



United States Department of State

*United States Permanent Mission to the
Organization of American States*

Washington, D.C. 20520

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

August 26, 2019

**Re: Lori Handrahan and her daughter M.M.¹
P-1134-14
Response of the United States**

Dear Dr. Abrão:

The U.S. Government has the honor of submitting to the Inter-American Commission on Human Rights this response to the Petition your office transmitted to us on May 14, 2019. The Petition, with exhibits, was submitted by Petitioner Lori Handrahan and forwarded to the United States as Petition No. P-1134-14 ("Petition"). The Petition was submitted to the Commission on August 12, 2014. The United States appreciates the opportunity to submit these observations on the documents submitted by the Petitioner to the Inter-American Commission on Human Rights ("Commission").

The Petition is inadmissible and must be dismissed for failure to meet the requirements for the consideration of petitions, for failure to pursue and exhaust domestic remedies, because it does not state facts that tend to establish a violation of the American Declaration, and because it is manifestly groundless. These reasons for dismissal are discussed in turn below, in tandem with the reasons why the Petition is meritless in any event.

The United States would also like to note at the outset that Petitioner has effectively asked the Commission to involve itself in a private custody dispute between Petitioner and the father of her daughter, combined with vague allegations against state and local officials in the U.S. State of

¹ To protect the identity of the minor named in the Petition, the United States has altered the title of this matter.

Maine, for alleged actions and inactions related to that custody dispute, with little to no supporting evidence or other substantiation, despite having transmitted to the Commission a large number of documents. To the extent that reviewing the merits of this Petition would require the Commission to delve into sensitive family matters governed by domestic family law, involving significant evidentiary records and testimony, including from expert witnesses, the Commission does not have the resources, the mandate, or the requisite expertise to perform such a task. With due respect to the Commission, it is not a formal judicial body equipped with a strong set of fact-finding authorities and tools. The Commission's petition and hearing process does not involve a discovery procedure. In this context, we urge the Commission to exercise prudence and caution with respect to its examination of the facts, and emphasize that Petitioner bears the burden of establishing facts that constitute a violation of the American Declaration of the Rights and Duties of Man ("American Declaration" or "Declaration").

In addition to this consideration, Ms. Handrahan's petition is insufficient; there is no basis to consider it under the Commission's Rules of Procedure ("Rules"). Specifically, the Petition is not admissible and must be dismissed because it fails to meet the Commission's established criteria in Article 20(c) of the Commission's Statute and Articles 28, 31, and 34 of the Rules. In addition, review of many of the allegations contained in the Petition is precluded under the Commission's "fourth instance" doctrine.

First, the Commission requires under Article 28(4) that petitions addressed to the Commission contain "an account of the act or situation that is denounced, specifying the place and date of alleged violations." In the Petition, Petitioner asserts that all rights were violated and names in particular "[t]he right to be free from violence and sex abuse." But, Petitioner asserts that "[t]he details [of the alleged violations] are far too extensive to write here." She asks the Commission to refer to the "Title 22 Petition...submitted in paper format, by hand, direction to the Washington DC office." The United States has not been provided with any materials by the Commission apart from what was sent to our office on May 14, 2019. Based on the allegations, we suspect the Petitioner is referring to a petition she may have filed with the state of Maine Child and Family Services.

Second, Petitioner has failed to exhaust domestic remedies, and the exceptions to the

exhaustion requirement are not met. Petitioner presents no indication of any attempt to litigate the violations alleged in the Petition in U.S. courts at either the state or federal level beyond vague reference to family court proceedings. In particular, Petitioner claims “[t]his case has been going on in Maine family courts since 2009” but provides no specifics as to the proceedings initiated or exhausted. Indeed, if a case is still “going on,” the Petitioner provides the Commission with her Petition’s own inadmissibility.

The Commission should declare the Petition inadmissible because Petitioner has not satisfied her duty to demonstrate that she has “invoked and exhausted” domestic remedies under Article 20(c) of the Commission’s Statute and Article 31 of the Rules. While the Statute and Rules require the Commission to examine the full array of domestic remedies that may address Petitioners’ claims, the Petition contains no references as to whether and how Petitioner attempted to invoke or exhaust domestic remedies related to the abuses alleged in the Petition, through criminal, civil, or administrative processes. In particular, there is no record of any domestic proceedings related directly to the abuses alleged to have been committed, except to the extent that some of these allegations may have been raised during the custody proceedings between Ms. Handrahan and her daughter’s father. Where such allegations have been considered in that context as a matter of fact by domestic courts in the United States,² the Commission’s reevaluation of those same allegations is precluded by the Commission’s fourth instance doctrine.

