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**REPORT No. 348/23
PETITION 821-18
REPORT ON INADMISSIBILITY**

KELVIN BANKS ET AL.
UNITED STATES OF AMERICA

Approved electronically by the Commission on December 29, 2023.

Cite as: IACtHR, Report No. 348/23, Petition 821-18. Inadmissibility. Kelvin Banks et al. United States of America. December 29, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Anthony Peirson Xavier Bothwell
Alleged victims:	Kelvin Banks, David Bevett, Charles W. Dickey, Marceau Doze-Guillory, Tamanee Mundy, Wanda Thomas, and Chiny Wang
Respondent State:	United States of America ¹
Rights invoked:	Articles I (Right to liberty and personal security), II (Right to equality before the law), IV (Right to freedom of investigation, opinion, expression and dissemination), V (Right to protection of honor and personal reputation), XIV (Right to work and fair remuneration), and XVII (Right to recognition of judicial personality and civil rights) of the American Declaration on the Rights and Duties of Man ² ; and Articles 5 (Right to humane treatment), 24 (Right to equal protection of the law) and 25 (Right to judicial protection) of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	April 23, 2018
Additional information received at the stage of initial review:	May 16, 2018, September 21, 2020, and August 5, 2021
Notification of the petition to the State:	August 25, 2022
State's first response:	July 28, 2023

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 on the Rights and Duties of Man (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
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in terms of Section VI
Timeliness of the petition:	Yes, in terms of Section VI

¹ Hereinafter “USA”, “U.S.”, or “United States”.

² Hereafter “the American Declaration” or “the Declaration.”

³ Hereinafter “the American Convention”.

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

V. ALLEGED FACTS

The petitioner

1. The petition is presented behalf of seven alleged victims (all persons of color) who claim that they were subjected to various acts of racial discrimination and workplace hostility while employed as civilian employees of the Tripler Army Medical Center ("Tripler") in Honolulu, Hawaii.

2. The alleged victims are Kelvin Banks ("Mr. Banks"), Dr. David Bevett ("Dr. Bevett"), Tamanee Mundy ("Ms. Mundy"), Wanda Thomas ("Ms. Thomas"), Dr. Chiny Wang ("Dr. Wang"), Marceau Doze-Guillory ("Ms. Doze-Guillory"), and Charles W. Dickey ("Mr. Dickey"). The petition provides narratives for each alleged victim, which are set out below. –The Commission observes that narratives are disjointed, vague, and lacking particularity on certain areas, such as details of the alleged abuses and the time frames during which they occurred.–

Mr. Banks

3. According to the petition, Mr. Banks is an African American who was employed at Tripler as an emergency medical technician. The petition alleges that Mr. Banks "began experiencing a hostile work environment before he filed a racial discrimination complaint in 2008 with the Army".⁵ The petition contends that someone called "Montague"⁶ constantly harassed Mr. Banks, "making false allegations and demeaning him." According to the petition, on one occasion (on February 20, 2008), Montague falsely accused Mr. Banks of failing to follow proper leave procedures. The petition further alleges that Montague pointed his finger at Mr. Banks' face while shouting angrily. According to the petition, Mr. Banks became faint, felt chest pains and shortness of breath. He then went to the emergency room, was transferred to the intensive care unit (ICU) and went on sick leave.

4. The petition claims that "someone forged Banks' signature on an official record." According to the petition, this document was a memorandum stating that that Mr. Banks was "counseled" on February 21, 2008, regarding his duties. The petition alleges that on this date, Mr. Banks was being treated in the ICU, and that the counseling did not take place at all. The petition further claims that at a meeting of Emergency Department managers,⁷ a person called "Kelly"⁸ gave an order "to "get rid of the slackers," referring to African American employees." The petition also alleges that Kelly falsely alleged that Banks was a "drug addict."⁹

