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REPORT No. 225/19
PETITION 312-13
REPORT ON ADMISSIBILITY

SIDDHARTA FISHER and CYNTHIA LOU 'CINDI' FISHER
UNITED STATES OF AMERICA

Approved electronically by the Commission on September 11, 2019.

Cite as: IACHR, Report No. 225/19, Petition 312-13. Admissibility. Siddharta Fisher and Cynthia Lou 'Cindi' Fisher. United States of America. September 11, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Janet Parker and Medical Whistleblower Advocacy Network
Alleged victim:	Cynthia Lou "Cindi" Fisher, Siddharta Fisher
Respondent State:	United States of America ¹
Rights invoked:	Articles I (life, liberty and personal security), II (Equality before law), III (right to religious freedom and worship), IV (freedom of investigation, opinion, expression and dissemination), V (protection of honor, personal reputation, and private and family life), VI (family and to protection thereof), VIII (residence and movement), XVIII (fair trial), and XXII (association), XXV (protection from arbitrary arrest) of the American Declaration of Rights and Duties of Man ² and other international treaties ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	February 26, 2013
Additional information received at the stage of initial review:	March 1, 2013
Notification of the petition to the State:	May 10, 2016
State's first response:	June 2, 2016
Additional observations from the petitioner:	May 12, 18, 19, 20, 26, 27 and 31; June 27; July 18 and 19; August 25, 29, 31; September 11 and 12; October 21; and December 9, 2016; January 16, 2017

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 (life, liberty and personal security), II (Equality before law), IV (freedom of investigation, opinion, expression and dissemination), V (protection of honor, personal reputation, and private and family life), VI (family and to protection thereof), VIII (residence and movement), XI (preservation of health and well-being), XVII (recognition of juridical personality and civil rights), XVIII (fair trial) and XXV (protection from arbitrary arrest) of the American Declaration.

¹ Hereinafter "United States."

² Hereinafter "American Declaration".

³ American Convention on Human Rights; Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of Persons with Disabilities; Convention on the Rights of the Child; Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disabilities; International Convention for the Protection of All Persons from Enforced Disappearance; Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities, Inter-American Convention to Prevent and Punish Torture; International Covenant on Civil and Political Rights;

⁴ The observations submitted by each party were duly transmitted to the opposing party.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes
Timeliness of the petition:	Yes

V. FACTS ALLEGED

1. The petitioners allege that the State has violated the human rights of Siddharta Fisher⁵ (hereinafter “Mr. Fisher”) who they argue was unduly subjected to compulsory medical treatment and inhumanly treated while under the custody of the State. Also those of his mother Cynthia Lou “Cindi” Fisher who they argue was not afforded adequate opportunities to participate in the judicial processes and medical decisions involving her son. According to their account, Mr. Fisher has been dealing with mental health issues since age 16, which were exacerbated after he became a victim of sexual assault at age 17. They argue that at age 17 and while suffering from post-traumatic stress disorder (PTSD) he was prescribed the neuroleptic drug Risperdal⁶ without informed consent, and even though this drug had not been approved by the Food and Drug Administration Agency for use in PTSD patients. They further argue that after medication with Risperdal Mr. Fisher began to display bizarre behavior⁷, such as entering onto strangers’ homes for no reason (when they were clearly watching him) then just leaving when asked to. They allege that Mr. Fisher became trapped in a “cycle of cyclic hospitalizations” where he was arrested multiple times for this kind of behavior and that, each time this happened, he was then sent up to a State hospital to be made competent to stand trial by being drugged with the very same drugs that were causing the behavior.

2. The petitioners also indicate than in November 27, 2011 Mr. Fisher was taken into police custody because of an incident of trespassing and assault of a police officer (spitting), after which he was arrested and placed in pretrial detention. They allege that he spent a great deal of his detention time in solitary confinement⁸ and that, when he was allowed visitations, he was chained hand to foot, because of which he could not freely reach the phone and had to shout to communicate with his mother through the Plexiglas window that divided them. They claim that, even though, Mr. Fisher was appointed a public guardian during these proceedings, Ms. Fisher was not given notice of all the administrative hearings and court proceedings involving him.

