

THE PERMANENT REPRESENTATIVE
OF THE
UNITED STATES OF AMERICA
TO THE
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C.
April 3, 2017

Mr. Paulo Abrão
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
Washington, D.C. 20006

Re: Isamu Carlos Shibayama et al.
Case No. 12.545
Further U.S. Observations on Admissibility and Merits

Dear Mr. Abrão:

On March 21, 2017, the Inter-American Commission on Human Rights (“Commission”) held a hearing in the case of *Isamu Carlos Shibayama et al.*, Case No. 12.545. During that hearing, Isamu Shibayama and his daughter, Bekki Shibayama, testified.

Regarding the substance of the Shibayama brothers’ petition itself, we take this opportunity to reiterate the arguments made in our prior written filings.¹ In this regard—particularly in light of Petitioners’ March 7, 2017 letter to the Commission and certain comments made by Commissioners during the hearing that evinced a possible misunderstanding about the scope of the claims currently before the Commission for a decision—we would like to highlight specifically that, in the Commission’s March 2006 admissibility report, the Commission determined that its competence *ratione temporis* is limited to Petitioners’ claims arising under Articles II, XVIII, and XXVI of the American Declaration of the

¹ See *Shibayama et al. v. United States*, Petition No. P-434-03, Response of the United States, Dec. 17, 2004; *Shibayama et al. v. United States*, Petition No. P-434-03, Observations of the United States, Mar. 31, 2005; *Shibayama et al. v. United States*, Case No. 12.545, Merits Observations of the United States, Jan. 22, 2007.

Rights and Duties of Man (“American Declaration”). Implicit in that finding was a determination that the Commission lacks competence to review Petitioners’ World War II-era claims, as these events predated the existence of the American Declaration and the Commission. Consequently, the only remaining claims before the Commission are those arising out of the 1988 Civil Liberties Act and subsequent events.

With respect to those remaining claims, Petitioners’ challenge to the limits on eligibility for reparations under the Civil Liberties Act exceeds the scope of the Commission’s competence pursuant to the Commission’s “fourth instance formula” doctrine. As the Commission has explained, it may not “serve as an appellate court to examine alleged errors of [] law or fact that may have been committed by the domestic courts acting within their jurisdiction.”² Further review of the remaining claims in the instant petition would run afoul of the Commission’s fourth instance formula doctrine because Petitioners are asking the Commission to review essentially the same claims they raised in their own domestic proceedings, i.e., a challenge to the denial of compensation under the Civil Liberties Act. Petitioners’ claim for compensation under the Civil Liberties Act was considered by domestic courts and dismissed, in accordance with United States law and consistent with due process protections set forth in the American Declaration. Where, as here, a petition relies upon the allegation that “the decision [in domestic proceedings] was wrong or unjust in itself, the petition must be dismissed” under the fourth instance formula.³

Please be assured that the United States acknowledges the suffering experienced by the Shibayama family and those similarly situated, which Isamu and Bekki Shibayama bravely and movingly described in their testimony before the Commission on March 21. Nevertheless, as a purely legal matter, the petition in this case is both inadmissible and the Commission lacks competence to pronounce on its merits. For the reasons discussed in this letter and those asserted in prior responses filed by the United States in this case, the United States

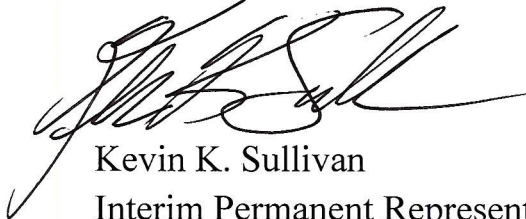
² Marzioni v. Argentina, Case No. 11.673, Report No. 39/96, Oct. 15, 1996, ¶ 51.

³ Abella v. Argentina, Case No. 11.137, Report No. 55/97, Nov. 18, 1997, ¶ 142.

respectfully requests that the Commission reconsider its admissibility decision⁴ and declare inadmissible the Shibayamas' petition or dismiss it for lack of competence.

Please accept renewed assurances of my highest consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Sullivan', with a stylized, cursive script.

Kevin K. Sullivan
Interim Permanent Representative

⁴ As we have explained in greater detail elsewhere, the Commission has the authority to reconsider a prior admissibility determination. Article 34 of the Commission's Rules of Procedure ("Rules") provides that "[t]he Commission shall declare any petition or case inadmissible when," for example, "it does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure." The explicit reference to both petitions, which have not been determined admissible, and cases which, by definition, have been found admissible, indicates beyond reasonable dispute that the Rules grant the Commission the authority to reconsider the admissibility of a case which has previously been declared admissible. For further elaboration, *see, e.g.*, *Bucklew v. United States*, Case No. 12.958, Corrected Response of the United States, Mar. 28, 2016, at 6–9.