



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

October 19, 2016

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

**Re: Brian Eugene Lepley, Petition No. P-1093-11  
Response to Petition**

Dear Mr. Abrão:

The United States Government has the honor of submitting to the Inter-American Commission on Human Rights (“Commission”) this response to the Petition your office transmitted to us on December 17, 2015 via a letter dated December 15, 2015. The Petition, with exhibits, was filed by Brian Eugene Lepley (“Petitioner” or “Mr. Lepley”) in the above-referenced matter. Petitioner filed the Petition with the Commission on August 18, 2011. This response also addresses two additional amended Petitions filed by Petitioner with the Commission on September 23, 2011 and January 31, 2012, respectively. This response will hereinafter refer to these three submissions collectively as “Petition” unless otherwise specified.

The United States respectfully submits that the matter addressed by the Petition is not admissible and must be dismissed because it fails to meet the Commission’s established criteria in Article 34 of its Rules of Procedure (“Rules”). In particular, supervening information and evidence presented in this response pursuant to Article 34(c) renders the Petition manifestly groundless under

Article 34(b). As such the Petition fails to establish any violations<sup>1</sup> of rights set forth in the American Declaration of the Rights of Duties of Man (“American Declaration” or “Declaration”).

At the outset, we would like to explain to the Commission that Petitioner’s submissions are, unfortunately, difficult to decipher or understand and at times raise contradictory claims.<sup>2</sup> In several places, the submissions state that Petitioner’s domestic court lawsuits challenging his alleged treatment in prison are in progress, which would appear to make the claims inadmissible under Article 31 of the Rules for failure to exhaust domestic remedies. The status of these domestic lawsuits, however, may have changed in the four years that have elapsed between the time the Petition was filed and the time it was forwarded to the United States. We have undertaken a careful and detailed review of the Petition, expending many hours of attorney time to transcribe the petitions—written in almost illegible handwriting—and engaged in significant research to ascertain the status of Mr. Lepley’s many domestic cases. In light of the fact that Petitioner is representing himself and is apparently not familiar with the American Declaration, we have tried to construe his claims in terms of the relevant articles of the American Declaration where possible.

Based on that work, it appears that Petitioner is alleging claims against the Nevada Department of Corrections (“NDOC”) arising from an incident that took place in Lovelock Correctional Center on January 2, 2011, after which NDOC charged Mr. Lepley with engaging in sexually stimulating activities in violation of

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<sup>1</sup> As the American Declaration of the Rights and Duties of Man is a non-binding instrument and does not create legal rights or impose legal duties on member states of the Organization of American States, the United States understands that a “violation” in this context means an allegation that a country has not lived up to its political commitment to uphold the American Declaration. The United States respects its political commitment to uphold the American Declaration. For an elaboration of the United States’ longstanding position on the non-binding nature of the American Declaration, see Request for an Advisory Opinion Submitted by the Government of Colombia to the Inter-American Court of Human Rights Concerning the Normative Status of the American Declaration of the Rights and Duties of Man, Observations of the United States of America, 1988, *available at* <http://www1.umn.edu/humanrts/iachr/B/10-esp-3.html>. U.S. federal courts of appeals have independently held that the American Declaration is nonbinding and that the Commission’s decisions do not bind the United States. *See, e.g.,* Garza v. Lappin, 253 F.3d 918, 925 (7th Cir. 2001).

<sup>2</sup> The United States District Court that reviewed Mr. Lepley’s claim against the State of Nevada, relating to the same incidents giving rise to the instant Petition, described similar challenges: “[T]he court notes that plaintiff’s complaint spans nearly one hundred pages and contains convoluted and far-reaching allegations. ... The court encourages plaintiff to state his allegations in the amended complaint as clearly as possible and to avoid including redundant and rambling allegations.” *Lepley v. LeGrand*, Case 3:11-cv-00781-LRH-WGC, Screening Order, at 10 (D. Nev, Feb. 17, 2012). A copy of this order is enclosed.