3. They indicate that the charges were dropped in February 27, 2012 but Mr. Fisher continued on compulsory treatment during which the care he received was counterproductive and discharge was delayed multiple times due to an inability of the authorities to find suitable housing for Mr. Fisher. They allege that Cindi fisher was afforded very limited opportunities to participate in the decision making pertaining her son’s treatment at one point being issued a no-trespassing order preventing her to see him and being informed in January 17, 2013 that the treatment team and a new guardian which had been designated for her son had decided to prohibit phone calls between her and his son. They further claim that, after his discharge in August 2014, Mr. Fisher suffers permanent psychological and emotional injury as a result of the abuse suffered in custody of the hospital. Furthermore, they allege that in June 2016 Cindi Fisher requested the court to allow an expert witness to testify in favor of Mr. Fisher to prevent the granting of the forced medication petition but that, even though the court gave permission for the testimony, it refused to grant payment for the expert witness because of which the decision was adopted without this testimony. They add that Mr. Fisher has been forced to

⁵ An African American male who was 35 years old at the time the petition was filed.

⁶ According to their allegations, as a result of being subjected, without his mother’s consent, to testing by the TeenScreen Program, which they allege was created by Columbia University in association with a person linked with the pharmaceutical industry and recommended by the New Freedom Commission on Mental Health (created in 2002 through an executive order of the then U.S. president). They claim that this program was utilized to screen children at public schools through an unacceptable “passive consent” system where parents’ consent was assumed unless parents had actively requested through the signing of a form for their children not to be screened.

⁷ They also claim medication with Risperdal resulted in negative physical side effects for Mr. Fisher such as diabetes, hyperprolactinemia with changes in sexual functioning, and alteration of hormonal status related to pituitary gland, adrenal glands, thyroid and parathyroid glands

⁸ Being restricted from having visitors or even books for more than 30 days.

be homeless since July 23, 2016 because obtaining housing has not been possible as places do not allow persons who have been detained or labeled as mentally ill⁹.

4. The State, on its part, claims that the hospital sought permission through Washington State Courts for the alleged victim to be medicated for his illness and that his interests were represented throughout the whole process by a public guardian assigned by the State. It also highlights that, as of August 2014, Mr. Fisher is no longer in custody and that his mother is participating in his treatment. The State has not provided additional observations or evidence to dispute the claims made by the petitioners.

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

5. The petitioner alleges that Ms. Fisher was not permitted access to the court process during Mr. Fisher's trial and was stripped of her rights to access by virtue of the surrogate decision making of the court appointed guardian. The petitioner further alleges a lack of due process where victims cannot access the courts through their court appointed guardian due to their mental disability and/or drug induced incapacitation. The petitioner also alleges that where the court appointed attorney and guardian were not involved in court hearings; this hindered the alleged victim's access to the court system. Further, it is alleged that the neither Mr. Fisher nor his mother were provided with court documents or associated records in breach of due process.

6. A lack of due process guarantees is also alleged where the State has failed to implement measures to prevent or protect persons from being mistreated and abused within the health care setting. The petitioner also asserts that there is no proper training of officials to identify, investigate and prosecute cases of abuse, mistreatment and torture in health care settings. The petitioner admits to not contacting the competent judges concerning the alleged mistreatment.

7. The State has expressed that, in its opinion, the petition is likely to fail to meet the thresholds and requirements of articles 28 and 31 of the Commission's Rules of Procedure. However, it has not provided information regarding specific remedies that have not been attempted by the petitioners and that would have been adequate and effective in the circumstances to remedy the alleged violations of the human rights of the alleged victims.

8. The Commission observes that the petitioner has argued that there's a lack of due process for the protection of human rights of persons in situations such as that of Mr. Fisher and that the State has not proven the existence and availability of adequate, appropriate, and effective domestic remedies that has not been exhausted by the petitioner¹⁰. In lights of these circumstances the Commission must conclude, without prejudging on the merits of the case, that the exception to the rule of exhaustion of domestic remedies contained in article 31.2(a) of its Rules of Procedure is applicable to the present case. Given that the petition was filed when, according to the allegations, the denounced human rights violations were still taking place, the Commission also 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

9. The petitioners argue that the State did not provide the due process guarantees required to ensure the protection of the rights of Mr. Fisher throughout the administrative and judicial processes in which decisions were made pertaining Mr. Fisher, including those of a medical nature. In their view, the State has unduly criminalized Mr. Fisher for behavior that was induced by the drugs that were forcefully given to him

⁹ They argue that he could not live with his mother because she could not find any residential place that would allow him to stay, because of which for 14 months she had to pay \$1500.00 per month for him to stay at a very small room at a motel while his son only received \$1400.00.

