**THE 2022 EUGENE SCASSA MOCK OAS PROGRAM INTER-AMERICAN COURT OF HUMAN RIGHTS MOOT COURT COMPETITION**

**IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

**November 2022**

**“EMILIA CORTEZ & FAMILY,**

*Petitioner*

**v.**

**“THE REPUBLIC OF CULEBRITA”**

*State*

**MEMORIAL FOR THE STATE**

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\*As reported by IACHR Press Office at <https://oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/105.asp>

\*\*[www.ojp.gov/ovc/publications/bulletins/children/pg5.html](http://www.ojp.gov/ovc/publications/bulletins/children/pg5.html)

**STATEMENT OF THE FACTS**

***Factual Background***

The Republic of Culebrita is located on the Eastern Coast of South America and is relatively small compared to its neighbors. It has a population of roughly three million and spans over a total of 11,000 square miles.[[1]](#footnote-1) Approximately 70 percent of the population lives in urban areas, but over 96 percent of the country’s wealth is concentrated there as well. While the Urban population is primarily of European descent, the rural populations are of Afro-indigenous descent.[[2]](#footnote-2) The Cortez family, a family from a rural village, are of Afro-indigenous descent and Herdez family, a financially and politically affluent family from the urban city, are of European descent.[[3]](#footnote-3)

Esther Cortez, a resident of the Italpa Province village of Castaneo, is 14 years old. She was known to have behavioral issues by the village.[[4]](#footnote-4) The Cortez family was known to have criminal activity as all three of Esther’s siblings have had some form of encounters with the law.[[5]](#footnote-5) Both of her sisters, Marta, and Julianna, are living at home, but her brother, Marco, is serving time in prison. Marta, age 17, has two children already. All three girls and Marta’s children live in with their mother, Emilia, and their uncle, Jesus Marano.[[6]](#footnote-6) The family lives in a 600 square foot home.[[7]](#footnote-7)

Esther gave birth to Francesca Cortez on January 14, 2021.[[8]](#footnote-8) When the child was born, both Francesca and Esther tested positive for Marijuana and Methamphetamine.[[9]](#footnote-9) Following this discovery, baby Francesca was taken into legal custody, as required by the law.[[10]](#footnote-10) Esther was then tried and found guilty of child endangerment charges. This was not only due to the drug test, but also her problems with school and the law. She was sentenced to rehabilitation and juvenile detention, which made her unable to be Francesca’s caregiver. Since Esther was the one whose parental rights were in question, the Cortez family was still given the opportunity to apply to adopt Francesca after she was deemed fit for adoption.[[11]](#footnote-11)

Ten families applied for custody of Francesca, and of these ten, five made it to the second round. The second round included in-person home inspections and financial investigations. This procedure was carried out by the Ministry of Family Services.[[12]](#footnote-12) The Cortez family and Herdez family were two of the final five and after an extensive home study and financial investigation, the Herdez family was given pre-placement. After waiting through the legally required three-month probationary period, the Herdez couple was awarded legal custody of Francesca. Francesca has remained in the Herdez’s custody since this decision was made. [[13]](#footnote-13)

On September 18, 2021, Esther was released back into her mother’s care, having successfully completed the rehabilitation program. She has managed to pass each of her monthly drug tests that were mandated as part of her release and will remain on parole until December 2023.[[14]](#footnote-14) There are no free rehab facilities near where Esther lives besides the court-ordered one which she attended.[[15]](#footnote-15) On October 4, after Esther’s release, Esther and her mother filed an appeal over the adoption proceedings. This was a joint filing for custody by Esther and Emilia.[[16]](#footnote-16)

The Provincial Court of Italpa ruled in favor of the Cortez Family in its initial ruling on November 17, 2021.[[17]](#footnote-17) On that same day the Herdez family made an appeal to the regional appellate court. It overturned the provincial court’s ruling. The Cortez family then filed an appeal to the Supreme Court which was rejected for reasons of being sufficiently considered. Thus, Culebrita National Supreme Court let stand the initial ruling from the region appellate court and Francesca has remained in the custody of the Herdez family.

