No. _____

IN THE

Supreme Court of the United States

ANTHONY PATTERSON,

Petitioner,

v.

ASLI BAZ,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

October 4, 2024

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QUESTION PRESENTED

Until the decision below, all the courts of appeals to have considered the question held, consistent with the position of the United States in litigation, that "remedies under the Hague [Abduction] Convention may be waived, and that parents may agree to litigate [child] custody [disputes] in a forum besides the children's habitual residence," which is otherwise the presumptive forum for resolving child-custody disputes under that treaty. *Holder* v. *Holder*, 305 F.3d 854, 873 n.7 (9th Cir. 2002). Further, "[i]t is well settled that the Executive Branch's interpretation of a treaty 'is entitled to great weight.'" *Abbott* v. *Abbott*, 560 U.S. 1, 15 (2010). The Seventh Circuit held otherwise.

The questions presented are:

1. Whether parties to a case under the Hague Convention on the Civil Aspects of International Child Abduction, may waive the right to seek a return elsewhere by agreeing to resolve child-custody disputes exclusively in the United States, and

2. Whether parties to a case under the Hague Convention should be held to a decision to waive, forego, or stipulate away rights, including to argue that the habitual residence of a child is outside of the United States, in the same way as any other party would in an ordinary civil action brought in U.S. court?

PARTIES TO THE PROCEEDING

Petitioner Anthony Patterson ("Patterson") was the respondent in district court and appellant below.

Respondent Asli Baz ("Baz") was the petitioner in district court and appellee below.

RELATED PROCEEDINGS

- *Baz* v. *Patterson*, 17 D 79814, Circuit Court of Cook County, Illinois, Family Relations Division. Ongoing.

- *Baz* v. *Patterson*, 23 C 5017, United States District Court for the Northern District of Illinois. Judgment entered December 13, 2023.

- *Baz* v. *Patterson*, No. 23-3407, United States Court of Appeals for the Seventh Circuit. Judgment entered April 30, 2024.

There are no other proceedings in state or federal courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14(b)(1).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

INTRODUCTION

The United States Government has taken the position in litigation, and multiple courts of appeals have held, that "remedies under the Hague [Abduction] Convention may be waived, and that parents may agree to litigate [child] custody [disputes] in a forum besides the children's habitual residence," which is otherwise the presumptive forum for resolving child-custody disputes under that treaty. *Holder* v. *Holder*, 305 F.3d 854, 873 n.7 (9th Cir. 2002). But below, the Seventh Circuit held otherwise.

There can be no dispute, and the Seventh Circuit took it as a given, that the parents here stipulated, in a consent order entered by an Illinois state court, that that Illinois court would be the exclusive forum to resolve child-custody disputes. They also stipulated that their child's "habitual residence" for purposes of the Convention would be the United States. The effect of these agreements was that the parents could not argue in a Hague Convention case for the return of the child to another forum. Yet that is precisely what Baz, the Hague Convention petitioner did, petitioning for a "return" to Germany after agreeing not to do so.

The Seventh Circuit, in affirming the district court's order sending the child to Germany,

disregarded the parents' exclusive-forum agreement, and affirmed the district court's view that the parents' fact stipulation was not binding, and instead just "one factor" to be considered among many. It also directed that, contrary to the parents' agreement, future custody disputes should be resolved in Germany.

That decision not only defies common sense and the position of the United States Government, but it also created a split among the courts of appeals and disregarded this Court's precedents. And, as Judge Hamilton explained in dissent below, the Seventh Circuit's decision "undermine[s] parents' and state courts' ability to resolve difficult family law disputes by agreement." Pet. App. 32a. The Court should grant the petition to provide clarity and uniformity on this important issue of treaty law, and reverse.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Seventh Circuit is reported at 100 F.4th 854, and reproduced at Appendix ("Pet. App.") 1a. The decision of the United States District Court for the Northern District of Illinois is unreported, available at 2023 WL 8622056, and reproduced at Pet. App. 49a.

STATEMENT OF JURISDICTION

The Seventh Circuit issued its published decision on April 30, 2024. Pet. App. 1a. On June 6, 2024, the Seventh Circuit denied Petitioner's timely petition for rehearing *en banc*. *Id.* at 69a. On August 15, 2024, Justice Barrett granted a timely motion to extend the

time to file a petition for certiorari until October 4, 2024. This petition is therefore timely, and the Court has jurisdiction under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

This case concerns a petition for "return" of a child under The Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention" or "the Convention"), Oct. 25, 1980, 1343 U.N.T.S. 89 and its implementing statute, the International Child Abduction Remedies Act 22 U.S.C. § 9001 *et seq.* ("ICARA") which are reproduced in the Appendix, Pet. App. 71a.

STATEMENT OF THE CASE

I. Legal Background

A. The Convention was established to "address the problem of international child abductions during domestic disputes." *Lozano* v. *Montoya Alvarez*, 572 U.S. 1, 4 (2014) (internal quotation marks omitted). Petitions brought under the Convention are not meant to resolve international child-custody disputes, but rather to send an abducted child to the presumptively best forum for resolution of such disputes.

The Convention proceeds on the "premise" that "custody decisions [should ordinarily be] made in the child's country of 'habitual residence.'" *Monasky* v. *Taglieri*, 589 U.S. 68, 72 (2020). To further that objective, parents may petition under the Convention for "the prompt return of a child wrongfully removed or

retained away from the country in which she habitually resides." *Ibid.* As this Court explained, the Convention's "return" requirement "is a 'provisional' remedy that fixes the forum for custody proceedings." *Ibid*. Thus, "[u]pon the child's return, the custody adjudication will proceed in that forum." *Ibid.*

B. Congress enacted ICARA to implement the Convention. In ICARA, Congress granted state and federal district courts concurrent jurisdiction over petitions seeking the return of a child under the Convention, 22 U.S.C. 9003(a), and gave "person[s] seeking to initiate judicial proceedings under the Convention" the private right to "commenc[e] a civil action" in courts with jurisdiction. 22 U.S.C. 9003(b).

Congress stated that the court would decide a petition in accordance with the convention. 22 U.S.C. 9003(d). And Congress prescribed burdens of proof—for example, a petitioner must show, "by a preponderance of the evidence," "that the child has been wrongfully removed or retained within the meaning of the Convention." 22 U.S.C. 9003(e). Congress also made clear that Convention remedies were not exclusive but "in addition to remedies available under other laws or international agreements." 22 U.S.C. 9003(h).

II. Factual Background

A. Born in the United States in 2017, A.P. is the child of Anthony Patterson (petitioner here and respondent in district court) and Asli Baz (respondent here and petitioner in district court). Patterson and Baz, who were never married, separated soon after

A.P.'s birth, and Baz initiated child-custody proceedings in the Circuit Court of Cook County, Illinois (the "Illinois State Court"). Over the years that followed, they routinely relied on the Illinois State Court to address custody issues.

In May 2022, Baz sought the consent of the Illinois State Court to take A.P. with her to Germany as her U.S. student visa was going expire. At that time, she falsely stated she intended the move to be temporary[1]; it would be A.P.'s first move outside of the United States. Ultimately, based on her representations, the Illinois State Court entered a consent order, negotiated by Baz and Patterson, with the assistance of counsel, allowing the move ("the Consent Order").

