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REPORT No. 6/23
PETITION 1119-17
REPORT ON INADMISSIBILITY

ADRIAN LOPEZ
UNITED STATES OF AMERICA

Approved electronically by the Commission electronically on February 15, 2023.

Cite as: IACHR, Report No. 6/23, Petition 1119-17. Inadmissibility. Adrian Lopez. United States of America. February 15, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Adrian Lopez
Alleged victim:	Adrian Lopez
Respondent State:	United States of America ¹
Rights invoked:	None specified

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	June 16, 2017
Additional information received at the stage of initial review:	October 19, 2017, March 25, 2019, April 5, 2019, July 18 2019
Notification of the petition to the State:	April 19, 2020
State's first response:	August 18 2020
Additional observations from the petitioner:	September 21, 2020, March 1, 2021, September 27, 2021

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)

V. ALLEGED FACTS

1. This petition deals primarily with allegations of various human rights violations including due process and custodial mistreatment arising from criminal proceedings against Adrian Lopez (the petitioner and alleged victim).

2. According to the petitioner, he has been an inmate of the New York Department of Corrections, since his conviction for murder in November 1989. Based on the record, it appears that the petitioner was sentenced to a term of 22 years to life by the Supreme Court of Kings County, New York. According to the petition, the petitioner was sentenced to this term of imprisonment (pursuant to a plea agreement) following his guilty plea. However, the petitioner claims that he is innocent, and that he was coerced by his counsel to plead guilty. He also alleges that he was interrogated for three days without being given anything to eat; that he was beaten by the police, and that the prosecutor produced a witness who gave a false statement that incriminated him. The petitioner generally claims that these factors vitiated his conviction. –The petitioner provides no supporting details on the allegations, or a chronology of events from his arrest to his conviction and sentence–.

3. The petitioner complains of inadequate or poor prison conditions since being incarcerated. During his term of imprisonment, he claims that he has suffered from poor health, and in particular, an orthopedic problem with his left leg. In this regard, the petitioner alleges that he was deprived of medical attention. –However, he submits medical documentation (up to 2018) that shows that he was seen by several doctors and treated for his orthopedic ailment–. The petitioner also complains about: (a) being denied parole multiple times; (b) being placed in solitary confinement; and (c) a false report by a prison guard alleging that

¹ Hereinafter “United States”, “the U.S.” or “the State.”

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

he had thrown food and water in the prison guard's face. –The petitioner does not provide any dates or any supporting details of these allegations–.

4. –There is generally no information from the petitioner regarding domestic remedies pursued or exhausted.–

5. The State rejects the petition as inadmissible on several grounds, including: (a) failure to exhaust domestic remedies; (b) untimeliness; (c) failure to state facts that tend to establish violations; and (d) the claims in the petition are manifestly groundless. The State also submits that that adjudication of the petition by the IACHR would violate the “fourth instance formula”.

6. According to the State, on November 9, 1989, the petitioner was convicted of the offenses of murder and endangering the welfare of a child. The petitioner was convicted by the Supreme Court of Kings County, New York. Upon conviction, the petitioner was sentenced to concurrent prison terms of twenty-two years to life and five to fifteen years. Since his conviction the petitioner has been incarcerated in New York State.

7. The State asserts that the petitioner has repeatedly appealed his conviction through the U.S. judicial system, which has repeatedly affirmed his conviction. In this regard, the State indicates that the petitioner has engaged in two phases of litigation to challenge his conviction. The first phase took place between 1991 and 1995 and the second phase took place between 2010 and 2017.

8. With respect to the first phase, the State indicates that: (a) On May 30, 1991, the petitioner appealed from his judgment of conviction to the Appellate Division of the Supreme Court of New York, claiming, *inter alia*, evidentiary violations and a violation of his right to counsel; (b) the Court unanimously affirmed his conviction on July 13, 1992; (c) On October 28, 1992, the petitioner's request for leave to appeal to the Court of Appeals was denied. The State further indicates that by *pro se* motion on September 20, 1993, the petitioner moved to vacate his judgment of conviction, claiming, *inter alia*, evidentiary violations, that he was incompetent to stand trial, and that his counsel was ineffective. However, this motion was dismissed by the Supreme Court of Kings County on December 15, 1993. Subsequently, on September 7, 1994, the petitioner applied for a federal writ of habeas corpus, which the United States District Court for the Eastern District of New York denied on November 20, 1995.

