⁸ *Informe N° 13-2017-VII-MACRO-REGPOL-CUSC-APU/RP-CUSCO-DEPSEEST/SECC.EXTR* [22 April 2017] National Peruvian Police, Cusco Region Police, Immigration Matters-Cusco, Chief, Jorge W. Venero Flores and Edgar E. Abarca Lezama at page 4 [*PNP Report*].

13. From April 18 to 20, 2017, Moore accompanied screenings of the documentary in the towns of Chamaca and Veliile, located in the very districts where Hubday's Constancia mine carries on operations. Materials related to the film were also distributed in the town of Santo Tomas, located in the district of Santo Tomas, which neighbours the Constancia mine site.⁹ According to Moore, the screenings were conducted with the knowledge of municipal authorities¹⁰ and were also known to the public. Police Report N° 13 acknowledges that Moore disclosed the purpose of the documentary screening to the municipal authorities of Chamaca.¹¹ The itinerary for the screenings was well publicized and a press conference in preparation for the screening in the city of Cusco was well attended.
14. During the screenings, Moore became aware that unidentified individuals were surveilling her,¹² that PNP officers had questioned her colleagues,¹³ and had visited her hotel in Santo Tomas to gather information about her.¹⁴
15. On Friday April 21, 2017, the documentary was screened in the city of Cusco. While Moore and Dougherty were leaving the screening venue, PNP and National Supervision of Migration officers, surrounded and apprehended them. According to Police Report N° 13, the officers asked for their identification and transported them to the Department of Security in order to verify their migratory status in Peru.¹⁵ While Moore was in custody, officers asked her many questions about her activities, but no charges were laid against her and after several hours she was released.¹⁶
16. On Saturday April 22, 2017, the day after Moore's apprehension, the PNP issued Police Report N° 13 which concluded that Moore's activities in facilitating and supporting the

⁹ *Habeas Corpus Moore, supra note 2* at page 5.

¹⁰ *Ibid.*

¹¹ *PNP Report, supra note 8.*

¹² *Habeas Corpus Moore, supra note 2* (in Chamaca).

¹³ *Ibid* (in Veliile).

¹⁴ *Ibid* at pages 5 and 6 (in Santo Tomas).

¹⁵ *PNP Report, supra note 8* at page 2.

¹⁶ *Habeas Corpus Moore, supra note 2* at page 8.

documentary screenings, including speaking at the screenings, violated Peruvian law.¹⁷ In making this finding, the PNP referred to Legislative Decree N° 1350 which sets out the scope of permissible activities for tourists in Peru.¹⁸ The Report did not identify specifically how the documentary screening activities were inconsistent with the aforementioned decree.

17. That same day, the Peruvian Ministry of the Interior (“**Ministry**”) published a statement on its website justifying the detention of Moore and Dougherty by the PNP. The statement alleged that by publicly disseminating the documentary, Moore was inciting the Peruvian population to violence and to oppose Canadian mining activity, including Hudbay’s activities specifically, and as such was threatening public order. According to the statement, Moore violated the terms of her tourist visa when she supported and facilitated the documentary screenings.¹⁹
18. The circumstances of her apprehension and the public statement by the Ministry led Moore to believe that she was no longer safe in Peru and she left the country the following day, on Sunday April 23, 2017, prior to the documentary screening scheduled for the city of Lima for April 25, 2017.²⁰
19. The same day that Moore left Peru, Henry Paricahua Carcausto, the Manager of Migratory Services, issued Management Resolution N° 755 on behalf of the National Supervision of Migration.²¹ The Resolution adopted the findings made in Police Report N° 13 and the Ministry’s online statement that Moore and Dougherty had violated Peruvian law and posed a threat to public order.²² There is no evidence in the Resolution that the National

¹⁷ *PNP Report*, *supra* note 8.

¹⁸ Specifically, they referred to Article 45.3 of the Legislative Decree N° 1350 and Articles 151°, 154°, and 156° of the Supreme Decree N° 007-2017-IN – Regulations of the Legislative Decree on Migration.

¹⁹ COMUNICADO MININTER N° 008 – 2017, [22 April 2017] Minister of the Interior <<https://www.mininter.gob.pe/content/sobre-la-situaci%C3%B3n-migratoria-irregular-de-una-ciudadana-canadiense-y-un-norteamericano>>.

²⁰ *Habeas Corpus Moore*, *supra* note 2.

²¹ *Resolución de Gerencia*, N° 755-2017- MIGRACIONES-SM, [23 April 2017] Migration Services, Henry Paricahua Carcausto.

²² *Ibid* at page 2.

Supervision of Migration undertook any further investigation into the matter beyond the activities recorded in Police Report N° 13. On this basis, the Resolution set out the decision of the Manager of Migratory Services to issue a migratory alert prohibiting Moore's return to Peru for an indefinite period of time.²³ Notably, the Resolution, as well as Police Report N° 13 were issued by authorities over the weekend.

20. In preparing this *amicus curiae* brief, we also reviewed a copy of an agreement between Hudbay and the PNP (“**Hudbay-PNP Contract**” or the “**Contract**”) in relation to Constancia Mine. While the copy in our possession is dated March 17, 2013, it contains a clause that allows for annual renewal. In the Contract, the PNP agrees to provide Hudbay with services that are “complimentary” to ordinary police services. This includes protection, surveillance, and security services at Hudbay’s installations and “in general in the area of influence of the project.”²⁴ Complimentary police services under the Contract further include “the prevention of crimes, acts of vandalism, sabotage, terrorism and or attacks that could befall the project”²⁵ as well as the “detection of unknown persons in the area of the project”.²⁶ The Contract requires the PNP to provide these services by coordinating with Hudbay’s representatives and with due regard for the company’s internal norms.²⁷

21. The geographical scope of the services provided under the Hudbay-PNP Contract is broad and vague. The Contract defines “project” as any and all mining installations, the area of operation of the mine, its zone of influence and any property in Hudbay’s possession located in the districts of Vellile and Livitaca.²⁸ Notably, the “zone of influence” of the project is not defined in the Contract. As such, the Contract does not specify precise geographical limits for the provision of “complementary” PNP services to Hudbay.

