

OEA/Ser.L/V/I.
Doc. 375
18 December 2022
Original: English

REPORT No. 367/22
PETITION 909-15
REPORT ON ADMISSIBILITY

MICHAEL BROWN, JR. & LESLEY MCFADDEN
UNITED STATES OF AMERICA

Approved electronically by the Commission on December 18, 2022.

Cite as: IACHR, Report No. 367/22, Petition 909-15. Admissibility. Michael Brown, Jr. & Lesley McFadden. United States of America. December 18, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Justin Hansford & Wade H. McMullen, Jr.
Alleged victims:	Michael Brown, Jr. & Lesley McFadden (mother of Michael Brown, Jr).
Respondent State:	United States of America ¹
Rights invoked:	Articles I ((right to life, liberty and personal security), II (right to equality before the law), XVIII (right to a fair trial), XXV (right of protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration on the Rights and Duties of Man ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	May 25, 2015
Notification of the petition to the State:	November 17, 2021
State's first response:	March 18, 2022
Notification of the possible archiving of the petition:	September 14, 2020
Petitioner's response to the notification regarding the possible archiving of the petition:	October 14, 2020

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	Articles I (right to life, liberty and personal security), II (right to equality before the law), XVIII (right to a fair trial), XXV (right of protection from arbitrary arrest), and 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

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

² Hereinafter "the American Declaration" or "the Declaration".

³ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petition contends that on August 9, 2014, Michael Brown Jr (“MB”) was shot and killed in Ferguson, Missouri by a police officer in circumstances that amounted to extrajudicial execution. The petition further contends that the killing of MB, an African-American, occurred within the context of systematic abuse and degrading treatment of black racial minorities (including excessive use of force) by a predominantly white police officers in Ferguson, Missouri, and the United States as a whole.

2. According to the petition at approximately noon on August 9, 2014, MB was walking down street with a friend when they were approached by a white police officer by the name of Darren Wilson. The petition indicates that the police officer was driving a police vehicle when he approached MB and his friend. According to the petition, the police officer ordered MB and his friend to “get the [expletive] off the sidewalk.” The petition alleges that a struggle ensued, following which the police officer fired his gun at MB, hitting him in the hand. According to the petition, MB ran away, but was chased by the police officer on foot. The petition states that MB subsequently raised his hands to surrender and begged the police officer not to shoot. However, the petition alleges that the police officer continued to fire several shots at MB, which ultimately led to his death.

3. The petition alleges that audio recordings of the shooting confirm that the police officer fired at least 10 bullets. The petition further alleges that an independent pathologist found that MB was hit by six bullets. According to the petition, the autopsy revealed that the bullets found in MB included one that entered his eye and another at the top of the head which could suggest that MB’s head was lowered as he collapsed or kneeled to surrender.

4. According to the petition, MB’s body was left uncovered in the middle of street for over four hours. The petition further alleges that the police officer made no effort to resuscitate MB, nor did he call for an ambulance. Given the history of systematic degrading treatment of black minorities by the police racial (in Ferguson and the United States as a whole), the petition alleges that this treatment of MB’s body, was traumatic for his family, including his mother: Lesley McFadden.

5. According to the petition, a grand jury was convened by the office of St. Louis County Prosecutor Robert McCulloch to determine whether the police officer should be indicted for any criminal offenses arising out of the death of MB. The petition states that ultimately, in November 2014, the grand jury decided against indicting the police officer. The petition alleges that the grand jury proceedings were improperly conducted. In this respect, the petition contends, for example, that the police officer was allowed to offer his own testimony, unchallenged by prosecutors, for over four hours. More specifically, the petition alleges that prosecutors did not challenge the police officer’s testimony even though it conflicted with his prior statements to law enforcement and the physical evidence.⁴

6. According to the petition, the suspect under investigation by the grand jury does not usually have a right to testify or to have exculpatory evidence presented. In this respect, the petition alleges that the police officer was allowed to testify and present exculpatory evidence, which is inconsistent with the way grand jury proceedings are conducted. The petition further points out that in the United States, normally a prosecutor provides a grand jury with the bare minimum amount of evidence needed to support probable cause. Based on this standard, the petition asserts that, less than .01 percent of prosecutions fail to go forward because of a grand jury failure to indict. However, the petition alleges that this standard was not applied to the police officer, who was allowed to present wide-ranging testimony without challenge.