The Consent Order "resolved a host of issues, including custody, visitation, schooling, and support." Pet. App. 30a (Hamilton, J., dissenting). Moreover, given the international relocation, the Consent Order included provisions concerning the Hague Convention that are often incorporated in court-ordered custody agreements, two of which are most relevant here.

First, the Consent Order "included agreement that the child's habitual residence for Hague Convention purposes would remain in Illinois as he would be traveling back and forth between the father in Illinois and the mother in Germany." Pet. App. 30a (Hamilton, J., dissenting); Pet. App. 5a ("[t]he 'Habitual Residence' of the minor child is the United States of

[1] Baz admitted this sworn testimony about the relocation being temporary was false. Pet. App. 39a – 40a n.6 (Hamilton, J., dissenting).

America, specifically the County of Cook, State of Illinois, United States of America."). It was common ground that this was a stipulation as to A.P.'s *future* habitual residence. Pet. App. 20a.

Second, the Consent Order contained an agreement that the Illinois State Court would retain exclusive jurisdiction over any child-custody disputes, and any modification of its terms (which, as noted, specifically addressed custody and other issues). Pet. App. 5a–6a ("So long as at least one parent resides in the State of Illinois, the Circuit Court of the State of Illinois shall retain exclusive and continuing jurisdiction over this cause to enforce or modify the terms and provisions of this [Consent Order].").[2]

The upshot of the Consent Order is clear: if A.P. were wrongly retained elsewhere, the Hague Convention would be available to seek a return to Illinois, the exclusive forum for custody disputes, but was otherwise not available to the parents.

B. In the summer of 2022, following entry of the Consent Order, Baz took A.P. to Germany in accordance with the agreement. Some six months later, a dispute arose between the parents concerning A.P.'s U.S. passport. In January 2023, consistent with the Consent Order, Patterson sought relief from the Illinois State Court. But Baz, rather than adhere to the Consent Order, sought *ex parte* relief from German

[2] This provision parallels The Uniform Child Custody Jurisdiction and Enforcement Act, a uniform act adopted in every state except Massachusetts. 750 ILCS 36/202(a)(2).

courts, seeking and obtaining a travel ban and then requesting sole custody of A.P. in Germany.

In May 2023 the parents entered an agreement in Germany lifting the travel ban and reaffirming the Consent Order in all material respects (including as to jurisdiction and habitual residence). Pet. App. 8a, 46a–47a.

Soon thereafter the parents had another dispute, with Baz again refusing Patterson parenting time. As a result, Patterson sought and obtained an order from the Illinois State Court "order[ing] Baz to turn over A.P. to Patterson immediately, and authoriz[ing] Patterson to travel to Germany to retrieve the child"; armed with that order, Patterson picked up A.P. from Kindergarten in Germany and returned him to Illinois. Pet. App. 10a.

C. With A.P. in Illinois, Patterson again went to the Illinois State Court. On July 10, 2023, the Illinois State Court entered a temporary restraining order granting Patterson sole custody of A.P. Pet. App. 11a. On July 25, 2023, the Illinois State Court converted the TRO into a preliminary injunction. In that order, the Illinois State Court found that Baz was "exhibit[ing] extremely concerning behavior as to direct violations of the [Consent Order] and contradictions to her testimony in open court." Pet. App. 67a n.10.

III. Procedural History

A. Rather than participate in proceedings before the Illinois State Court—to whose exclusive

jurisdiction she had earlier submitted all custody disputes—Baz filed a return petition under the Hague Convention in the United States District Court for the Northern District of Illinois on August 1, 2023. In her petition, Baz requested "return" of A.P. to Germany, which she claimed, again in breach of the Consent Order, to be A.P.'s "habitual residence," so that custody disputes could be heard in Germany.

Following a two-day hearing in December 2023 at which Patterson appeared *pro se*, the district court granted the return petition in full. In so ruling, the district court disregarded Baz's prior commitment to resolve custody disputes in Illinois, as well as her prior stipulation that A.P.'s "habitual residence" under the Hague Convention was the United States, finding that A.P.'s habitual residence was Germany.

B. Patterson appealed, now represented by *pro bono* counsel, and the Seventh Circuit entered a stay of the return order and expedited the appeal.

In his appeal brief, Patterson argued that the Consent Order made it a legal error to "return" A.P. to Germany for the consideration of child-custody disputes, as Baz was requesting. That was because, first, the parents stipulated to the exclusive jurisdiction of the Illinois State Court to resolve child-custody disputes, and second, the parents stipulated in the Consent Order that A.P.'s "habitual residence" was in the United States. In both ways, Patterson argued, Baz waived and contracted away her ability to petition for an order sending A.P. to Germany.

On April 30, 2024, the Seventh Circuit affirmed in a divided decision. The court construed Patterson's argument that the forum-selection clause amounted to a waiver of Baz's rights under the Hague Convention to be a claim that the parties agreed to oust the district court of jurisdiction and that they selected a contrary choice of law. Pet. App. 12a. The court rejected this claim on the basis that it contravened federal policy. Pet. App. 12a–15a. In that regard, the Seventh Circuit directed, contrary to the parents' agreement (and the UCCJEA, which the Consent Order parroted but which the Circuit did not address), that future custody disputes would be handled in Germany, not Illinois. Pet. App. 29a ("[I]f future custodial disputes involving A.P. should arise while his habitual residence remains in Germany, the task of resolving them will fall on the tribunals established in that country for the resolution of such issues.").

With regard to the stipulation of "habitual residence," the Seventh Circuit took it "as established" (given Baz's concessions on appeal) that the parents "purported to determine the child's future habitual residence" within the meaning of the Hague Convention. But the court declined to give the fact stipulation in the Consent Order controlling weight, or indeed much weight at all, for two reasons. First, it explained that the parents could not "bind third parties (such as A.P.'s guardian ad litem, who was not a party to the Illinois Allocation Judgment) or the district court." Pet. App. 20a. Second, the Seventh Circuit ruled that Patterson's argument rested on the "mistaken" premise "that parental intent alone can dictate a child's

habitual residence," Pet. App. 21a, holding that the district court should take the parents' stipulation as "only one factor among others to consider," which is what that court had done. Pet. App. 22a.

Judge Hamilton dissented. He wrote, among other things, that the district court committed legal error in giving "no meaningful weight to the parents' May 2022 agreement, accepted and ratified by the court in Illinois, where both parents and the child had lived and where earlier custody issues had been adjudicated." Pet. App. 30a. In his view, "courts should enforce" such agreements "absent unusual circumstances threatening the well-being of the child." *Ibid.*; Pet. App. 37a ("In this case, where no unexpected or unforeseeable factors would render the agreement contrary to the child's best interests, it should have controlling weight."). For that and other reasons, he would have reversed the return order.

C. Patterson filed a petition for rehearing *en banc*, which the Seventh Circuit denied on June 6, 2024. Pet. App. 69a. Patterson then filed this petition.

