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REPORT No. 144/18
PETITION 1606-07
REPORT ON INADMISSIBILITY

JEAN JOCELYN MERILIEN
UNITED STATES OF AMERICA

Approved electronically by the Commission on December 6, 2018.

Cite as: IACHR, Report No. 144/18, Petition 1606-07. Inadmissibility. Jean Jocelyn Merilien.
Haiti. December 6, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Jean Jocelyn Merilien
Alleged victim:	Jean Jocelyn Merilien
Respondent State:	United States of America ¹
Rights invoked:	No specified articles

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	December 19, 2007
Additional information received at the stage of initial review:	January 30, March 26 and September 22, 2008
Notification of the petition to the State:	July 22, 2010
State's first response:	October 22, 2014
Additional observations from the petitioner:	August 29, 2011; July 8, 2016

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 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:	Yes, exception set forth in Article 31.2 (b) of the IACHR's Rules of Procedure applies
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. Mr. Jean Jocelyn Merilien, the petitioner and alleged victim, a Haitian national, claims that various irregularities in his criminal prosecution in the state of Georgia led to his conviction for crimes he did not commit. He states that on October 30, 2004, he, accompanied by two of his friends, went to the local authorities with the purpose of explaining his version of the events surrounding the murder of his wife and his mother-in-law in his home, for which he now claims his innocence. He was allegedly interrogated by police officers and subsequently by the district attorney's office, to whom he confessed both murders. On March 6, 2006, the petitioner was indicted by the Rockdale County grand jury for two counts of malice murder, two counts of felony murder, two counts of aggravated assault, possession of a firearm during the commission of a crime, and possession of a firearm by a convicted felon. The state sought the death penalty against him. On May 19, 2006, pursuant to a negotiated plea agreement, the petitioner pled guilty to two counts of malicious murder and one count of possession of a firearm during the commission of a crime and was sentenced to two consecutive life sentences plus five years.

¹ Hereinafter "United States".

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

³ Hereinafter "the American Declaration".

2. According to the petitioner's allegations and the information available before the Commission, his statements to the police and the district attorney's office were taken prior to him having been informed of his constitutional rights, without a defense attorney being present, in the absence of an interpreter and without his embassy having been notified. He also asserts that his court-appointed trial counsels rendered ineffective assistance since they failed to meet and discuss the case with him, to inform him of his rights under the Vienna Convention on Consular Relations, to advise him of his constitutional rights and to investigate the state's evidence. He additionally alleges that he was denied an interpreter at the guilty plea hearing and that the trial court judge failed to inform him of his rights before taking his plea. Accordingly, the petitioner submits he did not knowingly, intelligently or voluntarily enter his guilty plea. Additionally, he claims that the trial court improperly suppressed evidence of his innocence, in the form of an affidavit in which its author confessed to both murders.

3. On December 6, 2006, the petitioner filed a motion to withdraw a guilty plea with the Superior Court of Rockdale County, which was denied on January 11, 2007, for lack of jurisdiction, the motion having been filed after the expiration of the term of court in which the judgement was rendered. The petitioner indicates he did not appeal the decision. According to the information presented by the petitioner, he filed an extraordinary motion for new trial with the Superior Court of Rockdale County. On June 27, 2008, the state of Georgia responded to the motion, arguing for dismissal. No information has been provided regarding the final decision. On August 24, 2007, the petitioner filed a state *habeas corpus* petition with the Superior Court of Lowdes County. The petitioner indicates that he attended an evidentiary hearing on August 14, 2008. No information has been provided by the petitioner regarding the outcome of this proceeding.

4. For its part, the State declares that, based on the information received, it does not find any basis for this matter to be considered under the Rules of Procedure of the Commission.

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

5. The petitioner alleges that he was convicted in first instance on May 19, 2006, after he entered a negotiated plea agreement. On December 6, 2006, the petitioner filed a motion to withdraw a guilty plea with the Superior Court of Rockdale County, which was denied on January 11, 2007, for lack of jurisdiction. The petitioner additionally filed an extraordinary motion for new trial with the Superior Court of Rockdale County, on which no further information was provided. On August 24, 2007, he filed a state *habeas corpus* petition with the Superior Court of Lowdes County, in which he alleged the failure from the trial court to inform him of his rights and provide him with an interpreter prior to the guilty plea; the ineffectiveness of his counsel assistance; and the lack of consular notification or mention of the Vienna Convention. It appears from the publicly available records that the petition was denied on December 11, 2009⁴. The State did not make any argument regarding exhaustion of domestic remedies, nor did it controvert what was indicated by the petitioner in this respect.

6. The Commission notes that the petitioner entered a guilty agreement, following which he was convicted and sentenced. It appears from the information provided by the petitioner that, although he did not appeal his conviction, he filed a motion to withdraw a guilty plea on December 6, 2006 and a *habeas corpus* petition on August 24, 2007. The Commission notes that the petitioner alleges various violations that purportedly took place prior to his plea as well as ineffective assistance of court-appointed counsel. Based on the available information and on the fact that the State does not make any argument regarding exhaustion of domestic remedies, the Commission considers that the alleged lack of effective representation would *prima facie* have prevented the petitioner to exhaust the remedies under domestic law and that, therefore, the exception to the prior exhaustion of domestic remedies set forth in Article 31.2(b) of the Rules of Procedure applies in this case. The IACHR notes in this regard that the causes and effects that have allegedly prevented the prior exhaustion of domestic remedies will be analyzed, as appropriate, in the report that the Commission

⁴ Information available at <https://www.leagle.com/decision/infcco20170612851>

adopts on the merits of the case, in order to determine if they do indeed constitute violations of the American Declaration.

7. With respect to the requirement concerning the timeliness of the petition, the Commission observes that the alleged facts took place between 2004 and 2006 and that the petition to the IACHR was received on December 19, 2007. Consequently, the Commission considers that the petition was filed within a reasonable period of time and that, therefore, the requirement established in Article 32.2 of the Rules of Procedures of the IACHR has been met.

VII. ANALYSIS OF COLORABLE CLAIM

8. The Commission notes that the conviction and sentencing of the petitioner resulted from his confession of both murders and a negotiated plea agreement. After considering the arguments and information provided by both parties, the Inter-American Commission has not found alleged facts that *prima facie* constitute potential violations of the American Declaration as provided for under Article 34.a of the Rules of Procedures of the IACHR.

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.

Done and signed on the 6th day of the month of December, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.