No._____

IN THE

# Supreme Court of the United States

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MARILIS YANETH VELASQUEZ PEREZ,

Petitioner

v.

JOSE CANDIDO DIAZ PALENCIA,

Respondent

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On Petition For Writ Of Certiorari
To The United States Court of Appeals for the Eleventh Circuit

## PETITION FOR WRIT OF CERTIORARI


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## QUESTIONS PRESENTED FOR REVIEW

I. Did the lower courts err in determining that retention of the child was wrongful under Articles 3 and 5 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction despite Articles 252 and 261 of the Guatemalan Civil Code giving Ms. Velasquez custody of the Child?

II. Did the Eleventh Circuit err and violate *Abbott v. Abbott*, 560 U.S. 1 (2010) by finding that Ms. Velasquez had *ne exeat* rights yet upholding the District Court's finding that Ms. Velasquez wrongfully retained the Child?

## PARTIES TO THE PROCEEDINGS

MARILIS YANETH VELASQUEZ PEREZ, Petitioner

JOSE CANDIDO DIAZ PALENCIA, Respondent

## DIRECTLY RELATED PROCEEDINGS

*Jose Candido Diaz Palencia v. Marilis Yaneth Velasquez Perez*
Eleventh Circuit Court of Appeals
Case number 18-14122
Judgment entered on April 30, 2019 and reported at 921 F.3d 1333 (included in the appendix)
Petition for Rehearing *En Banc* denied on July 1, 2019 and is not reported (included in the appendix)

*Jose Candido Diaz Palencia v. Marilis Yaneth Velasquez Perez*
Southern District of Florida
Case number 9:18-CV-80236-ROSENBERG/REINHART
Sealed judgment entered on September 20, 2018 and is not reported (included in the appendix)

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CITATIONS TO REPORTS OF THE OPINIONS AND ORDERS

ENTERED IN THE CASE

*Palencia v. Perez*, 921 F.3d 1333 (11th Cir. 2019).

## STATEMENT OF JURISDICTION

The United States Court of Appeals for the Eleventh Circuit entered its opinion on April 30, 2019, and then denied the timely filed petition for rehearing on July 1, 2019. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

## RELEVANT PROVISIONS INVOLVED

22 U.S.C. §§ 9001-9011 (2018), in pertinent part:

It is the purpose of this chapter to establish procedures for the implementation of the Convention in the United States.

22 U.S.C. § 9001(b)(1).

The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, in pertinent part:

Article 1

The objects of the Convention are –

a) to secure the prompt return of children wrongfully removed or retained in any Contracting State; and

b) to ensure that rights of custody and of access under the laws of one Contracting State are effectively respected in other Contracting States.

Article 3

The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 5

For the purposes of this Convention -

a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

**Guatemalan Civil Code, in pertinent part:**

Chapter VII, Article 252

Translation found in Exhibit B to the Declaration of Emanuel Callejas Aquino filed by the Petitioner in the District Court (App. 25a):

In marriage and outside of marriage. The parental authority is exercised over underage children jointly by father and mother in marriage and non-marital union; and by the father or the mother [i]n whose power the child may be in any other case.

Alternative partial translation provided by the Eleventh Circuit in its opinion, *Palencia v. Perez*, 921 F.3d 1333, 1340 (11th Cir. 2019):

"'within a marriage or common-law marriage' patria potestad 'is exercised jointly by the father and the mother over minor children,' and 'in any other case, it is exercised by the father or the mother, depending on who has custody of the child.'"

The text in Spanish provided by the Eleventh Circuit in its opinion, *Palencia v. Perez*, 921 F.3d 1333, 1340 (11th Cir. 2019):

En el matrimonio y fuera de él. La patria potestad se ejerce sobre los hijos menores, conjuntamente por el padre y la madre en el matrimonio y en la unión de hecho; y por el padre o la madre, en cuyo poder esté el hijo, en cualquier otro caso.

Chapter VII, Article 253

Translation found in Exhibit B to the Supplemental Declaration of Emanuel Callejas Aquino filed by the Petitioner in the District Court (App. 91a):

Parental responsibilities. The father and the mother are obliged to care for and support their children, born in or out of marriage, educate and correct them, using prudent means of discipline, and will be responsible according to criminal law if the abandon them morally and materially and fail to fulfill the duties inherent to parental authority.