REASONS FOR GRANTING THE PETITION

The Seventh Circuit held that parties to proceedings under the Hague Convention (here the parents), may not enter into forum-selection agreements or stipulations that would be binding in future Hague Convention proceedings. This remarkable ruling, which contravenes the law in other Circuits, the previously expressed view of the United States, and decisions of this Court, makes it impossible for parents to

reach agreement about how and where future child-custody disputes would be resolved. This Court should grant the petition for certiorari, and reverse.

I. The Seventh Circuit Split with all Other Circuits, Which Endorse Party Autonomy, and with the Position of the United States.

In two explicit ways, A.P.'s parents agreed that their child-custody disputes would be resolved in Illinois state court, and that A.P. would not be sent elsewhere under the Hague Convention to have such disputes resolved there—thus waiving any right to contrary relief under the Hague Convention. First, they agreed to the exclusive jurisdiction of the Illinois State Court for custody disputes, and second, they stipulated to A.P.'s habitual residence being in the United States, thus again waiving their right to a return elsewhere. In spite of that, the Seventh Circuit affirmed an order requiring the "return" of A.P. to Germany, directing, contrary to their agreement, that "future disputes involving A.P." would be resolved by "the tribunals established in [Germany]." Pet. App. 29a.

Whether viewed through the lens of waiver, stipulation, or otherwise, the Seventh Circuit split with every court of appeals to have considered the right of parents to forego their non-exclusive Hague Convention rights. It also departed from the considered views of the United States. The other circuits and the Executive all instruct, contrary to the Seventh Circuit, that parents ***may*** waive the right to seek "return" under the Hague Convention, by word or deed, and may

agree to have a forum other than the "habitual residence" resolve child-custody disputes.

A. Consider, first, the Ninth Circuit's decision in *Von Kennel Gaudin* v. *Remis,* 282 F.3d 1178 (9th Cir. 2002). There, the Ninth Circuit held that a parent "moot[ed]" her petition for return of a child to another country by her conduct (thus effectively waiving the right to return elsewhere). *Id.* at 1183. The Ninth Circuit explained that such a waiver of Hague Convention rights occurs by conduct, where a petitioning parent "cast[] [her] lot with the judicial system of the country" in which the Hague Convention petition was filed, thus making that country's courts "the proper forum to determine custody matters." *Id.* In that case, the Ninth Circuit held that the act of moving permanently to the jurisdiction from which return was sought mooted a claim for return elsewhere.

The First Circuit stated the same rule in *Nicholson* v. *Pappalardo*. 605 F.3d 100 (1st Cir. 2010), albeit in *dictum*. The petitioner entered a consent order in Maine state courts granting temporary sole custody to the respondent. *Id.* at 102–03. He later filed a petition under the Convention. The First Circuit stated that if in the consent order he had "agree[d] to let the Maine courts determine final custody" (as opposed to temporary custody) then "we would think that this was … a waiver of Hague Convention rights." *Id.* at 106–07.

The Fifth Circuit also recognizes the ability of parents to waive their rights under the Convention. In *Larbie* v. *Larbie*, 690 F.3d 295 (5th Cir. 2012), *cert denied*, 568 U.S. 1192, the Hague Convention petitioner

litigated custody issues in Texas state courts, and, unhappy with the result, later filed a Hague Convention petition. The district court granted relief and entered an order directing the child's "return" to England. On appeal, the Fifth Circuit reversed. Citing the First Circuit's decision in *Nicholson*, the Fifth Circuit reasoned that the previous litigation of custody issues in Texas state court—and the entry of state-court orders concerning child-custody matters—amounted to a waiver of remedies under the Hague Convention, and barred the petitioner from seeking relief under the Hague Convention (i.e., a "return" to England). It explained: "consent for a particular tribunal to make a final custody determination . . . suffices to establish an affirmative defense under the Convention." *Id* at 309; *see also id.* at 308 (if affirmed, "the district court's order [would] undo[] the custody arrangement ordered by the Texas court of competent jurisdiction—before which both parties participated and sought relief.").

Similarly, the Second Circuit enforces parental waivers in Hague Convention cases. In *Tereshchenko* v. *Karimi*, that circuit applied standard rules of procedure to determine that a parent waived an affirmative defense by failing to raise it in the answer. 102 F.4th 111, 127–29 (2d Cir. 2024) (citing FRCP 8). The court considered the issue of waiver to raise standard questions governing the adversarial process (between the parents), and, unlike the Seventh Circuit, never suggested that the policies of the Hague Convention, or the best interests of a non-party (i.e., the child), should alter the waiver analysis.

B. The Seventh Circuit also split with the Third Circuit on whether a court should enforce a parental stipulation waiving the ability to argue a particular fact in litigation (there, as here, a stipulation of habitual residence). Below, the Seventh Circuit cited *Karkkainen* v. *Kovalchuk*, 445 F.3d 280 (3d Cir. 2006), with approval, Pet. App. 20a, but it misinterpreted and overlooked *Karkkainen*'s holding. There, the Third Circuit affirmed a district-court decision not to enforce a written agreement, but that was because the parents modified it. *Id.* at 292–93. In other words, the Third Circuit *did* enforce the parental agreement—namely, the agreement to vary the prior agreement—and held the parties to their revised agreement.[3]

Moreover, unlike the Seventh Circuit below, which identified an implied federal policy preempting state law and ordinary rules of procedure, the Third Circuit proceeded as it did because of the relevant state law governing the enforcement of child-custody agreements. It did not hold there was an express or implied federal policy precluding parental stipulations of fact in Hague Convention cases, but rather enforced the agreement in line with state family law.

C. The views of the courts of appeals endorsing party autonomy to agree to a forum for resolving custody disputes and permitting (or finding) that parents may waive or forego their rights by word or deed, are

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[3] This is precisely the rule Judge Hamilton would have followed (in dissent), and the opposite of the Seventh Circuit's "one factor" approach, which failed to consider that parents in Hague Convention cases are party-adversaries who may waive or stipulate facts and rights away, just as any other litigant may do.

consistent with the position of the United States, taken in litigation.

In *Holder* v. *Holder*, 305 F.3d 854 (9th Cir. 2002), the Ninth Circuit recorded that the United States was asked for its position in point (in related custody and divorce proceedings); that position, which the Ninth Circuit affirmed (although it found no waiver on the facts presented), was that "remedies under the Hague Convention may be waived, and that parents may agree to litigate custody in a forum besides the children's habitual residence." *Id.* at 873 n.7. This is the converse of what the Seventh Circuit held.

Moreover, the United States had made the same point in submissions to the Supreme Court of Sweden. In *Johnson* v *Johnson*, Case No. 7505-1995 (Sweden), a child was taken from the United States to Sweden, and the mother refused to return her to the United States for parenting time, despite a Virginia custody order that—just like the one here—"'include[d] an agreement by the parties that Virginia is Amanda's place of habitual residence and that the Virginia court will maintain continuing and exclusive jurisdiction to resolve all future custody issues involving her.'" *See Johnson* v. *Johnson*, 493 S.E.2d 668, 670–71 (Va. App. 1997); Note from US Central Authority to Swedish Central Authority ("U.S. Swedish Submission"), *available at* https://bit.ly/Johnson1996.

