

**INTER- AMERICAN COMMISSION HUMAN RIGHTS
MOOT COURT COMPETITION**

**MITCHELL HENDERSON
(PETITIONER)**

V

**THE REPUBLIC OF ATHLIMA
(STATE)**

Memorial representing the Petitioner

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STATEMENT OF FACT

Factual Background

The Republic of Athlima (the State, the Republic of Athlima, or Athlima) is a state located in the Americas with a capital city of Kefalaio. ¹ Athlima is a constitutional republic with three branches including, the legislative, judicial, and executive. Each state has a federal district which has a district court that is given the jurisdiction over all matters of federal laws, including issues of judicial review of legislation. In the event that a court decision is unsatisfying, one may appeal to the Supreme Court in which their decision is final. ²

In 2006 and 2010, Kefalaio hosted two sports event which attracted an increasing amount of tourism and was given the honor of hosting the 2018 finals for the International Rugby Federation. ³ Unfortunately, after the two sporting events ended and tourism decreased, many people lost profits and became homeless. In 2010 it was recorded that the homeless population of Kefalaio increased by over 50 percent. ⁴ Due to the massive problem of homeless people in the city, a law was proposed to outlaw public vagrancy and panhandling which led to the National Assembly developing the Restoration of Community Act (hereafter, ROCA) that was passed and signed into law in January 2013 that punished public vagrancy and panhandling. This law did provide first time offenders the opportunity to enroll in the City's Homeless to Work program instead of facing prosecution. ⁵

¹ Hypothetical para. 1

² Hypothetical para. 3

³ Hypothetical para. 4

⁴ Hypothetical para. 5

⁵ Hypothetical para. 6

The new program had two training opportunities: hospitality service or public work the trained individuals for 120 days on the campus site. ⁶Individuals were placed in either training based on the entrance medical examination for mental and physical illness and if the individual was prescribed treatment or therapy then it was mandatory. ⁷ Individuals who were apart of the program were not allowed to leave the campus during their training and lack of dedication of failing to comply would result in the dismissal from the program that could lead to the prosecution of their original offense. ⁸ If the individual cooperated successful and finished the program, then they would be provided with 6 months housing and job counseling services to help in their hiring process in the field they were trained in. ⁹

Mitchell Henderson, a 43 year-old man was arrested in June 2014 for violating the Restoration of Community Act. ¹⁰ He had been a farm labor but was involved in an accident that left him with a broken left leg, and loss of three fingers from his dominate hand. He lost his job due to the inability to successful reenter his career from the injuries and was compensated for the work-related injuries. ¹¹He used that money to move to Kelfalaio in search for a new job but was unsuccessful and became homeless in October 2013. ¹² After his arrest in June, he enrolled in the Homeless to Work program. ¹³

During his entrance medical examination, he was diagnosed with PTSD and the injuries of his broken leg and loss fingers were documented. Therapy and medication were prescribed to

⁶ Hypothetical para. 8

⁷ Hypothetical para. 7

⁸ Hypothetical para. 9, 10, 11, 13

⁹ Hypothetical para. 12

¹⁰ Hypothetical para. 15

¹¹ Hypothetical para. 13, 14

¹² Hypothetical para. 13, 14.

¹³ Hypothetical para. 15

him and were a requirement to attend and consume or he would be dismissed.¹⁴ The program required long increments of standing that eventually bothered Mitchell even after he had completed his therapy. After six weeks he requested to be transferred from the public work training to the hospitality services but was denied due to the fact that it would require the similar amount of standing and his PTSD prevented him from providing direct customer service.¹⁵ Mitchell remained in the program for an additional two weeks but felt the conditions were becoming intolerable. He called his brother Francis and told him his situation and Francis agreed to pick him and bring him to his home which was in another city within Athlima.¹⁶ The staff of the program saw this as a dismissal and notified the Court. Mitchell felt that this would be acceptable since he would not be going back to the streets and because the only reason he was not continuing the program was because of his physical state. On August 30, 2014 the Court was notified and he was dismissed and charged the next day.¹⁷

He pled guilty because he felt that he had violated the law and started his sentence September 14, 2014. When his brother was notified he contacted a human rights organization in Kefalaio (Human Rights Kefalaio, HRK) because he felt that Mitchell was not given a fair chance to avoid imprisonment.¹⁸

