

## **BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION**

In re:  
Claim of Armando Gutierrez

TIRC Claim No. 2014.257-G  
(Relates to Cook County Circuit  
Court Case No. 00 CR 2795301)

### **Case Disposition**

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Admin. Code 3500.385(c) the Illinois Torture and Relief Commission, (hereinafter, the Commission or TIRC), concludes that, by a preponderance of the evidence, there is not sufficient evidence of torture to merit judicial review. The Commission denies the claim. This decision is based upon the Factual Findings and Conclusions set forth below, and the supporting record attached.

### **Executive Summary**

On July 17, 2002, a jury convicted Armando Gutierrez (Gutierrez) of first-degree murder and attempted murder and he was subsequently sentenced to sixty (60) years in prison.<sup>1</sup> In his 2011 TIRC Claim Form, Gutierrez claimed that Chicago Police Detective John Halloran (Halloran) tortured him for three to four days from October 25 to October 29, 2000.<sup>2</sup> Gutierrez claimed that during his detention he was not allowed to make phone calls or see a judge.<sup>3</sup> Gutierrez further claimed that he was stripped of most of his clothing, held in a basement, kept in cold conditions to the point that his body was shivering, not allowed sleep, and never given food or water.<sup>4</sup> During the course of his detainment, Gutierrez made a series of statements which were somewhat exculpatory, but which placed him at the scene of the crime and, when used on cross examination, apparently eroded his credibility and overall theory of self-defense.

Factors supporting Gutierrez' claim of torture include:

- Gutierrez' lengthy detention, for which he received a City of Chicago settlement as part of a class-action settlement of claims that the Chicago Police Department routinely detained suspects for more than forty-eight (48) hours without a probable cause hearing (*Dunn v. City of Chicago*).
- Detective John Halloran's extensive abuse allegation history.

Factors detracting from Gutierrez' claim of torture include:

- A lack of corroboration from former trial attorney Michael Johnson, John Lyke, and appellate attorney Jennifer Blagg.
- Substantial evidence (i.e., three eyewitnesses, immediate offender and weapon identification) reduced potential motive to coerce a confession.
- Evolving allegations of torture over time.
- A late outcry regarding his torture.
- A lack of physical evidence supporting Gutierrez' claims.

<sup>1</sup> TIRC Compiled ROP (TCROP) at 755-758

<sup>2</sup> Exhibit A, Armando Gutierrez, TIRC Claim Form

<sup>3</sup> Exhibit A, Armando Gutierrez, TIRC Claim Form

<sup>4</sup> Exhibit A, Armando Gutierrez, TIRC Claim Form

Ultimately, taking into consideration Gutierrez' late outcry, evolution in allegations, the lack of medical and physical evidence, and even the pattern and practice history of the accused detective, there is insufficient evidence of torture in Mr. Gutierrez' case to merit further judicial review.

### **Factual Findings**

#### **I. The Crime**

Gutierrez was arrested on October 25, 2000 around 9:55 p.m., at the home of siblings Jorge, Nestor, and Melissa Castaneda, for their shootings.<sup>5</sup> Gutierrez and Jorge Castaneda (Jorge), along with three other individuals, had been socializing in the backyard, an argument ensued, and Jorge was fatally shot.<sup>6</sup> Gutierrez then went into the home and encountered Nestor Castaneda (Nestor) and his 14-year-old sister Melissa Castaneda (Melissa).<sup>7</sup> Gutierrez shot Nestor three times and one of the bullets passed through Nestor and struck Melissa's foot.<sup>8</sup> Nestor and Melissa survived.

#### **II. The Police Investigation**

##### **A. Arrest and Detention**

Although Gutierrez states in his TIRC claim form that he was held at the police station between October 25 and October 29, 2000,<sup>9</sup> police reports, the trial transcript, and other documents reflect that Gutierrez was in police custody between the night of October 25, 2000 and the morning of October 28, 2000, when he had his bond hearing before being transferred to Cook County jail.<sup>10</sup>

Following the shooting, Gutierrez remained at the scene of the crime where police arrived and arrested him.<sup>11</sup> Officers Raymond Bronski (Bronski) and Wilke (Wilke) responded to the call of "shots fired" at the residence.<sup>12</sup> Bronski approached the house and saw some of the victims lying and standing outside the front of the house. He called for an ambulance, and shortly thereafter, Gutierrez came out of the front of the house.<sup>13</sup> Melissa identified Gutierrez as the shooter and Bronski "immediately handcuffed [Gutierrez]" and put him in a locked squad car.<sup>14</sup> Police reports document that Gutierrez was arrested at approximately 9:55 p.m. and later transported to the Office of Area 1 Violent Crimes.<sup>15</sup>

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<sup>5</sup> Exhibit B, CPD Case Supplementary Closing Report at 1-4

<sup>6</sup> TCROP 264-268

<sup>7</sup> TCROP at 303-305

<sup>8</sup> TCROP 305

<sup>9</sup> Exhibit A, Armando Gutierrez, TIRC Claim Form

<sup>10</sup> See Exhibit B, CPD Case Supplementary Closing Report and Exhibit A, Armando Gutierrez, TIRC Claim Form

<sup>11</sup> TCROP 528-530

<sup>12</sup> TCROP at 391-393

<sup>13</sup> TCROP at 393-394

<sup>14</sup> TCROP 394-395

<sup>15</sup> Exhibit B, CPD Case Supplementary Closing Report at 1-4, Exhibit R, Arrest Report

At trial, Detective John Halloran testified that, at approximately 10:00 p.m., he and his partner, Detective Frank Valadez (Valadez), arrived at the scene of the crime.<sup>16</sup> Halloran conducted an investigation, interviewing individuals, and searching the scene and surrounding area.<sup>17</sup> Halloran testified that Gutierrez was already in the back of a squad car when he arrived.<sup>18</sup> Halloran approached Gutierrez and asked him about some injuries on his body, specifically scrapes on his legs and various bruises.<sup>19</sup>

Halloran then testified that he again saw Gutierrez at Area 1 Violent Crimes, within about two hours of the incident.<sup>20</sup> Halloran testified that at the police station, in the early morning hours of October 26th, he encountered Gutierrez who was seated on a bench and had a twenty to thirty minute conversation with him.<sup>21</sup> Halloran then testified he had another conversation with Gutierrez in the afternoon hours of October 26th.<sup>22</sup> The record indicates that during these two conversations, Gutierrez made statements that Halloran recorded in writing.<sup>23</sup>