In *Johnson,* the United States submitted an *amicus* brief to the Swedish Supreme Court asserting that the parents' agreement should be enforced, as anything else would have the "insidious result of

substantially prolonging the custody dispute by making it more difficult for parents to come to an agreement," "create incentives for child abduction and forum shopping" and would "thwart[]" the "Hague Convention's goals of preventing jurisdiction from being established through an unlawful abduction or retention." *Ibid.*

And, after the Swedish Court (like the Seventh Circuit) rejected the position and found Sweden to be the child's habitual residence, the United States sent a formal diplomatic note reiterating its position that Sweden, by not holding the parents to their bargain, "threaten[ed] the greater objectives of the Convention." United States Note No. 64 of 30 Jun 1996, *available at* https://bit.ly/JohnsonNoteNumber64.

* * *

"It is well settled that the Executive Branch's interpretation of a treaty 'is entitled to great weight.'" *Abbott* v. *Abbott*, 560 U.S. 1, 15 (2010) (applying canon in Hague Convention case). If the Seventh Circuit had followed the considered views of the federal Government, which is also the rule in all other circuits, then Baz's Hague petition would have been denied.

There can be no question that the district court's order here "und[id] the custody arrangement ordered by the [Illinois] court of competent jurisdiction," *Larbie*, 690 F.3d at 308, and displaced the parents' designation of Illinois courts to exclusively resolve custody disputes, along with the parents' stipulation that A.P.'s habitual residence was in the United States.

These agreements would have worked to allow a Hague petition to return A.P. to Illinois, but plainly were intended to forego the right to seek a return elsewhere. These provisions would have required denial of the petition in other circuits.

This Court should resolve the conflict between the Seventh Circuit's decision and the views taken by the United States and the other courts of appeals.

II. The Decision Below is Wrong and Conflicts with this Court's Precedents

As this Court instructed, "absent a clear and express statement to the contrary, the procedural rules of the forum State govern the implementation of the treaty in that State." *Medellin* v. *Texas*, 552 U.S. 491, 517 (2008) (quoting *Sanchez-Llamas* v. *Oregon*, 548 US 331, 351 (2006)). This was a civil action between the parents, and Baz had the burden of proof on the elements essential to obtaining a remedy of "return," including habitual residence. *See* 22 U.S.C. 9003(b), (e). Her agreement to exclusive jurisdiction in Illinois—and her adverse stipulation as to an essential element of her claim should have been enforced, because the Convention did not express anything to the contrary.

A. With regard to the forum-selection clause, the Seventh Circuit cited no clear and express provision of the Hague Convention or its implementing legislation that foreclosed enforcement of the parties' agreements. Rather, contrary to this Court's precedents and ignoring the approach taken by the other circuits

(which Patterson cited in briefing), the court below discerned an implied preemption of ordinary rules of procedures governing party autonomy. It therefore declined to enforce the forum-selection clause or find a waiver of the rights and remedies available under the Hague Convention, citing "choice of forum" and "choice of law" principles. Pet. App. 13a–14a. This was error. *See Medellin*, 552 U.S. at 517.

B. The Seventh Circuit's refusal to enforce the parents' stipulation of fact also contravenes longstanding instructions by this Court that parties to a civil action are entitled to have their cases resolved on stipulated facts. *H. Hackfeld & Co.* v. *United States*, 197 U.S. 442, 446–47 (1905) ("[T]he parties were entitled to have this case tried upon the assumption that these ultimate facts, stipulated into the record, were established, no less than the specific facts recited."); *see also Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law* v. *Martinez*, 561 U.S. 661, 677–78 (2010) (describing the binding nature of fact stipulations as "long recognized"). A stipulation of fact acts to "withdraw[] a fact from issue" in judicial proceedings, and a court should not "consider a party's argument that contradict[s] a joint stipulation." *Ibid.* (cleaned up).

The Seventh Circuit invoked as a first rationale for not enforcing the parents' fact stipulation that it could not "bind third parties (such as A.P.'s guardian ad litem, who was not a party to the Illinois Allocation Judgment) or the district court." Pet. App. 20a. But again, Congress instructed that a Hague Convention

petition is just a "civil action," 22 U.S.C. 9003(b), and that a Hague Convention petitioner (Baz here) bears the burden of proof on the element of wrongful removal, and thus habitual residence, 22 U.S.C. 9003(e). *Monasky* v. *Taglieri*, 589 U.S. 68, 72 (2020) ("the Convention ordinarily requires the prompt return of a child wrongfully removed or retained away from the country in which she habitually resides."). If the party with the burden on an element of her claim stipulates it away, the district court must hold the party to its stipulation, *Christian Legal Society*, 561 U.S. at 677–78, and the case should be dismissed.[4]

The Seventh Circuit's second rationale for refusing to enforce the stipulation of habitual residence was that "parental intent alone can[not] dictate a child's habitual residence." Pet. App. 21a. In so holding, the court relied heavily on *Monasky*, 589 U.S. 68. But in *Monasky*, there was no agreement at all between the parents about where to raise their infant child. The question presented to this Court was whether, as a matter of substance and treaty interpretation, "an actual agreement between the parents on where to raise their child [was] categorically necessary to establish an infant's habitual residence." 589 U.S. at 77.[5] This Court's answer was no: "[t]here are no categorical requirements for establishing a child's

[4] The Seventh Circuit cited sentencing cases in support. Unlike a private civil dispute such as a Hague Convention case, the federal sentencing guidelines permit courts to "consider relevant information without regard to its admissibility under the rules of evidence applicable at trial[.]" U.S.S.G. § 6A1.3.

[5] The Court also addressed the relevant "standard of appellate review." 589 U.S. at 83.

habitual residence—least of all an actual-agreement requirement for infants." *Id.* at 80-81. Rather, "the determination of habitual residence [i]s a fact-driven inquiry into the particular circumstances of the case." *Id.* at 79.

Clearly, this Court's rejection of a categorical substantive requirement for establishing habitual residence says nothing about whether parents may stipulate to that element of the case. The law frequently requires a plaintiff (as here) to prove elements of a claim based on all relevant facts—be it retaliation in a Title VII case, or infringement in a patent or copyright case. These are fact-driven inquiries, but parties may still stipulate to them, or to facts underlying them. Indeed, in *Christian Legal Society*, the stipulation concerned the application of a school policy—also a fact-intensive inquiry. 561 U.S. at 677.[6]

D. The Seventh Circuit's view also contravenes the position of the United States regarding the interpretation of the Hague Convention, to which the Court should accord great weight. *Abbott*, 560 U.S. at 15 (Hague Convention); *Medellin*, 552 U.S. at 513 (Vienna Convention on Consular Relations); *Sumitomo Shoji Am., Inc.* v. *Avagliano*, 457 U.S. 176, 184–85

[6] The Seventh Circuit's ruling also cited the stipulation's prospective nature. Pet. App. 22a. The "leading legal treatise" cited in *Christian Legal Society,* 561 U.S. at 677–78, makes clear that there are circumstances permitting a court to disregard a stipulation—*e.g.*, "a showing of good cause sufficient to invalidate a contract, such as fraud, overreaching, duress, or mistake." 83 C.J.S. Stipulations 93. But none was asserted here. Moreover, as Judge Hamilton explained in dissent, there were no unforeseen changes in circumstance. Pet. App. 37a.