9. The State indicates that almost 15 years later, the petitioner commenced a series of legal actions (second phase) aimed at challenging his conviction again. All these legal actions were ultimately dismissed. In this regard, the State mentions firstly that the petitioner filed four motions to vacate the judgement against him (in June 2010³, December 2012⁴, December 2013⁵, and May 13, 2016⁶). Secondly, the

³ According to the State, on June 7, 2010, the petitioner applied to vacate the judgment, claiming that his conviction was improper, and that the indictment was legally insufficient. This was the second time that the petitioner had applied for the judgment to be vacated (the first time being in September 1993). The Supreme Court of Kings County summarily denied Petitioner's motion on October 4, 2010, holding that his claims were procedurally barred, and, in any event, meritless. On June 23, 2011, the Appellate Division (of the New York Supreme Court) denied the petitioner's request for leave to appeal from the decision of the Supreme Court.

⁴ According to the State on December 7, 2012, the petitioner again filed a motion to vacate his judgment of conviction, claiming that his plea was not knowing, voluntary, and intelligent because he allegedly misunderstood the sentence term, as well as claiming his counsel was ineffective for failing to object to the sentence term, and that the court erred by failing to inform him of the “mandatory special parole term.” The Supreme Court of Kings County denied Petitioner's motion on February 5, 2013, holding that petitioner had unjustifiably failed to raise the issues on direct appeal, and that petitioner failed to substantiate allegation of ineffective assistance of counsel.

⁵ According to the State, on December 16, 2013, the petitioner again filed a motion to vacate his conviction, once again claiming ineffective assistance of counsel. The Supreme Court of Kings County denied Petitioner's motion on March 18, 2014, holding the claims to be procedurally barred. On August 22, 2014, the Appellate Division denied the petitioner's request for leave to appeal.

⁶ According to the State, on May 13, 2016, the petitioner applied to the Appellate Division to renew his December 16, 2013 motion (denied on March 18, 2014) to vacate his judgment of conviction, on the basis of an alleged change in law. The Court denied the petitioner's motion on July 5, 2016, noting that the “defendant's case has been examined and reviewed in detail at the state and federal levels.” On April 19, 2017, the Appellate Division denied the petitioner's leave to appeal. On July 10, 2017, the State of New York Court of Appeals also denied the petitioner's leave to appeal.

State indicates that the petitioner filed four petitions for federal habeas corpus (two in August 2011, one in November 2014, and one in July 2017)⁷. Thirdly, the State mentions that in 2014 the petitioner filed a writ of *error coram nobis*. In this regard, the State indicates that on January 13, 2014, the petitioner applied to the Appellate Division of the New York Supreme Court for a writ of *error coram nobis*, again claiming ineffective assistance of counsel, as well as claiming that his trial counsel coerced him into pleading guilty. The Court denied Petitioner's motion on June 18, 2014. On September 23, 2014, the petitioner's request for leave to appeal to the Court of Appeals was denied.

10. The State submits that the petitioner has not satisfied his duty to demonstrate that he has invoked and exhausted domestic remedies with respect to his complaints. Regarding the due process claims (revolving around the conviction and the circumstances leading up to it), the State argues that at the time of the filing of the petition (June 16, 2017), the petitioner was still in the process of pursuing extraordinary judicial remedies⁸. The State contends that even if the remedies being pursued by the petitioner were extraordinary (i.e., not required in principle to exhaust domestic remedies), once the petitioner began to pursue such remedies, he was obliged to exhaust them prior to submitting his claims to the Commission⁹. Accordingly, the State further argues that the failure to exhaust these remedies makes the petition inadmissible.

11. The State further submits that even if the Commission were to construe the later dismissals of the petitioner's legal actions as notification of exhaustion of domestic remedies, the petitioner's subsequent filing of the petition in 2017 cannot be considered timely within the meaning of Article 32 of the Commission's Rules of Procedure. In this regard, the State contends that the petitioner's attempt, beginning in 2010, almost fifteen years after his federal habeas petition was denied, to revive his post-conviction litigation through successive legal actions cannot transform his petition into a timely one. For the State, even if the Commission were to construe the petitioner's later motions as part of his exhaustion of domestic remedies within the meaning of Article 31 of the Commission's Rules of Procedure, the petitioner's belated motions for extraordinary relief, beginning in 2010, cannot delay the time at which the petitioner's six-month period began to run (pursuant to Article 32(1) of the Commission's Rules).

12. The State also submits that the petition is inadmissible for failure to comply with Article 34 (a) and (b) of the Commission's Rules of Procedure. Accordingly, the State considers that the petition fails to state facts that tend to establish violations and/or that the claims in the petition are manifestly groundless.

13. In relation to the petitioner's due process claims that arising from allegations of (a) prosecutorial misconduct; (b) ineffective assistance of counsel; (c) wrongful conviction; and (d) lack of entitlement to parole, the State contends that the petitioner has failed to state facts that tend to establish a violation of the American Declaration. The State also submits that these claims are groundless in any event.

