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REPORT No. 87/25
PETITION 454-18
ADMISSIBILITY REPORT

B. AND HER DAUGHTER
UNITED STATES OF AMERICA

Approved electronically by the Commission on June 3, 2025.

Cite as: IACHR, Report No. 87/25. Petition 454-18. Admissibility.
B and her daughter. United States of America. June 3, 2025.

I. PETITION DETAILS

Applicant:	Laís Souza Papini
Alleged victims:	B. and her daughter ¹
Respondent State:	United States of America
Rights invoked:	Articles 7 (personal liberty), 8 (fair trial), 11 (right to privacy), 17 (rights of the family), 19 (rights of the child), and 24 (equal protection) of the American Convention on Human Rights ² and Article II (equality before the law) of the American Declaration of the Rights and Duties of Man. ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	February 15, 2018
Additional information received at the initial review stage:	March 26, 2018, June 5, 2018, July 9, 2018, August 22, 2018, September 5, 2018, and October 22, 2018.
Notification of the petition to the State:	March 6, 2023
State's first response:	January 25, 2024
Warning on possible archiving:	December 5, 2022
Applicant's response to warning of possible archiving:	January 25, 2023

III. COMPETENCE

<i>Ratione personae</i> jurisdiction:	Yes
<i>Ratione loci</i> jurisdiction:	Yes
<i>Ratione temporis</i> jurisdiction:	Yes
<i>Ratione materiae</i> jurisdiction:	Yes, American Declaration (OAS Charter ratified on June 19, 1951)

IV. DUPLICATION OF PROCEEDINGS AND INTERNATIONAL RES JUDICATA, CHARACTERIZATION, EXHAUSTION OF DOMESTIC REMEDIES, AND SUBMISSION DEADLINE

Duplication of procedures and international <i>res judicata</i>:	No
Rights declared admissible:	Articles II (equality before the law), VII (Right to protection for mothers and children), and XVIII (Right to a fair trial) of the American Declaration
Exhaustion of domestic remedies or grounds for an exception:	Yes, under the terms of Section VII
Timely submission:	Yes, under the terms of Section VII

¹ Since the complaint bears on alleged acts of domestic violence that involve an under-age girl, the Inter-American Commission decided to restrict the identity of the alleged victims to avoid their revictimization and the invasion of their privacy.

² Hereinafter, "the American Convention" or "the Convention."

³ Hereinafter, "the Declaration" or "the American Declaration."

⁴ Each party's observations were duly forwarded to the opposing party.

V. ARGUMENTS OF THE PARTIES

The applicant⁵

1. The Applicant alleges that Ms. 'B' lost her daughter's custody to the father through a process that breached the Hague Convention on the Civil Aspects of International Child Abduction and despite the father's record of domestic abuse. Thus, she contends that the US authorities failed to protect her and to afford her due process of law in the custody resolution and in her application for international return.

Child's birth, travel to the United States, and alleged domestic violence practices

2. The Applicant states that in August 2008, Ms. "B" met her ex-partner through the internet. In December of the same year he travelled to Brazil, where they started a relationship that resulted in her daughter being born in Santo André, Brazil, on August 31, 2009. Subsequently, the newborn's father returned to the United States and did not provide them with financial support for a year.

3. In September 2010 the father bought round-trip tickets to the United States for "B" and her daughter. The Applicant emphasizes that "B" never intended to reside in that country. She says that after they arrived, he took them to a hotel where, under threats and violence, they were kept in precarious conditions with no food and being unable to communicate. Afterwards, he took them to a flat where the confinement and aggression intensified.

Complaint to Brazilian and US authorities

4. Faced with the situation of violence and deprivation of liberty described above, in February 2012 "B" submitted an application for assistance to the Brazilian consulate in the United States. However, she reportedly did not receive an effective response, which, according to her, implied a violation of the American Convention and the Hague Convention on International Child Abduction. Later, on March 22, 2012, she requested assistance from the Brazilian police, though she states she did not receive any assistance either.

5. The Applicant indicates that "B" tried to seek help from the authorities on several occasions. She declares that she presented her first request for assistance to the Brazilian Consulate in February 2012 and that the Consulate failed to take appropriate action. In March 2012, she also requested support from Brazil's police.

6. The Applicant expounds that on March 2, 2013, the father physically assaulted "B" and the neighbours alerted the police, who registered the incident under number 130302-004065 with the Doral Police Department. As a result, he was detained for two days. The Applicant claims that as a result of this episode she obtained compensation for USD \$ 1,500. She was then transferred with her daughter to a shelter.