Halloran explained that at the end of October 26, 2000 (after the two interviews), he asked the watch commander to hold Gutierrez beyond the court call so that Halloran could continue his investigation.<sup>24</sup> The watch commander did so and the following day, during the early hours of the 27th, Halloran had a third conversation with Gutierrez during which Assistant State's Attorney Scott Herbert (ASA Herbert) was present.<sup>25</sup> During this conversation, Gutierrez allegedly repeated the partially incriminating statements he previously made to Halloran, then asked for his lawyer, Joe Lopez. The statements and the request for the lawyer are documented in an internal police memorandum and described below.<sup>26</sup>

Halloran testified that Valadez asked the watch commander to again hold Gutierrez past the court call.<sup>27</sup> As a result, on the 27th, Gutierrez was placed into lock up at the police station.<sup>28</sup> Halloran testified that despite not yet having a bond hearing, Gutierrez remained at Area 1 through October 27, 2000 until October 28, 2000, when he was finally taken to a bond hearing.<sup>29</sup>

#### B. Claimant Statements Made During the Investigation

Gutierrez told Halloran that he went to the Castaneda residence to hang out after dropping off his kids at school.<sup>30</sup> He said that he and Nestor hung out all day and Gutierrez denied using any drugs or alcohol during the day or evening.<sup>31</sup> Later in the day, Jorge came to

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<sup>16</sup> TCROP 482-483

<sup>17</sup> TCROP at 484

<sup>18</sup> TCROP 489

<sup>19</sup> TCROP at 489-490

<sup>20</sup> TCROP at 491

<sup>21</sup> TCROP at 490, 500

<sup>22</sup> TCROP at 490

<sup>23</sup> See Exhibit L, CPD Internal Memo Titled 26 Oct 00 3<sup>rd</sup> Watch

<sup>24</sup> TCROP at 504-505

<sup>25</sup> TCROP at 490

<sup>26</sup> Exhibit L, CPD Internal Memo Titled 26 Oct 00 3<sup>rd</sup> Watch

<sup>27</sup> TCROP at 505

<sup>28</sup> TCROP at 491

<sup>29</sup> Exhibit C, Prisoner Data Sheet Oct 28, 2000 and TCROP 505.

<sup>30</sup> Exhibit B, CPD Case Supplementary Closing Report at 16

<sup>31</sup> Exhibit B, CPD Case Supplementary Closing Report at 16

visit.<sup>32</sup> All three were there at the residence together and had no conflicts amongst themselves.<sup>33</sup> Gutierrez stated there was a gap in his memory and the last thing he remembered was everyone hanging out in the yard then suddenly being at the police station.<sup>34</sup> Gutierrez denied shooting the victims and could not explain how he got blood on his sweatpants and t-shirt.<sup>35</sup> Gutierrez denied fighting with any of the victims and would not explain why he and Jorge had mud and dirt on their clothes.<sup>36</sup> Gutierrez denied having keys to the Castaneda property or the safes in Nestor's bedroom but then later admitted he did have a key to the back gate of the Castaneda property and one key for each of the two safes located in Nestor's bedroom (in which the group of friends kept their gun and drugs). During trial, Halloran testified that he investigated the crime scene and found the keys to the safe near the safe; he did not request the keys be fingerprinted because he knew whose keys they were—Halloran testified Gutierrez identified them during their initial conversation together.<sup>37</sup>

### **III. Court Proceedings**

#### **A. Pre-Trial Proceedings**

Gutierrez initially employed private counsel, (now Judge) John Lyke (Lyke) for a short period before hiring private counsel, Michael Johnson (Johnson). Johnson represented Gutierrez through pre-trial and trial proceedings but filed no motion to suppress statements and no motion to quash arrest. A hearing on an informal oral motion in limine to exclude evidence of prior convictions and gang membership was heard, but there was no mention of police torture, abuse or misconduct.<sup>38</sup>

#### **B. Trial Proceedings**

##### **i. State's Evidence**

The State called nine witnesses at trial, three of them being eyewitnesses—Antonio, Melissa, and Nestor Castaneda.<sup>39</sup> The State also called the two responding officers (Bronska and Wilke), two forensic investigators, a Cook County Medical Examiner, and Eva Martinez as a life witness (Jorge Castaneda's girlfriend, with whom he had two daughters).<sup>40</sup> At no time during the State's case-in-chief did the State introduce or seek to introduce any of the statements that Gutierrez made at the crime scene or at the police station.

Antonio,<sup>41</sup> Nestor,<sup>42</sup> and Melissa<sup>43</sup> identified Gutierrez as the shooter. Antonio also testified that he was in the yard when the incident first occurred, and explained that Gutierrez

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<sup>32</sup> Exhibit B, CPD Case Supplementary Closing Report at 16

<sup>33</sup> Exhibit B, CPD Case Supplementary Closing Report at 16

<sup>34</sup> Exhibit B, CPD Case Supplementary Closing Report at 16

<sup>35</sup> Exhibit B, CPD Case Supplementary Closing Report at 16

<sup>36</sup> Exhibit B, CPD Case Supplementary Closing Report at 16

<sup>37</sup> TCROP at 497

<sup>38</sup> TCROP at 233-239

<sup>39</sup> See TCROP at 261-298, 298-322, 325-390

<sup>40</sup> See TCROP Index

<sup>41</sup> TCROP at 263-64

<sup>42</sup> TCROP 347-348

<sup>43</sup> TCROP 303-304

became angry after a minor disagreement with other individuals in the yard, which led Gutierrez to begin shooting.<sup>44</sup> Arresting officers testified that Melissa identified Gutierrez at the scene as the offender.<sup>45</sup> Forensic experts confirmed the gun found at the scene was the one used to kill Jorge.<sup>46</sup>

Antonio Castaneda's testimony largely captures the State's case and most directly counters Gutierrez' trial testimony. At the time of trial, two years after the incident, Antonio was nineteen years old.<sup>47</sup> Antonio testified that he was in the backyard where the shooting took place on the day and at the time of the shooting.<sup>48</sup> Antonio testified that he, Gutierrez, Jorge, and two others were smoking a joint when Gutierrez stated he wanted to leave.<sup>49</sup> The group told Gutierrez to sit down for his own safety, because Gutierrez had been in a car accident two days before, but Gutierrez became angry.<sup>50</sup> Gutierrez then grabbed a 9mm pistol that was sitting on top of his truck and started shooting.<sup>51</sup> Antonio testified that he ran for cover in the garage and heard about six or seven shots while also hearing Jorge yelling at Gutierrez to put the gun down.<sup>52</sup> When the shooting stopped, Antonio peeked out and saw Gutierrez pacing back and forth in the yard yelling "mother fuckers, I hate all yous" and then Antonio fled.<sup>53</sup> Antonio explained on cross examination that he and Gutierrez had retrieved a gun from inside the house earlier after seeing gang bangers drive by the house.<sup>54</sup>

## ii. Defense's Evidence

### Detective John Halloran's Testimony

Halloran was not called during the state's case-in-chief, but by the defense. Halloran's testimony covered much of his investigation, which is noted in the arrest and investigation discussion above. Halloran testified that over the multiple times that he interrogated Gutierrez, Gutierrez did not appear to be under the influence of drugs and that he appeared able to understand and respond. On direct and cross, Halloran related the statements Gutierrez made during the interrogation.<sup>55</sup> No allegations of torture were brought out on direct or cross.

