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**REPORT No. 255/20**  
**PETITION 1994-15**  
REPORT ON ADMISSIBILITY

ELEVEN CHILDREN AT THE NIXON FACILITY  
UNITED STATES OF AMERICA

Approved electronically by the Commission on September 21, 2020.

**Cite as:** IACHR, Report No. 255/20. Petition 1994-15. Admissibility. Eleven Children at the Nixon Facility. United States of America. September 21, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioners:</b>	O.A.F.E., E.A.H.C., W.O.G., P.A.S.G. J.M.R., O.B., J.E.A.L., E.A.F.F., J.C.C.B., D.A.E.F., E.R.R.J. <sup>1</sup>
<b>Alleged victim:</b>	Same as above
<b>Respondent State:</b>	United States of America <sup>2</sup>
<b>Rights invoked:</b>	Articles I, V, VII, XVIII, XXIV and XXV of the American Declaration of the Rights and Duties of Man <sup>3</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	November 25, 2015
<b>Notification of the petition to the State:</b>	December 13, 2018
<b>State's first response:</b>	July 25, 2019
<b>Additional observations from the petitioner:</b>	October 11, 2019

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	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**

<b>Duplication of procedures and International res judicata:</b>	No
<b>Rights declared admissible:</b>	Article I (right to liberty and security of the person); Article V (right to honor and private life); Article VII (right to special protection of children); Article XXV (right to humane treatment); Article XXIV (right to petition); and Article XXVI (right to due process of law)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in accordance to section VI
<b>Timeliness of the petition:</b>	Yes, in accordance to section VI

**V. ALLEGED FACTS**

1. The Petitioners in this case are also the alleged victims (hereinafter "Petitioners" or "alleged victims"). They are eleven men who fled Central America for the United States ("U.S."), alone, in 2006 and 2007, as children ("unaccompanied minors").<sup>5</sup> Petitioners assert that they were repeatedly sexually, physically and

<sup>1</sup> Identities of petitioners withheld on request in accordance with Article 28 (2) of the Commission's Rules of Procedure.

<sup>2</sup> Hereafter "United States", "U.S." or "the State".

<sup>3</sup> Hereinafter "Declaration" or "American Declaration."

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

<sup>5</sup> The U.N. Committee on the Rights of the Child defines unaccompanied minors and unaccompanied children as those who are under the age of eighteen and "who have been separated from both parents and other relatives and are not being cared for by an adult

psychologically abused, in 2006 and 2007, while they were detained in Texas at a privately-run facility contracted by the U.S. government to detain child immigrants (“the Nixon Center”).<sup>6</sup> Petitioners also witnessed similar abuse of the other children who were detained at the Nixon Center. The ages of petitioners when they arrived at the Nixon Center, were: O.A.F.E. (12 years old); E.A.H.C. (13 years old); W.O.G. (15 years old); P.A.S.G. (15 years old); J.M.R. (16 years old); O.B. (16 years old); J.E.A.L. (16 years old); E.A.F.F. (16 years old); J.C.C.B. (16 years old); D.A.E.F. (17 years old); and E.R.R.J. (17 years old).

2. The Petitioners contend that in July 2006, the U.S. government entered into a contract with Away From Home, Inc., a private corporation, to detain immigrant children at the Nixon Center. The contract mandated that the Nixon Center be licensed at the state level; comply with both state and federal law; and comply with the United States Office of Refugee Resettlement rules and policies. The Office of Refugee Resettlement is part of the U.S. Department of Health and Human Services.

3. The Petitioners allege that the U.S. is responsible for the alleged victims’ sexual, physical and psychological abuse because: the U.S. ordered the Petitioners detention at the Nixon Center, the Office of Refugee Resettlement was obligated to manage and monitor the Nixon Center, the U.S. government’s Division of Unaccompanied Children’s Series team had authority over all treatment and safety matters at the Nixon Center and these government officials were in “constant communication” with supervisors from the Office of Refugee Resettlement.

4. The Petitioners claim that between 2006-2007 they were victims of severe sexual abuse, physical abuse and psychological abuse at the hands of Nixon Center employees as detailed below:

5. Sexual Assault Allegations: Petitioners W.O.G., P.A.S.G., J.E.A.L., D.A.E.F., E.A.F.F., E.R.R.J., J.C.C.B., and O.B. all claim that they were sexually assaulted on one or more occasions while detained at the Nixon Center. Petitioner W.O.G. claims that he was sexually assaulted in the shower on multiple occasions by a Nixon Center female staff supervisor. Petitioner O.B. escaped sexual assault twice, but on the third time, a Nixon Center staff member put her hand inside his pants and sexually assaulted him. E.A.H.C. alleges that a female Nixon Center employee attempted to sexually assault him. E.A.H.C. also alleges that he witnessed a female Nixon Center employee sexually assault J.C.C.B. and E.A.F.F. by touching their penises, exposing herself, and having them touch her genitalia. E.R.R.J. claims that on at least ten occasions he witnessed a Nixon Center staff member sexually assault other boys.