²³ *Ibid* at pages 1, 3, 4.

²⁴ *Hudbay-PNP Contract*, *supra* note 5 at page 3 (clause 3).

²⁵ *Ibid* at page 4 (clause 4.1).

²⁶ *Ibid* at clause 5.1.18.

²⁷ *Ibid*.

²⁸ *Ibid* at page 2 (clause 1.2).

22. In exchange for these services, Hudbay agrees in the Contract to provide various forms of benefits and financial compensation to PNP officers as well as financial contributions to the PNP as an institution.²⁹
23. Just a few weeks after the apprehension of Moore, on May 8, 2017 Hudbay issued a public statement on the Business & Human Rights website. In the statement, Hudbay acknowledged that it continues to have “an arrangement with the PNP”.³⁰ This gives rise to a strong inference that the Hudbay-PNP Contract has been renewed annually since 2013 and was in place, with the same or substantially similar terms, at the time of Moore’s apprehension.
24. The factual record summarized here indicates that the PNP officers involved in Moore’s surveillance, apprehension and questioning, and in authoring Police Report N° 13, were rendering services within the area of influence of Hudbay’s Constancia project. Given that Hudbay and the PNP maintain an “arrangement”, it is possible that the PNP officers involved in Moore’s case were rendering services to Hudbay pursuant to a contract at the time of the actions in question. Another possibility is that any one of these same officers had benefited from a contractual relationship with Hudbay at some point prior to the facts in question, or perhaps anticipated a contractual relationship with Hudbay in the future.
25. It is clear that there was close proximity between the PNP officers who surveilled, apprehended and ultimately made findings against Moore, and Hudbay, the very company that the documentary was criticizing. This proximity between the PNP and Hudbay provides important context for our international law analysis of Moore’s habeas corpus claim, to which we now turn.

²⁹ *Ibid* at art 4.3 and clause 7.2.

³⁰ BHR Hudbay Reply May 10, 2017 at

<<https://drive.google.com/file/d/0B04WIWWDw5oGb0FJNHZzTm5TSIE/view>>.

PART III – INTERNATIONAL LAW ANALYSIS

26. Part Three of this *amicus curiae* brief is dedicated to the following question: did the surveillance and apprehension of Jennifer Moore and the subsequent prohibition on her re-entry amounted to a violation of Peru’s obligations under the *American Convention on Human Rights*³¹ (“*American Convention*”)?
27. In answering this question, this brief will refer to the jurisprudence of the Inter-American Court of Human Rights (“**Inter-Am Ct HR**” or “**Court**”) and reports by the Inter-American Commission on Human Rights (“**IACHR**”) that interpret the rights at issue.
28. Our analysis ultimately leads us to conclude that the actions of the Defendants have violated Moore’s rights to free expression (Article 13), free association (Article 16) and free mobility (Article 22) as protected by the *American Convention*. In our view, the facts strongly support the conclusion that these violations cannot reasonably be justified as part of an effort to preserve public order, but rather are consistent with a growing trend of criminalizing human rights defenders (“**HRDs**”) in Peru and in the region.

1. Context: International Concern for Human Rights Defenders

29. International human rights bodies have expressed widespread concern for the mistreatment of HRDs by state actors. In 2013, the UN Human Rights Council urged governments to protect HRDs from abuses arising from judicial and security systems and to grant them the legal guarantees and safeguards set out in international law.³² In a 2015 report on the criminalization of HRDs, the IACHR highlighted the importance of this issue in the Americas.³³ In a 2016 report on Indigenous peoples and extractive industries in the

³¹ OAS, General Assembly, *American Convention on Human Rights*, “*Pact of San Jose*”, Costa Rica, November 22, 1969 [*American Convention*].

³² *Protecting human rights defenders*, GA Res 22/6, UN Human Rights Council GAOR, 68th Sess, Supp No 53, 47th Mtg, UN Doc A/68/53 (2013) 24 at 26-29.

³³ OAS, Inter-American Commission on Human Rights, *Criminalization of the Work of Human Rights Defenders*, OR OEA/Ser.L/V/II/doc. 49/15 (2015) [*Criminalization of HRDs*].

Americas, the IACHR found that HRDs are disproportionately impacted by natural resource extraction, including through criminalization.³⁴ In its judgements, the Inter-Am Ct HR has identified HRDs as a vulnerable group and has called on states to increase protection for these individuals.³⁵

30. In spite of this, state actors in Latin America continue to misuse criminal law to hinder and obstruct the work of HRDs. This is often accomplished by adopting broad or vague definitions of crimes to validate unfounded accusations and unfair detention. The IACHR has observed that states often rationalize the criminalization of HRDs by appealing to vague objectives like ‘public order’ or ‘national security’.³⁶

1. Article 1.1 of the *American Convention* (State Obligation)

31. This section will analyze the following question: are Peru’s obligations under the *American Convention* engaged by the apprehension of Moore and the subsequent prohibition on her return to Peru, bearing in mind that Moore is not a citizen or resident of Peru?

a. Article 1 Law and Jurisprudence

32. Peru ratified the *American Convention* in 1978.³⁷ Article 1.1 thereof establishes the obligation of State Parties to respect the rights and freedoms recognized in the *American Convention* and “to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms”. This provision confirms that the *American Convention*

³⁴ OAS, Inter-American Commission on Human Rights, *Indigenous Peoples, Afro-Descendent Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OR OEA/Ser.L/V/II/doc. 47/15 (2016) at para 316.