⁴ In this regard, the petition states that the police officer first told police investigators that he did not suspect MB or his companion of having committed a crime when the physical altercation between him and MB occurred. Yet in his unchallenged grand jury testimony, the petition alleges that he testified that he did suspect the pair of having robbed a nearby convenience store when the altercation occurred. The police officer also told his supervisor that MB ran about 30 to 40 feet away from his vehicle before the fatal shooting occurred. Yet MB’s body was found over 100 feet from the police officer’s vehicle, indicating that the police officer pursued the fleeing MB farther than he first stated to his supervisor.

7. The petition also contends that the St. Louis County Prosecutor Robert McCulloch admitted to knowingly presenting perjured evidence from a witness who provided testimony supporting the police officer. In this regard, the petition alleges that this witness was not cross-examined. By contrast, the petition contends that the prosecutors cross-examined another witness whose testimony supported a probable cause finding. During this cross-examination the prosecutors falsely claimed that this witness's testimony did not comport with the physical evidence or with his prior statement to law enforcement.

8. According to the petition, the failure of the grand jury to indict the police officer led to widespread outrage. The petition indicates that this prompted the U.S Department of Justice elected to conduct its own federal criminal investigation. In this regard, the petition indicated that the federal investigation did not seek to determine whether the police officer's actions violated any Missouri laws, such laws on murder or manslaughter. Instead, the investigation sought to determine whether the police officer's actions should be prosecuted under the federal civil rights statute, 18 U.S.C. §242, which prohibits uses of deadly force that are "*objectively unreasonable*".

9. The petition states that to prove a violation of 18 U.S.C. §242, the government must prove beyond a reasonable doubt that: (1) the defendant was acting under color of law; (2) that he deprived a victim of a right protected by the Constitution or laws of the United States; (3) that he acted willfully; and (4) that the deprivation resulted in bodily injury and/or death. The petition asserts that the third element, willfulness, has been interpreted to effectively mean "*specific intent*". In other words, there must be evidence to prove that the defendant officer intended to engage in unconstitutional conduct, and that he did so knowing that it is a wrongful act. According to the petition, on March 4, 2015, the U.S Department of Justice declined to initiate proceedings against the police officer after investigators concluded "there was no credible evidence to refute the police officer's stated subjective belief that he was acting in self-defense. The petition challenges this conclusion, asserting that the investigators appeared to dismiss the testimony of at least two witness who claimed that MB turned around with his hands raised in surrender, and that he had never reached for a weapon (from his waistband).

10. The petition alleges that the State has ultimately failed to discharge its duty to effectively investigate or clarify the circumstances leading to the death of MB, or to take steps to prosecute the person responsible violations of MB's rights. More generally, the petition further contends that the State failed to prevent or address the systematic pattern of racially motivated police excesses that led to the shooting death of MB. Further, the petition submits that this failure of the State led to the violation of multiple rights of MB as well as his surviving mother Lesley McFadden.

11. The petitioners contend that the domestic remedies were effectively exhausted with the decision of the grand jury on November 24, 2014, not to indict the police officer for the homicide of MB. According to the petitioner, there are no other domestic remedy exists to challenge the grand jury's decisions and/or to the State's failure effectively investigate or prosecute the alleged violations of MB's rights. Additionally, or in the alternative, the petitioners assert that they had no further recourse after the U.S. Department of Justice declined to bring a federal prosecution against the police office on March 4, 2015.