6. Physical Abuse Allegations: O.A.F.E. claims that he was beaten by a staff member who had been reprimanded in the past for using excessive force against other children. O.A.F.E. also claims that he witnessed the guards beat many other children. This abuse often involved “knocking them to the floor and kicking them in the stomach or the back” while laughing at them.<sup>7</sup> Alleged victim O.A.F.E. claims that in order to escape the abuse at the Nixon Center, he asked to be deported. Petitioner J.M.R. claims that an employee of the Nixon Center, who was drunk, slammed him repeatedly against the facility’s walls. He alleges that on one occasion he was slammed so forcefully against a door that it caused the door to break. On one occasion, while he was in bed, J.M.R. alleges that yet another staff member beat him, and that he was denied medical care after the beating. Petitioner J.M.R. claims that he still suffers from intense neck and back pain as a result of the attacks. Petitioner O.B. claims to have witnessed J.M.R. and other boys being beaten.

7. Petitioners claim that the abuses at the Nixon Center were so bad that children tried to escape on multiple occasions. For example, it is alleged that in the summer of 2006, one child threw himself through a plate glass window, to escape, and another group of barefooted girls opened a window and “fled into the night.”<sup>8</sup> Petitioners also claim that on November 5, 2006, seven detained boys escaped. Petitioners claim that

who, by law or custom, is responsible for doing so.” *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER (February 1997), <https://www.unhcr.org/3d4f91cf4.pdf>.

<sup>6</sup> The Nixon Center, also referred to as the Nixon Shelter and the Nixon Facility, was located in a remote area of Texas. The Center was operated by Away From Home, Inc., which also used the names Texas Shelter Care, Inc. and Southwest Initiatives, Inc. The shelter has been permanently shut down since the time of the alleged abuses.

<sup>7</sup> *Eleven Children Detained at the Nixon Facility v. United States of America*, Petition No. P-1994-15, Petition, November 25, 2015.

<sup>8</sup> *Eleven Children Detained at the Nixon Facility v. United States of America*, Petition No. P-1994-15, Petition, November 25, 2015.

the Division of Unaccompanied Children's Series knew of the escape attempts and that no meaningful investigation was ever conducted.

8. Petitioners allege that they still suffer from the effects of the alleged abuse that they endured. They claim that the U.S. has had an obligation and the opportunity to remedy the alleged violations and provide redress to the alleged victims, but has failed to do so. Indeed, the U.S. has even failed to bring any federal criminal charges against any Nixon Center staff member or federal employee for the sexual, physical and psychological abuse they inflicted on the alleged victims.<sup>9</sup>

9. Petitioners allege that there were no meaningful methods of reporting abuses inflicted on them by the staff members at the Nixon Center and that when they tried to report abuse, they were threatened. For example, Petitioner W.O.G. claims that after he reported sexual assault by a supervisor, that supervisor denied him access to phone calls and television, as punishment. He also alleges that male staff members threw him to the floor, held him against the wall, and beat him in retaliation for reporting being sexually assaulted. Petitioner J.M.R. claims that the Nixon Center's Lead Supervisor ordered him not to report any abuse after he was severely beaten by multiple Nixon Center staff members. Petitioner P.A.S.G. claims that a Nixon Center staff member threatened that he would remain in the facility longer if he reported sexual abuse of the boys by Nixon Center staff members. Petitioner O.A.F.E. claims that after he reported physical abuse inflicted on him by a Nixon Center staff member to the abuser's supervisors, they did not believe him - even after he showed the marks on his body caused by the beatings.

10. The Petitioners claim that the Division of Unaccompanied Children's Series had thorough knowledge of the alleged sexual, physical and psychological abuses inflicted on them at the Nixon Center and did not act to prevent or remedy the harm to the children.<sup>10</sup> Petitioners allege that the failure of the Division of Unaccompanied Children's Series officials to act in response to the reports of abuse at the Nixon Center prevented the abused children from receiving necessary medical and mental health care.<sup>11</sup>

11. The Petitioners claim that on multiple occasions the Texas Department of Family and Protective Services (responsible for licensing child caretakers in Texas) reported instances of sexual abuse to the Department of Unaccompanied Children's Series. Petitioners also claim that the United States Conference of Catholic Bishops Child Welfare Monitor informed officials from the U.S. Division of Unaccompanied Children's Series of "staff grabbing, shoving, and humiliating children, the abandonment of the safety protocols, and the serious dangers presented at Nixon."<sup>12</sup>

12. The Petitioners allege that the Division of Unaccompanied Children's Series held several emergency meetings with Nixon Center staff between September and November of 2006 to discuss retraining staff and ways to prevent sexual and physical abuse at the facility. They allege that no new preventative measures were adopted. The Petitioners allege that, despite its knowledge of the abuses, the Division of Unaccompanied Children's Series allowed the Nixon Center to remain open, and continued to funnel more children there until March 2007.