³⁵ *Human Rights Defender et al v Guatemala* (2014), Preliminary Objections, Merits, Reparations and Costs, Inter-Am Ct HR (Ser C) No 283 at paras 72 and 263.

³⁶ See: *Criminalization of HRDs*, *supra* note 33; Christian Ferreyra, “The Risk of Defending Human Rights: The rising tide of attacks against human rights activists in Latin America”, (2016), online: *Oxfam International* <<https://oxf.am/2splvkR>>.

³⁷ Secretariat for Legal Affairs, “Multilateral Treaties: American Convention on Human Rights “Pact of San Jose, Costa Rica: Signatories and Ratifications” (2014), (*OAS*), online: <https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm>.

protects all citizens and non-citizens in a State Party's jurisdiction. It is a well-established principle of international law that the concept of jurisdiction extends beyond the territory of a state to refer to the ambit of the state's exercise of power and authority.³⁸

b. Article 1 Applicability

33. In the case at hand, the Defendants apprehended Moore while she was in Peru and subsequently prohibited her re-entry to the country. In the course of these actions, the Defendants have exercised authority and jurisdiction over Moore. On this basis, we conclude that Moore was and remains a person subject to Peru's jurisdiction and that Peru therefore owes Moore the free and full exercise of the applicable rights and freedoms protected by the *American Convention*.

3. Article 13 of the *American Convention* (Freedom of Expression)

34. This section will analyze the significance of Article 13 of the *American Convention* for the case at hand. First, it will summarize the jurisprudence and interpretation of Article 13 in Inter-American human rights law. Second, it will analyze the facts of the instant case in relation to this body of law. On this basis we respectfully substantiate our conclusion that the Defendants' actions violate Article 13.

a. Article 13 Law and Jurisprudence

35. The Inter-Am Ct HR has stated that freedom of expression is a "medium for the exchange of ideas and information between persons".³⁹ Correspondingly, Article 13 of the *American Convention* protects "the right to freedom of thought and expression for everyone, including the freedom to seek, receive, and impart information and ideas of all kinds, through any medium."⁴⁰

³⁸ Hugh M. Kindred et al., eds, *International Law: Chiefly as Interpreted and Applied in Canada* (Toronto: Emond Montgomery Publications, 2014) at chapter 4.

³⁹ *Ivcher Bronstein v Peru* (2001), Merits, Reparations and Costs, Inter-Am Ct HR (Ser C) No 74 at para 148.

⁴⁰ *American Convention*, *supra* note 31, art 13.

36. While Article 13.2 of the *American Convention* acknowledges that this right may be limited, this is only to the extent necessary to ensure respect for the rights or reputations of others or the protection of national security, public order, public health or morals (emphasis added).⁴¹

Article 13.3 is also clear that:

the right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over [...] equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.⁴²

37. In 2000, the IACHR adopted the *Declaration of Principles on Freedom of Expression* (“**Declaration**”)⁴³ to assist with the interpretation of Article 13 by creating a legal framework to regulate the effective protection of freedom of expression. The *Declaration* codifies established doctrine from important international instruments, including decisions of the Inter-Am Ct HR. The IACHR chose to give special attention to freedom of expression with a dedicated international Declaration in order to strengthen the protection of this right and acknowledge its importance.⁴⁴

38. Principles 5 and 13 of the *Declaration* are particularly relevant to this case. Principle 5 prohibits direct or indirect censorship of any expression, opinion or information transmitted through any means. It also prohibits the imposition of obstacles to the free flow of information. The IACHR has provided important commentary to assist with the interpretation of Principle 5:

The duty to refrain from interfering with the right to access information extends to the free circulation of information and ideas and the exhibition of artistic works that may not have the approval of government authorities.⁴⁵

⁴¹ *Ibid*, art 13.2.

⁴² *Ibid*, art 13.3.

⁴³ OAS, Inter-American Commission on Human Rights, *Declaration of Principles on Freedom of Expression*, Washington, DC, October 2000 <<http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&IID=1>> [*Declaration of Principles*].

⁴⁴ OAS, Inter-American Commission on Human Rights, *Background and Interpretation of the Declaration of Principles*, Washington, DC, October 2000 <<http://www.oas.org/en/iachr/expression/showarticle.asp?artID=132&IID=1>> [*Background and Interpretation*].

⁴⁵ *Ibid*, at para 21 (emphasis added).

39. In connection to Principle 5, the IACHR has also stated that:
- there are two aspects to freedom of expression: the right to express thoughts and ideas, and the right to receive them. Therefore, limiting freedom of expression through arbitrary interference affects not only the individual right to express information and ideas, but also the right of the community as a whole to receive all types of information and opinions.⁴⁶
40. Adding to this, Principle 13 of the *Declaration* reads: “The exercise of power [...] by the state [...] with the intent to put pressure on and punish [...] social communicators [...] because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.”⁴⁷
41. These principles were considered in the case of *Ivcher Bronstein*, decided by the Inter-Am Ct HR in 2001. Mr. Bronstein was a naturalized Peruvian citizen and majority shareholder, Director and President of a news channel. After airing a news program condemning a commercial relationship between members of the Peruvian Army and drug-traffickers, he was harassed, criminalized, and eventually deprived of his Peruvian nationality.⁴⁸
42. In its analysis, the Court confirmed that the right to free expression has both an individual and a social dimension; each of which must be guaranteed simultaneously.⁴⁹ With regard to the first dimension, the Court states that the individual component of the right embodies a right to disseminate information and ideas through the use of any method. The Court further clarifies that “the expression and dissemination of thought and information are indivisible, so that a restriction of the possibilities of dissemination represents directly, and to the same extent, a limit to the right to free expression”.⁵⁰

⁴⁶ *Ibid*, at para 25.

