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REPORT No. 181/22
PETITION 397-18
REPORT ON ADMISSIBILITY

GLENN SPIVEY
UNITED STATES OF AMERICA

Approved by the Commission electronically on July 25, 2022.

Cite as: IACHR, Report No. 181/22, Petition 397-18. Admissibility. Glenn Spivey.
United States of America. July 25, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Glenn Spivey
Alleged victim:	Glenn Spivey
Respondent State:	United States of America ¹
Rights invoked:	None specified

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	January 30, 2018
Additional information received at the stage of initial review:	December 13, 2018
Notification of the petition to the State:	May 14, 2020
State's first response:	September 18, 2020
Additional observations from the petitioner:	February 26, 2021, March 15, 2021, May 10, 2021, June 11, 2021, October 18, 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	Articles I (right to liberty and security of the person); XXV (right to human treatment in custody) 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 and no (under the terms of Section VI)
Timeliness of the petition:	Yes and no (under the terms of Section VI)

V. ALLEGED FACTS

1. This petition alleges various acts of custodial mistreatment treatment suffered by the petitioner while incarcerated by the Florida Department of Corrections (FDC) at its Suwannee Correctional Institution.

2. The petitioner's principal complaint appears to be inadequate medical treatment for an eye disorder. According to the petitioner, he suffers from a visual impairment because of glaucoma. He claims that the FDC has systematically deprived him of adequate treatment for the glaucoma. In this regard, the petitioner alleges that the FDC delayed his treatment for glaucoma until he lost his sight in his right eye. The petitioner also claims that correctional officials have also, on occasion, tampered with, or confiscated his

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".

medication for glaucoma. He mentions complaints made to the FDC/prison authorities in December 2017, but so far has had no redress. The petitioner also refers to other documented complaints (regarding the allegations of inadequate medical treatment), sent to the FDC on March 13, 2018, and March 21, 2018. The petitioner alleges that his complaints were dismissed following which submitted a “grievance appeal” on April 11, 2018.

3. The petitioner also complains about lack of adequate medical treatment after he was allegedly injured in a traffic accident. In this regard, the petitioner claims that in July 2017 he was being transported in a FDC van when it was rear-ended by another FDC van. He claims that he suffered pain/injury to his neck, shoulder, lower back, left leg. He also claims that a police officer came to investigate the accident, but that he was not allowed to speak to the police officer. The petitioner also indicates that he was not taken to a hospital but only to the Central Florida Reception Center medical department (part of the FDC). On return to the Suwannee Correctional Institution, the petitioner says he was examined by a nurse who scheduled him to see a doctor. The petitioner states that X-rays were subsequently done of his neck and back, and then later an ultrasound was done of his neck. He alleges that he continued to complain of pain in his back and left leg, but the Suwannee Correctional Institution refused to take steps to have him see a specialist to treat his medical complaints.

4. The petitioner also alleges that he has been assaulted by correctional officers. In this respect, he claims that in 2015 two officers assaulted him with mace after he had requested some medical treatment. The petitioner also claims that in September 2016, a correctional officer sexually assaulted him, by rubbing his penis in his face. The petitioner indicates that he reported this mistreatment to the authorities at the FDC. According to the petitioner his attempts at reporting this assault were unsuccessful; and that he was ultimately re-classified as a “close-management” inmate⁴.

5. Based on documentation submitted by the petitioner it appears that he litigated his complaints, regarding inadequate medical treatment for his glaucoma and for his injuries following the traffic accident, between 2020 and 2021 before the federal courts. In this regard, it appears that he filed suit before the US District Court for the Northern District of Florida, which was dismissed in June 2020. A subsequent appeal before the US Court of Appeals for the Eleventh Circuit was dismissed in or around November 2020. In or about April 2021, the petitioner filed another suit, regarding the same subject matter, before another US District Court in Florida. According to information supplied by the petitioner⁵ the petitioner filed another suit before the US District Court for the Middle District of Florida, which was dismissed on or June 2, 2021. A subsequent application by the petitioner to have his claim reinstated was dismissed by the same court on August 25, 2021. The petitioner also mentions a similar suit before the US District Court for the Northern District of Florida, which, on March 31, 2021, was ultimately dismissed, on appeal, by the US Court of Appeals for the Eleventh Circuit.

6. The State submits that the petition is inadmissible primarily for: (a) failure to exhaust domestic remedies; (b) failure to state facts that tend to establish a violation of the American Declaration. The State also submits that the petition is inadmissible because the allegations contained therein are manifestly groundless.

7. With respect to the failure to exhaust domestic remedies, the State generally submits that the Prison Litigation Reform Act (PLRA), prescribes that any complaints regarding prison conditions must first be pursued via administrative grievance procedures, before seeking judicial remedies. For the most part, the State contends that the petitioner did not exhaust available administrative grievance procedures.

8. Regarding the petitioner’s claims about his glaucoma medication/treatment, the State argues that it appears that the petitioner pursued, but did not exhaust, administrative remedies. In this regard, the State notes that the petitioner claims that he appealed the denial of his administrative claim but has not provided any evidence of this.

⁴ “Close management” apparently means the segregation of an inmate from the general population of a correctional facility.

⁵ The information supplied by the petitioner is somewhat sparse, and in parts, difficult to follow.

9. With respect to the petitioner's claims of sexual abuse by a correctional officer in September 2016, the State contends that there is no indication that the petitioner pursued or exhausted any administrative or other remedies.