prison disciplinary rules. After an administrative hearing, Mr. Lepley was found culpable and was given a punishment of 24 months of disciplinary segregation. Mr. Lepley denies the charges and raises a number of claims in his Petition about the disciplinary hearing and subsequent events. He alleges that he was transferred to a maximum security prison, Ely State Prison, in retaliation for filing a tort claim on February 28, 2011 with the Office of the Nevada Attorney General. At Ely State Prison, he alleges that he was “placed in a feces-smear cell with food thrown up against the walls and floor, rat, vole or mice feces in corner under door ants coming in window, dried ejaculate on wall, no working intercom.”<sup>3</sup> He further alleges that prison officials refused to provide him with cleaning supplies, denied him food, and denied him access to his property for 17 days. He also alleges that Nevada Administrative Regulation 610 (“AR 610”), on the treatment of prisoners with HIV and AIDS, violates his right to equal treatment because it treats HIV-positive inmates differently than inmates who have other sexually transmitted diseases, such as hepatitis C.<sup>4</sup> Petitioner alleges that he received a different administrative punishment than a non-HIV positive inmate who was involved in the same incident.<sup>5</sup> In his view, these allegations amount to violations of Article I, Article II, Article XI, Article VII, and Article XVIII of the Declaration.

Mr. Lepley also alleges that his due process rights in Article XXVI of the American Declaration were violated with regard to the administrative hearing and by AR 610 because, he asserts, AR 610 states that an inmate must admit guilt in order to be removed from indefinite administrative segregation.<sup>6</sup> Petitioner also

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<sup>3</sup> Lepley v. United States, Petition No. P-1093-11, Petition, Aug. 18, 2011, at 6. The documents filed by Petitioner lack pagination. Accordingly, the page numbers in citations to the Petition and the amended Petitions refer to the pdf page numbers. Additional information about the retaliation claims is in Lepley v. United States, Petition No. P-1093-11, Petition, Sept. 23, 2011, at 5; Lepley v. United States, Petition No. P-1093-11, Petition, Jan. 31, 2012, at 6, 11, 12, 19, 20, 24.

<sup>4</sup> Lepley v. United States, Petition No. P-1093-11, Petition, Sept. 23, 2011, at 1 (refers to NDOC Administrative Regulation 610 on Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS)); Lepley v. United States, Petition No. P-1093-11, Petition, January 31, 2012, at 18, 21, 23–25.

<sup>5</sup> Lepley v. United States, Petition No. P-1093-11, Petition, Sept. 23, 2011 at 1, 7; Lepley v. United States, Petition No. P-1093-11, Petition, Jan. 31, 2012, at 6. In Lepley v. United States, Petition No. P-1093-11, Petition, Aug. 18, 2011, at 7, Mr. Lepley states that he has been HIV positive for 24 years.

<sup>6</sup> Administrative segregation removes an inmate from the general population of the prison by placing the inmate in a controlled environment, which can include solitary confinement. These allegations are stated in Lepley v. United States, Petition No. P-1093-11, Petition, Sept. 23, 2011, at 7; Lepley v. United States, Petition No. P-1093-11, Petition, Jan. 31, 2012, at 21.

asserts that he has been subjected to discrimination because his rights under the Americans with Disabilities Act have been allegedly violated.<sup>7</sup>

As noted above, Mr. Lepley has filed numerous lawsuits in both domestic state courts and federal courts seeking redress for these alleged violations. In particular, Mr. Lepley filed a case in the U.S. District Court for the District of Nevada (a federal court) on October 26, 2011, pursuant to 42 U.S.C. §1983,<sup>8</sup> alleging that NDOC violated his civil rights because of actions taken regarding the incident that took place on January 2, 2011 at Lovelock Correctional Center. This case, docketed as case number 3-11-cv-00781-ECR-WGC, is referenced in Petitioner's filings with the Commission.<sup>9</sup> As summarized by the district court, in its two screening orders,<sup>10</sup> Mr. Lepley filed claims against officials of NDOC alleging retaliation and violations of due process and equal protection arising out of the January 2, 2011 incident. A copy of Mr. Lepley's second amended complaint in the district court case is enclosed with this response.