Alternative translation provided by the Eleventh Circuit in its opinion, *Palencia v. Perez*, 921 F.3d 1333, 1340 (11th Cir. 2019):

Duties of both parents. The father and the mother have a duty to care and provide for their children, whether born in or out of wedlock, and to raise and correct them using measured discipline. In accordance with criminal law, both shall be responsible should they leave them in a state of moral and/or material abandonment and fail to fulfill the duties inherent to parental authority.

The text in Spanish provided by the Eleventh Circuit in its opinion, *Palencia v. Perez*, 921 F.3d 1333, 1340 (11th Cir. 2019):

Obligaciones de ambos padres. El padre y la madre están obligados a cuidar y sustentar a sus hijos, sean o no de matrimonio, educarlos y corregirlos, empleando los medios prudentes de disciplina, y serán responsables conforme a las leyes penales si los abandonan moral o materialmente y dejan de cumplir los deberes inherentes a la patria potestad.

Chapter VII, Article 261

Translation found in Exhibit B to the Declaration of Emanuel Callejas Aquino filed by the Petitioner in the District Court (App. 25a-26a):

Single or separated mother. When the father and the mother are not legally married or under a non-marital union, the children will be under the power of the mother, except where she convenes that they pass under the power of the father, or that they are interned in an education establishment.

Alternative translation provided by the Eleventh Circuit in its opinion, *Palencia v. Perez*, 921 F.3d 1333, 1339 (11th Cir. 2019):

Single or separated mother. When the father and the mother are neither married nor in a common-law marriage, the children shall be

in the mother's custody unless she agrees to transfer them to the father's custody, or unless they are enrolled in a boarding school.

The text in Spanish provided by the Eleventh Circuit in its opinion, *Palencia v. Perez*, 921 F.3d 1333, 1339 (11th Cir. 2019):

Madre soltera o separada. Cuando el padre y la madre no sean casados ni estén unidos de hecho, los hijos estarán en poder de la madre, salvo que ésta convenga en que pasen a poder del padre, o que sean internados en un establecimiento de educación.

## STATEMENT OF THE CASE

Petitioner Marilis Yaneth Velasquez Perez ("Ms. Velasquez") and Respondent Jose Candido Diaz Palencia ("Respondent") are the mother and father, respectively, of H.J.D.V. ("the Child"), a child born in 2013 in Guatemala.[2] Ms. Velasquez and Respondent are both Guatemalan citizens. Ms. Velasquez and Respondent have never been married and have never had a non-marital union. The Child's place of habitual residence before removal was Guatemala.

Because the parties were unmarried and did not have a non-marital union, Articles 252 and 261 of the Guatemalan Civil Code clearly vested custody rights over the Child in Ms. Velasquez, the mother. In October 2016, Ms. Velasquez came to the United States with the Child and ultimately filed an asylum claim on behalf of herself and the Child. As an unwed mother and the parent with custody rights of the Child, Ms. Velasquez had full rights to do so.

On February 25, 2018, Respondent filed his petition pursuant to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("Hague Convention") and the International Child Abduction Remedies Act, 22 U.S.C. § 9001, *et seq.* The petition cited to 22 U.S.C. § 9003 for the basis of jurisdiction of the court of first instance.

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[2] Unless otherwise stated, the facts included in the Statement of the Case are adopted from the decision of the District Court as accepted by the Eleventh Circuit.

Despite the fact that Ms. Velasquez had custody rights, including the right to determine the place of residence of the Child, the District Court entered its Sealed Order Granting Petition for Return of Child and ordering Ms. Velasquez to reimburse Respondent's necessary expenses. App. 97a-133a. The Eleventh Circuit affirmed, and its affirmance of the issue of custody rights was based solely on the fact that Guatemalan Civil Code provided for an unmarried father's certain obligations (rather than rights) with respect to the Child.

Further, under the Eleventh Circuit's own interpretation of the law, ". . . Article 261 gives the mother the final say when the parents disagree on a given issue." App. 5a. In essence, the Eleventh Circuit held that the law vested an unmarried mother (but not the father) with *ne exeat* rights but still upheld the finding that Ms. Velasquez retained the Child wrongfully. The Eleventh Circuit's decision is in direct violation of this Court's mandate set forth in *Abbott v. Abbott*, 560 U.S. 1 (2010). Ms. Velasquez respectfully submits that the lower courts' decisions should be summarily overturned.