(1982) (Treaty of Friendship, Commerce and Navigation between the United States and Japan).

At the risk of repetition, the Executive made clear its position that "remedies under the Hague Convention may be waived, and that parents may agree to litigate [child] custody [disputes] in a forum besides the children's habitual residence." *Holder*, 305 F.3d at 873 n.7; *see also supra* at Section I.C. (discussing the same position taken by the United States in *Johnson*). Enforcing a parental stipulation, recorded in a court order, which resolves child-custody disputes, accords with the considered position of the United States. Disregarding it, as the Seventh Circuit did, does not.

* * *

Ours is an "adversarial system of adjudication," *United States* v. *Sineneng-Smith*, 590 U.S. 371, 375 (2020), and Congress made clear that the parents are adversaries in a civil case, with burdens of proof. Consistent with this, the United States has taken the position that parents can waive their rights and remedies, and stipulations of fact are enforceable, as are agreements to a particular forum to resolve child-custody cases. The Hague Convention contains no "clear and express statement" governing parental waivers or stipulations. Therefore, it is error not to enforce a parental waiver. *Medellin*, 552 U.S. at 517; *see also Sanchez-Llamas*, 548 U.S. at 360 ("claims under Article 36 of the Vienna Convention may be subjected to the same procedural default rules that apply generally to other federal-law claims.").

III. The Questions Presented are Important.

There is always an important federal interest in ensuring the uniform application of treaty law across the United States. *Monasky*, 589 U.S. at 76 (granting certiorari to clarify "an important question of federal and international law"); cf. *BG Grp., PLC* v. *Republic of Argentina*, 572 U.S. 25, 32 (2014) (granting certiorari "[g]iven the importance of the matter for international commercial arbitration").

Here, as noted, the Seventh Circuit unsettled expectations on important questions of treaty law, creating circuit splits. Moreover, the Circuit's ruling deviates from the judgment of the United States on waiver and parental agreements, including as reported in *Holder* v. *Holder*, that "remedies under the Hague Convention may be waived, and that parents may agree to litigate custody in a forum besides the children's habitual residence." 305 F.3d at 873 n.7. All of this, and the important federal interest in uniformity, strongly counsels in support of review.

The need for uniform rules concerning the effect of parental agreements in Hague Convention cases is heightened because proceedings under that treaty are meant to be expedited, and parents frequently stipulate to fact-intensive aspects of their case, particularly habitual residence. *The 1980 Hague Convention on the Civil Aspects of International Child Abduction, A Guide for Judges—Third Edition,* 267. ("parties can

reach an agreement concerning the facts of the case or the issues deemed established").[7]

The Seventh Circuit's ruling is also bound to affect primary conduct in child-custody matters. The agreements included in the Consent Order are commonplace in family-court decrees involving temporary international moves. The parents in *Johnson* entered into basically the same provision in a Virginia custody case, *see* supra. *See also Kinfoussia* v. *Hamade*, 2023 WL 4940574, at *6 (Cal. App. Aug 03, 2023).

By undoing those agreements and decrees (and others like them), the ruling below will make it impossible to fix forums to resolve custody disputes, and greatly "undermine parents' and state courts' ability to resolve difficult family law disputes by agreement." Pet. App. 32a (Hamilton, J., dissenting). It unsettles the ability of parents to organize their custodial affairs with the expectation that their prospective agreements with be enforced by federal courts. And it runs counter to a key "purpose" of the Hague Convention, which is to "deter[] child abductions by parents

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[7] Parties regularly so stipulate. *See Mene* v. *Sokola*, 2024 WL 4227788, at *17 (S.D.N.Y. Sept. 17, 2024); *Brito* v. *Castro*, 2024 WL 2967273, at *6 (N.D. Tex. May 8, 2024); *Guzman* v. *Brazon*, 2024 WL 1841602, at *1 (W.D.N.C. Apr. 26, 2024); *Castang* v. *Kim*, 2023 WL 1927027, *7 (N.D. Ga. Feb. 9, 2023); *Efthymiou* v. *LaBonte*, 2023 WL 1491252, at *7 (N.D. Cal. Feb. 3, 2023); *Preston* v. *Preston*, 2023 WL 300130, *1-2 (E.D. Tex. Jan. 17, 2023); *Rodriguez* v. *Lujan Fernandez*, 500 F. Supp. 3d 674, 681 (M.D. Tenn. 2020); *Colon* v. *Mejia Montufar*, 470 F. Supp. 3d 1280, 1291 (S.D. Fla. 2020); *see also Salame* v. *Tescari*, 29 F.4th 763, 766 (6th Cir. 2022); *Baran* v. *Beaty*, 526 F.3d 1340, 1342 (11th Cir. 2008); *Walsh* v. *Walsh*, 221 F.3d 204, 216 (1st Cir. 2000).

who attempt to find a friendlier forum for deciding custodial disputes." *Abbott*, 560 U.S. at 20.

IV. This Case Presents an Ideal Vehicle to Decide the Questions Presented.

The questions presented are squarely implicated, and outcome-dispositive. The parties' agreements in the Consent Order could not have been clearer, and the Seventh Circuit's holding could not have been clearer either: Party stipulations are not binding on federal courts, and state-court endorsed agreements to resolve custody disputes in a particular forum are neither enforceable *per se*, nor can they amount to a waiver of Hague Convention remedies, which are meant to be non-exclusive. Instead, per the court below, these agreements mean nothing. In other circuits, the position of the United States as stated in *Holder* would have been endorsed, and the Hague Convention petition would have been denied.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari.

Respectfully submitted,

October 4, 2024

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED APRIL 30, 2024

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 23-3407

ASLI BAZ,

Petitioner-Appellee,

v.

ANTHONY PATTERSON,

Respondent-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:23-cv-05017 – **Jorge L. Alonso**, *Judge.*

Argued April 11, 2024 — Decided April 30, 2024

Before Wood, Hamilton, and Lee, *Circuit Judges.*

Wood, *Circuit Judge.* Asli Baz, a citizen of Germany, filed this suit under the International Child Abduction Remedies Act, Pub. L. No. 100-300, 102 Stat. 437 ("ICARA"), seeking to compel Anthony Patterson, a citizen of the United States, to return their six-year-old son, A.P., from Illinois to Germany. ICARA implements the Hague

Convention on the Civil Aspects of International Child Abduction, T.I.A.S., No. 11,670, 1343 U.N.T.S. 89 (Oct. 25, 1980) ("the Convention"), an international treaty to which both the United States and Germany are parties. The statute "entitles a person whose child has been wrongfully [retained in] the United States in violation of the [] Convention to sue the wrongdoer in federal court for the return of the child" to the child's habitual residence. *Altamiranda Vale v. Avila*, 538 F.3d 581, 583 (7th Cir. 2008) (citing 22 U.S.C. § 9003(b)).[1]

The district court found that A.P.'s habitual residence at the time he was retained was in Germany, where he had lived with Baz for over a year, and that the retention in Illinois violated Baz's rights of custody under German law. It thus granted Baz's petition and ordered the child's return. We stayed the district court's return order while Patterson appealed the judgment. In his appeal, Patterson challenges both the jurisdiction of the district court and its rulings on the merits of the petition. We conclude that the district court properly exercised the jurisdiction granted to it by ICARA and that the record supports its decision. We therefore affirm.