After over a year of litigation in the federal court case, Mr. Lepley and the defendants, officials of NDOC—Nevada state officials—together filed a joint stipulation for dismissal providing that the case be dismissed in its entirety, with prejudice,<sup>11</sup> on the basis of a settlement reached by the parties in the case and memorialized in a written Settlement Agreement.<sup>12</sup> The joint stipulation is signed by both Mr. Lepley and the attorney representing the NDOC officials, and includes the order dismissing the case signed by the judge. The Settlement Agreement, signed by Mr. Lepley and the Deputy Director of NDOC, specifically states that it “addresses and resolves a dispute arising from and relating to an alleged violation

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<sup>7</sup> Lepley v. United States, Petition No. P-1093-11, Petition, Jan. 31, 2012, at 23.

<sup>8</sup> 42 U.S.C. §1983 provides that “every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

<sup>9</sup> Lepley v. United States, Petition No. P-1093-11, Petition, Jan. 31, 2012, at 8.

<sup>10</sup> A U.S. statute, 28 U.S.C §1915A, provides that the court must review a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. The screening orders were issued on February 17, 2012, and April 23, 2012, and are attached as enclosures to this response.

<sup>11</sup> When a case is dismissed “with prejudice,” it is dismissed permanently and cannot be brought back to court.

<sup>12</sup> Lepley v. LeGrand, Case 3:11-cv-00781-LRH-WGC, Stipulation for Dismissal and Order (D. Nev, May 30, 2013). A copy of the Stipulation for Dismissal and Order is enclosed.

of the Plaintiff's rights" as described by the Plaintiff in his complaint.<sup>13</sup> The Settlement Agreement settles "all claims, disputes and controversies between [Mr. Lepley and NDOC] arising from and relating to all issues and actions set forth in the complaint." NDOC agreed to expunge the disciplinary violation arising from the incident of January 2, 2011, including the removal of various adverse consequences from this violation. Mr. Lepley was restored 240 statutory good time credits,<sup>14</sup> equating to 144 good time days. Another term of the Settlement Agreement provided that Mr. Lepley would be seen by a full Classification Committee<sup>15</sup> within Ely State Prison prior to a medical transfer to the High Desert State Prison, which was to take place in June 2013. In turn, the Settlement Agreement provides that Mr. Lepley "hereby releases and forever discharges the Defendants ... and all other persons ... from any and all liability relating to the claims asserted, or which could have been asserted, relating to the civil rights complaint." In closing, the Settlement Agreement states that it "is entered into in good faith and fully settles all claims that Plaintiff asserted against Defendants" in the federal court case.

The Settlement Agreement and ensuing dismissal of Mr. Lepley's case in the U.S. District Court shows that Mr. Lepley received adequate and effective remedies for his claims, to which he freely and fully agreed, through the process of exhausting remedies through the U.S. court system.<sup>16</sup> Through this settlement, Mr. Lepley received significant remedies because he was restored many days credited to his sentence for good time served while in prison. He also received a classification consideration by a full classification committee to be conducted within a short period of time following the settlement. The Settlement Agreement

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<sup>13</sup> Lepley v. LeGrand, Settlement Agreement (May 20, 2013). A copy of the Settlement Agreement is enclosed.

<sup>14</sup> Under Nevada law, inmates earn ten or 20 credits per month for good behavior. These credits in turn reduce the sentence. Thus, 144 good time days means Mr. Lepley's sentence would be reduced by 144 days.