### Armando Gutierrez' Testimony

Armando Gutierrez took the stand in his own defense. He testified that on October 25, 2000 he went to the Castaneda's residence around 7:45 a.m. to work on his truck, which he said he "wrecked" in a crash two days prior.<sup>56</sup>

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<sup>44</sup> TCROP at 266

<sup>45</sup> TCROP at 394

<sup>46</sup> See TCROP 469-471

<sup>47</sup> TCROP at 261

<sup>48</sup> TCROP 263-64

<sup>49</sup> TCROP at 263-64

<sup>50</sup> TCROP at 264-65

<sup>51</sup> TCROP at 266

<sup>52</sup> TCROP 267-68

<sup>53</sup> TCROP at 268

<sup>54</sup> TCROP 279-280

<sup>55</sup> See TCROP at 490-493, 500-502

<sup>56</sup> TCROP at 512

Gutierrez described the events of the day largely as Antonio Castaneda did, except for his account of the argument that preceded the shooting. Gutierrez testified that Antonio told his cousin Jorge that Gutierrez was interested in Jorge's younger sister, Melissa, which made Jorge furious.<sup>57</sup> Gutierrez described confronting Jorge face to face as Jorge said, "if you do anything to my sister, I'll kill you."<sup>58</sup> Jorge then took a gun from his waistband and struck Gutierrez on the forehead with it.<sup>59</sup> At this point, Jorge and Antonio "jumped" Gutierrez and the three started fighting over the gun, which Gutierrez ultimately obtained. Gutierrez testified that Jorge then told Antonio to get his gun from the truck as he picked up a pipe and approached Gutierrez with it.<sup>60</sup> Gutierrez responded with gunfire then ran into the basement of the Castaneda residence, fearing the others would try to keep attacking him, when Nestor jumped out in front of him causing Gutierrez to shoot him in fear.<sup>61</sup>

Gutierrez then testified that he was arrested and taken to the police station for interrogation. He testified that he told police there was a gap in his memory and that the last thing he remembered before being arrested was being in the yard hanging out.<sup>62</sup> Gutierrez stated that the police asked him about the cuts, scrapes, and bruises on his body. Gutierrez testified that, at first, he lied to police when he told them that the cuts, scrapes, and bruises were the product of a documented car accident a few days prior; at trial he maintained that the injuries arose from the fight with Antonio and Jorge.<sup>63</sup>

On cross examination, the State showed that, during initial interrogations, Gutierrez denied fighting with any of the victims.<sup>64</sup> The State further impeached Gutierrez by highlighting that he initially told police that his injuries were not the result of a fight between him Jorge and Antonio, but instead were caused by the traffic accident a few days prior.<sup>65</sup>

With respect to his treatment while in custody, Gutierrez testified on direct that the detectives took his clothes from him, specifically his sweatpants and shirt.<sup>66</sup> Other than stating he had been stripped of his clothes, Gutierrez was not asked about and did not testify that he was beaten, kept in shivering cold conditions, denied food, water, and sleep, or that he was continuously moved from room to room. Neither side raised the issue of torture, police misconduct, or abuse.

### iii. Sentencing

In sentencing, the judge observed that the State and the facts pointed to "no ostensible motivation"<sup>67</sup> for the crime. He then pointed to "inferential aspects" including the drug use that was not evidence in the case and "something that caused [Gutierrez] to perhaps lose the ability to

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<sup>57</sup> TCROP at 522

<sup>58</sup> TCROP at 522-523

<sup>59</sup> TCROP at 523

<sup>60</sup> TCROP 524

<sup>61</sup> TCROP 524-525

<sup>62</sup> TCROP 530-531

<sup>63</sup> See TCROP 531-532

<sup>64</sup> TCROP at 590

<sup>65</sup> TCROP at 590

<sup>66</sup> TCROP at 532-533

<sup>67</sup> TCROP at 748

control [his] temper.<sup>68</sup> The judge mentioned that “imbibing or inhaling the controlled substances” “could have been” among the “many things” that could explain why Gutierrez would have found it necessary to kill people that Gutierrez considered close to him.<sup>69</sup> Gutierrez also testified at this hearing, but there was no discussion of alleged mistreatment or abuse.<sup>70</sup>

#### **IV. Post-Conviction Proceedings**

##### A. Motion for a New Trial

On August 21, 2002, following Gutierrez’ sentencing to forty (40) years for first degree murder and twenty (20) for attempted murder, defense counsel filed an unsuccessful motion for a new trial, but did not allege torture as a basis.<sup>71</sup>

##### B. Direct Appeal: No Torture Claimed

Gutierrez’ retained lawyer, Johnson, withdrew from the case after sentencing and the State Appellate Defender was appointed to pursue the appeal. On April 21, 2003, a notice of appeal was filed, but it was denied as untimely.<sup>72</sup> On June 23, 2005, Gutierrez, through his attorneys David Wiener and Thomas A. Moore, filed a post-conviction petition alleging ineffective assistance of counsel for his appointed counsel’s failure to file a timely notice of appeal.<sup>73</sup> The Appellate Court initially held that it lacked jurisdiction and dismissed the case, but the Supreme Court later directed the Appellate Court to vacate its opinion and reconsider the case.<sup>74</sup> On August 25, 2008, Gutierrez secured his appeal and raised only two issues: that the jury should have believed him, rather than Antonio, and the court imposed too severe a sentence.<sup>75</sup> On December 15, 2008, the Appellate Court affirmed the trial court’s conviction after it found that the evidence was sufficient to sustain the convictions and that the trial court did not abuse its discretion in sentencing.<sup>76</sup> No claims of torture were raised.<sup>77</sup>

##### C. Post-Conviction Petitions

At some point around 2009, Gutierrez retained appellate attorney Jennifer Blagg who, after a mix of pro se and counsel submitted motions, submitted an Amended Petition for Post-Conviction Relief on November 12, 2009.<sup>78</sup> This motion raised no torture allegations; its basis was ineffective assistance of counsel.<sup>79</sup> In a November 8, 2010, pro se motion responding to the State’s motion to dismiss the petition, however, Gutierrez wrote that his defense counsel did not conduct a reasonable pretrial investigation into Detective Halloran’s “2-step interrogation” (interviewing defendants after they had requested to remain silent or requested an attorney; citing Missouri v. Seibert, 542 U.S. 600, 124 (2004)) and that defense counsel failed to investigate

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<sup>68</sup> TCROP at 748.