LEGAL ANALYSIS

After Mitchell's brother contacted the HRK, they filed a motion to appeal the conviction to the Athlima Supreme Court but was denied January 14, 2015 because Mitchell had already pled guilty to the offense on his own and without persuasion. They also filed a petition for

¹⁴ Hypothetical para. 16, 17

¹⁵ Hypothetical para. 20

¹⁶ Hypothetical para. 21

¹⁷ Hypothetical para. 22, 23

¹⁸ Hypothetical para. 25, 26

constitutional relief from the ROCA on behalf of all citizens with disabilities in which a hearing was granted by the district court in November 2014. The HRK felt that the program was discriminatory for individuals with disabilities which led to the unjust institutionalization. The court ruled in the States favor declaring that it was fair but HRK appealed to the Athlima Supreme Court which was certified.¹⁹

On February 23, 2015, the Athlima Supreme Court found that the work training program discriminated against those with disabilities. The Court ordered the program to implement a work training program suitable for those with disabilities. The Court also found that the ROCA did not result in unjust industrialization of those with disabilities. In May 2015, HRK filed a petition before the Inter-American Commission on Human Rights (Inter-American Commission, Commission, or IACHR), alleging the international responsibility of the Republic of Athlima for the violation of the rights set forth in Articles 5, 7, 8, 24 and 25 of the American Convention, all in conjunction with Articles 1.1 and 2 of the American Convention, to the detriment of Mitchell Henderson and disabled citizens of Athlima.²⁰ In September 2016, the Commission issued its report on admissibility and merits (Report 194/2016). The IACHR found violations of articles 7, 8, 24 and 25. It recommended that the State of Athlima invalidate the ROCA and implement comprehensive reparation measures to compensate Mitchell Henderson and other disabled Athlimians subjected to the ROCA.²¹

1- ADMISSIBILITY

1.1 - STATEMENT OF JURISDICTION

With its Constitution of 1978, the Republic of Athlima ratified the main regional and

¹⁹ Hypothetical para. 27, 28, 29, 30

²⁰ Hypothetical para. 31, 33

²¹ Hypothetical para. 35

universal instruments on the subject. It is a founding Member State of the Organization of American States (OAS), having ratified the OAS Charter on April 30, 1948. On December 10, 1989, the Republic of Atlima ratified the American Convention on Human Rights and accepted the contentious jurisdiction of the Inter-American Court of Human Rights (Inter-American Court or Court). Additionally, Atlima has been a State Party to the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities since October 27, 2004. On August 30, 2009, it ratified the Convention on the Rights of Persons with Disabilities. In 2008, an amendment to the Constitution conferred constitutional status on the human rights treaties to which the Republic is a party.²²

IACHR VIOLATIONS

The State was found guilty of violating IACHR articles 7, 8, 24, and 25.

Article 7: Right to Personal Liberty

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be

²² Hypothetical para. 36

released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.²³

Article 8. Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

a. the right of the accused to be assisted without charge by a translator or interpreter, if he does

²³ [http://www.oas.org/dil/treaties B-32 American Convention on Human Rights.pdf](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf) (Article 7)

not understand or does not speak the language of the tribunal or court;

b. prior notification in detail to the accused of the charges against him;

c. adequate time and means for the preparation of his defense;

d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

g. the right not to be compelled to be a witness against himself or to plead guilty; and

h. the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a non appealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.²⁴

Article 24. Right to Equal Protection

²⁴ [http://www.oas.org/dil/treaties B-32 American Convention on Human Rights.pdf](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf) (Article 8)

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.²⁵

Article 25. Right to Judicial Protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

b. to develop the possibilities of judicial remedy; and

c. to ensure that the competent authorities shall enforce such remedies when granted.²⁶

REQUEST FOR RELIEF

Due to the violations committed by the State, the petitioner request that the Court

1. Declare Athlima with full responsibility for violating Mr. Henderson's rights.
2. Require the State to take actions in order to compensate Mr. Henderson and other individuals with disabilities for the damages done by the ROCA
3. Immediately invalidate the ROCA and create a fair and just program.

²⁵ [http://www.oas.org/dil/treaties B-32 American Convention on Human Rights.pdf](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf) (Article 24)

²⁶ [http://www.oas.org/dil/treaties B-32 American Convention on Human Rights.pdf](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf) (Article 25)