⁴⁷ *Ibid*, at para 55. Also see: *Declaration of Principle*, *supra* note 43, principle 13.

⁴⁸ *Ivcher Bronstein*, *supra* note 39.

⁴⁹ *Ibid* at para 146.

⁵⁰ *Ibid* at para 147 (emphasis added).

43. With regard to the second dimension, the Court stated that the *American Convention* protects the right and freedom to seek and receive information and ideas of all types.⁵¹ This entails a collective right of ordinary citizens to know the opinions and information that others have to offer.⁵² The Court is clear that the social element of freedom of expression is just as important as the individual right.⁵³
44. Ultimately, in the case of *Ivcher Bronstein*, the Inter-Am Ct HR found that Peru violated Article 13 of the *American Convention*. The Court concluded that, in separating Mr. Bronstein from the control of his news channel and in revoking his citizenship, the State restricted his right to circulate news, ideas and opinions.⁵⁴ The Court found that the State had used its immigration powers as a sanction technique and as a means of restricting Mr. Bronstein's freedom of expression.⁵⁵
45. The Court also found that, by separating Mr. Bronstein from the control of his news channel, the State had "affected the right of all Peruvians to receive information, limiting their right to exercise political opinions and develop themselves fully in a democratic society."⁵⁶ This finding reflects Principle 5 of the *Declaration* in that it connects individual free expression to the collective rights to hear ideas.

b. Article 13 Analysis: Peru violated Article 13 (freedom of expression)

46. The factual summary in Part 2 of this *amicus curiae* brief indicates that Jennifer Moore publicly screened the documentary, *Flin Flon Flim Flam (Hudbay's Hoax)*, within Hudbay's zone of influence. Part 2 also described how the documentary makes allegations that Hudbay has a record of human rights and environmental violations, including with respect to Hudbay's Constancia Mine in Peru. The documentary also depicts community

⁵¹ *Ibid* at para 146.

⁵² *Ibid* at para 148.

⁵³ *Ibid*.

⁵⁴ *Ibid* at paras 162, 163.

⁵⁵ *Ibid* at paras 143, 162.

⁵⁶ *Ibid* at para 163.

dissatisfaction with Hudbay in Peru and is critical of Hudbay's relationship with the PNP and of the conduct of PNP officers. The documentary's express purpose is to inform Peruvians and others impacted by Hudbay's operations.⁵⁷

47. Moore's actions in facilitating the exhibition of the documentary are clearly protected by the right to free expression. The *American Convention*, the *Declaration*, and the Inter-Am Ct HR are clear that the right of expression protects the right to transmit information, without censorship, that may be contrary to the interests of government authorities.⁵⁸
48. In response to Moore's exercise of her right to free expression, the Defendants surveilled and apprehended her before ultimately prohibiting her re-entry to the country.⁵⁹ The Defendants have attempted to justify their actions by claiming that Moore was inciting the Peruvian population to violence, was prompting opposition to Hudbay's mining activity and was threatening public order.⁶⁰ The Defendants have concluded that, in Peruvian law, the terms of Moore's tourist visa did not permit her to show a documentary film that is critical of Hudbay or Peruvian authorities.⁶¹
49. In principle, the *American Convention* allows free expression to be limited to the extent necessary to ensure public order.⁶² However, it is a fundamental principle of international law that such limitations cannot be imposed for the mere reason that governmental authorities do not approve of the ideas in question.⁶³ Similarly, state power may not be exercised to punish social communicators simply because the state disagrees with the information they disseminate.⁶⁴ Notably, international organizations have observed that when states attempt to censor or punish the expressions of HRDs, they often appeal to the concept of "public order".

⁵⁷ JCAP, *Amicus Curiae Brief*, paras 9 and 10.

⁵⁸ *American Convention*, *supra* note 31, art 13.2; *Declaration of Principles*, *supra* note 43, principle 5; *Ivcher Bronstein*, *supra* note 39.

⁵⁹ JCAP, *Amicus Curiae Brief*, paras 14, 15, and 17.

⁶⁰ *COMUNICADO MININTER*, *supra* note 19.

⁶¹ *Ibid.*

⁶² *American Convention*, *supra* note 31, art 13.2.

⁶³ See *Declaration of Principles*, *supra* note 43 at principle 5 and *Background and Interpretation*, *supra* note 44.

⁶⁴ *Ibid* at principle 13.

50. Based on our review of relevant documents, we conclude that the Defendants have failed to provide any evidence at all to support their conclusion that Moore's actions were a threat to public order in Peru. We have reviewed the film *Flin Flon Flim Flam* and we have concluded that it is solely focused on documenting human rights concerns with Hudbay's global operations. The film does not incite violence or civil disobedience either directly or indirectly. In our view, the circumstances of this case strongly support the conclusion that the Defendants have criminalized and sanctioned Moore for disseminating a documentary film that alleges human rights violations on the part of both Hudbay and the PNP. Notably, it is the PNP, a government institution in a long-standing contractual relationship with Hudbay, that first concluded that Moore's actions were unacceptable and a violation of law. The statements of international law and commentary cited above are clear: it is not permissible to use criminal law or immigration law in order to retaliate against or suppress expressions that criticize public and private actors. Indeed, one of the fundamental purposes of the right to free expression is to safeguard expressions that are critical of governments or other powerful social actors.
51. On this basis, we submit that the Defendants have violated Article 13 of the *American Convention* in four ways. First, as stated previously, the Defendants' actions in monitoring, apprehending and banning Moore are not justified by public order, but rather amount to a reprisal for her dissemination of a film that is critical of Hudbay and Peruvian authorities.
52. Second, the prohibition on Moore's re-entry to Peru prevents her from sharing information with Peruvians *in person*. The sources of international law cited above establish that Moore's individual right to free expression includes the right to share information "through any medium" and without the imposition of obstacles of any kind.⁶⁵ The Inter-Am Ct is clear that a restriction on the method of dissemination represents "directly, and to the same extent, a limit on the right to free expression".⁶⁶ By physically prohibiting Moore from entering Peru, the Defendants are preventing Moore from expressing her ideas and sharing