<sup>69</sup> TCROP at 750.

<sup>70</sup> TCROP 745-750.

<sup>71</sup> Exhibit D, Motion for a New Trial

<sup>72</sup> People v. Gutierrez, 876 N.E.2d 233 (Ill. App. 1 Dist. 2007)

<sup>73</sup> People v. Gutierrez, 876 N.E.2d 233 (Ill. App. 1 Dist. 2007)

<sup>74</sup> People v. Gutierrez, 899 N.E.2d 1193 (Ill. App. 1 Dist. 2008)

<sup>75</sup> People v. Gutierrez, 899 N.E.2d 1193 (Ill. App. 1 Dist. 2008)

<sup>76</sup> People v. Gutierrez, 899 N.E.2d 1193 (Ill. App. 1 Dist. 2008)

<sup>77</sup> See People v. Gutierrez, 899 N.E.2d 1193, 1198 (Ill. App. 1 Dist. 2008)

<sup>78</sup> See Exhibit E, Amended Petition for Post-Conviction Relief (Jennifer Blagg, Nov. 12, 2009)

<sup>79</sup> See Exhibit E, Amended Petition for Post-Conviction Relief (Jennifer Blagg, Nov. 12, 2009)

Halloran generally, while adding (without elaborating) that "coercion of any form to obtain an incriminating statement is a constitutional violation under the 5<sup>th</sup> and 14<sup>th</sup> amendment."<sup>80</sup>

On April 13, 2011, the Court held that Gutierrez failed to make a substantial showing that his constitutional rights were violated in either the trial or appellate proceedings and both Gutierrez' supplemental petition for post-conviction relief and Jennifer Blagg's petition for post-conviction relief were dismissed.<sup>81</sup>

On April 28, 2011, Gutierrez filed a pro se "Motion to Reconsider the Dismissal with Supplemental Petition for Post-Conviction Relief," in which, for the first time in the record Gutierrez expressly claimed being stripped of his clothes, not fed for three days, relentlessly interrogated, and not allowed sleep.<sup>82</sup> The Court denied his motion in August 2011. His subsequent appeal was denied on December 18, 2013.

On February 19, 2014, Gutierrez filed a pro se Petition for Relief from Void Judgment<sup>83</sup> and on April 30, 2014 another pro se motion titled Default and Declaratory Judgment,<sup>84</sup> but in neither motion did he allege torture.

On April 7, 2014, Gutierrez filed a Motion for Leave to File Second Successive Petition for Post-Conviction Relief where he alleged his statements to Halloran were the product of coercion and the lingering effects of PCP.<sup>85</sup> Gutierrez also referred generally to "abusive tactics of Halloran," which he did not detail, and he further alleged that the State used Halloran's perjured statements to convict him.<sup>86</sup>

## V. TIRC Investigation

### A. TIRC Claim Form

On July 15, 2011, Gutierrez submitted a claim form to TIRC.<sup>87</sup> In the form, Gutierrez stated that he was tortured from October 25, 2000 through October 29, 2000.<sup>88</sup> He identified only Detective Halloran as the person committing the alleged torture and stated that when he was arrested, he was held by the police between October 25 and October 29 without seeing a judge or being allowed to make a phone call.<sup>89</sup> Gutierrez described the detention as illegal and stated that he was stripped of all his clothes while being held in the basement of the police station with the temperature dropping low enough to make him shiver.<sup>90</sup>

### B. TIRC Interview with Gutierrez

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<sup>80</sup> See Exhibit F Traverse to Respondent's Motion to Dismiss (Pro Se Nov. 11, 2010) at 2-3

<sup>81</sup> Exhibit G, Court Order Dismissing Post Conviction Petition Apr 13, 2011

<sup>82</sup> Exhibit H, Pro se Motion to Reconsider Dismissal w/ Supplemental Petition for Post-Conviction Relief Apr 28, 2011

<sup>83</sup> Exhibit I, Petition for Relief from a Void Judgment Feb 19, 2014

<sup>84</sup> Exhibit J, Motion for Default and Declaratory Judgment Apr 30, 2014

<sup>85</sup> Exhibit K Motion for Leave to File Second Successive Petition for Post-Conviction Relief at 5

<sup>86</sup> Exhibit K, Motion for Leave to File Second Successive Petition for Post-Conviction Relief at 5

<sup>87</sup> Exhibit A, Armando Gutierrez, TIRC Claim Form

<sup>88</sup> Exhibit A, Armando Gutierrez, TIRC Claim Form

<sup>89</sup> Exhibit A, Armando Gutierrez, TIRC Claim Form

<sup>90</sup> Exhibit A, Armando Gutierrez, TIRC Claim Form

On May 28, 2020, TIRC conducted a waiver session and interview with Gutierrez. During this interview, Gutierrez set forth a timeline of events. Gutierrez explained that he was arrested at the Castaneda residence on October 25, 2000, taken to Area 1, thrown in a room, handcuffed, and interrogated.<sup>91</sup> Gutierrez stated that when the detectives first entered, they were playing good cop bad cop, asking questions, to which he repeatedly answered, “I don’t remember.”<sup>92</sup> The detectives left, then returned two minutes later and became increasingly aggressive with Gutierrez, getting in his face and telling him what happened.<sup>93</sup> Gutierrez was unable to name or identify detectives other than Halloran.

Gutierrez stated that within ten to twenty minutes after his first encounter with the detectives, they started to beat him, punch him in the stomach, in the side, and just kept “going at [him].”<sup>94</sup> During the interview, Gutierrez stated that the detectives were asking him questions about the safe that housed the gun used in the crime, and more specifically, about who owned the keys to the safe.<sup>95</sup> Detectives also asked about what generally happened that night, asking who shot whom and why it happened.<sup>96</sup> Gutierrez stated that the entire time detectives were asking him questions, they were also punching him, telling him he was going down for murder, and ignoring Gutierrez’ outcries that he was overdosing on PCP.<sup>97</sup>

Gutierrez stated that after they beat him some more, they took him to the “freezing cold” basement and before leaving him there, they stripped him of his clothes, left him in his boxers, and kept him in lock up with a bunch of other guys.<sup>98</sup> He claimed that they left him there for about thirty minutes to an hour before bringing him back to the interrogation room.<sup>99</sup>

Once back in the interrogation room, Gutierrez stated that they would hit him on the side, the stomach, and slap him on the back of the head, all while asking questions for about thirty to forty minutes before taking him back to the basement.<sup>100</sup> Gutierrez described that this pattern of being taken back and forth between the interrogation room and holding cell went on for hours.<sup>101</sup>