Dr. Bevett

5. According to the petition, Dr. Bevett, a psychologist, is of mixed Native-American and African American ethnicity. The petition claims that Dr. Bevett's ethnicity caused him to be denied positions for which he had superior qualifications. More specifically, the petition alleges that he was denied the "GS-13 position"¹⁰ by officers who resented the fact that Dr. Bevett was the first non-white person in the Army's program for doctors of psychology. The petition mentions that some "racist officers" decided "to destroy" Dr. Bevett's career, as well as to defame Dr. Bevett and ultimately to block his advancement at Tripler. The petition identifies the names of these officers as "Folen," "Weitz", "Hinton", and "Whitsett". The petition also claims that Dr. Bevett's supervisor (identified as a person called "Slobodzien") had said that Dr. Bevett did his job well, and that he was qualified for GS-13 and GS-14 positions. However, the petition alleges that "powerful officers" used their influence to subject him to a hostile environment, and to later blackball him from civilian jobs at Tripler.

⁵ The petition provides no details on the nature or outcome of this complaint.

⁶ The petition does not provide details on the full name of this person, or his specific role in relation to Mr. Banks.

⁷ The petition does not indicate when this meeting took place.

⁸ The petition does not provide details on the full name of this person, or his specific role in relation to Mr. Banks

⁹ The petition provides no information on when this meeting took place.

¹⁰ Though not expressly stated by the petition, GS-13 position appears to be part of a classification and payment scale for civilian employees.

The petition alleges that Dr. Bevett has since been diagnosed with post-traumatic stress disorder and sleep apnea due to the discrimination that he suffered at Tripler.¹¹

Ms. Mundy

6. According to the petition, Ms. Mundy is an African American, who was initially hired at Tripler as a GS-9 Health System Specialist, and then promoted three months later to GS-11 Supervisory Health System Specialist.¹² The petition state that Ms. Mundy was an exemplary employee. According to the petition, Ms. Mundy was under the supervision of a person called "Batts" for four years. During this time, the petition alleges that Batts swore and screamed at Mundy, using four-letter words and racist epithets.¹³ The petition claims that, generally, Batts consistently exhibited hostility to African Americans (at Tripler).

7. The petition further submits that on one occasion, Batts threw a chair at Ms. Mundy.¹⁴ The petition further claims that Batts "retaliated against Mundy" after she became a witness in support of a co-worker's complaint to the Equal Employment Opportunity Commission.¹⁵

8. According to the petition, a person called "Kelly" took over as Mundy's supervisor. The petition state that Kelly created a hostile working environment for Ms. Mundy, in which he fabricated baseless criminal charges, and tried to force Ms. Mundy to resign. The petition indicates that this environment adversely affected Ms. Mundy's career and health. The petition states that Ms. Mundy was retired on the grounds of ill-health.¹⁶

Ms. Thomas

9. According to the petition, Ms. Thomas is an African American who was employed at Tripler.¹⁷ The petition indicates that when she reported for work for the first time, her supervisor refused to shake her hand and walked away. The petition identifies the supervisor as a white person called "Petray."

10. The petition submits that Ms. Thomas was subjected to a hostile work environment¹⁸ under Petray "until her last day at Tripler." The petition indicates that Petray would repeatedly blame Ms. Thomas mistakes or misdeeds¹⁹ committed by white employees. The petition identifies these white employees as "Finstead" and "Bristow."

11. "The petition alleges that Ms. Thomas was hospitalized by a "Dr. Andrieu" due to anxiety, heart palpitations, difficulty breathing, and other symptoms" on account of difficulties she was experiencing with her employer. The petition also alleges that Ms. Thomas was demoted by three grades in retaliation for complaining about racist discrimination.²⁰

Dr. Wang

12. According to the petition, Dr. Wang is of Chinese Laotian heritage who was employed as a pharmacist at Tripler. The petition alleges that Dr. Wang was subjected to "racial epithets and out-of-control

¹¹ The petition provides no dates/time frames for when Dr. Bevett was allegedly subjected to discriminatory/hostile treatment at Tripler.

¹² The petition does not state when Ms. Mundy was hired or when she was promoted.