<sup>15</sup> Classification is the process used by the NDOC to determine where an inmate belongs within the prison system. Full classification review by a Classification Committee would help ensure that Mr. Lepley has the opportunity to be heard by the system that assigns him to a prison, and is a remedy for his claim that he was arbitrarily assigned to administrative segregation for an indefinite period of time because of his HIV-positive status. The State of Nevada's classification process is described in Administrative Regulation 503. [http://doc.nv.gov/uploadedFiles/docnv.gov/content/About/Administrative\\_Regulations/AR%20503%20-%20112414.pdf](http://doc.nv.gov/uploadedFiles/docnv.gov/content/About/Administrative_Regulations/AR%20503%20-%20112414.pdf)

<sup>16</sup> Sánchez et al. v. United States ("Operation Gatekeeper"), Report 104/05, Inadmissibility, Oct. 27, 2005, ¶ 62 ("domestic remedies, in order to accord with generally recognized principles of international law, must be both adequate, in the sense that they must be suitable to address an infringement of a legal right, and effective, in that they must be capable of producing the result for which they are designed").

specifically states that Mr. Lepley agreed that the settlement fully discharges any and all liability against NDOC and its past, present, and future officials relating to the claims he asserted, or could have asserted, in the federal court case. As explained above, these claims include all the claims asserted by Mr. Lepley in his Petition to the Commission. The dismissal of the case with prejudice means that Mr. Lepley is legally prohibited from ever again raising the claims he asserted, or could have asserted, relating to the civil rights complaint that he filed. Because Mr. Lepley agreed to release and discharge all liability of NDOC and its officials with respect to these matters, the Settlement Agreement precludes him from bringing the claims raised in the instant Petition before the Commission. Accordingly, Mr. Lepley cannot now assert that the United States violated his human rights with regard to the matters raised in his civil rights complaint, which he voluntarily settled and forever relinquished in a binding agreement.

Nothing in the principles established by the American Declaration or in the Rules would suggest that the Commission should intervene in a matter that has been voluntarily settled between a petitioner and the governmental authorities that he accuses of violating his rights. Moreover, implicit in the requirement of exhaustion is the incontrovertible principle that if a petitioner has received an effective remedy in the domestic system, then his or her claim is not admissible before the international forum. And in fact, the Commission itself encourages the settlement of human rights claims, by placing itself at the disposal of petitioners and the government to reach a friendly settlement, as reflected in Article 40 of the Rules.

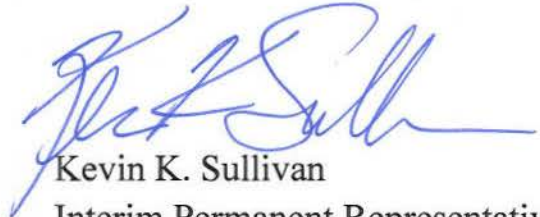
As a result, this matter is manifestly groundless under Article 34(b) of the Rules and the Commission should respect the legally binding agreement reached by the Petitioner and Nevada, reject Petitioner's submission, and close this matter.<sup>17</sup> We reserve the right to submit further observations, however, should this matter reach the merits stage.

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<sup>17</sup> Undocumented Migrant, Legal Resident, and U.S. Citizen Victims of Anti-Immigrant Vigilantes v. United States, Petition No. 478-05, Report No. 78/08, Admissibility, Aug. 5, 2009, ¶ 60 (where alleged victims pursued a civil lawsuit and won a judgment, Commission concluding that the alleged victims had access to an effective remedy and that no further review would be warranted).

Please accept renewed assurances of my highest consideration.

Sincerely,



Kevin K. Sullivan  
Interim Permanent Representative

Enclosures:

1. Lepley v. LeGrand, Case 3:11-cv-00781-LRH-WGC, Screening Order (D. Nev., Feb. 17, 2012).
2. Lepley v. LeGrand, Case 3:11-cv-00781-LRH-WGC, Screening Order (D. Nev., Apr. 17, 2012).
3. Lepley v. LeGrand, Case 3:11-cv-00781-LRH-WGC, Stipulation for Dismissal and Order, (D. Nev, May 30, 2013).
4. Lepley v. LeGrand, Settlement Agreement (May 20, 2013).
5. Lepley v. LeGrand, Case 3:11-cv-00781-LRH-WGC, Second Amended Complaint.