I

In 2013, Baz was living in the United Kingdom and Patterson resided in Florida. The two met while Baz was visiting Miami, and they soon struck up a relationship.

1. In 2014, the codified legislation was transferred from Title 42 of the United States Code to Title 22. Our references here are to the 2018 edition of the Code.

Two years later, Baz moved to Chicago on a student visa to pursue a doctoral degree in clinical psychology. Patterson accompanied her, they moved into a house together, and their son, A.P., was born in May 2017. Although Baz and Patterson ended their relationship shortly after A.P.'s birth, they continued to occupy the same house, though on different floors, pursuant to an order from the Circuit Court of Cook County, Illinois ("Illinois state court"). In November 2017, Patterson committed a domestic battery against Baz, for which he was charged, convicted, and sentenced to eighteen months of conditional discharge. He has fully served that sentence.

Over the next few years, Baz and Patterson continued to rely on the Illinois state court to resolve issues relating to A.P.'s custody and placement. On August 5, 2019, Baz sought and received the court's permission to relocate with A.P. to Wisconsin for her pre-doctoral internship. In September 2020, Baz again requested permission to relocate with A.P., this time to Minnesota so that she could complete a mandatory pre-doctoral fellowship in forensic psychology. The Illinois state court granted this request, too, and Baz completed her fellowship in March 2021.

Baz's student visa would have expired when her fellowship concluded, but it had been extended six months to March 2022 because of regulatory changes implemented during the COVID-19 pandemic. A sixty-day grace period allowed Baz to stay in the United States until May 21, 2022. As that date approached, Baz exhaustively pursued ways to remain in the country. She applied for and was offered a position as a forensic psychologist in

Cincinnati, Ohio, but her petition in the H-1B lottery was unsuccessful. She entered the green-card lottery, but she was not selected for a visa. And she hired an immigration lawyer who helped her to apply for an EB-2 visa, but this effort was also unsuccessful.

Anticipating that she would need to leave the United States in May 2022, Baz sought permission from the Illinois state court to relocate with A.P. to Germany. Patterson objected to her request, and the guardian *ad litem*, Michael Bender, recommended that the court deny it. The Illinois state court held a trial on Baz's relocation motion and, on May 9, 2022, granted her petition. The court then instructed Baz and Patterson to draft an agreement detailing how they would divide their parenting time and decision-making responsibilities after Baz relocated.

The Illinois state court memorialized the parental agreement on May 23, 2022, in a document entitled "Allocation Judgment: Allocation of Parenting Responsibilities and Parenting Plan" ("Illinois Allocation Judgment"). The Illinois Allocation Judgment was signed by Baz, Patterson, and the presiding judge, but not by the guardian *ad litem*. It provided that A.P. would move with Baz to Germany, where he would attend school, with each parent paying half of his tuition. The agreement also stated that A.P. would continue with his primary health-care provider in the United States, but that Baz would be responsible for securing medical, health, and hospitalization insurance for him in Germany, at least through the first month following his eighteenth birthday.

Although A.P. was to spend much of his time in Germany, the Illinois Allocation Judgment provided that Patterson would have parenting time during the summer and other school breaks. He also was allowed to have daily video calls with A.P. and to visit him in Germany. The parents agreed that each of them would maintain possession of A.P.'s U.S. passport during his or her respective parenting time, and that they would exchange the passport whenever A.P. was dropped off or picked up. The parties were allowed to modify this parenting schedule by written agreement.

The Illinois Allocation Judgment also purported to determine A.P.'s habitual residence for purposes of the Convention. (As we elaborate below, a child's habitual residence matters to the Convention because a retention cannot be wrongful unless, among other requirements, "it is in breach of rights of custody attributed to a person ... under the law of the State in which the child was habitually resident immediately before the ... retention." Convention, art. 3.) The habitual-residence provision of the Illinois Allocation Judgment states that "[t]he 'Habitual Residence' of the minor child is the United States of America, specifically the County of Cook, State of Illinois, United States of America." Another provision provides that neither Baz nor Patterson had "consented, or acquiesced to the permanent removal of the child to or retention in any country other than the United States of America." The agreement also includes a jurisdictional provision, which states that "[s]o long as at least one parent resides in the State of Illinois, the Circuit Court of the State of Illinois shall retain exclusive and continuing

jurisdiction over this cause to enforce or modify the terms and provisions of this Allocation Judgment." Although the Illinois Allocation Judgment stated that Baz would continue to apply for temporary and permanent visas that would allow her to travel to the United States, it did not impose a time limit on her efforts, nor did it state that Baz's and A.P.'s move would be temporary or provide a date that the agreement would expire.

By early May 2022, Baz had sold or donated all of her belongings in the United States. On May 13, 2022, with the permission of the Illinois state court, she and A.P. relocated to Germany. A.P. at the time was about five years old. Shortly after they arrived, Baz acquired a German passport for A.P., who, like her, is a German citizen. (To be accurate, A.P. has dual U.S. and German citizenship.) Baz testified that she applied for the passport because under German law A.P. could not attend school or enroll in the national health-care system without identification.

After Baz and A.P. relocated to Germany, A.P. enrolled in school as planned. He attended kindergarten at the International School on the Rhine in Düsseldorf from August 2022 through December 2022. He then transferred to the Johanniter Kindergarten in Erkrath, Germany (where Baz now lives), which he attended from January 2023 until July 2023. A.P. was scheduled to begin first grade on August 8, 2023, at the Regenbogen Grundschule (in English, the Rainbow Primary School), which also is located in Erkrath. Outside of school, A.P. has taken swim classes, and he has a German pediatrician, dentist, and therapist. Like A.P.'s classes, these extracurriculars are

conducted in German. A.P. is fluent in German, English, and Turkish. He also has friends and extended family, including a maternal grandmother, in Germany.

During the year following A.P.'s relocation to Germany, Patterson visited A.P. several times and regularly exercised his parenting time in the United States. Prior to his relocation, A.P. had attended school and participated in extracurricular activities in Chicago during Patterson's parenting time. He has siblings who live in Chicago and extended family elsewhere in the United States.

Patterson's parenting time during one of A.P.'s school breaks ended on January 5, 2023. When he returned A.P. to Germany, however, he did not hand over the child's U.S. passport to Baz. In response, Baz sought the assistance of the German police. When the police failed to secure the passport, she became worried that Patterson planned to take the child from Germany and to retain him in the United States, and so she filed a lawsuit in German court seeking an order preventing A.P. from being removed from Germany and awarding her sole custody. That court entered interim orders that prohibited A.P.'s removal from Germany, but it did not rule on the custody request. Patterson obtained German counsel to represent him during the proceedings, which he attended virtually.

