OEA/Ser.L/V/II.
Doc. 285
3 December 2020
Original: English

REPORT No. 269/20
PETITION 688-10

REPORT ON ADMISSIBILITY

SEAN PAUL SWAIN
UNITED STATES OF AMERICA

Approved electronically by the Commission December 3, 2020

Cite as: IACHR, Report No. 269/20, Petition 688-10. Admissibility. Sean Paul Swain. United States of America. December 3, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Sean Paul Swain
Alleged victim:	Sean Paul Swain
Respondent State:	United States of America[1]
Rights invoked:	Articles I (life, liberty and personal security), II (equality before law), III (religious freedom and worship), IV (freedom of investigation, opinion, expression and dissemination), VIII (residence and movement), X (inviolability and transmission of correspondence), XI (preservation of health and well-being), XIII (culture), XIV (work and fair remuneration), XV (leisure time and the use thereof), XVII (recognition of juridical personality and civil rights), XVIII (fair trial), XIX (nationality), XX (vote and participation in government), XXI (assembly), XXII (association), XXIII (property), XXIV (petition), XXV (protection from arbitrary arrest), XXVI (due process of law) of the American Declaration of the Rights and Duties of Man[2]

II. PROCEEDINGS BEFORE THE IACHR[3]

Filing of the petition:	May 11, 2010
Additional information received at the stage of initial review:	January 19, 2011; January 9, 2012
Notification of the petition to the State:	November 5, 2012
State's first response:	July 23, 2015
Additional observations from the petitioner:	November 26, 2012; January 7, 2013; September 9, 2019
Additional observations from the State:	July 18, 2017
Notification of the possible archiving of the petition:	June 5, 2017; October 2, 2018
Petitioner's response to the notification regarding the possible archiving of the petition:	September 9, 2019

III. COMPETENCE

Competence *Ratione personae:*	Yes
Competence *Ratione loci*:	Yes
Competence *Ratione temporis*:	Yes
Competence *Ratione materiae*:	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 *res judicata*:	No

[1] Hereinafter "U.S." or "United States."
[2] Hereinafter "American Declaration".
[3] The observations submitted by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles I (life, liberty and personal security), IV (freedom of investigation, opinion, expression and dissemination), X (inviolability and transmission of correspondence), XI (preservation of health and well-being), XVII (recognition of juridical personality and civil rights), XVIII (fair trial), XXVI (due process of law) of the American Declaration
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of section VI
Timeliness of the petition:	Yes, May 11, 2020

V. ALLEGED FACTS

1. The petitioner and alleged victim, Sean Paul Swain, is currently serving a life sentence after being convicted for murder and aggravated murder in 1995 by the State of Ohio. He alleges that he was never regularly convicted or sentenced under domestic law, but was rather detained for his political thoughts, and that the State of Ohio did not have jurisdiction to arrest and imprison him. He claims violation of his right to freedom of expression; cruel and inhumane treatment, as well as torture, suffered as a result of the publication of his work and his report of abuse suffered by him and other inmates; denial of due process in his internal disciplinary hearings; and denial of access to courts through obstruction of his correspondence and limitation of his access to legal information and records.

2. The petitioner claims that he was unlawfully arrested, tried and convicted because the State of Ohio and the trial court that convicted him did not have jurisdiction to do so. The petitioner filed various remedies of habeas corpus asserting this, all dismissed. The petitioner filed a first petition for habeas corpus and a petition for a writ of certiorari to the Supreme Court of Ohio, both dismissed, on December 16, 2009, and April 26, 2010, respectively. He again filed a writ of habeas corpus in 2016, asserting that the trial court that convicted him acted without jurisdiction in exceeding the scope of the appellate court's mandate and in permitting the jury to consider a murder charge that the state had allegedly dismissed before sentencing at Swain's first trial. The Court of Appeal dismissed the action, and this decision was confirmed by the Supreme Court on July 27, 2017. The latter found that the trial court had not departed from the court of appeal's mandate when ruling on an expert testimony, and that the petitioner had a direct remedy to challenge the trial's court evidentiary ruling, which he did, unsuccessfully; the Court also found that the trial court did not lack jurisdiction to sentence him for the charge of aggravated murder. The Court specified that to the extent the petitioner would have been arguing actual innocence, he had an adequate remedy to assert that claim. He presented another writ of habeas corpus in 2018, alleging that the trial court in which he was convicted lacked jurisdiction because it was operating outside the territory of Ohio, arguing it was rather an unceded Indian territory under the Treaty of Greenville, signed August 3, 1975. The action was dismissed by the Supreme Court of Ohio on October 10, 2018. The Court indicated that the territory on which the petitioner was arrested, tried, and convicted was part of Ohio since the Treaty of Fort Industry, signed July 4, 1805; thus, the petitioner's assertion that said territory had never been ceded to the United States is incorrect.