International return proceedings and custody judgment

7. The Applicant indicates that, based on the foregoing, on August 17, 2013, Mrs. "B" filed an application for international legal cooperation with the Brazilian Central Authority in order to obtain her daughter's return. The application argued that the child's transfer to the United States was meant to be temporary and that the conditions in which she was held in that country entailed deprivation of liberty and violence and were detrimental to her well-being. "B" argued that the child's father had illegally held her in the United States without her informed consent and under duress.

8. On January 14, 2014, the Brazilian Central Authority accepted the application and processed it in accordance with the provisions of the Hague Convention. The petition was formally sent to the appropriate US authorities pursuant to Article 16 of the Hague Convention, which established that the courts of the country

⁵ The Applicants submitted several declarations on a number of events. This summary seeks to synthesize the most important aspects of that information.

where the child has been removed to cannot decide on custody until the resolution on international has been pronounced.

9. Notwithstanding the above, the father initiated divorce and custody proceedings before the US courts and a final custody and divorce hearing was held on August 21, 2013. The Applicant alleges that "B" was not provided with a lawyer and translator for this hearing, though she requested to have them. She claims that the court denied her request for a translator even though she is not fluent in English. As a result of these proceedings, on February 2, 2015, a judge awarded 100% custody to the father, based on the alleged absence of Ms. "B" at a hearing held on January 12.

10. In this regard, the Applicant argues that "B" was never notified of this hearing; that she had no legal representation at the time; and that she was still living in a shelter without adequate access to information about the legal proceedings. Moreover, although the Brazilian Central Authority had already sent the international return petition, the US court proceeded with the custody resolution without waiting for the international decision. According to the Applicant, this violated Article 16 of the Hague Convention on International Child Abduction, which forbids local courts to make custody decisions until it is resolved if a child's removal and retention was wrongful.

Alleged impact on the mother-daughter relationship

11. The Applicant states that, as a result of this irregular procedure, "B"'s contact with her daughter has been severely restricted. In view of this situation "B" has attempted to modify custody through her legal representation. At a first hearing, she was allowed supervised visits after ten months of losing contact with her daughter. In a second hearing, she requested to change guardians because the person charged with supervision had links to the defendant's lawyer. However, her application was rejected. Later on, the court ordered "B" to pay USD \$ 114 every 15 days to continue with the visits but she could not afford that amount.

Alleged irregularities of the supervision on the father's custody and poor condition of the child

12. The Applicant complains that there were serious irregularities in the supervision of custody. She alleges that the guardian omitted from her report a psychiatric evaluation on the father that proved his unfitness to care for the child. She also indicates that though the assigned therapist initially determined that the relationship between mother and daughter was healthy, the guardian did not accept this finding. The Applicant also points out that the defendant paid USD \$ 2,000 to the guardian in exchange for a report that favoured him. She further alleges that the court ordered reunification therapy for the two parents, but that during the sessions the father insulted B, calling her "crazy." She also indicates that she paid the cost of these sessions.

13. The Applicant notes that on April 8, 2017, "B" was allowed to receive visits from her daughter every 15 days. However, she claims that the father constantly interfered by calling the girl over the phone and demanding that she send him pictures of her mother's house, which affected the conduct of the visits. It indicates that these only lasted for three months.

14. Finally, the Applicant complains that the father took the child out from school without her mother's consent, so she is now receiving private home-schooling.

Closing arguments

15. Based on the factual considerations mentioned above, the Applicant claims that "B" and her daughter have suffered several rights violations for which the US authorities are liable. She considers that they have not been guaranteed due access to justice or basic guarantees to assert their rights against the actions of the girl's father.

The State

16. The State argues that the petition is inadmissible because the Applicant has not proven that she has exhausted domestic remedies, in accordance with Article 20(c) of the IACHR Statute and Article 31 of its Rules of Procedure. It alleges that she has not specified what remedies she sought against the alleged domestic abuse. It further states that although the Applicant raised this issue during the custody proceedings, there is no record of domestic legal actions related to domestic violence in the criminal, civil or administrative jurisdictions.

17. The United States also notes that the documents submitted by the Applicant clearly indicate that the proceedings through which "B" challenged the custody of her daughter were still ongoing at the time she filed her petition. This would demonstrate that the alleged victim did not exhaust domestic remedies in a timely manner.

18. Furthermore, the State claims that the Applicant did not produce evidence to show that "B" was prevented from filing an application to modify or enforce a custody order issued by a US state court. It explains that in most states custody and visitation orders can be modified after showing a substantial change in circumstances. As reflected in the documents submitted by the Applicant, the custody order for her daughter has been modified over the years. However, there is no evidence in the file to indicate that she was prevented from requesting modifications to any orders regarding access to the child.

