



THE PERMANENT REPRESENTATIVE  
OF THE  
UNITED STATES OF AMERICA  
TO THE  
ORGANIZATION OF AMERICAN STATES

WASHINGTON, D.C.

March 23, 2016

Mr. Emilio Alvarez Icaza  
Executive Secretary  
Inter-American Commission on Human Rights  
Organization of American States  
Washington, D.C. 20006

**Re: Michael A. Kitchen  
Petition No. 1900-11  
Response to Petition**

Dear Mr. Icaza:

The Government of the United States thanks you for the letter of your office dated December 23, 2015, and appreciates the opportunity to provide the following response to the Inter-American Commission on Human Rights (“Commission”) regarding the Petition of Michael A. Kitchen, No. P-1900-11. The United States respectfully submits that the matter addressed by the Petition is not admissible because it fails to meet the Commission’s established criteria in its Rules of Procedure (“Rules”) for consideration; in particular the Petition was not properly filed within the period of time permitted under the statute of limitations.

As stated in the affidavit filed by the Petitioner with the Petition, the Petitioner was convicted by the state of Michigan in 1987 for criminal sexual conduct, two counts of armed robbery, breaking and entering, stealing a car, and possession of a firearm during the commission of a felony. He was sentenced to 40 to 60 years in prison in 1987.<sup>1</sup> He appealed the conviction to the Michigan appeals court. His appeal was denied, and he did not file a further appeal to the Michigan Supreme Court.<sup>2</sup> The petitioner next filed a post-conviction motion for relief in 1996 under Michigan state court rules, which permit a defendant to file one motion for relief from judgment with regard to a conviction, unless new

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<sup>1</sup> Affidavit of Michael A. Kitchen, ¶ 29.

<sup>2</sup> *Id.*, ¶¶ 31, 36.

evidence is discovered or there is a retroactive change in the law.<sup>3</sup> The motion was denied in 1997. The Petitioner appealed to the Michigan appeals court, which denied the appeal in 1998, and then to the Michigan Supreme Court, which denied the appeal in 1999.<sup>4</sup> The Petitioner then filed a petition for a writ of *habeas corpus* in federal court in 2000, which was denied by the U.S. district court in 2003. The Petitioner appealed this decision to the U.S. Court of Appeals, which denied the appeal in 2004.<sup>5</sup> With the denial of this appeal, the Petitioner asserts he has exhausted domestic remedies available to challenge his conviction.

Although the Petitioner has stated that he exhausted his domestic remedies in 2004, his Petition was not received by the Commission until seven year later, on December 28, 2011, which does not satisfy the requirements of the Commission's Rules. Article 32(1) of the Rules states that "[t]he Commission shall consider those petitions that are lodged within a period of six-months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies." Article 28(7) stipulates that compliance with this statute of limitations is a threshold requirement for the Commission's consideration of petitions. The Commission has repeatedly dismissed as inadmissible petitions that have been filed after this period of time.<sup>6</sup>

Accordingly, the United States requests that the Commission, in accordance with the Rules and in line with its standard practice in many prior cases, declare the Petition inadmissible and close this matter. We are concerned that your office chose to forward the Petition to us for our views despite the Petition's clear failure to satisfy a basic threshold requirement for consideration, and would urge the strict application of Article 28 factors in future matters so as not to detract attention and resources—both ours and the Commission's—away from the many other pending matters on the Commission's docket. This response is not intended to address any other issues regarding this Petition and the United States reserves the right to file additional observations should the Commission choose, despite the Petition's clear inadmissibility under the Rules, to further consider it.

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<sup>3</sup> Michigan Court Rule 6.500 et seq.; see also [http://www.sado.org/content/pub/10349\\_Motion-for-Relief-from-Judgment-Packet.pdf](http://www.sado.org/content/pub/10349_Motion-for-Relief-from-Judgment-Packet.pdf) for further information about post-conviction motions in Michigan.

<sup>4</sup> Affidavit of Michael A. Kitchen, ¶¶ 38, 40, 41.

<sup>5</sup> *Id.*, ¶¶ 42, 44.

<sup>6</sup> See, e.g., Echeverría & González v. Chile, Petition No. 4636-02, Report No. 108/13, Inadmissibility, Nov. 15, 2013, ¶ 54; J.C.R. v. Mexico, Petition No. 513-04, Report No. 60/12, Inadmissibility, Mar. 19, 2012, ¶ 36; Lara v. Peru, Petition No. 871-03, Report No. 18/11, Inadmissibility, Mar. 23, 2011, ¶ 30; Forzzani v. Peru, Petition No. 277-01, Report No. 17/11, Inadmissibility, Mar. 23, 2011, ¶ 25; Association of Retired Oil Industry Workers of Peru—Metropolitan Area of Lima & Callao v. Peru, Petition No. 12.119, Report No. 79/10, Inadmissibility, July 12, 2010, ¶ 34; Trinidad v. Brazil, Petition No. 397-04, Report No. 118/09, Inadmissibility, Nov. 12, 2009, ¶ 28; Vera et al. v. Peru, Petition No. 619-00, Report No. 4/08, Inadmissibility, Mar. 4, 2008, ¶ 38.



Please accept renewed assurances of my highest consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael J. Fitzpatrick". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael J. Fitzpatrick  
Interim Permanent Representative