¹³ The petition provides no specific dates on which Ms. Mundy was allegedly subjected to verbal abuse; or any other specifics on the circumstances which led to this alleged verbal abuse.

¹⁴ The petition does not state when this occurred.

¹⁵ The petition does not indicate the nature of this retaliation. The petition mentions that the complaint to the Equal Employment Opportunity Commission had been brought by Wanda Thomas but does not indicate the nature of the complaint or when it was filed.

¹⁶ The petition provides no chronology regarding the alleged mistreatment by Kelly; or any indication of when Ms. Mundy retired from Tripler.

¹⁷ The petition does not state when Ms. Thomas was employed at Tripler or the capacity in which she was employed.

¹⁸ Generally, the petition does not provide details of this alleged hostile work environment.

¹⁹ The petition does not provide particulars of these alleged mistakes/misdeeds, or any dates on which Petray alleged blamed Ms. Mundy for these mistakes/misdeeds.

²⁰ The petition does not indicate (a) when Ms. Mundy was hospitalized or for how long; (b) when Ms. Mundy was demoted; and (c) when and to whom she complained of racial discrimination.

hostility" by white coworkers. The petition also alleges that white coworkers ridiculed Dr. Wang and refused to cooperate with her at work. The petition further submits that Dr. Wang complained about this behavior to management, but that management refused to take corrective action. The petition indicates that Dr. Wang was berated by management (for making the complaint), and that Dr. Wang was ultimately fired without justification.²¹

Ms. Doze-Guillory

13. The petition states that Ms. Doze-Guillory is an African American who was subjected to racist epithets and discrimination while employed at Tripler.²² According to the petition, white employees called her "Beast," an offensive label directed against African Americans by white supremacists.

14. The petition alleges that a person called "Burt" would, daily, scream angrily at Ms. Doze-Guillory, and would also refuse to work cooperatively with Ms. Doze-Guillory. The petition also asserts that another person called "Nicholls" would often ridicule and demean Ms. Doze-Guillory Doze in front of others in the workplace.²³ According to the petition, the racial hostility exhibited to Ms. Doze-Guillory ultimately forced her to end her employment at Tripler.²⁴

Mr. Dickey

15. According to the petition, Mr. Dickey is an African American who was employed at Tripler.²⁵ The petition alleges that Mr. Dickey subject to various verbal and other abuse because of his race. In this regard, the petition alleges that a person called "Dove" (who was then chief of the Cardiology department) repeatedly belittled²⁶ Mr. Dickey in front of coworkers, and on one occasion slammed the door in his face. The petition also alleges that Dove's successor, a person called "Wisenbaugh" screamed obscenities at Dickey in front of patients and otherwise shunned him. According to the petition, a person called "Illovsy" succeeded Wisenbaugh. The petition alleges that Illovsy "escalated" the mistreatment of African American employees as inferior and "always talked down to us as if we were not competent."²⁷

16. The petition generally claims that "incentive pay and promotions" were given to "racially favored" employees and withheld from Dickey, because of his race.²⁸

17. According to the record, on December 30, 2011, all of the alleged victims filed suit before the U.S. District Court for the District of Hawaii ("the District Court") on December 30, 2011, alleging discrimination in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), retaliation in violation of Title VII, and discrimination and retaliation in violation of the Equal Protection Clause of the Fifth Amendment (of the US Constitution). Based on the information available, it appears that in 2014, the District Court dismissed the suit brought by the alleged victims. According to the petition, an appeal was subsequently filed with the United States Court of Appeals for the Ninth Circuit ("Court of Appeals").

18. The petition indicates that the Court of Appeals ultimately dismissed the appeal by way of two judgments. The first judgment was issued on October 18, 2017 was in relation to the claims of the alleged victims Mr. Banks, Dr. Bevett, Mr.Dickey, Ms. Doze-Guillory, Ms. Mundy, and Dr. Wang. According to the petition,

²¹ The petition does not provide details on (a) the dates/duration of Dr. Wang's employment; (b) the dates on which she was subjected to the alleged racial abuse/hostility; (c) when or to whom Dr. Wang made a complaint; or when she was fired.