13. According to the Petitioners, the U.S. suspended new placements to the Nixon Center in February 2007, but still kept the alleged victims at the facility for about a month. In June 2007, the Office of Refugee Resettlement revoked the Nixon Center's contract because of its failure to "protect the children in its care from physical and sexual abuse."<sup>13</sup>

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<sup>9</sup> Even though a Nixon Center employee was sentenced to seven years in prison, the charges were brought under Texas state law and prosecuted by Texas prosecutors. U.S. officials failed to file federal charges against this known abuser.

<sup>10</sup> Petitioners claim that extensive reports of the alleged sexual abuse at the Nixon Center were made to multiple D.U.C.S. officials. Petitioners further claim that by February 12, 2007, the D.U.C.S. officials were well aware that many children were allegedly experiencing sexual assault at the hands of staff members at the Nixon Center.

<sup>11</sup> By November 2006, petitioners claim that the staff at the Nixon Center had still not implemented the ban on caretakers' unaccompanied entry into the boys' bedrooms and bathrooms. Petitioners allege that multiple D.U.C.S. supervisors were in regular communication with the Nixon Center and knew about this failure, but still did nothing.

<sup>12</sup> *Eleven Children Detained at the Nixon Facility v. United States of America*, Petition No. P-1994-15, Petition, November 25, 2015.

<sup>13</sup> *Eleven Children Detained at the Nixon Facility v. United States of America*, Petition No. P-1994-15, Petition, November 25, 2015.

14. On February 15, 2008, the petitioners filed a lawsuit against the U.S, U.S. employees, the Nixon Center, and Nixon Center employees on behalf of the alleged victims (in the United States District Court for the Western District of Texas).<sup>14</sup> The Petitioners settled with the Nixon Center shortly thereafter. Neither the U.S., nor U.S. officials, were involved in the settlement, and they remained defendants in the lawsuit.<sup>15</sup>

15. The U.S. successfully argued before the trial court that because the Nixon Center employees were not U.S. employees, the U.S. could not be held responsible for their abuses. The Petitioners' case against the United States was dismissed on July 5, 2013 without the court hearing the merits of the case<sup>16</sup>. According to the petitioners, this decision by the District Court was appealed to the Fifth Circuit of Appeals, which affirmed the decision of the District Court on January 16, 2015.

16. The U.S. then filed a routine "Bill of Costs" on August 7, 2013 seeking the repayment of fees for making copies of documents. The federal court awarded that request.<sup>17</sup> Petitioners do not allege, nor is there any evidence in the record, to show that petitioners appealed this finding.

17. Petitioners also filed constitutional claims against federal officers who worked within the Division of Unaccompanied Children's Series and the Office of Refugee Resettlement. The federal employees that Petitioners sued argued that they were entitled to "qualified immunity" from the suit.<sup>18</sup> The court agreed, and dismissed the constitutional claims against the federal officials without considering the merits. Petitioners appealed this dismissal. On January 26, 2015, the Fifth Circuit Court of Appeals affirmed the dismissal in full. On April 8, 2015, Petitioners requested to have the alleged victims' case reviewed by the U.S. Supreme Court. On May 26, 2015, the Supreme Court refused to review the matter.

18. In its response to the Petition, the U.S. admits it had knowledge of several of the allegations of the Petitioners. The State admits that even before the alleged victims arrived at the Nixon Facility, as early as August 2006, the Office of Refugee Resettlement was aware that there were claims of sexual abuse at the Nixon Center. The U.S. also acknowledges that some Nixon Center staff members inappropriately restrained and injured children, including alleged victim J.M.R. In its response, the U.S. also verified the abuse of Petitioner J.M.R., but denies that it is responsible for the abuse. The U.S. also acknowledges that in November 2006, officials from the Office of Refugee Resettlement knew that off-duty Nixon Center staff (who had been drinking) were called to assist with the search for missing children, and the care of the other children still at the Nixon Center.

19. Despite these acknowledgments, the U.S. claims that it is not responsible for these alleged violations. Instead, the U.S. argues that the Nixon Center was controlled by Away from Home, an independent private contractor, which was not an agent of the U.S.