⁶⁵ *American Convention*, *supra* note 31, art 13, *Declaration of Principles*, *supra* note 43 at principle 5 and *Background and Interpretation*, *supra* note 44.

⁶⁶ *Ivcher Bronstein*, *supra* note 39 at para 147.

information with Peruvians in her chosen mode, namely, in person. This case is like the case of *Ivcher Bronstein*, where government authorities prevented Mr. Ivcher Bronstein from using his chosen method of communication, his news channel. In Peru, the communities most directly impacted by mining and most vulnerable to human rights violations are those with the least access to electronic forms of communication. In order for Moore to most effectively share human rights related information with vulnerable communities, she must be able to communicate with them in person.

53. Third, the Defendants' rationale for their actions (in Police Report N° 13, Management Resolution N° 755, and the Ministry's statement) has implications, not only for Moore's rights, but also for anyone visiting Peru on a tourist visa. The Defendants' reasoning suggests that anyone who visits Peru with a tourist visa *and* expresses opinions critical of a mining company or the PNP could, like Moore, be sanctioned by Peruvian authorities using criminal law and/or immigration law. This approach, if allowed to persist, could affect a wide range of social communicators, including foreign researchers, journalists, artists, filmmakers, NGO volunteers or anyone else. We conclude that the Defendants' actions against Moore will put a chill on free expression at any event with international participants that is focused on mining and hosted in Peru, such as for example film festivals and academic conferences.
54. Fourth, the instruments of international law cited above establish that free expression includes a collective right to receive all types of information and opinions.⁶⁷ In the case of *Ivcher Bronstein*, the Peruvian State limited Mr. Ivcher Bronstein's potential audience by preventing him from communicating through his news channel. This is analogous to Moore's case where the Defendants have prevented Moore from communicating in person with Peruvians. In both cases, the scope of the communicators' potential audience is reduced. On this basis, we conclude that the Defendants' actions infringe Peruvians' collective right to receive information from Moore in person. This in turn limits their right to form political opinions and participate fully in a democratic society.

⁶⁷ *Background and Interpretation, supra* note 44.

55. As a Canadian HRD, Moore has important expertise and information about Canadian mining companies and Peruvians, especially those impacted by the operations of such a company, have a legitimate interest to hear this information.⁶⁸ Just like the case of *Ivcher Bronstein*, in the case at hand, the Defendants have used their powers to create an obstacle to the dissemination of information to Peruvian citizens, thereby preventing them from hearing expert information from Moore in person. As such, we conclude that the actions of the Defendants violate Peruvians' collective right to free of expression.
56. We conclude that by surveilling, apprehending and subsequently prohibiting Moore's re-entry to the country, the Defendants have violated Article 13 of the *American Convention* to the detriment of Jennifer Moore and all Peruvian citizens. Moore's actions and expression, while critical of Hudbay and the PNP, are for that very reason legitimate and protected by the *American Convention*.

4. Article 16 of the *American Convention* (Freedom of Association)

57. This section will analyze the significance of Article 16 of the *American Convention* for Moore's habeas corpus claim. First, it will summarize relevant jurisprudence in Inter-American human rights law. Second, it will analyze the facts of the case at hand in relation to this body of law. On this basis, we respectfully conclude that the Defendants actions to prohibit Moore's re-entry to Peru violate Article 16.

a. Article 16 Law and Jurisprudence

58. Article 16.1 of the *American Convention* recognizes that everyone has the right to associate freely for political, social or other purposes. Article 16.2 provides that the exercise of this right shall be subject to restrictions only where they are made in accordance with law and are necessary in a democratic society in the interest of, *inter alia*, public order.

⁶⁸ JCAP, *Amicus Curiae Brief*, para 8.

59. The Inter-Am Ct HR has interpreted the meaning of this right in its jurisprudence, finding that freedom of association encompasses the “right to associate with others in order to achieve a lawful common objective without pressure or interference that could alter or interfere with this objective”.⁶⁹ In relation to HRDs, the Court has found that states have both negative and positive obligations. They have a duty to “provide the necessary means for human rights defenders to conduct their activities freely” and to investigate “any violations perpetrated against [HRDs], thereby combating impunity”.⁷⁰ States must also refrain from “imposing restrictions that would hinder the performance of [HRDs] work”.⁷¹
60. In the 2011 case of *Lysias Fleury et al.*,⁷² Mr. Fleury, a Haitian HRD, was illegally arrested and detained by the Haitian National Police (“HNP”). Mr. Fleury worked for the non-governmental organization, “National Episcopal Commission for Justice and Peace”, as a HRD and legal adviser. Mr. Fleury represented victims of illegal arrest throughout Haiti and conducted investigations, drafted reports and made recommendations concerning human rights violations that occurred under the Haitian criminal justice system.⁷³ Due to his profession, Mr. Fleury was known to the HNP.⁷⁴
61. In this context, the HNP arrested Mr. Fleury, allegedly for stealing a water pump. However, while Mr. Fleury was incarcerated, agents of the State inflicted torture on him while alluding to the fact that he was a HRD.⁷⁵ On the basis of these findings, the Inter-Am Ct HR concluded that the violations perpetrated against Mr. Fleury were related to his work as a HRD and were inflicted to prevent him from continuing to associate with the National Episcopal Commission for Justice and Peace.⁷⁶ This case is important because it suggests that where a HRD is critical of certain state actors and is then criminalized and/or abused by those same actors, this will give rise to a strong inference that the violations are a form of

⁶⁹ *Lysias Fleury et al v Haiti* (2011), Merits and Reparations, Inter-Am Ct HR (Ser C) No 236 at para 99.