Gutierrez said that after probably twenty-four hours, the police stopped putting him in the holding cell with everyone else and they moved him to what he believed were the drunk holding cells—really small cells all next to each other, where he was left for a couple of hours.<sup>102</sup> Gutierrez stated that while in a tiny cell, he tried to get some rest but an unseen figure kept asking him why he was in prison, what had he done, and that when Gutierrez jumped up and said something to the effect of, “you’re not going to trick me,” Halloran revealed himself as the unseen voice from around the corner.<sup>103</sup> Gutierrez stated that Halloran then walked away as

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<sup>91</sup> Hear Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 22:00

<sup>92</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 22:00

<sup>93</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 26:00

<sup>94</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 26:00

<sup>95</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 32:40

<sup>96</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 32:40

<sup>97</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 32:40

<sup>98</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 33:30

<sup>99</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 33:00

<sup>100</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 34:00

<sup>101</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 34:05

<sup>102</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 34:05

<sup>103</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 34:05

Gutierrez screamed for a lawyer before trying to get some sleep.<sup>104</sup> Gutierrez estimated he had gotten maybe a minute or two of sleep before the police grabbed him, took him to the interrogation room, and for ten hours repeated the cycle of beating him, asking him questions, and taking him downstairs to the basement for ten to twenty minute intervals before returning him back upstairs for more interrogation and beatings.<sup>105</sup>

During the interview, Gutierrez' account of the days became unclear. Gutierrez initially stated that after being in the interrogation room, he was placed in the basement and put in *group holding*.<sup>106</sup> Later, he stated that, while in the group holding cell, Maurice "Reese" Williams (Williams), a member of the same gang as Gutierrez, gave Gutierrez his shirt because he saw Gutierrez shivering.<sup>107</sup> Gutierrez then stated "wait a minute, I take that back. If I recall correctly, I went into that holding cell with everybody [on] the second or third day; the first day, I think, I was by myself. I'm foggy as to which day I ended up with the whole crowd of people. Like I said, it was 20 years ago, and I think it was [on] the second or third day they put me in the holding cell with everybody."<sup>108</sup> Therefore, it is unclear whether he was put in group holding on the first or second day and on which day Williams gave him the sweater. Gutierrez also stated that he was not given any clothes back and that he walked into Cook County jail wearing nothing but boxers and Williams' shirt.<sup>109</sup>

Gutierrez further stated that he was not given food between October 25<sup>th</sup> and October 28<sup>th</sup>, that he "wasn't even given a bologna sandwich," while others around him were provided food.<sup>110</sup>

He indicated that, while not certain, he believed that he spoke with an ASA on the second or third day of his initial detention at Area 1.<sup>111</sup>

Lastly, Gutierrez expressed displeasure with Jennifer Blagg and other attorneys for failure to raise allegations of torture and that, because of his displeasure, he was filing pro se motions alongside Blagg's motions.<sup>112</sup>

#### C. Other Interview: Attorneys

TIRC staff reached out to Michael Johnson, John Lyke, Joe Lopez, and Jennifer Blagg to speak with each of them regarding their respective representation of Gutierrez, and was able to speak with each attorney. Those discussions are detailed below.

##### **i. Michael Johnson (Trial Attorney) Interview**

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<sup>104</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 34:05

<sup>105</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 34:05

<sup>106</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 41:00

<sup>107</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 41:00

<sup>108</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 44:10

<sup>109</sup> Exhibit U, Gutierrez TIRC Interview 45:00

<sup>110</sup> Exhibit U, Gutierrez TIRC Interview 47:00

<sup>111</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 48:30

<sup>112</sup> Exhibit U, Gutierrez TIRC Interview May 28, 2020 at 1:09

In a May 7, 2021 interview, Gutierrez' trial attorney, Michael Johnson, repeatedly indicated that he had no independent recollection of Gutierrez' claim of torture.<sup>113</sup> He stated that he only vaguely remembered Gutierrez' case, as it was so long ago and he had taken so on many similar cases over the years.<sup>114</sup> Johnson stated that he only briefly thumbed through Gutierrez' file prior to the interview.<sup>115</sup>

Although he had no specific recollection of discussions with Gutierrez, Johnson said that he did not file a motion to quash because Gutierrez was arrested at the scene of the crime, covered in blood, with two witnesses identifying him, and therefore he "would get nowhere with a motion to quash arrest."<sup>116</sup> As for the motion to suppress statements, Johnson stated that in his statements to police, Gutierrez "beat around the bush" and never made admissions that he shot anybody.<sup>117</sup> Pressed on whether the motion to suppress was not pursued because Gutierrez made no abuse allegations or because Johnson just felt such an effort would have been fruitless, Johnson stated, "look if I sat down with Mr. Gutierrez and he looked me in the eye and told me this is what happened, told me I was tortured and this and that, I would have filed a motion and now the more I think about it, he didn't say it to me, I have no problem filing a motion to suppress statements, I do it all the time, and more often than not you're relying on the statement of your client . . . and again, I'm not basing this off independent recollection, but I'm basing it off my practice."<sup>118</sup>

When asked why Johnson did not have Gutierrez testify to any of the torture when he was called as a witness at trial, Johnson stated "I would not have had [Gutierrez] testify to something he didn't have any evidence of and if [Gutierrez] was tortured before giving any statements to the police, I definitely would have had him testify to that effect." Johnson further stated he "didn't prevent Mr. Gutierrez from testifying to anything we thought was relevant."<sup>119</sup> Johnson related as much as he could remember, but stated that any information he was providing was him "working backwards" and based on his practice at the time and through the years.<sup>120</sup> Cautioning that he did not have an independent recollection, Johnson said, "look, if he said those things to me, [things regarding abuse, misconduct, or torture], I would have filed a motion . . . looking backwards, based off what I did in the past, if I had, I'm not going to say evidence, but if I had suspicion that [Gutierrez] was mistreated or tortured, I would have filed a motion."<sup>121</sup>

Johnson further stated he would consider plausibility in determining whether to file a motion and that in his experience, it would be plausible that CPD stripped a suspect of their clothes, down to their underwear, moved them from room to room, denied them food, sleep, and water, while keeping them in cold conditions while repeatedly beating him—that those things could have happened, but ultimately, he did not recall Gutierrez telling him those things.<sup>122</sup>

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<sup>113</sup> Exhibit M, Witness Interview Report Michael Johnson, May 7, 2021 at 1

<sup>114</sup> Exhibit M, Witness Interview Report Michael Johnson, May 7, 2021 at 1

<sup>115</sup> Exhibit M, Witness Interview Report Michael Johnson, May 7, 2021 at 1

<sup>116</sup> Exhibit M, Witness Interview Report Michael Johnson, May 7, 2021 at 3

<sup>117</sup> Exhibit M, Witness Interview Report Michael Johnson, May 7, 2021 at 2-3

<sup>118</sup> Exhibit M, Witness Interview Report Michael Johnson, May 7, 2021 at 4.

