



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

WASHINGTON, D.C.

June 1, 2016

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

**Re: Douglas A. Morin, Petition No. P-178-13
Response to Petition of January 31, 2013**

Dear Mr. Icaza:

The United States Government has the honor of submitting to the Inter-American Commission on Human Rights ("Commission") this response to your office's letter dated March 1, 2016, which your office transmitted to us on March 14, 2016, forwarding a Petition from Douglas A. Morin ("Petitioner") regarding the above-referenced matter. The Petitioner filed the Petition with the Commission in January 2013, and thereafter filed several letters providing additional information.

The United States respectfully submits that the Petition is not admissible and must be dismissed because it fails to meet the Commission's established criteria in Article 31 of its Rules of Procedure ("Rules"). Article 31 provides that, in order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with recognized principles of international law.

The Petitioner was sentenced on May 27, 2011 for two separate offenses of robbery and grand theft and is incarcerated in the State of Florida. In his Petition, he alleges that he has been subjected to unreasonable search, unreasonable bail, cruel and unusual punishment, ineffective assistance of counsel, due process of law violations, and that he was beaten by jail staff and suffered injuries for which he was not provided with adequate medical care. In his Petition he states that he has made complaints to several state and federal agencies. In subsequent correspondence with the Commission dated August 12, 2013, the Petitioner states that Florida state district courts and a Supreme Court of Florida Senior Justice have all ignored or dismissed his claim. In subsequent correspondence with the Commission dated March 4, 2014, the Petitioner states that “these issues have been exhausted to the highest court in Florida ... so that the matters are now before the United States District Court, Middle District of Florida ... Habeas Corpus.” And in further correspondence with the Commission dated September 16, 2014, the Petitioner drew the attention of the Commission to a federal lawsuit filed by him, so that “the Commission may observe first-hand the Constitutional Injury being played out in the United States District [Court], in the Middle District of Florida.”

Thus, Petitioner’s own written statements explain that he continues to file and pursue domestic lawsuits, in the federal courts of the United States, regarding the matters he raises in the Petition filed with the Commission. These statements are verified by a review of the docket for the United States District Court for the Middle District of Florida, which shows that the Petitioner filed a petition for writ of *habeas corpus* in that court as recently as November 19, 2015, and that this case is currently in active litigation. (A copy of this docket, current through May 27, 2016, is enclosed with this response.) Notably, on April 21, 2016, the court granted the State of Florida’s request for additional time to respond to the Petitioner’s *habeas* petition, giving Florida 45 days to file its response.

The Petitioner’s petition for *habeas corpus* clearly mirrors the issues he raised in his Petition before the Commission and in the subsequent letters he filed with the Commission. Ground One of the *habeas* petition alleges that he has been

subjected to unreasonable search and seizure.¹ Ground Two alleges that he has been deprived of effective assistance of counsel.² Ground Three alleges he has been subjected to unreasonable bail and to cruel and unusual punishment while in pretrial detention.³ Ground Four alleges that he was deprived of his right to due process.⁴

The Petition is inadmissible under Article 31 of the Rules for this reason alone, because Petitioner is plainly still filing lawsuits in the United States, the resolution of which has a direct bearing on his claims before the Commission. This Petition provides a quintessential illustration of the rationale underlying the exhaustion doctrine—international institutions must permit domestic proceedings to run their course, thereby affording the State the opportunity to fashion any appropriate remedy under its domestic law. Thus, the customary international law doctrine of exhaustion of domestic remedies, which is incorporated into the Rules of the Commission, compels the finding that the Petition is not admissible.

To the extent the Petitioner has not timely notified the Commission of pending domestic proceedings having a material bearing on his petition, the United States would urge the Commission to remind him—and all similarly situated petitioners—that it is petitioners' duty to provide the Commission with information on material developments in their domestic cases. It is not the Commission's duty to independently monitor every petitioner's domestic case—and it does not have the resources for such a burdensome task—nor is it the State's duty to keep abreast of developments and keep the Commission updated.

Accordingly, the Commission should dismiss and close this Petition, in accordance with the Commission's own precedents.⁵ Such a closure would be, of

¹ Petition Under 28 U.S.C. §2254 for Writ of Habeas Corpus by a Person in State Custody (Case No. 6:15-cv-01981-RBD-KRS, U.S. District Court, Middle District of Florida) at 5. A copy of this Petition is enclosed with this Response.

² *Id.* at 7.

³ *Id.* at 8.

⁴ *Id.* at 10.