In March 2023, Patterson filed an "Emergency Motion to Modify Parenting Time and Allocation of Parental Responsibilities and Parenting Time" in Illinois state court. The court continued the proceedings because it

did not consider Patterson's motion to be an emergency. A month later, the court ordered Baz to file a supplemental appearance. As of December 2023, she had not done so.

Back in the German court, Baz and Patterson negotiated a settlement agreement and memorialized it in a "German Consent Order" dated May 31, 2023. The settlement was twice dictated and translated before each of the parents approved it. It reaffirmed that joint parental care and custody of A.P. would remain in place, and that the Illinois Allocation Judgment would continue to apply to the extent that additional specifications had not been adopted. The parents further agreed that A.P. was living in Germany with Baz, but that Patterson was authorized and required to have parenting time or contact with A.P. from June 19, 2023, through July 31, 2023, pursuant to the Illinois Allocation Judgment. Once A.P. was back in Germany, Patterson would be allowed to see him at discrete times in August 2023 and to attend the child's first-day-of-school ceremony on August 8, 2023. Patterson would keep A.P.'s U.S. passport going forward, and Baz would keep his German passport.

Through the German Consent Order, Baz and Patterson also agreed that they would not continue to pursue custody-related matters pertaining to A.P. in either the United States or Germany. Patterson "commit[ted] himself to submit the [German Consent Order] to the [Illinois state] court in Chicago by" June 2, 2023. He also agreed "to request that the American court suspend the proceedings in view of the fact that the German attorneys want to come up with an out-of-court

solution." Patterson notified the Illinois state court of the agreement on June 1, 2023, but he did not furnish the court a complete copy of the German Consent Order (either in German or in English).

Immediately after informing the Illinois state court about the German Consent Order, Patterson told Bender (the guardian *ad litem*) that he had agreed to that order under duress.[2] By June 2, 2023, Patterson had also filed a motion with the Illinois state court entitled "Emergency Motion to Modify Parenting Time and Allocation of Parental Responsibilities and Parenting Plan and Petition for Rule to Show Cause and for a Finding of Indirect Civil Contempt." This motion may have been the same as (or at least related to) the one Patterson filed in March 2023, but in any event he appears to have continued to pursue this request despite his agreement in the German Consent Order to ask that the Illinois state court proceedings be suspended pending efforts to resolve the case amicably.

When Baz learned that Patterson was acting contrary to the German Consent Order, she expected that he would also refuse to return A.P. to Germany by July 31, 2023,

2. Bender testified that Patterson told him he entered into the German Consent Order under duress "[a]lmost immediately" after the agreement was entered. The district court, however, expressly declined to find that Patterson was under duress at that time, noting that Patterson had been "represented by retained counsel, voluntarily participated in the May 31, 2023, settlement proceedings, and presented no evidence that he signed the [German] Consent Order under duress." *Baz v. Patterson*, 2023 U.S. Dist. LEXIS 221744, 2023 WL 8622056, at *3 n.2 (N.D. Ill. Dec. 13, 2023). Patterson has not challenged that finding on appeal.

when his summer parenting time was up. Motivated by this concern, Baz did not make plans for A.P. to return to the United States on June 19, 2023. This conflicted with the German Consent Order.

On June 27, 2023, the Illinois state court ruled on a separate motion filed by Patterson, this one entitled "Emergency Motion to Enforce the May 23, 2022 Court Order and to Modify Parental Responsibilities and Parenting Plan." The court found that Baz had not turned A.P. over to Patterson on June 1, 2023, as the Illinois Allocation Judgment had required. (The German Consent Order had modified the exchange date to June 19, 2023, which also had passed.) It ordered Baz immediately to turn over A.P. to Patterson, and authorized Patterson to travel to Germany to retrieve the child.

On July 3, 2023, Patterson arrived in Germany, went to A.P.'s school, and removed the child from his kindergarten class to bring him to the United States. The kindergarten staff called the German police, who briefly stopped Patterson at the Düsseldorf airport, but ultimately allowed him to leave the country with A.P. because the German Consent Order stated that Patterson's parenting time had begun on June 19, 2023. That same day, Patterson messaged Baz to inform her that he had A.P. and that he would allow them to talk via FaceTime once they were settled in the United States.

Sometime around July 7, 2023, Patterson filed an "Emergency Ex Parte Petition for Temporary Restraining Order and Preliminary Injunction" with the Illinois state

court. [3] He requested that Baz be ordered to return A.P. to Chicago (though A.P. was in Chicago by that time) and sought sole custody. On July 10, 2023, Patterson secured a favorable ruling on his motion. The order stated that, until further order from the court, Baz was "restrained from having physical contact with" A.P. and that Patterson was "granted exclusive parenting time and decision making for the minor child[.]" It further ordered Baz to "deposit any and all foreign identification, passport(s) (including, but not limited to any German passport), or travel document(s)" for A.P. with the court by July 25, 2023.

On July 18, 2023, about a week after the temporary restraining order was entered, Baz filed a Hague Convention Application for Return with the Central Authorities for the United States and Germany, seeking A.P.'s return to Germany. See 22 U.S.C. § 9003. Baz also petitioned the Illinois state court to stay both its temporary restraining order and the custody case. The court declined her request, and on July 25, 2023, it converted its temporary restraining order against Baz into a preliminary injunction that remains in place. Since pulling A.P. from his kindergarten class in July 2023, Patterson has not allowed the child to return to Germany.

On August 1, 2023, Baz filed her Verified Petition for Return of Child to Germany in the Northern District of Illinois. The district court held a two-day evidentiary

3. The district court was not provided with a copy of Patterson's petition, and so it found that the petition was filed around July 7, 2023 (*i.e.*, three days before the Illinois state court ruled on the motion). Neither party contests this finding.

hearing, during which it considered testimony from the parties, two German attorneys, Bender, and Patterson's sister. On December 13, 2023, the court granted Baz's petition. It issued an order the following day requiring that A.P. be returned to Germany. But, after entering final judgment, the district court stayed its return order through January 5, 2024, so that Patterson could in turn seek a stay from us while he appealed the judgment. See FED. R. APP. P. 8. We granted Patterson's request for a stay pending appeal and ordered expedited briefing. The case is now ready for decision.

II

Before we reach the merits of this appeal, we must address an unusual threshold issue. Patterson insists that the district court should have denied Baz's petition because various provisions in the Illinois Allocation Judgment displace the Convention. A close inspection of Patterson's argument shows that it can be understood in two discrete ways. On the one hand, he states repeatedly that the district court lacked "jurisdiction" over Baz's petition because the Illinois Allocation Judgment confers exclusive jurisdiction on the Illinois state court. These statements suggest to us that Patterson is making a forum-selection argument. On the other hand, Patterson suggests that certain language in the Illinois Allocation Judgment prevents any court but the Circuit Court of Cook County from applying the Convention (and ICARA), which we take to be a choice-of-law argument. As it turns out, it does not matter which theory Patterson intends to advance. Regardless of whether the jurisdictional

provision is understood as a forum-selection clause or a choice-of-law clause, Patterson cannot rely on the Illinois Allocation Judgment to oust federal jurisdiction over a case brought under the Convention.