²² The petition doesn't indicate when Ms. Doze-Guillory was employed to Tripler or in what capacity.

²³ The petition does not provide a time frame for when these alleged abuses took place. There is also no detail provided on what exactly was said by Burt and Nicholls to Ms. Doze-Guillory.

²⁴ The petition does not state when Ms. Doze-Guillory left her employment with Tripler.

²⁵ The petition does not indicate when Mr. Dickey was employed at Tripler or the capacity in which he was employed.

²⁶ The petition does not provide any further particulars on when this occurred.

²⁷ The petition does not provide any further particulars on the nature of this "mistreatment"; or when it occurred.

²⁸ The petition provides no particulars on the pay and promotions given to "racially favored" employees and withheld from Mr. Dickey.

the first judgment of the Court of Appeals formally took effect on December 11, 2017,²⁹ pursuant to a “mandate” issued by the court.

19. According to the petition the second judgment was issued on October 27, 2017, in relation to the claims of Ms. Thomas. The petition indicates that this judgment formally took effect on December 19, 2017³⁰, pursuant to a “mandate” issued by the Court of Appeals.

20. The petition also mentions that the alleged victims all made complaints to the United States Equal Employment Opportunity Commission (“EEOC”), which were all dismissed. However, the petition does not provide any dates on which these complaints were made; the nature of these complaints; or when they were dismissed.

The United States

21. The State rejects the petition as inadmissible, primarily for failure to exhaust domestic remedies and to state facts that would tend to establish a violation of the American Declaration. The State also submits that the petition is untimely in respect of the alleged victims (except for Ms. Thomas). Finally, the State argues that consideration of the petition would violate the Commission’s fourth instance doctrine.

22. By way of background, the State acknowledges that all the alleged victims were employed to Tripler. The State also acknowledges that they all filed a complaint in the U.S. District Court for the District of Hawaii on December 30, 2011, alleging discrimination in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), retaliation in violation of Title VII, and discrimination and retaliation in violation of the Equal Protection Clause of the Fifth Amendment. According to the State, between March 13 and May 14, 2014, the Department of the Army and the Department of Defense filed separate motions for dismissal or summary judgment on each of the claims contained in the complaint filed by the alleged victims. The State indicates that between June 30 and August 29, 2014, the District Court granted motions for dismissal and summary judgment on each claim contained in the complaint. According to the State, the District Court generally found that each alleged victim failed to establish a *prima facie* case of discrimination or retaliation.³¹

23. The State submits that on October 18, 2017, the United States Court of Appeals for the Ninth Circuit affirmed the District Court’s decision to grant motions for dismissal/summary judgement (in relation to all the alleged victims except for Ms. Thomas). The State indicates that on October 27, 2017, the Court of Appeals made a similar ruling in respect of Ms. Thomas. Regarding the first of these judgments, the State points out that the Court of Appeals ruled that “No triable issues of fact existed as to whether Appellants endured discrimination, retaliation, and/or a hostile work environment at Tripler” and that “The district court correctly determined that none of the Appellants established a *prima facie* case in their actions alleging discrimination, retaliation, and hostile work”. In relation to the second judgment, the State indicates that the Court of Appeals ruled that “Because Thomas failed to raise a material issue of fact as to her Title VII claims, the district court did not err in granting summary judgment in favor of Defendant.”

²⁹ Based on the information provided, it appears that this was the date on which the parties were officially notified of the judgment.

³⁰ Based on the information provided, it appears that this was the date on which Ms. Thomas was officially notified of the judgment.