It was Petitioner’s duty to initiate judicial proceedings if she believed the State of Maine or the United States needed to address the alleged violations through judicial review, but nothing in the record indicates that Petitioner did so. Specifically, Petitioner provides no explanation or evidence of whether she attempted to pursue the ample opportunities she has under state law to bring a civil tort suit or to seek criminal charges against those private actors she claims are responsible for the injuries to her child. As such, the Petition is inadmissible under Article 31 of the Rules.

Lastly, the Petition fails to state facts that tend to establish a violation³ of rights set forth in

² See, e.g., *Malenko v. Handrahan*, No. 2:11-CV-250-GZS, 2012 WL 5267530 (D. Me. Oct. 24, 2012); *Handrahan v. Malenko*, 12 A.3d 79, 2011 ME 15 (Jan. 25, 2011).

³ The United States has consistently maintained that the American Declaration is a nonbinding instrument and does not create legal rights or impose legal duties on member States of the OAS. U.S.

the American Declaration and is manifestly groundless. Petitioner alleges that “the right to be free from violence and sex abuse . . . has been totally abdicated,” which the United States understands to refer to the right to the security of person under Article I of the American Declaration, however Petitioner has not articulated facts that tend to establish any violation of this right by the United States. Petitioner further alleges that the “right of due process, and fair trial [have been] completely abdicated,” which the United States understands to refer to Articles XVIII and XXVI of the American Declaration. Here again, Petitioner has failed to articulate any action by the United States contrary to those rights. In other words, the facts presented by Petitioner show no prejudice to her American Declaration rights or those of her child. Instead, the Petition contains vague, unfounded, conclusory statements and opinions of Petitioner on family law proceedings, which do not state facts that tend to establish a violation of the American Declaration pursuant to Article 34 of the Rules.

For the reasons discussed above, the Petition is inadmissible because Petitioner has not pursued and exhausted domestic remedies, none of the exceptions to the exhaustion requirement apply to the present Petition, and the Petition fails to state facts which tend to establish a violation of rights under the American Declaration and is manifestly groundless.

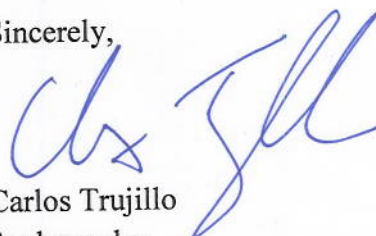
Federal Courts of Appeals have independently held that the American Declaration is nonbinding and that the Commission’s decisions do not bind the United States. *See, e.g.,* Garza v. Lapin 253 F.3d 918, 925 (7th Cir. 2001); *accord, e.g.,* Flores-Nova v. Attorney General of the United States, 652 F.3d 488, 493-94 (3rd Cir. 2011); *In re Hicks*, 375 F.3d 1237, 1241 n.2 (11th Cir. 2004). As explained by the U.S. Court of Appeals for the Seventh Circuit in Garza, “[n]othing in the OAS Charter suggests an intention that member states will be bound by the Commission’s decisions before the American Convention goes into effect. To the contrary, the OAS Charter’s reference to the Convention shows that the signatories to the Charter intended to leave for another day any agreement to create an international human rights organization with the power to bind members. The language of the Commission’s statute similarly shows that the Commission does not have the power to bind member states.” *Accord* the language of the Commission’s Statute, art. 20 (setting forth recommendatory but not binding powers). 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 a further discussion of the U.S. position regarding the nonbinding 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.

To conclude, we reiterate two critical points: at the root of the Petition is a private custody dispute that was decided in Maine state court, with multiple opportunities for Petitioner to present her case domestically in full observance of due process commitments under the American Declaration. Moreover, the Petition consists of facially absurd claims premised on the operation of a state-sponsored "elite child sex trafficking ring" that do not warrant expenditure of the Commission's limited resources. The Commission should also be aware that Petitioner is subject to a judgment in favor of her husband and daughter for negligent and intentional infliction of emotional distress, as well as for per se defamation of her husband, in relation to the same allegations underlying the Petition.⁴ The United States therefore urges the Commission to consider carefully whether it is in the best interest of those concerned to grant this Petition further consideration.

If the Commission nonetheless chooses to continue its consideration of this matter, it should, at the very least, require updated information from Petitioner, instructing her to provide such information in as concise and clear a manner as possible. The disjointed record currently before the Commission, devoid of a required procedural history, provides a thoroughly inadequate basis for the Commission to proceed in this matter. As always, we reserve the right to submit further observations should this matter reach the merits stage.

Please accept renewed assurances of my highest consideration.

Sincerely,



Carlos Trujillo
Ambassador

Enclosures:

1. Malenko v. Handrahan, No. 2:11-CV-250-GZS, 2012 WL 5267530 (D. Me. Oct. 24, 2012).
2. Handrahan v. Malenko, 12 A.3d 79, 2011 ME 15 (Jan. 25, 2011).

⁴ Malenko v. Handrahan, No. 2:11-CV-250-GZS, 2012 WL 5267530 (D. Me. Oct. 24, 2012).