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REPORT No. 29/23
PETITION 1796-15
REPORT ON INADMISSIBILITY

JORGE PALACIOS
UNITED STATES OF AMERICA

Approved electronically by the Commission on February 26, 2023.

Cite as: IACHR, Report No. 29/23, Petition 1796-15. Inadmissibility. Jorge Palacios. United States of America. February 26, 2023.

I. INFORMATION ABOUT THE PETITION

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

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	October 6, 2015
Additional information received at the stage of initial review:	August 24, 2016, March 7, 2017, April 26, 27, 2017, January 24, 2018, November 7, 2019
Notification of the petition to the State:	November 25, 2019
State's first response:	May 8, 2020
Additional observations from the petitioner:	August 17, 2020, May 10, 2021, December 3, 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 on the Rights and Duties of Man ³ (ratification of 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:	N/A
Timeliness of the petition:	N/A

V. ALLEGED FACTS

1. The petitioner appears to be an inmate of the California prison system, and more particularly, the Mule Creek State Prison (MCSP). The petitioner alleges that he has multiple health problems which have either been inadequately treated or ignored by the prison authorities.

2. According to the petitioner, he is an elderly man who has suffered from two heart attacks (one in 2012 and another in 2014). Regarding the heart attacks the petitioner indicates that he did undergo two angioplasty procedures and that stents were placed in his arteries. The petitioner also claims that he was diagnosed with cancer (Hodgkin Lymphoma) for which he received eight sessions of chemotherapy. The petitioner alleges that due to the cancer and the cancer treatment, he suffered from intense muscular-skeletal pain which in turn impeded his mobility. The petitioner indicates that he was given a walking cane, but that

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

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

³ Hereinafter "the American Declaration" or "the Declaration".

this was subsequently taken away from him. He claims that he repeatedly asked his physician to have the cane returned, but that the cane was not returned to him until a prison officer did so. According to the petitioner, the absence of the cane resulted in the petitioner suffering from an inguinal hernia. This appears to have occurred in 2017.

3. The petitioner claims that it took two years for the prison authorities to arrange for him to have the necessary surgery to correct the inguinal hernia. The petitioner claims that he suffered chronic pain from the hernia while awaiting surgery. The petitioner states that given his health problems, he needed a special diet that included citrus fruits and raw vegetables, and which excluded fat/grease. The petitioner alleges that he was not given such diet. The petitioner also claims that he was prescribed Vitamin D injections but that this was ultimately cancelled/rejected by his physician.

4. The petitioner also complains that he (and other inmates) was denied access to regular showers, even when the temperature rose to 90 degrees or higher. According to the petitioner, access to showers was often restricted to three days a week. He claims that the prison authorities justified the restriction as a water conservation measure.

5. The petitioner states that the MSCP does not have full medical facilities. Given the scope of his medical issues, the petitioner states that he has repeatedly asked to be transferred to another prison that offers full medical facilities but has so far been denied.

6. According to the petitioner, in 2017, he filed a civil rights suit before a federal court, alleging that he had been subjected to deliberate indifference to his medical needs.⁴

7. The petitioner also complains that Hispanic and Mexican-American inmates are subjected to discrimination in the MSCP.⁵

8. The State rejects the petition as inadmissible contending that the petitioner failed to exhaust domestic remedies and further, that the petition fails to state any facts that tend to establish violations of the American Declaration.

9. The State notes that on November 10, 2017, the petitioner initiated litigation before the United States District Court, Eastern District of California (a federal court), in which he asserted three claims of deliberate indifference to serious medical needs against his doctors and other medical personnel. The State indicates that this lawsuit was a civil right action pursuant to 42 U.S.C. § 1983.⁶

10. Based on the record, it appears that on November 30, 2018, the court issued a preliminary dismissal of the petitioner's complaint but granted the petitioner leave to amend (and refile) his complaint. The State indicates that an amended complaint from the petitioner was, on June 20, 2019, dismissed due to failure to state a (colorable) claim and, also failure to exhaust administrative remedies (under the Prison Litigation Reform Act). The State indicates that the court found, among other things, that the petitioner could not be transferred to the prison of his choice due to other health concerns; and that he had been evaluated on several occasions by different medical professionals, including individuals not identified in the petition. The court also dismissed an application by the petitioner for an injunction relating to access to medication and a desired relocation to another prison facility. On August 21, 2019, the State indicates that the court issued a final set of findings and recommendations dismissing the petitioner's claims (particularly his application for an injunction). The State indicates that under the terms of the ruling, the petitioner was granted 21 days to file any objections (to the ruling). To date, the State indicates that the petitioner has not filed any such objections; nor

⁴ The petitioner doesn't indicate the outcome of this suit.

