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REPORT No. 183/18
PETITION 206-09
REPORT ON INADMISSIBILITY

JUAN AYALA
UNITED STATES OF AMERICA

Approved electronically by the Commission on December 26, 2018.

Cite as: IACHR, Report No. 183/18, Petition 206-09. Inadmissibility. Juan Ayala. United States of America. December 26, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Juan Ayala, Kiara Coreas
Alleged victim:	Juan Ayala
Respondent State:	United States of America ¹
Rights invoked:	Articles XVIII (right to a fair trial), and XXVI (right to due process of law)

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	February 25, 2009
Additional information received at the stage of initial review:	October 26, November 10, 2011; March 26, July 19, September 7, 2012
Notification of the petition to the State:	June 24, 2014
State's first response:	October 24, 2014
Additional observations from the petitioner:	August 31, September 14, 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 Declaration (ratification of the OAS Charter on June 19, 1951)

IV. 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
Rights declared admissible	None under the terms of section VII
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes. June 21, 2010
Timeliness of the petition:	Yes

V. ALLEGED FACTS

1. The petitioner and alleged victim, a Salvadorian national, states that on May 19, 2000 he was convicted and sentenced to 25 years for a murder that he did not commit, by the Nassau County Supreme Court, New York. He argues that he tried to "inform the court" about his innocence and that his right to a fair trial and opportunity to present witnesses have been violated. He pleads that he could not tell the court who the real murderer was because the "Mara Salvatrucha" would harm his family in Long Island, USA, and in San

¹ Hereinafter "United States."

² The observations submitted by each party were duly transmitted to the opposing party.

Salvador. He also alleges that both his right to a fair trial and to have the opportunity to present witnesses that could exonerate him have been violated.³

2. In subsequent proceedings, the alleged victim appealed to New York State Supreme Court. He appealed on the grounds of: (1) improper admittance of evidence concerning his gang affiliation which prejudiced the jury and (2) error by the Nassau County Court by admitting certain hearsay testimony by police recounting witness' identification of petitioner as the perpetrator. The New York State Supreme Court rejected his appeal and confirmed his conviction on October 7, 2002. The conviction was then appealed on the same grounds to the New York State Court of Appeals which refused to hear the case on December 2, 2002.⁴

3. On June 3, 2003, petitioner filed a motion in the Nassau County Court seeking to vacate his conviction on the basis of new grounds for relief, namely that he was not reminded of his right to remain silent ("Miranda warning"), that his counsel withheld exculpatory evidence, that he was not provided with an interpreter upon arrest, that the ballistics test used at trial was tainted, that his fingerprints were illegally obtained, that he was framed by a police detective, and that he was unable to prove his innocence because of lack of adequate defense. On September 16, 2003, the Nassau County Court denied this motion. Regarding Mr. Ayala's claim that he was denied an interpreter, the Court noted that at a pre-trial hearing, Detective Raymond Ruiz had testified that he was fluent in Spanish and had translated for Mr. Ayala, explaining to him his constitutional rights. In relation to the other claims, the Court held that Mr. Ayala had produced no evidence to substantiate them.⁵

4. On May 10, 2003, petitioner filed a writ of *habeas corpus* in the United States District Court for the Eastern District of New York raising the same two grounds of appeal as in the state proceedings (i.e. improper admittance of evidence of petitioner's gang activity and hearsay testimony regarding witness identification of petitioner).⁶

5. In a supplemental application dated November 21, 2005, the petitioner requested permission to amend his motion to include the allegations raised in his post judgment motions to set aside his conviction. The request to amend was granted. On May 22, 2008, the District Court denied the writ of habeas corpus, stating that petitioner's claims were all procedurally barred for failure to raise such claims on direct appeal, and having not shown that the failure to consider such claims would otherwise constitute a miscarriage of justice.

6. On May 18, 2009, the United States Court of Appeal for the Second Circuit granted the petitioner's Motion for a Certificate of Appealability to appeal the District Court's decision and remanded the case to the District Court to consider petitioner's two claims of improper admittance of evidence relating to petitioner's gang membership and hearsay statements identifying the petitioner as the perpetrator. The District Court reviewed these two claims and on July 17, 2009, denied the petitioner's writ of habeas corpus.⁷

7. The petitioner indicates that his Motion To Extend Time To File a Motion For Certificate of Appealability was granted on March 15, 2010. The petitioner also filed a second Motion To Extend Time To File A Motion For Certificate of Appealability, and this was granted on April 16, 2010. By order dated June 21, 2010, the Court of Appeals dismissed petitioner's motion for a Certificate of Appealability, stating that the Notice of Appeal was untimely filed.

³ Juan Ayala states that he was represented at the trial by Lloyd J. Nadel, it is not clear whether he was a public defender or a privately hired attorney. He makes no allegations on ineffective assistance of court appointed counsel.

⁴ An attorney by the name of Samuel E. Rieff appeared for Mr. Ayala in the appeal to the New York State Supreme Court. It is not clear whether he was a public defender or privately hired.

⁵ The issue of language/interpretation was not raised before the New York Supreme Court.

⁶ He was represented in these proceedings by Counsel Mr. Randall Unger. It is not clear whether Unger was a public defender or privately hired.

⁷ The petitioner was represented before the District Court by attorney Mark Gimpel. It appears that Mr. Gimpel was privately hired.

8. Ultimately, Mr. Ayala contends that he was wrongly convicted of a crime that he did not commit and that the domestic courts have failed to remedy this, together with other violations of due process.

9. According to the State, there is no basis for Mr. Ayala's petition to be considered under the Rules of Procedure of the Commission. The State contends that this is a matter in which Mr. Ayala "claims his innocence to a crime in which he was duly tried and convicted in a court of law". Apart from this, the State offers no observations on the petition.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

10. Based on the documents provided, the last decision taken in this matter is the June 21, 2010 order of the Second Circuit denying petitioner's appeal from the denial of his habeas petition. The State does not argue that internal remedies were not exhausted. On the contrary, it notes that the alleged victim had access to justice although with results that were unfavorable to him. Given that the petition was received on February 25, 2009, the petition is considered timely. The IACHR reiterates its constant position according to which the situation that must be taken into account to establish whether domestic remedies have been exhausted is that existing when deciding on admissibility.

11. The State has not questioned the sequence of remedies filed, and based on available information, the Commission has determined that the requirement to exhaust all domestic remedies provided for under Article 31 (1)) of the Commission's Rules of Procedure has been fulfilled.

VII. ANALYSIS OF COLORABLE CLAIM

12. Petitioner alleges various due process violations in the context of criminal convictions, all of which were raised in various appellate and review courts and rejected. Accordingly, there is no indication that Mr. Ayala was not able to appeal his conviction or to have resort to the courts relating to his due process complaints. The Commission considers that Mr. Ayala has not provided sufficient evidence to indicate, *prima facie*, an alleged violation of a right guaranteed in the American Declaration (in this case, Articles XVIII (right to a fair trial), XXVI (right to due process of law)).

VIII. DECISION

1. To find the instant petition inadmissible.
2. To notify the parties of this decision; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed on the 26th day of the month of December, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.