

OEA/Ser.L/V/II
Doc. 5
20 January 2023
Original: English

REPORT No. 5/23
PETITION 1093-11
REPORT ON INADMISSIBILITY

BRIAN EUGENE LEPLEY
UNITED STATES OF AMERICA

Approved electronically by the Commission on January 20, 2023.

Cite as: IACHR, Report No. 5/23, Petition 1093-11. Inadmissibility. Brian Eugene Lepley.
United States of America. January 20, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Brian Eugene Lepley
Alleged victim:	Brian Eugene Lepley
Respondent State:	United States of America ¹
Rights invoked:	Articles I, (Right to life, liberty and personal security), II, (Right to equality before law), XI (Right to the preservation of health and to well-being), XVII (Right to recognition of juridical personality and civil rights), XXIV, (Right of petition), XXV, (Right of protection from arbitrary arrest), XXVI (Right to due process of law).

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	August 11, 2011
Additional information received at the stage of initial review:	September 23, 2011, November 28, 2011, January 31, 2012, and August 5, 2015
Notification of the petition to the State:	December 17, 2015
State’s first response:	October 19, 2016
Additional observations from the petitioner:	October 13, 2022
Notification of the possible archiving of the petition:	July 19, 2022
Petitioner’s response to the notification regarding the possible archiving of the petition:	October 9, 2022

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
Exhaustion of domestic remedies or applicability of an exception to the rule:	Not applicable
Timeliness of the petition:	Not applicable

¹ Hereinafter “the United States”, “the US”, or “the State”.

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

V. ALLEGED FACTS

1. This petitioner is an inmate of the Nevada Department of Corrections (“the NDOC”). His petition alleges that officials of the NDOC have committed various abuses of his human rights, including the right to due process.

2. The documentation from the petitioner does not provide any details on: (a) when the petitioner was imprisoned; (b) the term of imprisonment imposed; and (c) the nature of the conviction that led to the term of imprisonment. Generally, it should be noted that the petitioner’s documentation is partly illegible, and somewhat incoherent.

3. The grievances in the petition appear to arise largely from disciplinary proceedings that were conducted against the petitioner while he was incarcerated at the Lovelock Correctional Center. According to the file, the NDOC charged the petitioner with engaging in sexually stimulating activities (with another inmate) in violation of prison disciplinary rules. From the information available, it appears that the petitioner was accused of committing these activities on January 2, 2011. The petitioner denies that he committed any of these activities.

4. Based on file, it appears that the NDOC subsequently conducted an administrative hearing at which the petitioner was found guilty and given a punishment 24 months of disciplinary segregation. According to the petitioner he is HIV-positive. He alleges that because he received a different administrative punishment than a non-HIV positive inmate who was involved in the same incident. –It is not clear from the petitioner’s documentation how his punishment differed from the other inmate–. The petitioner contends that this constitutes a violation of his right to equal treatment. He also alleges that his due process rights were violated regarding the administrative hearing, because Nevada Administrative Regulation 610 (“AR 610”) requires that an inmate must admit guilt in order to be removed from indefinite administrative segregation.

5. The petitioner alleges that he was the subject of retaliation by the NDOC after he filed a tort claim on February 28, 2011, with the Office of the Nevada Attorney General. –The nature of this tort claim is unclear (from the petitioner’s documentation)–. In this respect, the petitioner contends that he was transferred to a maximum-security prison called Ely State Prison. At Ely State Prison, the petitioner alleges that he was placed in a feces-smear cell with food thrown up against the walls and floor. The petitioner also states that the cell had rat, vole, or mice feces in corner; ants coming in window, as well as dried ejaculate on wall, and no working intercom. He further alleges that prison officials initially refused to provide him with cleaning supplies, denied him food, and denied him access to his property for 17 days.

6. Based on the available information, it appears that the petitioner sought judicial relief (against the NDOC) principally before the U.S. District Court for the District of Nevada (a federal court). – There appears to be mention of other judicial proceedings in the petition, but the information on this is largely illegible, and there is no clear mention of the results of these judicial proceedings–. According to the file, the petitioner filed suit on October 26, 2011, pursuant to 42 U.S.C. §1983³, alleging various violations of his civil rights (arising from the incident that took place on January 2, 2011, at Lovelock Correctional Center). The petitioner’s documentation does not appear to indicate the outcome of this litigation.

7. The State rejects the petition as inadmissible principally on the ground that it is manifestly groundless pursuant to Article 34 of the Commission’s Rules of Procedure. The State also argues that to the extent that the petitioner may have ongoing lawsuits challenging his alleged treatment in prison, this would serve to make his claims inadmissible under Article 31 of the Commission’s Rules of Procedure for failure to exhaust domestic remedies. The State generally notes that the petitioner’s documentation is difficult to decipher, which in turn makes it difficult to determine the nature or status of the petitioner’s ongoing lawsuits.