14. Generally, the State contends that criminal proceedings against the petitioner were conducted in compliance with U.S. law and the rights set forth in the American Declaration. Further that the petitioner had ample opportunities to present his case, to rebut the government's case, to challenge the evidence presented against him, and to marshal legal arguments, both during the guilt and sentencing phases

⁷ According to the State the petitions for habeas corpus were considered as "successive petitions". Based the available information, it appears that U.S. federal law requires petitioners to obtain permission from a federal appeals court to file "successive petitions". The petitioner's applications in 2011, 2014, 2017 were all referred to the United States Court of Appeals for the Second Circuit which denied permission to the petitioner to file these the applications. The dismissals by this Court occurred on July 10, 2012 and July 25, 2012 (in relation to the 2011 applications); March 9, 2015 (in relation to the 2014 application); and September 26, 2017 (in relation to the 2017 application).

⁸ In this respect, the State mentions that the petitioner had a pending application before the State of New York Court of Appeals for leave to appeal the April 19, 2017 denial of his motion to vacate his judgment of conviction by the Appellate Division. His application for leave to appeal was dismissed on July 10, 2017, after the filing of the petition. The State also mentions that after submitting a petition to the Commission on June 16, 2017, the petitioner again filed for a federal writ of habeas corpus in the United States District Court, Eastern District of New York on July 27, 2017, which was transferred to the United States Court of Appeals for the Second Circuit and then denied on September 26, 2017.

⁹ Citing IACHR, Report No. 135/18. Petition 1045-07. Inadmissibility. Enrique Alberto Elías Waiman. Argentina. November 20, 2018, para. 10.

of trial and thereafter. The State further contends that: (a) the domestic courts have considered and rejected the petitioner's claims; (b) the petitioner has not specifically addressed the finding of the domestic courts, but merely reiterate a blanket claim without supporting evidence. With specific reference to the claim of wrongful conviction, the State submits that the petitioner has repeatedly challenged his conviction in the domestic courts but that this conviction has been repeatedly upheld. The State concludes that in this regard, the petitioner has failed to state any facts that that would tend to establish a violation.

15. Regarding the petitioner's claims of custodial mistreatment (pre-trial and post-conviction), the State submits that the petitioner has provided no facts to support the allegations. In particular, the State contends that the petitioner has failed to specify when and by whom these alleged acts¹⁰ were committed.

16. Regarding the petitioner's claim that he received inadequate medical treatment for a leg injury, the State contends that there are no facts to support this allegation. In this respect, the State contends that the petitioner has not provided sufficient information to substantiate his complaint, in accordance with Article 28 of the Commission's Rules of Procedure. Further, the State submits that the records provided by the petitioner himself indicate, he was evaluated and treated on several occasions by different medical professionals, including outside specialists. The State further indicates that these records show that the medical care given to the petitioner apparently culminated in the surgery that the petitioner was seeking. According to the State, these records militate against any finding that the petitioner was denied services that were necessary to the preservation of his health.

17. Regarding the petitioner's claim regarding denial of parole, the State submits that the petitioner has failed to provide facts that would tend to establish a violation of the American Declaration. The State submits that (a) the petitioner has provided no specific information or documentation regarding his parole (applications); (b) that even if the petitioner has been denied parole through a formal adjudication process, that would not be indicative of a violation of the American Declaration.

18. The State submits that the petition violates the Commission's fourth instance doctrine. In this regard, the State contends that to the extent that the petitioner pursued domestic remedies, the claims raised in the petition have been already considered and rejected by the U.S. courts. The State submits that it is not the Commission's place to sit in judgment as another layer of appeal, second-guessing the considered decisions of a State's domestic courts in weighing evidence and applying domestic law, nor does the Commission have the resources or requisite expertise to perform such a task.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES, TIMELINESS AND COLORABLE CLAIM

19. The petition under consideration is one in which there is a paucity of information from the petitioner on the issues of exhaustion of domestic remedies, timeliness, and colorable claims. Further, based on the information available, it appears that these issues are significantly interconnected. Accordingly, given these considerations, the Commission finds it convenient to analyze these issues concurrently in this section.

20. In keeping with the Commission's Rules of Procedure (Article 31), and the article 20 (c) of its Statute, a petitioner is required to satisfy the rule of exhaustion of domestic remedies or otherwise demonstrate that an exception to this requirement is warranted. To satisfy this rule, a petitioner must exhaust the remedies that are suitable, i.e., those that are available and effective for remedying the situation denounced. If the State fulfills its burden to contest the exhaustion of domestic remedies, the petitioner must submit arguments about his compliance with the exhaustion of remedies.