¹⁰ The Commission recalls that it is well established on its case-law that whenever a State alleges that a petitioner has not exhausted domestic remedies, it has the burden of identifying the remedies to be exhausted and demonstrating that the remedies that have not been exhausted are "appropriate" for redressing the alleged violation (IACHR, Report No. 26/16, Petition 932-03. Inadmissibility. Rómulo Jonás Ponce Santamaría. Peru. April 15, 2016, para. 25)

without his informed consent; highlighting that, unlike criminal convictions, a psychiatric commitment can be extended indefinitely, making it a potential life sentence in discrimination of persons with disabilities¹¹. They allege that these forced psychiatric interventions were sanctioned, perpetrated by and paid for by the State, in violation of the prohibition of torture. They further argue that the forced medication of Mr. Fisher with a drug that had not been approved for treating his condition constitutes an unacceptable form of medical experimentation in humans; stressing that there is clear weakness in the oversight of State authorities in respect of the use of non-approved drugs on human subjects who are wards of the State. They also claim that Mr. Fisher's rights have been violated because he was never afforded proper care for the sexual trauma he suffered¹².

10. The State, on its part, argues that the petition should be declared inadmissible under article 34(c) of the Commission's Rule of Procedures. It considers that the grounds on which the petition was based do not longer exist, given information supervening the filing of the petition that indicates that Mr. Fisher has been released and his mother is now participating in his treatment.

11. The Commission needs to stress that article 34(c) of its Rules of Procedure does not imply that a petition should be declared inadmissible simply because the factual situation has changed in the time in between the filing of the petition and the decision of admissibility. Conversely, if a petition presents a colorable claim of human rights violations and there is no evidence that the State has provided comprehensive reparation to the purported victims, then it must be admitted for an examination of the merits. Based on the elements of fact and law submitted by the parties, the nature of the matter brought before it, and the paramount importance of the principle of free and informed consent for all forms of medical treatment, the Commission finds that, should the alleged facts be proven, they could tend to establish violations of Articles I (life, liberty and personal security), II (Equality before law), IV (freedom of investigation, opinion, expression and dissemination), V (protection of honor, personal reputation, and private and family life), VI (family and to protection thereof), XI (preservation of health and well-being), XVII (recognition of juridical personality and civil rights), XVIII (fair trial), and XXV (protection from arbitrary arrest) of the American Declaration.

12. As to the alleged violations to articles III (right to religious freedom and worship), VIII (residence and movement), and XXII (association) the Commission observes that the petitioners have not provided any allegations or sufficient evidence that would make it possible to consider *prima facie* its possible violation.

13. The commission notes that petitioners have also alleged violations to a large number of international treaties that have either not been ratified by the State or in respect of which the Commission lacks *ratione materiae* competence. However, in accordance with basic canons of interpretation, the Commission can take the terms of these treaties into account in applying the American Declaration.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, II, IV, V, VI, VIII, XI, XVII, XVIII, and XXV of the American Declaration.

2. To find the instant petition inadmissible in relation to Articles III and XXII of the American Declaration.

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.

¹¹ They claim that State authorities prevented any changes in the treatment plan to slowly wean Mr. Fisher off the psychiatric medications and that the coercive psychiatric punishment was unduly prolonged Authorities' own inability to arrange housing for him.

¹² They acknowledge the sexual assault was perpetrated by a private person in a private setting but argue that Mr. Fisher reported the assault to a provider at Western State Hospital who failed to follow the mandated reporting procedures for situations of alleged sexual assault of a child.

Approved by the Inter-American Commission on Human Rights on the 11th day of the month of September, 2019. Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola Noguera, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.