⁵ The petitioner does not provide any specific information about discrimination that targeted him specifically.

⁶ This is a federal statute known as the Civil Action for Deprivation of Rights Act.

11. Generally, the State argues that the petitioner has failed to exhaust both administrative and judicial remedies regarding his claims about inadequate medical treatment. With respect to administrative remedies, the State indicates that pursuant to the Prison Litigation Reform Act (PLRA), the petitioner is obliged to pursue administrative remedies (under the PLRA) before pursuing judicial remedies.⁷ The State contends that the petitioner's failed to pursue and exhaust such administrative remedies prior to initiating judicial proceedings in 2017; and that there is no indication that the petitioner has cured this defect.

12. The State also contends that, even if the petitioner had exhausted these administrative remedies, he has not exhausted judicial remedies. In this regard, the State argues that it was open to the petitioner to challenge the final order of the court, such as by way of appeal. The State submits that the petitioner has failed to do so, and therefore has failed to satisfy the exhaustion requirements.

13. The State contends that the petitioner has failed to state facts that might amount to a violation of the American Declaration. In this regard, the State submits, among other things, that the petitioner has not substantiated his claim that that action or inaction on the part of medical professionals was deliberately indifferent and subsequently resulted in health problems (such as an inguinal hernia). The State also submits that a difference of opinion between the petitioner and medical professionals regarding appropriate medical treatment and diagnosis does not amount to a violation of any right under the American Declaration. In relation to the petitioner's claim that medical personnel denied him access to medical services such as his cane, the State argues that disagreement (with medical personnel) by the petitioner on the need for a cane or walker is not sufficient to substantiate an allegation of a violation of any right under the American Declaration.

14. The State generally contends that while the petitioner is challenging the sufficiency of his medical care, his claims regarding the actions of his doctors and medical personnel are too vague and inconclusive to support violations of the American Declaration. Further, the State argues that the findings of the court do not support the petitioner's claims that he was denied services that were necessary for the preservation of his health. Finally, the State rejects the petitioner's claim that Hispanic and Mexican-American inmates are subjected to discrimination. The State indicates against there are simply no facts presented by the petitioner litigation to suggest that petitioner has suffered from such discrimination.

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

15. 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.

16. The Commission notes that the petitioner's complaints are primarily about failure by correctional authorities to provide adequate or timely medical attention for various health problems, including an inguinal hernia. For the State, the petitioner has failed to exhaust administrative or judicial remedies with respect to all these claims.

17. According to the record, it appears that the petitioner litigated his claims before the United States District Court, Eastern District of California, commencing in November 2017. It appears that these claims were considered by the court in various proceedings which ultimately resulted in findings and recommendations (in August 2019) that amounted to a dismissal of the petitioner's claims. petitioner. According to the record, it was open to the petitioner to challenge this judicial decision (for example by

⁷ According to the State under the PLRA, "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

appeal) but that there is no evidence on the file to indicate that he attempted to do so (or was prevented from doing so). Having regard for the foregoing, the Commission is unable to verify whether the petitioner pursued and exhausted domestic remedies; or whether there are any circumstances that warrant an exemption from the requirement to exhaust domestic remedies. Accordingly, the Commission considers this petition to be inadmissible.

VII. ANALYSIS OF COLORABLE CLAIM

18. Whereas the foregoing conclusion on the issue of domestic remedies is sufficient to dispose of this petition, the Commission nevertheless wishes to make some observations regarding the applicability of the fourth instance doctrine to this matter. In this respect, the IACHR notes 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 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. Based on available information, the Commission considers that the petitioner was accorded all due judicial guarantees, and that he has not provided sufficient evidence to indicate, *prima facie*, any violations of his rights as guaranteed by the American Declaration.

19. In relation to the petitioner's claim of discrimination, the IACHR considers that the petitioner has not presented any arguments or sufficient grounds to demonstrate *prima facie* violations of his rights in this regard.

VIII. 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 26th day of the month of February, 2023. (Signed:) Julissa Mantilla Falcón, President; Stuardo Ralón Orellana, Vice President; Margarete May Macaulay, Second Vice President; and Roberta Clarke, Commissioners.