19. Moreover, "B" failed to file an application for the girl's return before a court in the United States, which led the authorities to close the case. In the State's view, the failure to pursue the appropriate legal remedies to address the arguments concerning the irregular removal and retention of the child is yet another argument supporting that the Applicant has not "invoked and exhausted" domestic remedies under Article 20(c) of the Commission's Statute and Article 31 of its Rules of Procedure. Therefore, her petition is rendered inadmissible.

20. Furthermore, the State also argues that the petition is inadmissible because the colourable claims do not constitute rights violations for which it could be liable. It argues that the subject matter of this petition —international child custody— falls within the scope of international family law, which has well-established treaties, mechanisms, procedures, and standards of its own. The United States argues that the Commission's intervention in this case would be inappropriate, as it could interfere in a field of law that is outside the scope of human rights. The State argues that such intervention could disrupt well-established legal processes and create potential conflicts between several branches of international law.

21. In relation to due process of law, the United States asserts that "B" had multiple opportunities to present arguments to a court regarding the custody of his daughter and the alleged violence inflicted by the father. In addition, she was represented by lawyers and had interpreters each time she made a statement before a court. The State argues that the court made its decisions based on the available evidence and that there is no indication that it failed to follow established procedures or give "B" a fair opportunity to present her case. That the Applicant may disagree with the court's decisions does not necessarily imply a violation of her right to a fair trial or due process of law.

22. Finally, concerning the alleged domestic violence inflicted on the Applicant by the father, the State contends that she gave vague and insufficient arguments to support her allegations of physical abuse. It claims that there no direct evidence or plausible arguments link these allegations to the actions of the authorities. It argues that, in fact, the interview during the father's psychological evaluation exposed another version of the events, in which "B" allegedly displayed controlling behaviour, threatened the father with a knife, and verbally attacked him. According to the State, the father also claimed that the alleged victim threatened to take his daughter away and told him that no judge would believe him.

VI. ANALYSIS OF RATIONE MATERIAE JURISDICTION

23. The Commission notes that the Applicant makes her application stand on the American Convention on human rights. However, the United States has not ratified this instrument, so the IACHR lacks material competence to take a position on violations of this treaty.

24. Nevertheless, the consolidated practice and case law of the Inter-American human rights system establish that the American Declaration of the Rights and Duties of Man constitutes a source of international obligations for the United States and any other OAS Member States that are not parties to the Convention. These obligations stem from the human rights commitments undertaken by Member States, as set out in the OAS Charter when it declares that such commitments are contained and defined in the American Declaration. Moreover, the rights protected in its core provisions are customary in nature, thus empowering the Commission to receive and assess allegations of non-compliance with these commitments by States under Articles 18 and 20 of its Statute.⁶

25. Finally, about the alleged failure to comply with the Hague Convention on International Child Abduction, the IACHR lacks competence to establish violations of the provisions of that treaty. Nevertheless, under the terms of Article 29 of the American Declaration, it may take those violations into account when applying the Declaration to the instant case.

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

26. The IACHR recalls that, in accordance with its consolidated and reiterated practice, in order to identify the appropriate remedies that should have been exhausted before resorting to the Inter-American system, the first methodological step is to establish the specific object of the petition. In this regard, although the Applicant alleges that her rights were violated in a number of situations, the Commission identifies that the purpose of all her allegations is to question the decision of the U.S. authorities to grant custody of "B"'s daughter to her father, despite his record of domestic violence and the timely filing of a request for international restitution. She further claims that she was unable to participate properly in the process of guardianship and custody of her daughter because she did not have a translator and was not notified of the decisions in spite of her situation of vulnerability. For its part, the State responds that the Applicant failed to exhaust domestic remedies, as (i) she did not specify what remedies she sought against the alleged domestic abuse; (ii) the custody proceedings were still ongoing when she filed her petition; (iii) she has not produced evidence to show that "B" was prevented from filing an application to modify or enforce a custody order issued by a US state court; and (iv) the alleged victim did not file an application for the child's return before a United States court.

27. In this regard, the Commission reiterates that the requirement of exhaustion of domestic remedies does not imply that alleged victims are obliged to exhaust all possible remedies available to them. In this regard, the IACHR has held that if an alleged victim pursued the matter through one of the valid and appropriate options in accordance with the domestic legal system, and the State had the opportunity to remedy the matter in its jurisdiction, the objective of international law has been achieved.⁷

28. In the instant case, the Commission notes that Ms "B" used a valid mechanism to obtain custody of her daughter and have her return to Brazil, given that she filed an application before the Brazilian Central Authority on August 17, 2013. As a result, on January 14, 2014, the Central Authority accepted and processed the application in accordance with the provisions of the Hague Child Abduction Convention and forwarded it to the appropriate authorities in the United States of America.

⁶ IACHR, Report No. 57/06, Petition 526-03, Admissibility, Hugo Armendáriz, United States, July 20, 2006, para. 30.