### **LEGAL ANALYSIS**

#### **1. ADMISSIBILITY**

##### **1.1 Statement of Jurisdiction**

The Republic of Culebrita adopted the American Convention on Human Rights in 1969; the Geneva Conventions and additional protocols in 1949; and has recognized the jurisdiction of the Inter-American Court of Human Rights (IACHR) since 1981. It ratified the UN Convention on the Rights of the Child in 1990.[[18]](#footnote-18) Therefore, Culebrita is bound to abide by the American Convention on Human Rights (ACHR) and its court.

#### **2. LEGAL ANALYSIS**

**2.1 The State Did Not Violate Article 8**

The state did not violate Article 8 Section 2 or any prevalent subsections there within. This article states that “During the proceedings, every person is entitled, with full equality.”[[19]](#footnote-19) The initial response from the Italpa Provincial Court which found in favor of the Cortez family took just over one month.[[20]](#footnote-20) The appellate decision was given within two weeks.[[21]](#footnote-21) The Cortez family was given a fair and speedy trial with representation despite being financially challenged. The state was able to provide them with a public defender.[[22]](#footnote-22)

A case that strongly resembles this case was recently published as press release by the IACHR. In the case of *María & Mariano v. Argentina,* the state failed to give Mariano’s birth family any consideration *or* a public defender to file a timely appeal.[[23]](#footnote-23) The Republic of Culebrita, however, did not take the same actions as Argentina did. All parties were given their day in court with timely rulings.

**2.2 The State Did Not Violate Article 17**

The State did not violate Article 17 Section 2 of the American Convention on Human Rights. This article states that “The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.”[[24]](#footnote-24) The Cortez family initially had Francesca removed from their custody because of drugs found in her system as well as in Esther’s system. As required by domestic law, Francesca was then removed from the household.[[25]](#footnote-25) The child was exposed to clear and present danger of drug abuse within the household as well as poor decision-making skills. Poor decision making is something that is considered while determining if one is judged an unfit parent.[[26]](#footnote-26) If this is true, then the initial consideration placing Francesca back into Esther’s care may have posed a danger which is why the upper courts swiftly overturned the decision of the Italpa Regional Court.

As well as this, the International Covenant on Economic, Social and Cultural Rights advocates for the protection of the family unit particularly “while it is responsible for the care and education of dependent children.”[[27]](#footnote-27) While this does not mean that the family is unimportant if it is not providing education for dependent children, this does set a precedent for children requiring care givers who will ensure they are getting a proper education. The Herdez family has no criminal history of note regarding this issue while the Cortez children all have records of truancy among other issues with the law.[[28]](#footnote-28) It is true that the state has decided the Herdez family is a better fit for Francesca’s needs, but this is based on all factors. Family preference is usually given, but the state is not bound by any laws to do so if they do not believe it is in the best interest of the child.[[29]](#footnote-29)

Article 17 has more clear concern and application in cases of arbitrary interference with familial relationships. In the case of *María & Mariano v. Argentina*, Mariano was placed in the custody of another family while the state had no jurisdiction or legal grounds to do so.[[30]](#footnote-30) However, in the case of Cortez family, they were given the ability to apply for custody of Francesca after she was lawfully removed from Esther’s custody. The state was only following its own laws and procedures; therefore, the interference was necessary, not arbitrary.

Moreover, the child was not completely cut off from her family. Although the home study and financial investigations found in favor of the Herdez family, they did recommend an open adoption so that the child could still see her family and share in her heritage.[[31]](#footnote-31)

**2.3 The Actions of the State Were Necessitated by the Circumstances**

Francesca was born with marijuana and, more concerningly, methamphetamine (meth) in her system.[[32]](#footnote-32) This was the reason for her removal from Esther‘s custody as well as the main reason for Esther‘s arrest.[[33]](#footnote-33) Meth is widely known to be detrimental to growth and development, especially in the prenatal stages. Some of the known effects on the fetus are brain lesions, stunted growth, premature birth, and birth defects.[[34]](#footnote-34) After birth, these children might experience hypersensitivity to touch, extreme muscle tension, and respiratory problems. Throughout their life, they may experience stunted growth, impaired cognitive function, learning disabilities, neurological abnormalities, and/or developmental delays.[[35]](#footnote-35) Children in environments where drug abuse happens or crime can occur in general can be detrimental and traumatic, whether the child was born dependent or not. [[36]](#footnote-36)