⁷⁰ *Ibid* at para 100.

⁷¹ *Ibid*.

⁷² *Ibid*.

⁷³ *Ibid* at para 32.

⁷⁴ *Ibid* at para 97.

⁷⁵ *Ibid* at paras 34, 36, 101.

⁷⁶ *Ibid* at para 102.

retaliation against the HRD. The inference that the state's actions are politically motivated will be especially strong in the absence of a clear evidentiary basis for any alleged wrongdoing on the part of the HRD.

b. Article 16 Analysis: Peru violated Article 16 (freedom of association)

62. Pursuant to Article 16.1 of the *American Convention*, Moore and all people subject to the jurisdiction of the Peruvian government have the right to associate freely for political, social or other purposes. Having carefully analyzed the facts in light of the principles of international law set out above, we conclude that the Defendants' decision to prohibit Moore's re-entry to Peru violates Article 16 in three important ways.
63. First, the Defendants' decision violates Moore's right to freely associate with Peruvians in the most general sense. As the Inter-Am Ct HR stated in the case of *Lysias Fleury*, Moore's right to association includes a right to associate with all Peruvians in an effort to achieve a lawful common objective without pressure or interference by the State. The prohibition on Moore's re-entry prevents her from freely and directly associating with any and all Peruvians, and anyone else, who live in Peru.
64. Second, the Defendants' decision seriously restricts Moore's ability to associate with the Peruvian organizations and communities that she collaborates with in the defense of human rights. By preventing Moore from personally visiting Peru, the Defendants have imposed a restriction on Moore that has the effect of hindering the performance of her work as a HRD. Collaborations that occur remotely (for example with electronic means) are generally less effective than in person meetings, especially when dealing with sensitive issues like the defence of human rights.
65. Moreover, as mentioned earlier, many of the mine affected communities that Moore associates with in Peru are geographically isolated and lack access to basic services, including limited electronic means of communication. In these circumstances, the Defendants' ban creates an absolute bar to Moore's direct association with mine affected

communities. In this light, we believe, not only that the Defendants' have violated Moore's right to free association, but that they have also failed to fulfill their positive obligation "to provide the necessary means for [HRDs] to conduct their activities freely", as stated in the case of *Lysias Fleury*.

66. Third, in the same way that the Defendants' have interfered with Moore's freedom of association, their actions also violate the rights of all Peruvians to associate with Moore. The right to freely associate is a collective right. The Defendants' decision directly impacts Peruvian HRDs who work to protect the human rights of communities affected by the operations of Canadian mining companies in Peru. As stated, this decision has the most severe impact on those living in remote mine affected communities with limited access to electronic forms of communication. The Defendants' ban amounts to a form of interference that alters the ability of individuals and groups in Peru to freely associate with Moore to pursue a common lawful objective, namely, the defence of human rights. On this basis, we conclude that the Defendants have also violated the collective aspect of the right to associate.

67. Having concluded that the Defendants' actions violate Article 16.1 of the *American Convention*, we turn now to consider the Defendants' argument that this violation is justified under Article 16.2, which allows for restrictions on free association only in accordance with law, and where necessary in a democratic society and in the interest of public order. Previous in this *amicus* brief we considered the public order exception in relation to freedom of expression and we concluded that there is no evidence to support the Defendants' assertion that Moore represents a threat to public order (see para 49). On the basis of the documents reviewed and in light of the jurisprudence cited, we believe that this same conclusion applies here and that there is no justifiable basis for a restriction to Moore's freedom of association under Article 16.2. We note that the threshold under Article 16.2 to justify limitations on freedom of association is even more stringent than the test under Article 13.2 in place to justify limitations on free expression. Article 16.2 adds the requirement that limitations on free association be made in accordance with law and only where necessary in a democratic society.

68. Going even further, we believe that the circumstances of Moore's case support the conclusion that the Defendants' actions were undertaken with the specific and principal intention of preventing Moore from continuing to directly associate with the organizations and communities that she collaborates with in Peru. As previously mentioned, PNP Report No. 13 discloses that PNP officers began surveilling Moore's activities upon her arrival in the country in 2017.⁷⁷ The same report references Moore's previous visits to Peru beginning in 2009.⁷⁸ This suggests that authorities were aware that Moore's activities in Peru focused on the protection of the social, economic and environmental rights of mine affected communities. Authorities were also aware that Moore undertook these activities in coordination with a number of Peruvian NGOs, HRDs and affected communities. This is the context within which the Defendants apprehended Moore, announced that she is a threat to public order in Peru, and decided to prohibit her re-entry to the country.
69. These facts reveal that Moore's case is very similar to the case of *Lysias Fleury*. In both cases the very same state actors that a HRD had criticized took steps to apprehend the HRD and accuse them of wrongdoing. In the case of *Lysias Fleury*, the Inter-Am Ct HR concluded that the apprehension and torture of Mr. Fleury was a form of retaliation for his work defending human rights and that it was intended to dissuade him from continuing to work for the same organization. We think the same reasoning applies to the case at hand in that the Defendants' ban is a form of retaliation against Moore and intended to obstruct her association with Peruvians.
70. In sum, we submit that the Defendants' actions and decisions violate Moore's right to freedom of association, under Article 16.1 of the *American Convention*, as well as the freedom of association rights of all affected Peruvians. For the reasons described above, we also submit that this violation is not justified under Article 16.2 on the basis of public order.