<sup>119</sup> Exhibit M, Witness Interview Report Michael Johnson, May 7, 2021 at 3

<sup>120</sup> Exhibit M, Witness Interview Report Michael Johnson, May 7, 2021 at 3

<sup>121</sup> Exhibit M, Witness Interview Report Michael Johnson, May 7, 2021 at 3

<sup>122</sup> Exhibit M, Witness Interview Report Michael Johnson, May 7, 2021 at 4

Ultimately, Johnson failed to substantiate Gutierrez' claims and went as far as to say, "now the more I think about it, he didn't say [anything about torture] to me."<sup>123</sup>

## ii. Other Attorney Interviews

TIRC staff attempted interviews with other counsel and found as follows:

- Joe Lopez stated he could not remember anything regarding Gutierrez or his claim and, despite repeated attempts to speak with him further, could not be reached for additional comment.
- Jennifer Blagg stated that she would gladly speak with TIRC after reviewing her files, but after realizing she no longer had Gutierrez' file due to computer loss, she stated she had no independent recollection to aid in our inquiry.
- Now-Judge John Lyke stated he had no independent recollection regarding Gutierrez' claim but added that he does not remember any client of his ever alleging torture or misconduct by the police.

## D. Pattern & Practice Evidence: Complaints Against Detective John Halloran<sup>124</sup>

During his TIRC Interview, Gutierrez stated that about five other officers in addition to John Halloran abused him, either by striking him, not interceding in other officers' abuse, or in repeatedly waking him and moving him from room to room. Gutierrez was, however, unable identify them except by describing them as white males. This review therefore centers on Detective Halloran.

Detective Halloran has had over thirty-one (31) complaints lodged against him with police disciplinary bodies or courts. Some resulting in significant settlements are as follows:

- Defendants Harold Hill, Dan Young, and Peter Williams confessed to detectives Halloran and Kenneth Boudreau in a murder. Before charging Williams, however, police discovered he had been incarcerated at the time of the murder and therefore proceeded against Hill and Young, who were convicted. Hill alleged in a civil lawsuit that Halloran did nothing as Boudreau slapped and punched him to secure a confession. After DNA testing years later showed someone else's DNA under the victim's fingernails, their convictions were vacated and the state dropped all charges. Hill received a \$1.25 million settlement from the City of Chicago, and he took the extra step of insisting Halloran pay \$7,500 out of his own pocket to settle the suit—which he did.
- A lawsuit by acquitted defendant Frederick Ewing was settled for an undisclosed amount in a matter involving a lost motion to suppress that alleged detectives Boudreau and Halloran physically abused him to get a confession. Ewing was acquitted at trial.
- An attorney, Kenneth Cummings, alleged Halloran unconstitutionally entered his home, held him against a wall, and called him racial slurs. He filed suit and judgement was entered into his favor in the amount of \$12,000.

Other allegations of physical abuse have been lodged by defendants Johnny Plummer, Halloran's own wife Karen Halloran (she later refused to cooperate and withdrew the complaint),

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<sup>123</sup> Exhibit M, Witness Interview Report Michael Johnson, May 7, 2021 at 4-5

<sup>124</sup> See Exhibit S, TIRC Summary of Complaints Against Det. John Halloran.

Clayborn Smith, Emmet White, Nevest Coleman, Derrell Fulton, Derrick Flewellen, Christopher Neal, and Marcellous Pittman.

#### E. Class Action Settlement

Due to his detention in the criminal case underlying this TIRC claim, Gutierrez qualified to be a part of a class action settlement in Dunn v. City of Chicago, from which he received \$2,844.30 on March 7, 2011.<sup>125</sup> In that matter, the Plaintiffs claimed that the Chicago Police Department routinely violated the United States Constitution by detaining suspects for longer than forty-eight hours without a probable cause determination.<sup>126</sup> Ultimately, the City denied and continues to deny wrongdoing and no dispositive rulings as to the merits of these claims have been made.

#### F. Complaints by Claimant to Police Misconduct Authorities

There is no evidence in the record that Gutierrez made any complaints of misconduct to any police misconduct authorities.

#### G. Medical Records

On October 28, 2000, Gutierrez was given a health screening conducted by Cermak Health Services.<sup>127</sup> The Physical Examination indicated no bruising, cuts, swelling, sores, amputations, bandages, casts, or birth marks. The form indicated approximately nine tattoos and approximately two scars. The first scar is indicated on the forehead and the second scar is indicated to be near Gutierrez' right armpit.<sup>128</sup> The scar to the forehead Gutierrez attributed, the record shows, once to the car accident and another time to the fight with Jorge.

#### H. Other Evidence and Documents Gathered

Following his TIRC interview, Gutierrez requested Williams submit an affidavit on his behalf. Gutierrez' wife Randi Gutierrez sent the affidavit to TIRC. In his affidavit, Williams stated that he gave Gutierrez a shirt while they both awaited their bond hearings, which would have been October 28, 2000.<sup>129</sup>

#### Standard of Decision

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture. *See 775 ILCS 40/40(d).* “Claim of torture” means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is *some credible evidence* related to allegations of torture occurring within a county of more than 3,000,000 inhabitants.” 775 ILCS 40/5 (emphasis added).

If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief

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<sup>125</sup> Exhibit N, Dunn v. City of Chicago Claim Form and Exhibit O, Dunn v. City of Chicago Check Info Quick View (Armando Gutierrez)

<sup>126</sup> Exhibit P, Dunn v. City of Chicago Class Action Release and Settlement Agreement

<sup>127</sup> Exhibit Q, Cermak Health Services Medical Intake Records

<sup>128</sup> Exhibit Q, Cermak Health Services Medical Intake Sheet

<sup>129</sup> Exhibit T, Maurice Williams Affidavit

Judge of the Circuit Court of Cook County. If fewer than five Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the Commission shall conclude there is insufficient evidence of torture to merit judicial review.<sup>130</sup>

The Commission was not asked by the General Assembly to conduct full, adversarial, evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred. That remains the role of the courts. Instead, the Commission has interpreted Section 45(c), through its administrative rules, as requiring it to determine whether there is sufficient evidence of torture to merit judicial review.<sup>131</sup>

## **Analysis**

### **I. Claimant's Statements Satisfy Jurisdictional Requirement**

As a threshold matter, before assessing the credibility of Gutierrez' claims, the Commission examines the Commission's jurisdictional requirements. The Commission's jurisdiction is limited to cases in which the following elements are met:

- 1) the claimant was tortured into confessing to a crime for which they were convicted, and
- 2) the tortured confession was used to obtain their conviction. 775 ILCS 50/5(1).