3. Additionally, the petitioner alleges that he was submitted to harsh treatment while incarcerated as a result of his beliefs and ideology, and because he denounced the conditions of detention and abuses, he was victim of, or testimony to. He submits he became aware of a torture cell within the prison and witnessed the torture of a fellow prisoner. Due to his reporting of that incident, he claims, and subsequent denunciation of what he saw while incarcerated, he was assaulted, beaten up and tortured, regularly being put in segregation despite not being found guilty of any misconduct. He alleges he was regularly denied medical treatment for his injuries. He claims he was placed on several occasions in a suicide cell without food or water, including on one occasion for four days during which he suffered a seizure (for which he was taken to the hospital, before being put back in the suicide cell), without always being accused and found guilty of a rule violation. He also claims he was transferred to a mental health unit, despite not being mentally ill, for a period of at least 30 days.

4. The petitioner further indicates that between 2005 and 2008, some of his writing was published and he was invited to collaborate to different projects, talking about his political views. Around May 2005, collections of his writings about the abuses he suffered in prison and his criticism of the prison complex's agenda were published in a book. On April 2008, he was invited to contribute a statement to a conference organized by human rights advocate. He alleges he was then accused of violating a prison disciplinary rule by encouraging other prisoners to engage in work stoppage – he alleges this was not an accurate representation of his writings and expressed opinions, and that some accusations were bluntly false. He also claims that some of the writings at stake was not his, and that, in any case, they were misinterpreted. The petitioner indicates that he unsuccessfully challenged the finding of a violation in two appeals before the Rules Infraction Board[4], and that both were irregular and rigged. He claims further efforts to pursue administrative appeals and legal actions were deliberately thwarted by prison officials, alleging he was denied grievance and complaint forms, denied access to prison regulations and policies, that his law library access was harassed and that the prison official delayed processing of outgoing legal mail as well as destroyed incoming legal mail. As a consequence of the rule violation, he was transferred to segregation[5], where he was kept for seventy days. He was held in solitary confinement for 23 hours a day, subjected to 24 hours/day artificial lighting, leading to sleep deprivation, selectively denied writing materials and envelopes he had purchased designed to keep him incommunicado, refused access to legal material (including his own court records and materials), provided only a starvation diet, denied laundry facilities and any cleaning supplies, forced to shower in front of other prisoners, housed in cells next to mentally ill prisoners.

5. The petitioner filed a civil rights action in the United States District Court in November 2009, alleging violation to his rights to free speech, to due process, to equal protection and to access to the courts, for his correspondence having been violated, as well as cruel and unusual punishment by his placement in extended administrative segregation, amounting in violation of his constitutional rights and international treaties. The Court dismissed his remedy on May 19, 2010. The Court found that given the nature of the speech by the petitioner – including encouraging inmates to lay on their bunkbeds for thirty days to get "whatever the hell [they] asked" –, disciplining him for this was reasonably related to legitimate penological interests and was not in violation of the First Amendment. The Court then found no evidence that the petitioner had been prevented from presenting a defense in the disciplinary processes and further that he had been given adequate due process as he was notified of the hearing, had had an opportunity to call witnesses and present evidence and had been provided with a written statement of the evidence relied on and reason for the disciplinary action. The Court also found insufficient basis regarding the allegation of violation of his right to equal protection, and no violation of the petitioner's constitutional right of access to the courts, since he could not demonstrate actual injury. Finally, the Court found that the treatments alleged by the petitioner following the publication of his opinions did not amount the extreme deprivations required to find cruel and unusual treatment, and at most indicated discomfort as opposed to a denial of some element of civilized human existence. On appeal, the Sixth Circuit affirmed the lower court's decision on August 8, 2011, and a leave to file a writ of certiorari to the US Supreme Court was denied on October 11, 2011. The petitioner claims that in retaliation for the court actions he filed, he was found guilty of non-existent rule violations and punitively transferred to another prison and place on a "security threat group".