⁷ IACHR, Report No. 70/04, Petition 667/01, Admissibility, Jesús Manuel Naranjo Cárdenas et al., Jubilados de la empresa venezolana de aviación VIASA, Venezuela, October 15, 2004, para. 52.

29. However, on February 2, 2015, a US judge awarded 100% custody to the father knowing the resolution on the international return application, thus rendering it moot. In this regard, although the IACHR does not have precise information on the exact date on which the application was forwarded to the US authorities, the Applicant alleges that they received it before the custody decision was issued. The State has not refuted this argument.

30. Based on the foregoing, the IACHR considers that, although Mrs. "B" did try to initiate an international return process, the US authorities did not observe the procedure. On the contrary, they decided on the custody of the child ignoring that she had made an application. In this regard, it is incumbent upon the IACHR to analyse whether such a decision could represent an obstacle to the exhaustion of domestic jurisdiction, as provided for in Article 31(2)(b) of its Rules of Procedure.

31. In this regard, the Commission considers that this provision applies when, having identified that an apt legal remedy does exist, factual or legal obstacles would make it ineffective. The Commission has applied this exception in cases in which it considered that the conduct of the authorities did not allow the alleged victims to access or exhaust the appropriate judicial remedies to their situation.⁸ It has also used it in situations in which it identified that a certain legal figure made the remedy ineffectual.⁹ In some cases, the Commission has even considered that both factual and legal impediments were present.¹⁰

32. In the instant case, the Commission considers that the information in the case file suggests that the US authorities did not properly process the application for international return. Therefore, they hindered Mrs. "B" from using it. In addition, the Commission notes that the Applicant claims that the alleged victims have also been prevented from duly participating in the custody proceedings initiated by the father. For all the above reasons, the Commission considers it appropriate to apply the exception already mentioned.

33. Finally, after considering the characteristics of the instant case, the Commission concludes that the submission of the petition on February 15, 2018, was made within a reasonable time and in accordance with the provisions of Article 32(2) of the IACHR Rules of Procedure. In particular, the Commission highlights the situation of vulnerability of the alleged victims, as well as the several domestic actions Mrs. "B" took in relation to custody and access to her daughter.

VIII. CHARACTERIZATION OF THE COLOURABLE CLAIMS

34. The Commission recognizes that it is not competent to review judgments handed down by domestic courts acting within their jurisdiction, provided that they follow the due process of law and grant judicial guarantees. However, it reiterates that its mandate empowers it to declare a petition admissible and examine its merits when domestic proceedings may have resulted in violations of rights protected by the American Declaration.

35. In the instant case, the Commission notes that the alleged victim complains of a series of situations that require prompt and effective attention by the authorities in order to protect Mrs. "B" and her daughter's rights. In the Commission's view, it is necessary to examine their claims at the merits stage to determine whether there were omissions on the part of the State that affected any of the rights or guarantees set forth in the American Declaration.

⁸ IACHR, Report 214/22, Admissibility, Petition 867-09, Abelardo Árevalo Choque et al, Bolivia, August 13, 2022; Report 303/22, Admissibility, Petition 958-15, John Sotomayor Pinuer, Chile, November 8, 2022; and Report 378/21, Admissibility, Petition 1835-14, Juan Antonio Miralles Fernández and E.L.M.F., Ecuador, December 1, 2021.

⁹ IACHR, Report 403/20, Admissibility, Petition 1295-12, Relatives of Domingo Bartolomé Tarrés, Chile, December 10, 2020; and Report 57/21, Admissibility, Petition 2185-12, Celia de los Ángeles Martínez Chao and Priscila de las Nieves Guido Martínez, Argentina, March 17, 2021.

¹⁰ IACHR, Report 420/21, Admissibility, Petition 1564-14, J.Z and S.Z, Brazil, December 31, 2021; and Report 46/22, Admissibility, Petition 1009-13, Silvestre González Pedrotti, Mexico, March 9, 2022.

36. In view of the above, the Commission will proceed to analyse the merits of the case, ensuring full respect for the due process of law and the right of defence of both parties. After evaluating the arguments presented before it, the IACHR considers that the Applicant's claims are not manifestly groundless and may characterize violations of the rights recognized in Articles II (equality before the law), VII (right to protection of mothers and children) and XVIII (right to judicial guarantees) of the American Declaration, to the detriment of Mrs. "B" and her daughter.

IX. DECISION

1. Declare this petition admissible under Articles II, VII, and XVIII of the American Declaration.
2. Notify the parties of this decision; continue its in-depth analysis and publish it in the 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 June, 2025.
(Signed:) José Luis Caballero Ochoa, President; Andrea Pochak, Vice President; Arif Bulkan, Second Vice President; Roberta Clarke, and Gloria Monique de Mees, Commissioners.