12. The petitioners submit that the petition was filed in a timely manner pursuant to Article 32 (1) of the Commission's Rules of Procedure. In this regard, the petitioners state the petition was submitted on May 24, 2015, which was within six months of the grand jury's decision. The petitioners further submit that the petition was submitted within three months of the decision of the U.S. Department of Justice not to bring a federal prosecution against the police officer.

13. The State submits that the petition should be archived or declared inadmissible based mainly on supervening information that the petitioner has failed to provide. In this regard, the State asserts that the parents of MB filed a wrongful death suit against the city of Ferguson in April 2015. The State further submits that on June 20, 2017, the United States District Court (Eastern District of Missouri) approved a settlement between the parents of MB and the city of Ferguson. The State asserts that the settlement demonstrates that the petitioners have now received adequate and effective remedies for the actions surrounding the death of MB.

14. The State further submits that nothing in the principles established by the American Declaration or in the Commission's Rules of Procedure would suggest that the IACHR should intervene in a matter that has been voluntarily settled between a petitioner and governmental authorities that are accused of violating the petitioner's rights. Further, the State contends that implicit in the requirement of exhaustion in Article 31 of the Rules is the incontrovertible principle that if a petitioner has received an effective remedy in the domestic system, then their claim is not admissible before the international forum. Accordingly, the State concludes that this supervening information renders the petition inadmissible and out of order consistent with Articles 31 and 34 of the Commission's Rule of Procedure.

15. The State submits that there is further supervening information that renders the petition inadmissible and out of order. In this regard, the State contends that in 2018, Wesley Bell placed Robert McCulloch as the St. Louis County Prosecutor. In July 2020, the State indicates that Wesley Bell announced that he had reopened the investigation into the death of MB, and conducted a five-month review of the evidence in the case. At the end of that review, the State submits that Wesley Bell's office concluded that it could not prove beyond a reasonable doubt that the police officer committed murder or manslaughter under Missouri law when he shot MB. The State further submits that this supervening information is directly relevant to the claims in the petition concerning whether there was an effective criminal investigation and renders those claims out of order and inadmissible.

16. The State indicates that the U.S. Department of Justice undertook an investigation into the Ferguson Police Department regarding alleged patterns of unlawful conduct. The State submits that the U.S. Department of Justice ultimately issued a report on March 4, 2015, which identified a pattern or practice of unlawful conduct within the Ferguson Police Department, including unreasonable force and discriminatory policing. Additionally, the State submits that in March 2016, the U.S. Department of Justice reached a court-enforceable agreement with the City of Ferguson intended to remedy the patterns or practices identified in the investigation. According to the State, this agreement requires significant reforms, including policy revisions; increased training, including training in bias-free policing and use of force; robust accountability systems; and enhanced data collection.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES, OVERALL ADMISSIBILITY OF THE CLAIM *VIS-Á-VIS* THE REPARATIONS RECEIVED AT THE DOMESTIC LEVEL, AND TIMELINESS OF THE PETITION

17. The parties diverge on the issue of exhaustion of domestic remedies. The petitioners contend that all available domestic remedies were exhausted by the completion of the grand jury proceedings; and the investigation by the Department of Justice, neither of which resulted in any criminal indictment against the police officer who shot MB. The State argues that the settlement of the wrongful death suit in 2017 effectively provided the petitioners with an effective remedy in the domestic system, and that the petitions is therefore inadmissible.

18. In this regard, the IACHR has consistently ruled that in cases of serious violations of the rights to life and physical integrity, such as in cases of possible torture followed by extrajudicial killing, the adequate domestic remedy that needs to be exhausted is the criminal investigation into the facts, aimed at identifying, prosecuting and punishing the perpetrators of such acts.⁵

19. In the present case, according to the information available, the killing of MB was the subject of (a) grand jury proceedings, (b) federal investigation by the U.S. Department of Justice; and (c) a review of evidence by a (new) St. Louis County Prosecutor. All these proceedings resulted in decisions not to prosecute the police officer who killed MB. However, there is ultimately no indication that any of these proceedings