20. The U.S. argues that the petition is not admissible because petitioners have not exhausted all domestic remedies, because they did not appeal the District Court's dismissal of the claims against the United States. Further the State also argues that Petitioners are seeking to use the Commission as a "fourth instance" body to review claims already heard and rejected by U.S. courts.

<sup>14</sup> *Walding v. United States*, 955 F. Supp. 2d 759, 762 (W.D. Tex. 2013).

<sup>15</sup> Prior to trial, on August 9, 2012, the Nixon Center and its staff reached a settlement with the alleged victims on all claims. On July 24, 2012, this settlement agreement was filed with the Western District of Texas District Court. Subsequently, however, recovery against the Nixon Center staff was impossible because most of the staff lacked the financial resources to satisfy the settlement, and Away From Home Inc. went bankrupt. Petitioners claim that the alleged victims recovered a very minimal amount of money damages.

<sup>16</sup> *E.A.F.F. v. United States*, 955 F. Supp. 2d 707, 737 (W.D. Tex. 2013) (The court found that the employees of the Nixon Center were not employees of the U.S. government because there were "no facts suggesting that any federal defendant exercised day-to-day supervision over the Nixon facility." The court found that the employees were private, independent contractors).

<sup>17</sup> *E.A.F.F. v. United States*, No. SA-08-CA-124-XR, 2014 WL 2155263, at \*7 (W.D. Tex. May 22, 2014).

<sup>18</sup> *E.A.F.F. v. United States*, 955 F. Supp. 2d 707, 736 (W.D. Tex. 2013), *aff'd sub nom. E.A.F.F. v. Gonzalez*, 600 F. App'x 205 (5th Cir. 2015).

## VII. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

21. In accordance with Article 31(1) of the Rules of Procedure of the Inter-American Commission, for a petition to be admissible, domestic remedies must have been pursued and exhausted pursuant to generally recognized principles of international law. This requirement is aimed at enabling national authorities to recognize the alleged violation of the protected right, and, if appropriate, resolve the matter before it is heard by an international body.<sup>19</sup>

22. The Commission has established that whenever a publicly actionable offense is allegedly committed or that there have possible violations of fundamental rights (such as the right to humane treatment), the State is obliged to institute and pursue criminal proceedings and that this is the suitable channel to clarify the facts, prosecute the responsible parties, establish appropriate criminal penalties, and make possible other means of financial reparation. In addition, as a general rule, the Commission has established that a criminal investigation must be carried out promptly to protect the interests of the victims, to preserve the evidence, and also to safeguard the rights of all persons deemed suspects in the investigation. According to the information available, it does not appear that the authorities having knowledge of the allegations of abuse of the alleged victim undertook the corresponding investigations. Consequently, the IACHR concludes that in accordance with the provisions of Article 31.2 (b) of its Rules of Procedure the exception to the exhaustion of domestic remedies applies. Having regard for the foregoing, the IACHR considers that the filing of the petition on November 25, 2015 was done with a reasonable time, pursuant to Article 32.2 of the Commission's Rules of Procedure.

## VIII. ANALYSIS OF COLORABLE CLAIMS

23. The IACHR considers that the petition is not manifestly unfounded, and that the allegations of sexual, physical and psychological abuse, and the failure to investigate these allegations, if proven, would constitute violations of Article I (right to liberty and security of the person); Article V (right to honor and private life); Article VII (right to special protection of children); Article XXV (right to humane treatment); Article XXIV (right to petition); and Article XXVI (right to due process of law) of the American Declaration.

24. With reference to the State's contention that the fourth instance formula bars the IACHR from adjudicating this petition, the IACHR recognizes that the IACHR is not entitled to review judgments issued by domestic courts acting within their jurisdiction and in accordance with due process of law and the right to a fair trial. However, the Commission reiterates that, under its mandate, it is competent to find a petition admissible and, if applicable, decide on the merits of the case when the matter concerns domestic proceedings that may have been contrary to the rights protected by the American Declaration.<sup>20</sup>

## IX. DECISION

1. To find the instant petition admissible in relation to Articles I, V, VII, XXV, XXIV, XXVI of the American Declaration of the Rights and Duties of Man.

2. To notify the parties of this decision; to continue with the analysis on the merits; 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 21<sup>st</sup> day of the month of September, 2020. Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana Commissioners.

<sup>19</sup> IACHR, Report No. 82/17, Petition 1067-07. Rosa Angela Martino and Maria Cristina Gonzalez. Argentina. July 7, 2017, para. 12 (Exhaustion is intended to allow domestic authorities to hear the alleged violation of a protected right and settle the issue before having it brought before the IACHR).

<sup>20</sup> IACHR, Report No. 76/19, Petition 1495-08. Admissibility. Hugo Eduardo Ibarbuden. Argentina. May 21, 2019, para. 14.