While this case was pending, Respondent initiated a proceeding in Guatemala to obtain custody of the Child. On July 2, 2019, after the conclusion of the proceedings in the Eleventh Circuit Court of Appeals, the court in Guatemala revoked its prior provisional placement of the Child with Respondent, and granted custody and decision-making

authority over the Child solely to Ms. Velasquez. App. 94a-96a. Because the court in Guatemala followed Article 261 of the Guatemalan Civil Code, did not grant custody of the Child to Respondent and did not grant the parties joint custody or decision-making authority, this decision confirms that Ms. Velasquez's interpretation of Guatemalan law is correct.

## REASONS FOR GRANTING THE WRIT

The Eleventh Circuit departed from the accepted and usual course of judicial proceedings when it (1) read into Articles 3 and 5 of the Hague Convention and Articles 252 and 261 of the Guatemalan Civil Code Respondent's custodial rights when Respondent had no custodial rights under Guatemalan law because the parties were not married; and (2) failed to follow this Court's applicable decision in *Abbott v. Abbott*, 560 U.S. 1 (2010). The decision of the Guatemalan court granting custody of the Child to Ms. Velasquez confirms that the Eleventh Circuit erred.

Certiorari is appropriate when a United States court of appeals "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." U.S. Sup. Ct. R. 10(a); *Kalamazoo County Rd. Com'n v. Deleon*, 135 S. Ct. 783 (2015) (Alito, J., dissenting) (arguing that the decision of the Sixth Circuit holding that respondent suffered an adverse employment action when his employer transferred him to a position for which he had applied qualified for review because the appellate court departed from the accepted and usual course of judicial proceedings). In this case, this Court should intervene and reverse the lower court's bizarre

interpretation of clear applicable statues to prevent the Eleventh Circuit's decision from having precedential value.

I. The lower courts erred in determining that retention of the Child was wrongful under Articles 3 and 5 of the Hague Convention despite Articles 252 and 261 of the Guatemalan Civil Code giving Ms. Velasquez rather than Respondent custody of the Child

The lower courts read into Articles 3 and 5 of The Hague Convention Respondent's custodial rights that did not exist because Articles 252 and 261 of the Guatemalan Civil Code gave Ms. Velasquez (rather than Respondent) custodial rights over the Child. Clear and unambiguous applicable statutes of the Guatemalan Civil Code (Articles 252 and 261) govern unwed parents' rights and give an unwed Guatemalan mother the custody rights over her child.[3] The lower courts disregarded these clear and unambiguous statutes governing unwed parents' rights and instead interpreted other statues that govern the parents' general obligations (rather than rights) to mean that Respondent had custodial rights. To put it simply, the lower courts violated the most fundamental principles of statutory and treaty interpretation.

[3] The statues equate couples who are married with the couple who are in a legally recognized non-marital union ("union de hecho"). Because the parties in this case were never married and never had a legally recognized non-marital union, in this brief, "married" or "wed" will mean "married or in a legally recognized non-marital union;" and "unmarried," "not married" or "unwed" will mean "not married and not in a legally recognized non-marital union."

"The interpretation of a treaty, like the interpretation of a statute, begins with its text." *Abbott v. Abbott*, 560 U.S. 1, 10 (2010). When a court interprets a treaty, which is an agreement between countries, the court must avoid reading legal concepts into the text, and the court's power is more restrained than in interpreting federal statutes. *See Lozano v. Montoya Alvarez*, 572 U.S. 1, 11 (2014) ("Unlike federal statutes of limitations, the [Hague] Convention was not adopted against a shared background of equitable tolling.")

When "the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (internal quotations omitted). The courts overstep their authority if they re-write clear text enacted by the legislature. *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. Where, as here, that examination yields a clear answer, judges must stop. Even those of us who sometimes consult legislative history will never allow it to be used to 'muddy' the meaning of clear statutory language." (internal citations omitted)). Ambiguous legislative history cannot prevail over clear statutory text. *See id.* Further, "a statute

should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous." *Clark v. Rameker*, 573 U.S. 122, 131 (2014).