³¹ The State relies on judgments by the District Court that were issued between June 2014 and August 2014. As an example, in one of the judgments regarding Ms. Doze-Doze-Guillory, the court found that her “evidence is insufficient to raise a genuine dispute as to whether the actions of her colleagues and supervisor were race-based or that they were severe and pervasive.” The Court also found that her evidence consisted of “conclusory allegations” and that this is not the type of evidence required to defeat summary judgment.” In another (similar) judgment regarding Dr. Wang, the District found that she fails to make a *prima facie* case of discrimination, and she fails to state a claim for retaliation”.

Failure to exhaust domestic remedies/timeliness

24. The State contends that the alleged victims have failed to exhaust domestic remedies in accordance with Article 31 (1) of the Commission's Rules of Procedure. In this regard, the State submits that the alleged victims did not pursue all available domestic remedies; and that in particular, they failed to appeal to the U.S. Supreme Court. According to the State, resort to the U.S. Supreme Court is not an extraordinary remedy, but an ordinary remedy which the alleged victims were obliged to pursue. The State contends that failure to seek relief from the Supreme Court must result in a determination of inadmissibility before the Commission.

25. The State submits that even if the Commission were to determine that domestic remedies had been exhausted, the petition should be dismissed as untimely as to all with respect to all the alleged victims, except for Ms. Thomas. The State emphasizes that under Article 32(1) of the Rules, the Commission will only consider "petitions that are lodged within a period of six months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies."

26. The State submits that the Commission appears to have received the petition on April 23, 2018, more than six months after the Court of Appeals denied the appeal of the alleged victims (other than Ms. Thomas) on October 18, 2017. The State notes that the Court of Appeals denied the appeal of Ms. Thomas on October 27, 2017).

27. With respect to the alleged victims (other than Ms. Thomas), the State argues that they have provided no explanation for failing to file the petition within the requisite period of six months. Accordingly, for these alleged victims, the State contends that their claims are untimely. However, the State considers that Ms. Thomas' claims are timely, given that the petition was filed within six months of her appeal being dismissed.

Failure to state colorable claim

28. The State submits that the petition fails to state facts that tend to establish a violation of rights set forth in the American Declaration and that the petition is otherwise manifestly groundless.

29. The State indicates that the petition lists various rights alleged violated under the American Declaration and the American Convention; but fails to articulate why or how these rights have been violated. The State further submits that the statement of facts in the petition is "short" and "conclusory;" and that it mirrors what was presented in the domestic litigation – where the alleged victims alleged discrimination, retaliation, and a hostile work environment.

30. The State further submits that these claims were carefully considered and dismissed by the District Court and Court of Appeals in Hawaii.

Fourth instance

31. The State argues that the Commission's fourth instance doctrine bars the IACHR from considering the petition. The State further contends that the petition plainly constitutes an effort to use the Commission as a "fourth instance" body to review claims already heard and rejected by U.S. courts. The State asserts that the petition makes the same claims that were raised and dismissed before 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. Accordingly, the State concludes that the fourth instance doctrine precludes any review of the petition's claims by the Commission.

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

32. In determining the admissibility of a petition, the Commission is required (in accordance with Article 31 (1) of its Rules of Procedure) to verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law. The Commission observes that the requirement of prior exhaustion of domestic remedies is intended to enable the national authorities to take cognizance of the alleged violation of a protected right and, if appropriate, to resolve the situation before it is brought before an international body.

33. In the instant petition, the record indicates that the alleged victims initially litigated their claims before the U.S. District Court for the District of Hawaii. This court dismissed their claims in 2014, following which the alleged victims appealed to the U.S. Court of Appeals for the Ninth Circuit. Based on the information provided, the Court of Appeals issued two judgments dismissing the appeal. The first judgment was issued on October 18, 2017 (in relation to all the alleged victims except for Ms. Thomas). The second judgment was issued on October 27, 2017, in respect of Ms. Thomas.