"Tortured Confession" is defined as:

[A]ny incriminating statement, vocalization, or gesture alleged by police or prosecutors to have been made by a convicted person that the convicted person alleges were a result of (or, if the convicted person denies making the statements, occurred shortly after) interrogation that the convicted person claims included torture. 20 Ill. Admin. 2000.10.

Although Gutierrez did not confess to a shooting, he made the following statements that were incriminating or used in the course of obtaining his conviction:

- that he was at the Castaneda residence;<sup>132</sup>
- that he possessed keys to the safe which housed the gun used in the crime;<sup>133</sup>
- that he had no conflicts with Jorge, Nestor, Antonio, or anyone else at the residence immediately before his arrest;<sup>134</sup>

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<sup>130</sup> See 775 ILCS 40/45(c). To dismiss a claim, a minimum of four votes to dismiss are required. See 2 Ill. Adm. Code 3500.385(e).

<sup>131</sup> See 2 Ill. Adm. Code 3500.385(b)(1). In general, the approach the Commission has taken is akin to the concept of "probable cause." That is, there must be enough evidence that the claim should get a hearing in court. See FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx>. Note that the Commission is free under its rules, where it chooses, to find that any fact occurred, more likely than not. 2 Ill. Adm. Code 3500.385(b)(2). The Illinois Appellate Court has similarly framed the Commission's duties: "[T]he Commission is asked to determine whether there is enough evidence of torture to merit judicial review, the circuit court is asked to determine whether defendant has been tortured. These are two different issues determined by two different entities. \* \* \* What the Commission did was analogous to finding that a post-conviction petition could advance to the third stage." *People v. Christian*, 2016 IL App (1<sup>st</sup>) 140030, ¶95, 98.

<sup>132</sup> TCROP at 588

<sup>133</sup> TCROP at 590-591

<sup>134</sup> TCROP at 588

- that he had a gap in his memory and that he could only remember hanging out in the yard and then being arrested;<sup>135</sup>
- that his injuries, including those on his forehead, scrapes along his leg, and bruises over his body were the result of a traffic accident a few days prior;<sup>136</sup> and
- that he did not fight with any of the victims.<sup>137</sup>

Halloran testified to some of these statements at trial, specifically that the injuries were the result of a prior car accident and that Gutierrez possessed keys which opened the safe.<sup>138</sup> Halloran's testimony, however, was not originally solicited by the State, but by the defense in its case-in-chief. Many of the remarks were pointed to by the State in closing arguments as evidence of consciousness of guilt and dishonesty by Gutierrez, and were part of the evidence used to help obtain his conviction.

This Commission has previously determined that an incriminating statement, was "used to obtain the conviction" if it "had some role in obtaining the conviction" such as serving to keep the defendant off the stand, thereby precluding him from testifying on his own behalf.<sup>139</sup> Here, Gutierrez testified in his defense. His testimony and that of others stood in comparison (and at times in contrast) to his allegedly coerced police station statements, which were introduced through Halloran's testimony. If statements used to preclude testimony can be said to "have been used to obtain a conviction," it follows that those statements used to contradict testimony can also be said to have been used to obtain a conviction. It would not serve justice for the Commission to have jurisdiction over a claim where a tortured confession kept a defendant off the stand, but then to lose it when that defendant takes the stand, only to have that tortured confession then introduced and discredit that testimony. However, in this instance, the contradicting statements of Gutierrez' utterances at the police station were introduced by Gutierrez himself by calling Halloran as a witness. While the TIRC Act does not explicitly require that the *state* introduce the tortured confession that is used to obtain the conviction, that is a common requirement of jurisprudence and a logical requirement.

It is possible Gutierrez' lawyer called Halloran solely to blunt the rebuttal testimony he knew would be coming. However, there is no evidence to this effect. Another possible route to jurisdiction concerns whether Gutierrez' attorney felt compelled to put him on the stand due to his statements at the police department. In one notorious police-torture case, the Illinois Supreme Court noted that "[T]he prosecution has the burden of proving that its use of wrongfully obtained evidence did not cause the accused to testify." *People v. Wilson*, 60 Ill.2d 235 (1975). However, that case can be distinguished on several levels from Gutierrez' claim.

Ultimately, the Commission does not decide this issue now. For the sake of argument, the Commission assumes, but does not find, that Gutierrez' incriminating statements were used to obtain his conviction, and proceeds to the issue of whether there is sufficient evidence of torture to merit judicial review.

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<sup>135</sup> TCROP at 589

<sup>136</sup> TCROP at 590

<sup>137</sup> TCROP at 590

<sup>138</sup> TCROP at 482-508

<sup>139</sup> In re Claim of Tony Anderson 2011.014-A, May 21, 2015, page 13 (TIRC Determinations)

## **II. Factors Supporting Claim of Torture**

Several factors support the Claimant's torture allegations:

- Detective John Halloran's record of numerous complaints, many involving accused individuals confessing to crimes and then later being acquitted, is highly concerning. Halloran's extensive history weighs in favor of Gutierrez' claim.
- Documentation that his clothes were taken without a subsequent record indicating he was provided a change of clothes.<sup>140</sup>
- Police records suggest that Gutierrez was moved on several occasions while in detention.<sup>141</sup>
- In a 2020 affidavit, Maurice Williams supports the claim that Gutierrez was in his boxers, seemed cold, and that therefore Williams offered him his sweater.
- Gutierrez qualified for settlement in class action against the City of Chicago for an alleged widespread and frequent practice of detaining suspects beyond forty-eight (48) without a hearing.

## **III. Factors Detracting from Claim of Torture**

- Delayed outcry of torture lessens the credibility of the claims. At trial in 2002, Gutierrez testified that the police took his sweatpants and shirt from him while in their custody, an allegation which makes up a portion of his present claim,<sup>142</sup> but did not mention the rest of the allegations he now raises. The record does not show a coercion allegation again until November 8, 2010 and not a torture allegation with specific facts alleged until April 13, 2011.
- Gutierrez' claims significantly evolved over time:
  - In 2002, at trial, Gutierrez only noted that his clothes were taken from him.
  - In a November 8, 2010 filing, he makes a vague reference to Halloran's "2-step interrogation" and notes generally that "coercion of any form to obtain an incriminating statement is a constitutional violation under the 5<sup>th</sup> and 14<sup>th</sup> Amendments."<sup>143</sup>
  - In April 2011, Gutierrez filed a pro se motion for leave to file supplemental petition for post-conviction relief where he stated he was stripped and for the first time he alleged that he was not fed for three days, was relentlessly interrogated, and not allowed any sleep.<sup>144</sup>
  - On his July 15, 2011, TIRC claim form, Gutierrez stated that he was stripped of all his clothes, while being held in the basement of the police station, with the

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<sup>140</sup> Exhibit B, CPD Case Supplementary Closing Report at 9.