10. The State further argues that In February 2020, more than two years after filing the petition with the Commission, it appears that petitioner pursued judicial remedies with respect to at least some of the claims contained in the petition⁶. The State indicates that on June 5, 2020, a federal magistrate judge, of the United States District Court Northern District of Florida, provided her report and recommendations, recommending the case be dismissed without prejudice because the petitioner made false representations on his complaint form. The State further mentions that the report and recommendations were adopted by a federal district judge on July 15, 2020. Subsequently, the petitioner appealed (to United States Court of Appeals for The Eleventh Circuit), which appeal was docketed on August 17, 2020. According to the State, the petitioner has essentially continued to litigate these claims, and that this also signifies a failure to exhaust domestic remedies.

11. The State also submits that the petition is also inadmissible pursuant to Article 34(a) of the Commission's Rules of Procedure because it does not state facts that would tend to establish violations of the applicable portions of the American Declaration. Further the State also submits that the petitioner's claims appear to be without basis and therefore inadmissible under Article 34(b) of the Commission's Rules of Procedure. With reference to the petitioner's complaint about his glaucoma medication/treatment, the State rejects the petitioner's claims that his medication was tampered or confiscating, asserting that these claims are manifestly groundless.

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

12. In accordance with Article 31(1) of the Rules of Procedure of the Inter-American Commission, for a petition to be admissible, domestic remedies must have been pursued and exhausted pursuant to generally recognized principles of international law. This requirement is aimed at enabling national authorities to take cognizance of the alleged violation of the protected right and, if appropriate, resolve the matter before it is heard by an international body.

13. The Commission notes that the petitioner's complaints are primarily about: (a) physical and sexual abuse by correctional authorities; and (b) failure by the correctional authorities to provide adequate medical attention to his eye disorder (glaucoma) and to the injuries sustained following a traffic accident. For the State, the petitioner has failed to exhaust administrative or judicial remedies with respect to all these claims. On the other hand, the petitioner has indicated that he has pursued domestic remedies and continues to do so with respect to the failure of the correctional authorities to provide adequate medical attention.

14. With respect to the allegations of physical mistreatment/assault by correctional officers, the Commission has long established that under international standards applicable to cases like this one, where serious human rights violations such as physical abuse are alleged, the appropriate and effective remedy is the filing and the undertaking of an effective criminal investigation aimed at the clarification of the facts and, if necessary, individualize and prosecute the persons responsible⁷. According to the record, it appears that no such investigation was undertaken by the State, which, in essence, constitute an exception to the rule of exhaustion of domestic remedies. The Commission also observes that the alleged acts at issue began in 2015 and its effects concerning the alleged lack of investigation and punishment of said acts to the alleged victim continue to this date. As a result, considering the context and the characteristics of this case, the Commission concludes that it has sufficient elements to believe that the exception set forth in Article 31 (2) (b) of the IACHR

⁶ The State submits court documents that show that the claims litigated were related to the petitioner's complaints about lack of adequate treatment for his glaucoma condition and lack of adequate medical attention following a traffic accident.

⁷ See for example IACHR, Report No. 156/17, Petition 585-08. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, para.13; and IACHR, Report No. 124/20, Petition 1524-13. Admissibility. Hapete Michael Henry and family. Jamaica. April 24, 2020, para.9.

Rules of Procedure is applicable in this case, and that the petition was filed in a reasonable time, under the terms of Article 32 (2) of the IACHR Rules of Procedure.

15. Regarding the petitioner's claims on the lack of medical treatment, the record shows that the petitioner pursued various remedies, up to and including an action before the US District Court for the Middle District of Florida. According to the record, this action was ultimately dismissed on August 25, 2021. The Commission notes that the requirement of exhaustion of domestic remedies does not mean that the alleged victim has the obligation to exhaust every possible remedy available to them. The IACHR has maintained that if the alleged victim endeavored to resolve the matter by any of the valid and available options under domestic law, and the State had an opportunity to remedy the issue within its jurisdiction, the purpose of the international legal precept is fulfilled. The Commission therefore concludes that the domestic remedies were exhausted with the decision of the US District Court for the Middle District of Florida; in accordance with Article 31 of the Rules of Procedure. Moreover, the petition to the IACHR was filed on January 30, 2018, and thus meets the requirement of timeliness prescribed by Article 32(1) of the Commission's Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

16. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the IACHR considers that the alleged acts of physical mistreatment of the alleged victim, as well as the lack of investigation of said claims are not manifestly groundless and, if proved, may represent violations of the rights enshrined in Articles I (right to liberty and security of the person); XXV (right to human treatment in custody) and XXVI (right to due process of law) of the American Declaration.

17. In the other hand, the Commission notes that the petitioner claims regarding lack of medical attention were adjudicated and rejected during multiple proceedings before the domestic courts. In the absence of any evidence to the contrary, it appears that the petitioner is dissatisfied with the outcome of the domestic judicial proceedings and now seeks relief from the Commission. The Commission has observed 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. 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. In view of these considerations, the Commission considers that the claims of the petitioner regarding lack of medical attention should be ruled inadmissible, in keeping with Article 34 (a) of the Commission's Rules of Procedure and the application of the fourth instance formula.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, XXV, and XXVI of the American Declaration regarding the alleged acts of physical mistreatment against Mr. Glenn Spivey;

2. To find the petition inadmissible with respect to the claims of inadequate medical treatment; and

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 25th day of the month of July, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarette May Macaulay, Second Vice President; Joel Hernández, and Roberta Clarke, Commissioners.