Respondent's petition alleged a wrongful retention of the Child by Ms. Velasquez. In order to establish a wrongful retention under The Hague Convention, Respondent must demonstrate by a preponderance of the evidence that the Child was "wrongfully removed or retained within the meaning of the Convention." *Ruiz v. Tenorio*, 392 F.3d 1247, 1251 (11th Cir. 2004) (citing 22 U.S.C. § 9003(e)(1)). Therefore, in order to prevail, Respondent had to prove that: (1) the Child was a "habitual resident" of Guatemala at the time of the retention; (2) the retention was in breach of Respondent's custody rights under Guatemalan law; and (3) Respondent was exercising those rights at the time of the retention. *Ovalle v. Perez*, 681 F. App'x 777, 780 (11th Cir. 2017) (hereafter "*Ovalle II*") (citing *Ruiz*, 392 F.3d at 1251). This case turns on the second prong of this analysis. Specifically, the outcome of this case depends upon whether Respondent had custody rights under Guatemalan law. The lower courts incorrectly found that Respondent had custody rights, including the right to decide the place of residence of the child, and in the process, disregarded applicable Guatemalan law.

The Convention provides that "rights of custody" are determined by the law of the country in which the child habitually resided at the time of removal. Hague Convention, Art. 3; *Hanley v. Roy*, 485 F.3d 641, 645 (11th Cir. 2007). Because the Child habitually resided in Guatemala prior to moving to the United States, Guatemalan law determines the existence of the "rights of custody" in this case. In Articles 252 and 261, Guatemalan law clearly prescribes that such rights belong to Ms. Velasquez.

**A. Articles 252 and 261 of the Guatemalan Civil Code clearly apply here and vest custody rights in Ms. Velasquez**

The Civil Code of Guatemala makes a distinction between couples who are married (or in a legally recognized "union de hecho") and couples who are unwed. For example, Article 252 provides that parental authority over minor children is exercised jointly by a married mother and father, and in any other case (i.e. when the parents are not married), by the parent in whose power the child is. *Ovalle v. Perez*, 16-CV-62134, 2016 WL 6082404, at *10 (S.D. Fla. Oct. 18, 2016), aff'd, 681 F. App'x 777 (11th Cir. 2017) (hereafter "*Ovalle I*"). Article 261 applies if the parents are not married and provides that an unwed mother (rather than the father or the parents jointly) has the power over the children.

Ms. Velasquez and Respondent are not married and they have never been married. App. 2a. Additionally, they never entered into a "non-marital union" as defined in the Guatemalan Civil Code. *Id.* The lower courts committed reversible error by failing to apply Article 261 of the Guatemalan Civil Code, which clearly governs the situations where the mother is single or separated from the father, including the situation at hand here. *See* G.C.C., Art. 261. The decision of the court in Guatemala granting custody and decision-making authority to Ms. Velasquez is legal authority that confirms that this interpretation is correct because the Guatemalan court followed Article 261.

**B. *Ovalle I* and *II* correctly applied Guatemalan law and the same reasoning should be applied in this case**

The Eleventh Circuit had the opportunity to interpret the bounds of Article 261 in a recent Hague Convention case, *Ovalle II*, 681 F. App'x at 780. In that case, the Eleventh Circuit applied the plain language of Guatemalan law, explaining that Article 261 "notes that children shall be in the power of the mother where the mother is unwed, unless both parents agree that the father should have custody." *Ovalle II*, 681 F. App'x at 785; *see also Ovalle I*, 2016 WL 6082404, at *10 ("Civil Law Code, Article 261 further provides that children shall be in the power of the mother in the case of an unmarried mother.

Petitioner, therefore, had the absolute right under Guatemalan law to determine E.L.'s place of residence...").

Applying this reasoning and the plain language of Guatemalan law to this case, it is clear that Ms. Velasquez held the rights over the Child at the time she allegedly removed the Child. The lower courts' determination that Respondent has custodial rights runs contrary to Article 261 of the Guatemalan Civil Code and The Hague Convention. Just as the Eleventh Circuit found in *Ovalle II*, the plain language and clear application of Article 261 should end the inquiry here as well.

Instead, the District Court and the Eleventh Circuit were persuaded by Respondent's strained and illogical reading of other statutory provisions, which have been disproved by the decision of the Guatemalan court.

