



THE PERMANENT REPRESENTATIVE
OF THE
UNITED STATES OF AMERICA
TO THE
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C.
April 3, 2017

Mr. Paulo Abrão
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
Washington, DC 20006

**Re: Angelica M. Owen and Catrina H. Owen
Request for Precautionary Measures, No. MC-454-14
Response to IACHR's Request for Information**

Dear Mr. Abrão:

The United States Government acknowledges your letter dated January 25, 2017. That letter appended an undated request for precautionary measures by Teresa A. Owen and David W. Owen ("Petitioners"), alleging that their "daughters were wrongfully removed from [their] home on January 20, 2011 for truancy." In an annexed "Motion to Reinstate Dismissed Case," Petitioners indicate that they did not appeal the custody determination made by a domestic court in the State of Kansas with respect to their daughters and that their "case was dismissed in its entirety on February 26, 2014."

As an initial matter, we note that in the documents made available to us, Petitioners have not provided any of the domestic court decisions that underlie their allegations and claims. The United States acknowledges the request in your January 25, 2017 letter that we: (a) "provide information about the proceedings related to the current custody of Angelica M. Owen and Catrina H. Owen being allegedly given to Sheila and Jeffrey Crabtree"; and (b) "indicate which actions were taken to verify that the parents who currently have custody over the

adolescents¹ are complying with their obligations of care and support.” However, we are not in possession of such information and we would emphasize that, while such information is likely readily available to the Petitioners, it would be difficult for the federal government to gather. This difficulty arises because the subject of the Petitioners’ request is child custody, a matter generally in the purview of the states within our federal system, and typically subject to strict rules regarding the confidentiality of information and its nonprovision to third parties, even where the third party is the federal government or the Inter-American Commission on Human Rights (“Commission”). In the instant matter, it appears as though the custody dispute underlying the request for precautionary measures was adjudicated by a local state court in Kansas and is governed by Kansas state law.

We further note that, in a letter dated January 25, 2017, which was posted in the IACHR Individual Petition System Portal (“Portal”), the Commission did request additional information from the Petitioners. Among other things, the Commission asked Petitioners to provide information regarding “the legal situation of the proposed beneficiaries.” As of March 31, 2017, no response to that inquiry has been posted in the Portal or forwarded to us. Should Petitioners provide a response to the Commission’s January 25, 2017 inquiry, we may supplement this letter with additional observations.

In the interim, we wish to point out that, if the Commission treats the Petitioners’ filing as a petition seeking a determination of admissibility and on the merits under the Rules of Procedure (“Rules”)—and not only a request for precautionary measures—the filing appears to be untimely. Pursuant to Article 32(1) of the Rules, “[t]he Commission shall consider those petitions that are lodged within a period of six months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies.” As discussed above, Petitioners have indicated that their custody case in the domestic court system was dismissed on February 26, 2014, nearly three years before your office transmitted their filing to the United States. The petition itself is undated, so we have no way of knowing whether the petition was lodged within a period of six months following the date on which the alleged victim has been notified of the

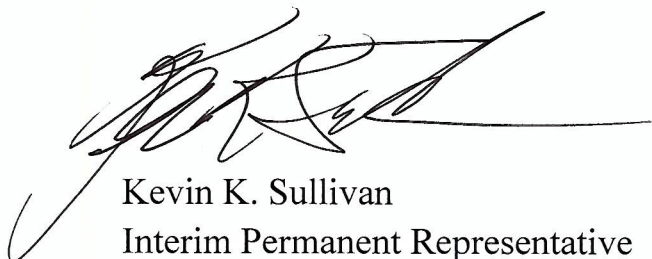
¹ It would appear that parental custody may be a moot issue with respect to the older of the two girls, Angelica, who is now an adult as she is over the age of 18. The younger daughter, Catrina, will turn 18 in September 2017, after which issues of custody may also be moot.

decision that allegedly exhausted the domestic remedies. Pursuant to Article 28(7) of the Rules, a petition addressed to the Commission shall demonstrate “compliance with the time period provided for in Article 32 of the[] Rules of Procedure.” Pursuant to Articles 26(2) and 27, the “Commission shall consider petitions . . . only when the petitions fulfill the requirements set forth . . . in the Rules of Procedure” and “[i]f a petition or communication does not meet the requirements set for in these Rules of Procedure, the Executive Secretariat may request the petitioner or his or her representative to fulfill them.”

Finally, it is worth observing that Petitioners have requested that the Commission provide them with “a hearing on [their] court cases.” However, as the Commission has explained on numerous occasions, the Commission is not a court of fourth instance. The Commission may not “serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction”—a doctrine the Commission calls the “fourth-instance formula.”² Where, as here, a petition “contains nothing but the allegation that [a domestic] decision was wrong or unjust in itself, the petition must be dismissed” under the fourth instance formula.³

Please accept renewed assurances of my highest consideration.

Sincerely,



Kevin K. Sullivan
Interim Permanent Representative

² Marzioni v. Argentina, Case No. 11.673, Report No. 39/96, Oct. 15, 1996, ¶ 51.

³ Abella v. Argentina, Case No. 11.137, Report No. 55/97, Nov. 18, 1997, ¶ 142.