⁵ See, inter alia: IACHR, Admissibility Report No. 181/18, Petition 300-09, Ronald Bullock, United States of America, December 26, 2018, at para. 16; Admissibility Report No. 72/18, Moises de Jesús Hernández Pinto and family, Guatemala, para. 10; Admissibility Report No. 78/16, Almir Muniz Da Silva, Brazil, para. 31; Admissibility Report No. 118/17, Carmen Luz Cuchimba Vallejo et al, Colombia, p. 8; Admissibility Report No. 156/17, Carlos Alfonso Fonseca Murillo, Ecuador, para. 13; Admissibility Report No. 44/19, Gerson Mendonça de Freitas Filho, Brazil, para. 9.

effectively clarified the facts leading to the death of MB, as part of the State's obligation to conduct criminal investigations. The Commission notes that the petition was filed after the completion of grand jury proceedings, on November 24, 2014; and the federal investigation conducted by the U.S. Department of Justice. In the circumstances, the IACHR concludes that the present petition complies with the requirement of exhaustion of domestic remedies as set forth in Article 31 of its Rules of Procedure. The Commission also notes that the petition was filed on May 25, 2015, which was within six months of the termination of the grand jury proceedings, and within three months of the decision of the U.S. Department of Justice not to bring a federal prosecution against the police officer. Accordingly, the IACHR concludes that the petition meets the time deadline prescribed by Article 32 of the Commission's Rules of Procedure.

20. As the Commission has stated before, in another precedent regarding the United States,⁶ the IACHR deems necessary to clarify that regardless of the nature and legal effects the said agreement between the parents of MB and the city of Ferguson, the access by the victims to the IACHR is an entirely different matter, one governed by international law. Furthermore, the Commission notes that civil remedies are neither appropriate nor necessary to exhaust before resorting to the IACHR in cases where the violation of the right to life is claimed. The Commission notes that there was a court-approved settlement between the State and the parents of MB. However, such a settlement only applies to claims of a civil nature arising from the facts surrounding the death of MB; and that this does not derogate from, or substitute for the State's international obligation to conduct an effective criminal investigation aimed at the clarification of the facts, and the establishment of criminal responsibility where possible. Accordingly, the Commission considers that the petition cannot, in principle, be dismissed at the admissibility stage, based on a settlement or agreement concluded before the domestic courts.

VII. ANALYSIS OF COLORABLE CLAIM

21. For the most part, the petition claims that MB was the victim of extrajudicial killing; and that the State has so far failed to conduct a criminal investigation that clarifies the facts leading to the death of MB. The petition emphasizes that the investigations conducted so far have simply resulted in decisions not to prosecute the police officer responsible for the killing of MB. The petition also claims that these claims also implicated the rights of Lesley McFadden, the mother of MB.

22. As the Commission has established before, as a general rule, a criminal investigation must be conducted promptly and exhaustively in order to clarify the facts, protect the interests of the victims, preserve the evidence and also safeguard the rights of anyone deemed a suspect in the framework of the investigation. In other words, the investigation and prosecution of the death of MB in the present case must be conducted in accordance with the pertinent standards of international human rights law. As noted above, the Commission does not consider that this obligation is satisfied or waived by a court-endorsed settlement of civil claims arising from the circumstances leading to, or aftermath of the killing of MB.

23. After assessing the position of the Parties, the IACHR considers that the claims submitted by the petitioners are not manifestly groundless, and that *prima facie* they may constitute violations of the rights enshrined in Articles I (right to life, liberty and personal security); II (right to equality before the law); XVIII (right to a fair trial), XXV (right of protection from arbitrary arrest); and XXVI (right to due process of law) of the American Declaration in relation to MB, and Lesley McFadden in the terms of the present report.

VIII. DECISION

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

⁶ See Report No. 198/20 Petition 524-16, Admissibility, Anastasio Hernandez Rojas and Family, United States of America, para.

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 18th day of the month of December, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Joel Hernández, and Roberta Clarke, Commissioners.