It is not only important that Esther is currently sober, but also she must remain sober after she is off probation. What happens after birth greatly impacts a child’s development. The home environment is extremely important since, if done properly, the consequences of exposure during pregnancy can be mediated through many available interventions.[[37]](#footnote-37) The Herdez family showed themselves to be a willing couple as they agreed to care for baby Francesca despite the circumstances. They must have been aware of the situation for several reasons. First, they went to court with the Cortez family over custody of the child, in which situation they would have been informed as to the intimate details of the Cortez family and what lead to this point.[[38]](#footnote-38) The second reason would be the open adoption, meaning they are aware of Francesca’s background and willing to allow the biological family visitation rights.[[39]](#footnote-39)

Drug abuse is a very serious issue and can have seriously detrimental effects on infants. Due to the concerns that lead to Esther’s arrest, the state found it necessary for Francesca’s development to be kept out of the environment where this all occurred it. As with every aspect of this case, the state only tried to act in the best interest of the child.

### **Request For Relief**

For the foregoing reasons, the state respectfully asks that the court:

1. Uphold the decision of the regional appellate court that the Culebrita National Supreme Court allowed to stand.
2. Allow the state to entertain supervised visits for Francesca to the Cortez family in Italpa for the benefit of all parties and to meet the requirements of an open adoption.

1. Hypothetical Case §I ¶1 [↑](#footnote-ref-1)
2. Hypothetical Case §I ¶2 [↑](#footnote-ref-2)
3. Clarification Question 1, 26 [↑](#footnote-ref-3)
4. Hypothetical Case §II ¶1 [↑](#footnote-ref-4)
5. Clarification Question 9; Ibid. [↑](#footnote-ref-5)
6. Hypothetical Case §II ¶1 [↑](#footnote-ref-6)
7. Clarification Question 66 [↑](#footnote-ref-7)
8. Hypothetical Case §II ¶1 [↑](#footnote-ref-8)
9. Clarification Question 69; Ibid. [↑](#footnote-ref-9)
10. Clarification Question 31 [↑](#footnote-ref-10)
11. Clarification Question 52 [↑](#footnote-ref-11)
12. Hypothetical Case §II ¶3 [↑](#footnote-ref-12)
13. Hypothetical Case §II ¶5 [↑](#footnote-ref-13)
14. Hypothetical Case §II ¶6 [↑](#footnote-ref-14)
15. Clarification Question 38 [↑](#footnote-ref-15)
16. Hypothetical Case §II ¶6 [↑](#footnote-ref-16)
17. Hypothetical Case §III ¶1 [↑](#footnote-ref-17)
18. Hypothetical Case §V ¶3 [↑](#footnote-ref-18)
19. ACHR 17.2 [↑](#footnote-ref-19)
20. Hypothetical Case §III¶1 [↑](#footnote-ref-20)
21. Hypothetical Case §III¶2 [↑](#footnote-ref-21)
22. Hypothetical Case §IV¶2 [↑](#footnote-ref-22)
23. *María & Mariano v. Argentina* [↑](#footnote-ref-23)
24. ACHR 17.2 [↑](#footnote-ref-24)
25. Clarification Question 31 [↑](#footnote-ref-25)
26. Clarification Question 33 [↑](#footnote-ref-26)
27. International Covenant on Economic, Social and Cultural Rights 10.1 [↑](#footnote-ref-27)
28. Clarification Question 9, 35, 49 [↑](#footnote-ref-28)
29. Clarification Question 5 [↑](#footnote-ref-29)
30. *María & Mariano v. Argentina* [↑](#footnote-ref-30)
31. Hypothetical Case §IV¶3 [↑](#footnote-ref-31)
32. Clarification Question 20 [↑](#footnote-ref-32)
33. Clarification Question 39 [↑](#footnote-ref-33)
34. *Parenting Children Who Have Been Exposed to Methamphetamine* 7 [↑](#footnote-ref-34)
35. *Ibid.* 8 [↑](#footnote-ref-35)
36. *Dangers to Children Living at Meth Labs* [↑](#footnote-ref-36)
37. *Parenting Children Who Have Been Exposed to Methamphetamine* 7 [↑](#footnote-ref-37)
38. Hypothetical Case §III¶2 [↑](#footnote-ref-38)
39. Hypothetical Case §IV¶3 [↑](#footnote-ref-39)