

OEA/Ser.L/V/II
Doc. 197
4 August 2022
Original: English

REPORT No. 194/22
PETITION 937-15
REPORT ON ADMISSIBILITY

DARRELL FARLEY
UNITED STATES OF AMERICA

Approved electronically by the Commission on August 4, 2022.

Cite as: IACHR, Report No. 194/22, Petition 937-15. Admissibility. Darrell Farley.
United States of America. August 4, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Darrell Farley
Alleged victim:	Darrell Farley
Respondent State:	United States of America ¹
Rights invoked:	No specific provisions invoked

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	March 4, 2015
Additional information received at the stage of initial review:	Jan 28, 2019 and March 7, 2019
Notification of the petition to the State:	May 6, 2019
State's first response:	August 8, 2019

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 of the Rights and Duties of Man ³ (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	Article I (right to security of the person); Article XXV (right to humane treatment); and Article XXVI (right to due process of law) of the American Declaration
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

V. ALLEGED FACTS

1. This petition deals with claims of custodial mistreatment of Darrell Farley ("the petitioner" or "alleged victim") while incarcerated by the Virginia Department of Corrections ("the VDOC").

2. According to the petitioner, he has been incarcerated by the VDOC since 2014. He alleges that during his time of incarceration that he has been subjected to various acts of custodial mistreatment, including repeated rapes by other inmates and by prison officials. In this regard, the petitioner specifically mentions that he was raped by an inmate on November 16, 2018. According to the petitioner, this inmate told him that he had transmitted HIV to the petitioner. Generally, the petitioner alleges that VDOC has denied him any medical attention for possible HIV infections that he may have contracted because of the repeated rapes (including the rape in November 2018).

¹ Hereinafter "the United States", "the U.S." or "the State."

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

³ Hereinafter "Declaration" or "American Declaration."

3. The petitioner also alleges that he suffers from various medical conditions including asthma and Complex Post Traumatic Stress Disorder (“PTSD”). Regarding his asthma condition, the petitioner alleges that prison authorities have routinely denied him access to an inhaler and has failed to provide any treatment for his PTSD. The petitioner also complains of being placed in a cell with poor ventilation and high temperatures which served to aggravate his respiratory illness. Generally, the petitioner alleges that his health is deteriorating, and that he has been the subject of death threats from prison officials.

4. The petitioner states that he has invoked the internal grievance procedures of VDOC, but without any success. In this regard, the petitioner alleges that the Special Investigation Unit (part of VDOC) has simply turned a blind eye to complaints of rape. According to the petitioner, he also initiated two civil actions before the U.S. District Court for the Western District Court of Virginia (“the District Court”), and that these civil actions were pending at the time of filing of the petition. The petitioner alleges that because of poverty, he has not been able to retain a lawyer to represent him in these lawsuits. He further states that his poor health has also limited his capacity to prosecute these lawsuits, or any other domestic remedies. The petitioner subsequently states that “the court will not help me”. According to the record, the District Court dismissed his civil actions on March 17, 2017, and December 16, 2017.

5. The State rejects the petition as inadmissible principally on the following grounds: (a) failure to exhaust domestic remedies; and (b) failure to specify the place and date of alleged violations – as prescribed by Article 28 of the Commission’s Rules of Procedure.

6. With respect to the issue of exhaustion of domestic remedies, the State acknowledges that the petitioner initiated two civil actions in the District Court. The State further notes the petitioner’s claim that he was hampered in his ability to litigate these actions because he had no lawyer, together with other circumstances. Nevertheless, the State argues that the petitioner failed to exhaust prison grievance procedure, and that ultimately U.S. Courts found his claims to be “either unexhausted or [to] fail as a matter of law.” The State argues that “the domestic exhaustion requirement (which subsumes both administrative and judicial remedies) writ large remains both unaddressed and unfulfilled”. The State also notes that the litigation initiated by the petitioner was pending at the time of the petition, and therefore unexhausted. The State rejects the petitioner’s claim that “[t]he Courts and lawyers will not help at all,” arguing that the “[m]ere doubt as to the prospect of success in going to court is not sufficient to exempt a petitioner from exhausting domestic remedies.”

7. Further, the State asserts that despite the petitioner’s claim about the courts, he has continued to pursue domestic remedies. In this respect, the State indicated that the petitioner on December 20, 2018, filed a complaint, with the District Court alleging abuse by a variety of prison officials. According to the State, the Court issued an order on March 15, 2019, advising the petitioner of the changes that needed to be made to the complaint to conform to the Federal Rules of Civil Procedure. The State further indicates that the petitioner submitted an amended complaint on March 21, 2019, that remains pending with the court.

8. The State also contends that the documentation provided by the petitioner fails to provide a specific account, “specifying the place and date of the alleged violations,” as required by Article 28(4) of the Commission’s Rules of Procedure. For the State, this disqualifies the petition from consideration by the Commission.

9. The State also submits that the petitioner has not demonstrated compliance with the deadline for submitting petitions as prescribed by Article 32 of the Commission’s Rules of Procedure.

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

10. The parties diverge on the issue of exhaustion of domestic remedies. The State contends that petitioner failed to exhaust domestic remedies domestic remedies, while the petitioner alleges that he was hampered by reasons of health and lack of a lawyer, to fully prosecute domestic remedies.

11. The Commission notes the petition alleges custodial mistreatment including rape. 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. Moreover, the State has a special responsibility to guarantee the rights of persons deprived of liberty, since they are kept in institutions under the full control of State authorities.

12. 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 March 4, 2015, was done within a reasonable time, pursuant to Article 32.2 of the Commission's Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

13. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, the Commission considers that the petition is not manifestly unfounded. In this regard, the Commission believes that the allegations regarding: (a) the rape/ sexual abuse of the alleged victim; and (b) the failure of the State to act with due diligence or within reasonable time to investigate and clarify the facts (regarding the alleged abuse) are not manifestly unfounded and could characterize possible violations of Article I (right to security of the person); Article XXV (right to humane treatment); and Article XXVI (right to due process of law) of the American Declaration.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, XXV and XXVI of the American Declaration; and

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 4th day of the month of August, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Joel Hernández and Roberta Clarke, Commissioners.