**C. Respondent could not and did not have rights of custody under The Hague Convention because Respondent did not have rights of custody in Guatemala**

The lower courts' interpretation of the law incorrectly mistakes obligations for rights, and renders Article 261 meaningless. The "custodial rights" the lower courts granted to Respondent are not rights under Guatemalan law, but rather are obligations a parent must meet. "The [Hague] Convention addresses only whether custodial rights were exercised at the time of removal or would have

been exercised in the absence of removal; the Convention does not contemplate the exercise of obligations, nor does it appear the Convention was intended to contemplate the exercise of obligations." *Leonard v. Lentz*, 297 F. Supp. 3d 874, 885–86 (N.D. Iowa 2017) (citing Elisa Pérez–Vera, *Explanatory Report on the Hague Convention of 1980 on the International Abduction of Children* (hereinafter Pérez–Vera Report")). "Although the Convention provides little explanation with respect to the phrase 'rights of custody,' the Convention favors 'a flexible interpretation of the terms used, which allows the greatest possible number of cases to be brought into consideration.'" *Id.* (citing Pérez–Vera Report, at ¶ 67; *Abbott*, 560 U.S. at 19–20, 130 S. Ct. 1983).

However, even though the Court must take a broad reading of custodial rights, the overarching premise is "the law of the child's habitual residence is invoked in the widest possible sense." Pérez–Vera Report, at ¶ 67. Thus, "if a court is presented with a situation wherein reading the phrase 'rights of custody' with great flexibility would be in conflict with 'the law of the child's habitual residence,' the flexible reading of 'rights of custody' must yield so as to allow the overarching premise to guide the court's reading." *Leonard*, 297 F. Supp. 3d at 885–86 (citing Pérez–Vera Report, at ¶ 67).

In this case, instead of relying on the plain language of Article 261, which clearly applies to the situation at hand, the lower courts engaged in an extra textual exercise contrary to Guatemalan law and The Hague Convention in an effort to strip Ms. Velasquez of her sole custody rights prescribed by Guatemalan law. To do so, the lower courts reviewed Article 253 of the Guatemalan Civil Code, which dictates that both parents of a minor child have certain obligations, and concluded that provision must also confer custody rights upon an unwed father. App. 4a-5a, 126a-127a. In so doing, the lower courts rendered meaningless the provisions of Article 261 and reached a conclusion in direct conflict with *Ovalle II*.

Tellingly, Article 253 upon which the lower courts rely does not include anything relating to "rights of custody" or any rights. Instead, Article 253 only dictates the parents' minimum responsibilities or obligations. The lower courts disregarded the law of Guatemala in favor of a "flexible" creation of a "right of custody" found nowhere in Article 253.

Additionally, the lower courts' reading of Article 253 as conveying "rights of custody" to both unwed parents of a minor child renders Article 261 completely meaningless and unnecessary. Such a reading of clear statutory text is impermissible under the Hague Convention. The District Court and the Eleventh Circuit correctly

noted that Guatemala's legal system is a civil law system, and its primary source of law is legislation—not case law. App. 3a, 4a, 122a. As such, the lower courts should have interpreted the Civil Code provisions according to their plain meaning, and in a way that imported meaning to each provision. *Clark*, 573 U.S. at 131.

Even though the statutory text of Article 261 is clear, and the court's interpretation should not go beyond the text of the statute, this interpretation is supported by multiple Guatemalan legal scholars. For example, a special Commission appointed by Colonel Enrique Peralta Azurdiia, then the Head of the Government of Guatemala, and consisting of Arturo Peralta, José Vicente Rodríguez and Mario Aguirre Godoy, eminent lawyers and jurists, opined that "[o]nly by judicial decision can the father separate the child from the mother, a decision that must be the ruling that declares the custody of the child suspended or terminated." *Exposición de Motivos del Código Civil Guatemalteco,* Resultado de la Comisión del Decreto Ley 106, Sep. 9, 1963, at page 32 (Guatemala) [Explanatory Statements of the Guatemalan Civil Code, Report of the Commission on Decree Law 106]. Moreover, in addressing Articles 252 and 253 the Commission described the aforementioned Articles as providing rights to the ***children*** as opposed to the parents. *See id* at 31.