34. The State contends that the alleged victims failed to appeal to the U.S. Supreme Court, and therefore did not exhaust domestic remedies. However, the Commission notes that the requirement of exhaustion of domestic remedies does not mean that the petitioner or alleged victim has the obligation to exhaust every possible remedy available to them. The IACR has maintained that if the petitioner or alleged victim endeavored to resolve the matter by making use of a valid, adequate alternative available in the domestic legal system and the State had an opportunity to remedy the issue within its jurisdiction, the purpose of the international legal precept is fulfilled. Based on the record, it appears that the alleged victims were able to access and exercise domestic remedies before an appellate court (which ruled against them). Having regard for the foregoing, the Commission considers that the dismissal of the appeal in October 2017 by the U.S. Court of Appeals for the Ninth Circuit represents the exhaustion of domestic remedies in accordance with Article 31 (1) of the Commission's Rules of Procedure.

35. The State argues that the petition is untimely in relation to the alleged victims (except for Ms. Thomas). In this regard, the State notes that the petition was filed April 23, 2018, and therefore over six months after the U. S. Court of Appeals issued its (first) judgment on October 18, 2017. However, according to the petitioner, this judgment did not formally come into effect until December 11, 2017. Based on the information provided by the petition, it appears that this is the date on which the parties were officially notified of the judgment. In the absence of any information to the contrary, the Commission considers that the petition was filed within six months of the notification of the judgment and is therefore timely in respect of the alleged victims (apart from Ms. Thomas).

36. Regarding Ms. Thomas, the Commission notes that (a) the State has not contested the timeliness of her claims; and (b) the judgment of the U.S. Court of Appeals was issued on October 27, 2017. The Commission also notes the submission of the petition that the judgment regarding Ms. Thomas did not formally take effect until December 19, 2017. Given the totality of the foregoing, the Commission also concludes that the petition was filed in timely manner in accordance with Article 31 (1) of the Commission's Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

37. As a preliminary consideration, the Commission notes that the petition sets out claims under both the American Declaration and the American Convention. However, the State is not a party to the American Convention. Accordingly, the Commission has no jurisdiction *ratione materiae* to consider any claims brought by the petition with respect to the American Convention. The Commission will therefore consider only the claims brought by the petition with respect to the American Declaration.

38. The Commission observes that the submissions from the petitioner are vague, disjointed and lacking in crucial detail (such as chronological data). This makes it difficult to clearly identify the scope or

nature of the petitioner's claims, or to determine whether there are *prima facie* violations of the American Declaration.

39. Further, from the record, it appears that the claims contained in the petition were fully ventilated before the domestic courts and rejected. According to the record, the alleged victims initially litigated their claims before the U.S. District Court for the District of Hawaii. In a series of judgments in 2014, the District Court dismissed these claims, primarily on the ground that alleged victims failed to establish a *prima facie* case of discrimination or retaliation (pursuant to Title VII of the Civil Rights Act of 1964).³² These rulings of the District Court were subsequently affirmed by two judgments by the U.S. Court of Appeals for the Ninth Circuit in October 2017. The Court of Appeals dismissed the appeals ruling that the District Court correctly determined that none of the alleged victim had established a *prima facie* case regarding their complaints.³³

40. The alleged victims now appear to be dissatisfied with the outcome of the domestic judicial proceedings and now seek relief from the Commission. The Commission has observed that the interpretation of the law, the relevant proceeding, and the weighing of evidence, are, among others, functions to be exercised by the domestic jurisdiction, which cannot be replaced by the IACtHR. In this regard, it should be recalled that the Commission does not have authority to review judgments handed down by domestic courts 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. The information provided by the petition does not establish, *prima facie*, that any of the alleged victims were deprived of any their due process rights as guaranteed by the American Declaration.

41. In view of these considerations, the Commission concludes that the petition fails to state facts that tend to establish a violation of any rights enshrined in the American Declaration and is accordingly inadmissible pursuant to Article 34 (a) of the Commission's Rules of Procedure.

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.

Approved by the Inter-American Commission on Human Rights on the 29th day of the month of December, 2023. (Signed:) Margarette May Macaulay, President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón, and José Luis Caballero Ochoa, Commissioners.

³² See generally para. 22.

³³ See generally para. 23.