⁷⁷ *PNP Report*, *supra* note 8 at page 3 and 4.

⁷⁸ *Ibid* at page 3, para B1 and page 6, para VN.

5. Article 22 of the *American Convention* (Freedom of Movement)

71. This section will analyze the significance of Article 22 of the *American Convention* for this case. First, it will summarize the relevant provisions of Article 22 and related jurisprudence of the Inter-Am Ct HR. Second, it will analyze the facts of the case at hand in relation to this body of law. On this basis, we respectfully conclude that the Defendants' actions violate her freedom of movement as protected by Article 22.

a. Article 22 Law and Jurisprudence

72. Article 22.1 of the *American Convention* protects the right of every person lawfully in the territory of a State Party to move about in it and to reside in it subject to the provisions of the law. Article 22.2 recognizes a person's right to leave any country freely. Article 22.3 allows for restrictions on these rights only to the extent necessary in a democratic society to protect, *inter alia*, public order. In this connection, Article 22.6 establishes that, "an alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law".⁷⁹ The strict criterion of "in accordance with law", entails that a state's decision to expel a non-citizen and/or non-resident must accord with substantive and procedural rights protections. This is consistent with Article 1.1 of the *Convention*, which extends human rights protections to all persons who are subject to a state's jurisdiction.

73. In our view, the substantive rights component of the Article 22.6 criterion "in accordance with law" encompasses respect for all applicable substantive rights protected by domestic and international law, including the rights of free expression and association. The concept of "in accordance with law" also requires a decision to expel (a non-citizen or non-resident) to conform to the principles of procedural fairness required by the rule of law in a democratic society. In our view, this means, at a minimum that the decision must not be: arbitrary,

⁷⁹ *American Convention*, *supra* note 31 at art 22.6 (emphasis added).

imposed in a disproportionate manner,⁸⁰ unsubstantiated by evidence and reasons, or made without affording the person affected the opportunity to offer submissions.

74. Turning to the jurisprudence, the Inter-Am Ct HR has broadly interpreted the scope of the right to free movement. It has concluded that Article 22 protects “the right of all persons lawfully within a State to move freely about in it” and “to enter, to remain in, and to leave the territory of the State without unlawful interference”.⁸¹ In the case of *Human Rights Defender et al.*⁸², the Court confirmed that the *American Convention* protects a person from being expelled from the territory of the State in which he or she is lawfully present.⁸³ The Court has also affirmed repeatedly that the enjoyment of this right does not depend on any particular reason for the person wanting to remain in a State.⁸⁴
75. In the cases of *Lysias Fleury*, referred to earlier, Mr. Fleury and his family were subject to harassment by the Haitian National Police. Following Mr. Fleury’s release from police custody, they feared for their safety and ultimately fled to the United States of America, where they obtained refugee status.⁸⁵ The Inter-Am Ct HR concluded that although the State in that case did not formally restrict Fleury’s freedom of movement and residence, this right was violated by a *de facto* restriction deriving from the State’s failure to establish the conditions or to provide the appropriate means for this right to be exercised.⁸⁶ In other words, if a State’s actions unlawfully cause a person to feel unsafe in a country and to flee the jurisdiction, this will amount to a *de facto* violation of their freedom of movement which includes the right to reside in, enter or leave any country freely and in accordance with law.

⁸⁰ *Liakat Ali Alibux v Suriname* (2014), Preliminary Objections, Merits, Reparations and Costs, Inter-Am Ct HR (Ser C) No 276 at para 126.

⁸¹ *Lysias Fleury et al*, *supra* note 69 at para 93.

⁸² *Human Rights Defender et al v Guatemala*, *supra* note 35.

⁸³ *Ibid* at para 165.

⁸⁴ *Ibid*; *Moiwana Community v Suriname* (2005), Preliminary Objections, Merits, Reparations and Costs, Inter-Am Ct HR (Ser C) No 124 at para 110.

⁸⁵ *Lysias Fleury et al*, *supra* note 69 at para 95.

⁸⁶ *Ibid* at para 93.

b. Article 22 Analysis: Peru violated Article 22 (freedom of movement)

76. Article 22.1 of the *American Convention* guarantees freedom of movement to persons lawfully present in a State. Article 22.3 allows restrictions on free movement, but only to the extent necessary in a democratic society to protect public order, *inter alia*. In the instant case, the Defendants concluded that Moore was not permitted by Peruvian law to disseminate the documentary film *Flin Flon Flim Flam* due to her status as a tourist in the country. They also concluded that Moore's actions in this regard constituted a threat to public order. In the paragraphs above, we have explained our view that Moore is a HRD and that in disseminating the documentary she was legitimately exercising her free expression and association rights. We have also explained why we believe the public order exception to the exercise of these rights does not apply to this case. Finally, in the paragraphs above we have substantiated our conclusion that the Defendants' decision to ban Moore was undertaken with the specific intention of limiting her freedom to communicate and associate with Peruvians. For these same reasons, we submit that Moore was lawfully present in Peru and that as such her freedom of movement is protected by the full force of Article 22, without exception.
77. In light of the applicable provisions of the *American Convention* and the jurisprudence of the Inter-Am Ct HR, we conclude that the Defendants actions violated Moore's freedom of movement in two ways. The first violation relates to the circumstances of Moore's departure from Peru. While Moore left Peru voluntarily, we note that she claims that her departure was premature and compelled by fear. These fears arose after Moore was heavily surveilled, apprehended by PNP officers, and after the Ministry of the Interior publicly stated that Moore is a threat to public order. These actions led Moore to conclude that she could not count on Peruvian authorities to afford her minimum guarantees in regard to her personal safety, freedom and a fair legal process.⁸⁷
78. In the *Lysias Fleury* case, the Inter-Am Ct HR concluded that where a HRD flees a country because State authorities have caused them to fear for their safety, this amounts to a *de facto*