The analysis proffered by the Commission runs contrary to the analysis provided by the Eleventh Circuit insofar as it relates to the rights conferred by Article 253. The Commission's Report explains that the rights granted in Article 253 belong to the child, as opposed to either of the parents. This explanation illustrates how Article 253 and Article 261 can work in tandem while both still maintaining their importance: the content of Article 253 is directed at establishing obligations, not rights, of the parents, and only vests "rights" in the children, and Article 261 vests the power over the children in the mother where, as here, the parents are not married.

Further, Article 252 states that parents exercise parental authority jointly only when they are married, and when the parents are not married, only one of them can exercise parental authority – the parent who has the power over the children. Article 261 establishes that an unwed mother has the power over the children unless she agrees that the father does or the children are enrolled in school. Both Guatemalan attorneys for Ms. Velasquez and the attorney for Ms. Ovalle view Guatemalan law this way. App. 14a-15a, 18a-19a, 72a. This interpretation harmonizes Articles 252, 253 and 261. In contrast, the lower courts' interpretation strains logic when it equates obligations and rights and renders Article 261 meaningless.

Lastly, the Eleventh Circuit asserts that its decision is not in conflict with *Ovalle* due to the fact that *Ovalle* dealt with the rights of an unmarried mother and the present case deals with the rights of an unmarried father. This is a procedural distinction without a difference because the Guatemalan Civil Code gives custody rights to one parent (the mother) when the parents are not married, and there is no way to determine one unwed parents' rights without determining the other unwed parents' rights. There is no joint parental authority for unwed parents. While this may not be congruent with the legal system in the United States, this is plainly what the Guatemalan Civil Code states. Article 261 must be given the full force and effect of its plain language: "*When the father and the mother are not legally married or under a non-marital union, the children will be under the power of the mother. . . .*"

D. Eleventh Circuit's interpretation of the concept of "*patria potestad*" does not explain who has the right to exercise such rights

The Eleventh Circuit cited to secondary authorities in support of its position that the concept of *patria potestad* encompasses both rights and responsibilities. However, with the exception of Article 253, the Eleventh Circuit cited nothing that addresses who can exercise *patria potestad* rights. In fact, the Eleventh Circuit admits that this concept

originally applied only to fathers but more recently has been made applicable to either parent. App. 4a. As explained *supra*, the Eleventh Circuit's strained interpretation of clear statutory language renders Article 261 meaningless. This is a textbook example of impermissible application of unclear legislative history or secondary authority over clear statutory language.

II. Applying Guatemalan law as stated by the Eleventh Circuit will yield a result that is congruent with The Hague Convention and failing to do so is contrary to this Court's decision in *Abbott*

The Eleventh Circuit stated in its opinion that "Article 253 provides an unmarried father with certain obligations (and therefore certain rights) with respect to his child, with the caveat that Article 261 gives the mother the final say when the parents disagree on a given issue." App. 5a. Thus, in essence, the Eleventh Circuit held that Ms. Velasquez had *ne exeat* right, a right to consent before the other parent can take the child out of the country. *See Abbott v. Abbott*, 560 U.S. 1, 6 (2010).

In *Abbott*, this Court held that "*ne exeat* right is a right of custody under the Convention." 560 U.S. at 10. Thus, the Eleventh Circuit held that Ms. Velasquez had a right of custody under the Convention to take the Child to the United States. Also, under the

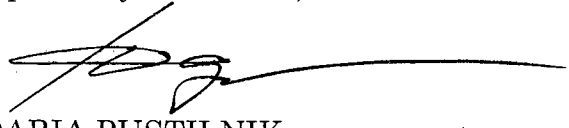
Eleventh Circuit's interpretation of Guatemalan law, Ms. Velasquez has the final word in this regard over Respondent's wishes. Thus, the Eleventh Circuit failed to follow this Court's decision in *Abbott* when the Eleventh Circuit upheld the order to return the Child to Guatemala. Such a decision cannot and should not stand. *See Bosse v. Oklahoma*, 137 S. Ct. 1, 2-3 (2016).

## CONCLUSION

For all of the foregoing reasons and authorities, Ms. Velasquez requests that this Court grant this Petition for the Writ of Certiorari and review the decision of the Eleventh Circuit.

Dated: September 26, 2019

Respectfully submitted,



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