21. In this matter, the Commission notes that the petitioner has not (a) provided any information on the domestic remedies pursued or exhausted; or (b) provided any information to demonstrate

¹⁰ The petitioner alleged that (a) subsequent to his arrest, he was beaten, interrogated for three days, denied food and water, and coerced into providing a false confession (b) that subsequent to his conviction, he was improperly placed into solitary confinement and had a false behavioral report filed against him.

that an exception to the requirement to exhaust domestic remedies is warranted; or (c) submitted any arguments to counter the State's position that he failed to exhaust domestic remedies. The petitioner has also not provided any information to counter the State's position that the petition is untimely, even if he could be considered to have exhausted domestic remedies. In the absence of any information from the petitioner on the issue of exhaustion of domestic remedies, the Commission considers that it cannot verify that the petitioner has pursued and exhausted domestic remedies in accordance with generally recognized principles of international law.

22. Alternatively, the State has provided information on the domestic remedies pursued by the petitioner, indicating that the petitioner pursued remedies in two phases. These remedies largely sought to challenge the petitioner's conviction and to redress the alleged due process violations arising therefrom. The first phase was completed in 1995, while the second phase took place between 2010 and 2017. Based on the information provided it appears that in the first phase, the petitioner unsuccessfully appealed his conviction; and unsuccessfully pursued post-conviction relief (in the form of an application to vacate the judgment of conviction and an application for writ of federal habeas corpus). The second phase was largely about repeated applications for extraordinary relief, including four applications for habeas corpus. The State argues that the petitioner was still in the process of pursuing this litigation at the time that the petitioner filed a petition with the Commission, and that this signifies non-exhaustion of domestic remedies.

23. Based on this information, the Commission considers that the second phase was substantively and procedurally the re-litigation of claims that had already been litigated and dismissed in 1995. Accordingly, the Commission infers that effectively, the petitioner exhausted his domestic remedies in 1995. The petitioner provides no information to explain: (a) the gap of almost 15 years between the completion of the first phase of litigation and the start of the second phase of litigation; or (b) the rationale for re-litigating these claims. In the circumstances, the Commission considers that the petition could be considered untimely, given that it was not filed until 2017, more than 20 years after the petitioner exhausted domestic remedies in 1995. Accordingly, with respect to the petitioner's due process claims (including the claim of wrongful conviction) the Commission concludes that the petitioner has failed to exhaust domestic remedies or alternatively, has not submitted his petition in a timely manner.

24. With regard to the other claims in the petition, the Commission considers that the petitioner has failed to demonstrate that he exhausted domestic remedies; and/or has failed to state facts that tend to establish any violations of the American Declaration.

25. Generally, the Commission notes that the petitioner has provided very little or no evidence to support his claims of violations relating to: (a) mistreatment by the police; (b) denial of medical treatment; and (c) denial of parole. The same considerations apply to other claims of the petitioner, including his complaint of being placed in solitary confinement; and his complaint of a false report made by a prison guard. With respect to the alleged mistreatment by the police the petitioner has not provide any dates or a detailed description that would be sufficient to establish a *prima facie* violation of the American Declaration. The petitioner has similarly failed to provide sufficient information to establish a *prima facie* violation with respect to his other claims regarding solitary confinement and a false report.

26. With respect to the claim of inadequate medical treatment, the petitioner has provided contradictory information which demonstrates that he did receive the medical information needed to address the medical problem with his leg. Accordingly, the petitioner has failed to state any facts that tend to establish any violation in this regard. The Commission also considers that this claim appears to be manifestly unfounded. In any event, the Commission notes that the petitioner has not provided any information to suggest that he invoked or exhausted any domestic remedies regarding the alleged lack of medical treatment.

27. With respect to the claim of denial of parole, the petitioner has not provided any information or evidence to establish a *prima facie* violation of the American Declaration. He has simply stated that he was repeatedly denied parole, but without providing any details on the applications for parole (such as dates and reasons for refusal). The petitioner is dissatisfied with the outcome of the parole proceedings and now seeks relief from the Commission. The Commission has observed that the interpretation of the law, the relevant

proceeding, and the weighing of evidence, is among others, a function to be exercised by the domestic jurisdiction, which cannot be replaced by the IACHR. In this regard, it should be recalled that the Commission does not have authority to review decisions by domestic tribunals acting within their competence and applying all due judicial guarantees unless it finds that a violation of one of the rights protected by the American Declaration has been committed. Based on available information, the Commission considers that the petitioner has not provided sufficient evidence to indicate, *prima facie*, any violations of his due process rights as guaranteed by the American Declaration. The Commission further considers that the claim of the petitioner in this regard is manifestly unfounded.

28. In light of the foregoing considerations, the Commission considers the petition to be inadmissible.

VII. DECISION

1. To find the instant petition inadmissible; and
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.

Approved by the Inter-American Commission on Human Rights on the 15th day of the month of February, 2023. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Joel Hernández and Roberta Clarke, Commissioners.