⁸⁷ See *Habeas Corpus Moore*, *supra* note 2 and JCAP, *Amicus Curiae Brief*, para 18.

restriction on the right to free movement. We conclude that the same reasoning applies to Moore's case and that the actions of the Defendants prior to Moore's departure from Peru amount to a *de facto* restriction on her right to free movement. The Defendants' actions created a climate of fear for Moore, thereby removing the conditions within which she could exercise her right to freely remain in or leave the country, as protected by Articles 22.1 and 22.2 of the *American Convention*.

79. The second violation of Moore's freedom of movement arises from the Defendants' prohibition on her re-entry. Within hours of Moore's departure, the Manager of Migratory Services issued a migratory alert, impeding her return to Peru for an undefined period of time.⁸⁸ This indefinite ban represents a formal restriction on Moore's freedom of movement that is tantamount to expulsion from the country. According to Article 22.6, Moore may only be expelled from Peru "pursuant to a decision reached in accordance with law".
80. In our consideration of this case, we conclude that the Defendants' decision to prohibit Moore from re-entry to Peru was not made in accordance with law. We have already discussed why we believe this decision violates Moore's substantive rights to freedom of expression and association. Based on the documents reviewed, we believe that the Defendants' decision also fails to comply with basic procedural requirements of the rule of law in a democratic society. First, as we have previously note, the Defendants have failed to provide evidence or reasons that substantiate the basis for their decision. In our view, there is no evidence that Moore and/or the documentary film were inciting violence or threatening public order in any way. This lack of evidence makes an indefinite ban on Moore's entry to Peru disproportionate and arbitrary. Second, we note that the Defendants did not fully investigated the situation, rather the investigation consisted merely of surveilling and questioning Moore as recorded in PNP Report No. 13.⁸⁹ Third, we observe that Moore was not afforded due process to formally respond to the Defendants' concerns before they reached their conclusion that her activities are not permitted and are a threat to

⁸⁸ JCAP, *Amicus Curiae Brief*, para 19; *COMUNICADO MININTER*, *supra* note 19.

⁸⁹ JCAP, *Amicus Curiae Brief*, *ibid*; *COMUNICADO MININTER*, *ibid*.

public order. These conclusions were made public (and known to Moore) only after authorities had released Moore from police custody.

81. For these reasons, we submit that the Defendants have violated Moore's right to freedom of mobility under Articles 22.1 and 22.2 which includes the right to freely and lawfully remain in the country or to leave without fear. In addition, we submit that the Defendants' decision to prohibit Moore's re-entry to Peru was not made in accordance with law, thereby constituting a further violation of Moore's freedom of movement under Article 22.6.

PART IV – CONCLUSION

82. In Part 3 of this *amicus curiae*, we emphasized that international human rights bodies have widely recognized the vulnerability of HRDs, particularly those specializing in issues related to mining and oil extraction. In our view, there can be no doubt that Moore is a HRD working to protect the social, economic and environmental rights of communities in Latin America affected by the operations of Canadian mining companies.
83. The determination of Moore's habeas corpus claim will set an important precedent because it requires Peruvian courts to consider the scope of human rights protection that Peruvian authorities must afford to HRDs in Peru, including non-citizen and non-residents like Jennifer Moore. In this *amicus* brief, we have argued that Article 1.1 of the *American Convention* requires Peru to extend human rights protections to HRDs who are subject to its jurisdiction, which includes HRDs like Moore who visit Peru with a tourist visa.
84. We have also argued that the known facts of Moore's activities in Peru in the defence of human rights do not support the Defendants' conclusion that Moore is a threat to public order. On this basis, we conclude that the Defendants' prohibition on Moore's re-entry to Peru contravenes Articles 13 and 16 of the *American Convention* because it obstructs Moore's capacity to collaborate, associate and communicate with Peruvians. Moreover, this same violation is perpetrated against the rights of any Peruvian who seeks to collaborate, associate or communicate directly with Moore. Furthermore, we submit that these violations

of Articles 13 and 16 flow from the violation of Moore's freedom of movement, protected by Article 22. This violation first occurred when Moore fled Peru in fear, and it persists while she is prohibited from returning.

85. On the basis of our submission that the Defendants have violated Moore's rights to free expression, association, and mobility, recognized in Articles 13, 16, and 22, respectively, of the *American Convention*, we further conclude that the Defendants have failed to fulfill their obligations under Article 1.1 to ensure that Moore enjoys the free and full exercise of these rights and freedoms in Peru's jurisdiction.
86. We have noted that the adjudication of the instant case has significance beyond its specific facts. The outcome will have far reaching implications for the work of foreign nationals who visit Peru as academics, journalists, artists and activists concerned with the defence of human rights in the context of resource extraction. Given this potential for international ramifications and in light of Peru's obligations in international law, we believe that consideration of this case in conformity with the *American Convention* is vitally important. As such, we hope that the contents of this *amicus* brief are useful to this honorable Court in its determination of Moore's habeas corpus claim.

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