<sup>141</sup> See Exhibit R, Arrest Report

<sup>142</sup> TCROP at 532-533

<sup>143</sup> Exhibit F, Traverse to Respondent's Motion to Dismiss (pro se Nov 12, 2009) at 3, 6

<sup>144</sup> Exhibit H, Pro se Motion to Reconsider Dismissal w Supplemental Petition for PCR Apr 28, 2011

- temperature dropping far enough to make him shiver, but made no mention of threats or being beaten.<sup>145</sup>
- On April 7, 2014, Gutierrez added that he was kept in a cold basement and that officers accomplished sleep deprivation by waking him up every ten to fifteen minutes.
  - During his 2020 TIRC interview, Gutierrez revealed the new allegation that detectives beat him on his ribs and back.
  - The nature and amount of evidence quickly obtained would have lessened law enforcement's motivation to coerce a confession. They had three victim/eyewitnesses, immediate outcry from two of them to responding officers that Gutierrez committed the crime, Gutierrez's on-scene arrest, and the immediate recovery of a murder weapon.
  - The paucity of Gutierrez' statements to police does not suggest that detectives, motivated to torture, would have been satisfied with what little Gutierrez did say. While the Commission does not discount the ingenuity of detectives to elicit something less than a full confession, but that will still convict (like admission to an act that will win an accountability conviction or felony murder rule conviction), it seems unlikely that detectives would have invested such effort for so little.
  - Gutierrez' former attorney did not substantiate Gutierrez' claims. During his TIRC interview, Gutierrez stated he told his trial attorney, Johnson, about the torture. When interviewed, Johnson went as far as to express confidence that Gutierrez did not raise any allegations of torture, based upon his ordinary practice of being willing to file motions to suppress even with no evidence beyond a defendant's word. This strongly suggests that Gutierrez' torture claims were later manufactured.
  - There is no corroborating physical evidence regarding Gutierrez' claim of being physically beaten by police. There is no photographic, physical, or medical evidence indicating Gutierrez was bruised or injured as a result of being beaten by police. Even if there was such evidence, his involvement in a car accident two days prior to his arrest and an altercation allegedly preceding the shootings would make it difficult to distinguish the source of injuries absent specificity or evidence as to what those injuries were.
  - Maurice Williams' affidavit was created twenty (20) years after the incident in question, moreover, as a fellow gang-member incarcerated with Gutierrez, the affidavit's objectivity is called into question. Further, this corroborating witness is only first mentioned during Gutierrez' TIRC interview, not in the TIRC claim form, which gives claimants an opportunity to identify individuals who can support the claim.
  - Other details of the alleged conduct, such as not being allowed to sleep, not being provided food or water, and being kept in cold conditions while only in boxers cannot be verified or corroborated with any available records or evidence.
  - Halloran's filing of a discoverable report memorializing Gutierrez' request for an attorney on the early morning of October 27th or late evening of the 26th<sup>146</sup> seems an unlikely step to take if he intended to keep interrogating and torturing Gutierrez in an attempt to secure a confession, and weighs against Gutierrez.

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<sup>145</sup> Exhibit A, Armando Gutierrez, TIRC Claim Form

<sup>146</sup> Exhibit L October 26, 2000 3<sup>rd</sup> Watch Memo.

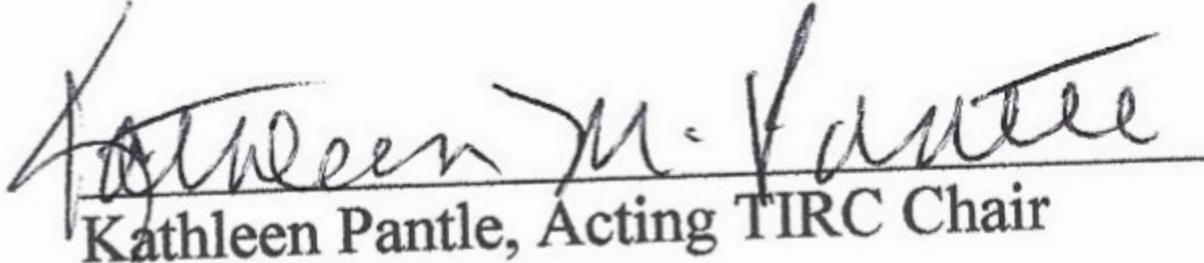
#### **IV. Weighing of the Evidence**

Although the history of the investigating detective identified in this matter as well as the length of detention are problematic, they stop short of being evidence of the torture that Gutierrez claims. In support of his claims, Gutierrez has offered a very delayed “outcry” of his most significant abuse allegations as well as significant additions to them over time. Absent from the record, however, is corresponding corroborating evidence. While the Cermak intake report notes a ‘scar’ on Gutierrez’ forehead and armpit, there is evidence that Gutierrez incurred injuries from a car accident two days prior, and possibly during a fight with Jorge. There are no contemporaneous witness accounts of torture. Absent such corroboration, abuse claims that arise years after the alleged facts and then evolve significantly are rarely “sufficient evidence of torture” to merit judicial review. Gutierrez’ trial counsel’s representations that any indicated claim of torture would have been pursued is persuasive, in part because the Claimant had and took the opportunity to testify and did not mention the abuse that he now claims. Gutierrez’ previous arrests and his sophistication in asking for attorney Joseph Lopez at a fairly early juncture suggest he would have told his attorney about any beating at a fairly early stage and been insistent about it being brought forth.

#### **Conclusion**

The Commission concludes, by a preponderance of the evidence that there is insufficient evidence of torture to merit judicial review of Gutierrez’ claim, and hereby denies his claim. This determination shall be considered a final decision of an administrative agency for purposes of administrative review under the Administrative Review Law (735 ILCS 5/3-101).<sup>147</sup> The Commission also instructs its Executive Director to notify Gutierrez of this decision and inform him of his right to judicial review under the Administrative Review Law.

Dated: June 16, 2021



Kathleen Pantle, Acting TIRC Chair

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<sup>147</sup> See 775 ILCS 40/55(a) of the TIRC Act. Although this determination does not concern a “contested case” as defined in Section 1-30 of the Illinois Administrative Procedures Act (5 ILCS 100/1-30) because no opportunity for a hearing is required (see 775 ILCS 40/45(a)), the Commission notes that the rules of the Commission do not require any motion or request for reconsideration before appeal under the Administrative Review Law, and notes that the service address of interested parties is listed in the Notice of Filing certificate that accompanies the filing of this determination with the Court.