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REPORT No. 165/17
PETITION 86-08
REPORT ON ADMISSIBILITY

DIONICIO CERVANTES NOLASCO AND ARMANDO AGUILAR REYES
MEXICO

Approved by the Commission at its session No. 2111 held on December 1, 2017.
166th Special Period of Sessions.

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 DECEMBER 1, 2017

I. INFORMATION ABOUT THE PETITION

Petitioning party:	José de Jesús Esqueda Díaz
Alleged victims:	Dionicio Cervantes Nolasco and Armando Aguilar Reyes
State denounced:	Mexico
Rights invoked:	Articles 7 (personal liberty), 8 (fair trial), 10 (compensation), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights, ² in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), and other international treaties ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	January 24, 2008
Date on which the petition was transmitted to the State:	December 17, 2013
Date of the State's first response:	April 16, 2014
Date on which the petitioner was notified of the possible archiving of the petition:	May 26, 2017
Date on which the petitioner responded to the notification regarding the possible archiving of the petition:	June 16, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes; American Convention (instrument of ratification was deposited on March 24, 1981)

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
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¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the discussion or the decision on this matter.

² Hereinafter "Convention" or "American Convention."

³ Articles 5 and 14 of the International Covenant on Civil and Political Rights; and Article 12 of the ILO 169 Convention.

⁴ The observations presented by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 7 (personal liberty), 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; January 10, 2008
Timeliness of the petition:	Yes; January 25, 2008

V. ALLEGED FACTS

1. The petitioner indicates that Dionicio Cervantes Nolasco and Armando Aguilar Reyes (“the alleged victims”), Tepehuan natives, were detained by police officers in Bajío del Berrendo, Zacatecas, on October 29, 2005, when they were in a parked vehicle without a license plate. As a result of the contradiction in their answers about their destination, they were arrested. In their journey to the police station, the police officers found an abandoned van with 188 kilograms of marijuana inside. According to the petitioner, the police officers associated this van with the alleged victims because both vehicles had similar intercoms inside. The petitioner claims that the alleged victims explicitly requested to meet with a defense counsel, but that this was not granted. He asserts that on the following day they made their statements before the prosecutor and a public defense counsel, in which they confessed that they were hired to guide van carrying marijuana, and to report by intercom whenever they detected a police patrol on the way. He submits that their statements were extended and repeated in the preliminary statements and that sociocultural expert assessments were undertaken. Based on the information filed by the petitioner, in the trial, there were interpreters and the defense asked for an extension of the statements in which the defendants had claimed that their confessions had been directed by the police officers. On June 19, 2006, the Second Judge of the District of Zacatecas convicted the alleged victims of crime against public health for drug transportation, to seven years and six months in prison.

2. The federal public defense counsel impugned the guilty verdict before the Twenty-third Circuit Unitary Court, but the appeal was rejected on September 21, 2006. On October 11, 2006, the counsel lodged a direct amparo action before the Twenty-third Circuit First Collegiate Court, but it was rejected on December 14, 2006. As a last resort, the defense counsel filed an appeal for the review of this decision, claiming that the defendants had not been allowed to meet with their lawyer in private before testifying before the prosecutor, or to access interpretation in the preliminary inquiry. On January 10, 2008, the Supreme Court of Justice dismissed the appeal for the review, on the basis that the fact that there was a procedural error for lack of a prior private meeting with the counsel does not invalidate the evidence submitted or violate the right of defense. As to the right to interpretation, the Court asserted that the defendants declared that they understood the Spanish language and that it was proved that they are bilingual, denying that the lack of interpretation at the beginning of the proceedings has infringed their procedural safeguards.

3. The petitioner complains that the alleged victims lacked appropriate defense because they were deprived of their right to meet with their defense counsel in private before making their initial statement at prosecution, which means that there was lack of communication and a violation of their right to prepare their defense. Therefore, he claims that only from the time of their first statement before the prosecutor did they have a defense counsel. He also claims that the judgment was based on insufficient and illicit evidence. He moreover submits that the alleged victims’ rights to interpretation and specialized defense throughout the proceedings were violated, which invalidates their statements. Finally, he asserts that the courts’ decisions show that it is impossible to access effective and simple remedies to protect the alleged victims’ rights.

4. For its part, the State requests that the petition be declared inadmissible in view of the fact that the petitioner’s complaints were timely dealt with and settled by the domestic courts; therefore, that its admissibility by the Commission would lead to a fourth instance. It specifies that the complaints regarding

aspects such as the interpretation of the law, relevant procedures and the assessment of the evidence concern the domestic jurisdiction, on which the IACHR is not entitled to rule. It also indicates that the complaints are unfounded because the alleged victims were duly notified of their constitutional safeguards; they were assisted by a federal public defense counsel from the time they testified before the prosecution; they were appointed an interpreter of their mother tongue from the time of their preliminary statement, despite their having declared that they understood Spanish; and they were always heard by an impartial, independent and competent court, in accordance with the applicable safeguards and within a reasonable time.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. Based on the available information, the petitioner denounced the purported violations before several domestic judicial bodies, and domestic remedies were exhausted through the Mexican Supreme Court of Justice's denial of January 10, 2008 to review the appeal. The Commission notes that the State did not submit observations concerning the exhaustion of domestic remedies or the timeliness of the petition. As a result, the Commission concludes that this petition meets the requirement established in Article 46.1.a of the Convention.

6. Likewise, the petition was lodged on January 24, 2008; that is to say, within the six months following the date of notification of the final resolutions whereby domestic remedies were exhausted. Thus, the petition meets the requirement established in Article 46.1.b of the Convention.

VII. COLORABLE CLAIM

7. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that, if proved, the claims of violation of the right of appropriate defense in view of the alleged victims' purported inability to privately meet with their counsel before their initial statement at prosecution; violation of the right to have at all times interpreters and defenders who have knowledge of their native language; and lack of access to appropriate remedies to protect their rights could establish violations of the rights enshrined in Articles 7 (personal liberty), 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention, in connection with its Articles 1.1 and 2.

8. As to the petitioner's claim of the purported violation of Article 10 (compensation) of the Convention, the Commission believes that it is inadmissible because said provision refers to the right to compensation in the event that a person has been sentenced by a final judgment through a miscarriage of justice. Furthermore, concerning the other international treaties invoked by the petitioner, the IACHR is not entitled to rule on the violation of articles set forth in those treaties although it may consider them to interpret the rules established in the American Convention in the merits stage of this case, under the terms of Article 29 of the American Convention.

9. Lastly, as to the State's claim of the establishment of a fourth instance, the Commission notes that by declaring this petition admissible, it does not seek to replace the domestic authorities' competence. However, the Commission will analyze in the merits stage whether the domestic judicial proceedings conformed to the rights of due process and judicial protection and ensured the alleged victims' right of access to justice under the terms of the American Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 7, 8, 24 and 25 of the American Convention, in connection with its Articles 1.1 and 2;

2. To declare the instant petition admissible in relation to Article 10 of the American Convention;

3. To notify the parties of this decision;

4. To continue with the analysis on the merits; and
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights, on the 1st day of the month of December, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; Paulo Vannuchi, James L. Cavallaro and Luis Ernesto Vargas Silva, Commissioners.