6. For its part, the State submits that the alleged victim is not being retaliated against for works published in prison, but rather for his involvement in a prison security threat group known as the Army of the Twelve Monkeys. The State alleges that the petitioner distributed pamphlets inciting other inmates to unite and riot against prison administration, directly threatening the prison wardens, in addition to his participation in the creation of the group and a personal blog for the purpose of threatening, harassing and/or intimidating staff. The alleged victim is accordingly in violation of the rules of conduct regarding unauthorized group activities, conspiration with others to riot. The State indicates that an earlier disciplinary hearing was held where the charges were overturned due to errors in the hearing and charges, but that the current charges, as of 2013, reflect an intent by the alleged victim to cause disruption in the Ohio prison system and intimate, threaten and harass employees of the Ohio Department of Rehabilitation and Correction. The alleged victim is

[4] The petitioner indicates having also communicated his situation and the one of other inmates to multiple authorities, including the wardens of the prisons where he was detained, the Correction Institution Inspection Committee of the Ohio Assembly, and Ohio Senators.

[5] The petitioner claims having been transfered to segregation on others occasions, always because of his ideology and political views.

held in segregation because of his security threat group involvement and threatening behavior. The State further submit that there is no evidence of torture or inappropriate supervision.

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

7. The Commission notes that the petitioner filed three writ of habeas corpus, alleging the lack of jurisdiction of the State of Ohio and the trial court that convicted him, all of which were dismissed by the Supreme Court of Ohio, on April 26, 2010, July 7, 2017 and October 10, 2018. The Commission concludes that the petitioner thus exhausted the domestic remedies in reference to his claim of unlawful jurisdiction, meeting the requirement provided for under Article 31.1 of the Rules of Procedure of the IACHR.

8. Additionally, the petitioner challenged the decisions by which he was found guilty of violating the prisons disciplinary rules in front of the Rules of Infraction Board, which dismissed his complaint on two occasions. The Commission observes that the petitioner then filed a civil rights action in the United Stated District Court, in which he presented allegations regarding the lack of due process and access to the courts in the prison disciplinary remedies, the violation of his right to free speech and equal protection, as well as the cruel and unusual punishments he suffered while incarcerated. On May 19, 2010, the Court dismissed the petitioner's remedy, a decision confirmed on August 8, 2011, by the Sixth Circuit Court. On October 11, 2011, the US Supreme Court denied the writ of certiorari presented by the petitioner. In light of the above, the Commission concludes that the petitioner exhausted the domestic remedies, in accordance with Article 31.1 of its Rules of procedures.

9. Given that the petition was received by the Commission on May 11, 2010, the IACHR concludes that the petition was filed within reasonable time in the terms of article 32.2 of its Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

10. The Commission notes that this petition includes allegations regarding harsh and inhumane detention conditions, as well as torture, suffered as a result of the publication of the petitioner's writings, constituting a violation of his freedom of expression, as well as regarding the denial of due process in internal disciplinary hearings and civil courts, through obstruction of his correspondence and limitation of his access to legal information and records. In view of these considerations and after examining the elements of fact and law presented by the parties, the Commission considers that the claims of the petitioner are not manifestly unfounded and require a substantive study on the merits as the alleged facts, to be corroborated as certain could characterize violations of Articles I (life, liberty and personal security), IV (freedom of investigation, opinion, expression and dissemination), X (inviolability and transmission of correspondence), XI (preservation of health and well-being), XVII (recognition of juridical personality and civil rights), XVIII (fair trial), XXVI (due process of law) of the American Declaration.

11. Concerning the alleged violation of Articles II (equality before law), III (religious freedom and worship), VIII (residence and movement), XIII (culture), XIV (work and fair remuneration), XV (leisure time and the use thereof), XIX (nationality), XX (vote and participation in government), XXI (assembly), XXII (association), XXIII (property), XXIV (petition), XXV (protection from arbitrary arrest) of the American Declaration, the Commission notes that the petitioner has not submitted elements to warrant prima facie consideration of a possible violation of these Articles; therefore, that claim must be declared inadmissible.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I[6], IV, X, XI, XVII, XVIII, XXVI of the American Declaration.

2. To find the instant petition inadmissible in relation to Articles II, III, VIII, XIII, XIV, XV, XIX, XX, XXI, XXII, XXIII, XXIV, XXV of the American Declaration.

[6] On September 27, 2021, the IACHR Executive Secretariat rectified a material error in this report by including Article I of the American Declaration among the rights declared admissible, in accordance with paragraph 10 above.

3. 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 3rd day of the month of December 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, and Julissa Mantilla Falcón, Commissioners.