⁵ *See, e.g.,* Undocumented Migrant, Legal Resident, and U.S. Citizen Victims of Anti-Immigrant Vigilantes v. United States, Petition No. 478-05, Report No. 78/08 & 78/09, Admissibility, Aug. 5, 2009 ("Vigilantes Admissibility Decision"), ¶ 60 & Decision ¶ 3 (declaring case inadmissible with respect to one petitioner "because the presumed victim is pursuing a civil domestic remedy"); Cherokee Nation v. United States, Case No. 11.071, Report No. 6/97, Inadmissibility, Mar. 12, 1997, ¶ 41 (finding petition inadmissible because "[t]here are still available, domestic remedies in the United States to be invoked and exhausted" and accordingly closing the case); Move Organization v. United States, Case No. 10.865, Report No. 19/92, Decision of the Commission as to the Admissibility of Case 10.865, Oct. 1, 1992, Analysis § b(2) & Morin v. United States, Petition No. P-178-13, Response of the United States, June 1, 2016 3

course, without prejudice to Petitioner's ability to file another Petition, if and when he has satisfied the requirements of Article 31 and the other requirements for the Commission to consider a petition and declare it admissible, including the requirement in Rule 34(a) that the Petition state facts that tend to establish a violation of the rights reflected in the American Declaration of the Rights and Duties of Man.⁶ It bears noting that, should he obtain effective relief in the domestic system, then any future petition would be inadmissible.⁷ Should the Commission, nonetheless, decide to proceed with consideration of this Petition despite the failure of the Petitioner to exhaust domestic remedies, we reserve the right to submit further observations regarding admissibility and the merits of the Petition.

The Commission should not hold the Petition in abeyance or simply take no action and allow the matter to remain open on the Commission's docket pending exhaustion of domestic remedies, which has no basis in the Rules and could set an onerous precedent for future petitions that are similarly flawed. Moreover, closing inadmissible matters is an appropriate course of action in light of the urgent need for the Commission to clear out its backlog of cases, the Commission's many other priorities with respect to the United States and the other countries of the Hemisphere, and the Commission's limited resources. We understand that the budgetary crisis facing the Commission has recently become even more pressing, which reinforces a concern we have expressed to the Commission with increasing frequency: the vast number of matters pending a decision by the Commission—over 70 against the United States alone, according to our records, and likely very many against fellow OAS Member States—and the extreme delays even in conducting routine functions such as forwarding one party's filing to the other, threatens to undermine the Commission's reputation and its legitimacy. In our

Conclusion ¶ 1 (finding petition inadmissible for failure to exhaust because petitioner "has invoked and is currently pursuing" domestic remedies). An examination of the Commission's inadmissibility reports with respect to other Organization of American States member states reveals a number of other matters in which the Commission dismissed the petition as inadmissible because the petitioner was still pursuing domestic remedies. *See, e.g.,* Guimarães v. Brazil, Petition No. 1242-07, Report No. 60113, Inadmissibility, July 16, 2013, ¶¶ 18–19.

⁶ We understand that a "violation" in this context means an allegation that a country has not lived up to its political commitment to uphold the Declaration.

⁷ *See, e.g.,* Vigilantes Admissibility Decision, *supra* note 5, ¶ 60 & Decision ¶ 4 (declaring case inadmissible with respect to petitioners who obtained access to an effective remedy in the domestic system).

view, the Commission must demonstrate its appreciation of the dire situation by taking decisive action to streamline its management of cases, including by quickly disposing of matters, such as this one, that are plainly inadmissible. The United States thus strongly urges the Commission to issue a decision without delay closing this matter as inadmissible for failure to exhaust domestic remedies under Article 31. Such a decision need not be lengthy; the Commission could dispose of this matter in a brief decision totaling just a few paragraphs.

As a final note, Petitioner filed an additional letter on April 14, 2016, requesting “that the Commission place itself at [his] disposal for the purpose of negotiating a friendly settlement” The Commission forwarded that letter on April 28, 2016, via a letter from your office dated April 27, 2016. The United States is not in a position to consider pursuing a friendly settlement of this matter under Article 40 of the Rules, including because the claims alleged before the Commission continue in active litigation in U.S. court.

Please accept renewed assurances of my highest consideration.

Sincerely,



Michael J. Fitzpatrick
Interim Permanent Representative

Enclosures:

- Civil Docket for Case 6-15-cv-0981-RBD-KRS (U.S. District Court, Middle District of Florida).
- Petition Under 28 U.S.C. §2254 for Writ of Habeas Corpus by a Person in State Custody.