³ This is a federal statute allowing for civil actions for deprivation of rights.

8. The State acknowledges that the petitioner's claims arise primarily from an alleged violation of prison rule (engaging in sexual stimulating activities) on January 2, 2011, together with the outcome and aftermath of consequential disciplinary proceedings against the petitioner. The State further acknowledges that the petitioner filed suit against NDOC in the U.S. District Court for the District of Nevada on October 26, 2011, pursuant to 42 U.S.C. §1983, alleging various violations of his civil rights (arising from the incident that took place on January 2, 2011, at Lovelock Correctional Center).

9. The State submits that this lawsuit was ultimately dismissed on May 30, 2013, after the petitioner and officials of NDOC executed a settlement agreement regarding the petitioner's claims. In this respect, the State indicates that the settlement agreement provided for the settlement of all claims, disputes and controversies arising from the alleged violation of the petitioner's rights. The State further submits that pursuant to the settlement agreement the NDOC agreed to expunge the disciplinary violation arising from the incident of January 2, 2011, including the removal of various adverse consequences from this violation. The State also indicates that under the settlement agreement, the petitioner was awarded "240 statutory good time credits" which translated into a 144-day reduction in the petitioner's sentence.

10. Further the State indicates that another term of the settlement agreement provided that the petitioner would be seen by a full Classification Committee within the Ely State Prison prior to a medical transfer to the High Desert State Prison. The State also asserts that the settlement agreement stipulated that [the petitioner] "hereby releases and forever discharges the Defendants [...] and all other persons [...] from any and all liability relating to the claims asserted, or which could have been asserted, relating to the civil rights complaint". Further the State indicates that the settlement agreement stipulated that it "is entered into in good faith and fully settles all claims that [the petitioner] asserted against the Defendants" in the federal court case.

11. According to the State, the settlement agreement and ensuing dismissal of the petitioner's case in the U.S. District Court shows that the petitioner received adequate and effective remedies for his claims, to which he freely and fully agreed, through the process of exhausting remedies through the U.S. court system. The State submits that the settlement agreement effectively discharges all liability against the NDOC and its past, present, and future officials relating to the claims that the petitioner asserted, or could have asserted, in the federal court case. The State further submits that these claims include those asserted by the petitioner before the Commission. In this regard, the State asserts that the settlement agreement effectively precludes the petitioner from bringing these claims before the Commission; and that the petitioner cannot now assert that the United States violated his human rights with regard to the matters raised in his lawsuit, which he voluntarily settled and forever relinquished in a binding agreement.

12. The State submits that nothing in the principles established by the American Declaration or in the IACHR's Rules would suggest that the Commission should intervene in a matter that has been voluntarily settled between a petitioner and the governmental authorities that he accuses of violating his rights. Further, the State submits that implicit in the requirement of exhaustion is the incontrovertible principle that if a petitioner has received an effective remedy in the domestic system, then his or her claim is not admissible before the international forum. Based on the foregoing, the State concludes that the petition is manifestly groundless and therefore inadmissible.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND COLORABLE CLAIM

13. Article 31 (1) of the Commission's Rules of Procedure provides that for a petition to be admissible the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law. This requirement ensures the State the opportunity to hear the alleged violation of a protected right and, if applicable, settle the issue before it is brought before an international body settle human rights complaints within its own system of justice before being addressed by an international body.

14. Based on the documents and information provided, it appears that the petitioner's complaint was litigated primarily before the U.S. District Court for the District of Nevada between October 2011 and

May 2013. The petition appears to mention other judicial proceedings, but the information on this is largely illegible, and there is no clear mention of the results of these judicial proceedings.

15. Regarding the litigation before the U.S. District Court for the District of Nevada, the available information shows that the petitioner entered into a settlement agreement with the NDOC in May 2013, resulting in the resolution of the petitioner's claims, as well as the (consensual) termination of the litigation by both parties. Ultimately, it appears that the petitioner's complaint was redressed domestically, and, in the circumstances, the Commission considers that issue of exhaustion of domestic remedies has now been rendered moot. Alternatively, the Commission considers that the petitioner has provided no other information upon which the Commission might (a) determine whether he was dissatisfied with the settlement/resolution; and/or (b) verify whether he pursued or exhausted any other available remedies to redress any such dissatisfaction. Moreover, As indicated before, the information in the petition on exhaustion of domestic remedies is largely illegible and incomplete.

16. Based on the foregoing, the Commission further 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.

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 20th day of the month of January, 2023. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Joel Hernández and Roberta Clarke, Commissioners.