We begin with the forum-selection theory. A forum-selection clause will not be enforced if it "would contravene a strong public policy of the forum in which the suit is brought, declared by statute or judicial decision." *Bonny v. Society of Lloyd's*, 3 F.3d 156, 160 (7th Cir. 1993) (citing *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15, 92 S. Ct. 1907, 32 L. Ed. 2d 513 (1972)). The Convention is an international treaty that "was adopted in 1980 in response to the problem of international child abductions during domestic disputes." *Abbott v. Abbott*, 560 U.S. 1, 8, 130 S. Ct. 1983, 176 L. Ed. 2d 789 (2010). By signing the treaty, the Senate and the President pledged that the United States would "have in place judicial and administrative remedies for the return of children taken from the State of their habitual residence to another signatory State in violation of the left-behind parent's custody rights under the law of the State of the child's habitual residence." *Redmond v. Redmond*, 724 F.3d 729, 737 (7th Cir. 2013) (citing Convention, arts. 3, 4, 7, 12).

Congress enacted ICARA to implement the Convention for the United States. See 22 U.S.C. § 9001(b). The statute provides that "[t]he courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention." *Id.* § 9003(a). By conferring concurrent jurisdiction upon both the state and the federal courts, Congress made a

policy judgment about how best to meet the obligations it undertook under the treaty. The parties have no power to contravene Congress's choices about subject-matter jurisdiction. All they might be able to do would be to select one among several potential venues for suit. That choice cannot be made without reference to the Convention. There is thus nothing in the parties' private forum-selection agreement that either adds to or subtracts from the court's jurisdiction, in the sense of its power to adjudicate the issues the parties have raised.[4]

The choice-of-law theory fails for similar reasons. As the name suggests, choice-of-law clauses affect only the substantive law that will apply to a claim raised under the Convention and ICARA. The possibility that some claims might not be cognizable under the chosen law does not affect the court's jurisdiction. Choice-of-law clauses are generally enforceable, but such a clause would be invalid if it violated United States public policy. See *Seafarers Pension Plan on behalf of Boeing Co. v. Bradway*, 23 F.4th 714, 726 (7th Cir. 2022). Congress, as we have said, enacted ICARA so that a parent of a wrongfully retained or removed child could petition courts in the United States for the return of the child to the child's habitual

4. We note that there are provisions in the treaty and ICARA that affect the kinds of claims that can be brought. For example, Congress has required that full faith and credit be accorded to prior judgments of both state and federal courts, see 22 U.S.C. § 9003(g), thereby creating the basis for an affirmative defense in some circumstances. But no judgment pertaining to A.P. has arisen through adjudication of a claim under the Convention, and neither is such a suit pending in another court.

residence. Faced with such a petition, the court's job is to consult the governing law and decide where the child habitually resides. If that residence is not in the forum state, then the court dismisses as instructed by ICARA and the Convention so that the proper court can decide the delicate issues of residence and custody that these cases present. Those are preliminary procedural decisions, not jurisdictional rulings. As applied here, there was no subject-matter jurisdiction bar preventing Baz from filing her petition for a return order in the federal court, notwithstanding the language in the Illinois Allocation Judgment purporting to give "exclusive and continuing jurisdiction" over the case to the Circuit Court of the State of Illinois. Upon Patterson's motion, the federal court simply had to decide what weight to give that choice-of-forum (or law) provision under the Convention.

III

With this jurisdictional detour out of the way, we are ready to address Baz's return petition. In their briefs and at oral argument, the parties at times seemed to mistake this case for a custody proceeding. But "[a] Hague Convention case is not a child custody dispute." *Redmond*, 724 F.3d at 737 (quotation omitted); see also 22 U.S.C. § 9001(b)(4) ("The Convention and this chapter empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims."). Rather, the purpose of a Convention case is to determine whether a child has been wrongfully removed or retained from his habitual residence and, if so, to order the child's prompt return. See *Redmond*, 724

F.3d at 737. As the Supreme Court explained in a decision that takes center stage in this dispute, "[t]he Convention's return requirement is a provisional remedy that fixes the forum for custody proceedings." *Monasky v. Taglieri*, 589 U.S. 68, 72, 140 S. Ct. 719, 206 L. Ed. 2d 9 (2020) (quotation omitted). Underlying the return requirement "is the Convention's core premise that 'the interests of children ... in matters relating to their custody' are best served when custody decisions are made in the child's country of 'habitual residence.'" *Id.* (quoting Convention Preamble).

Thus, far from weighing in on a custody dispute, all that we must decide is whether Baz has shown by a preponderance of the evidence that A.P. was wrongfully retained away from his habitual residence. See 22 U.S.C. § 9003(e)(1). To do so, we apply a familiar four-part inquiry:

> (1) When did the removal or retention of the child occur? (2) In what State was the child habitually resident immediately prior to the removal or retention? (3) Was the removal or retention in breach of the custody rights of the petitioning parent under the law of the State of the child's habitual residence? and (4) Was the petitioning parent exercising those rights at the time of the unlawful removal or retention?

Redmond, 724 F.3d at 737-38. We address these four questions sequentially.

Appendix A

A. Time of Retention

Baz alleges that Patterson wrongfully retained (as opposed to removed) A.P., and so "[t]he first question is ... when the retention began." *Walker v. Walker*, 701 F.3d 1110, 1118 (7th Cir. 2012). "Wrongful retentions typically occur when a parent takes a child abroad promising to return with the child and then reneges on that promise." *Redmond*, 724 F.3d at 738 n.5. The date on which a wrongful retention commenced is a question of fact on which we defer to the district court. See *Walker*, 701 F.3d at 1118.

The district court identified July 7, 2023, as the date of A.P.'s retention. Patterson had returned to the United States with A.P. on July 3, 2023, and by July 10, 2023, he had requested a temporary restraining order and exclusive parenting time and decision-making authority. The district court understood Patterson's actions as an indication of his refusal to abide by the German Consent Order and of an intent not to return A.P. to Germany when his summer parenting time ended on July 31, 2023. It concluded that the retention occurred on July 7, 2023, because that was "'the date consent was revoked' or 'when the petitioning parent learned the true nature of the situation.'" *Baz v. Patterson*, 2023 U.S. Dist. LEXIS 221744, 2023 WL 8622056, at * 5 (N.D. Ill. Dec. 13, 2023) (quoting *Abou-Haidar v. Sanin Vazquez*, 945 F.3d 1208, 1216, 444 U.S. App. D.C. 482 (D.C. Cir. 2019), *abrogated on other grounds by Monasky*, 589 U.S. 68).

The record amply supports the district court's finding. When he agreed to the German Consent Order, Patterson made affirmative representations regarding the date on which he would return A.P. to Germany. He then turned around and sought sole custody of A.P. notwithstanding his commitment in the German Consent Order not to pursue further custody-related matters pending efforts to resolve their dispute out of court. Baz could reasonably infer from Patterson's decision to renege on that commitment that he also would not be returning A.P. to Germany as they had agreed. *Cf. Palencia v. Perez*, 921 F.3d 1333, 1342 (11th Cir. 2019) (holding that "the date the petitioning parent learned the true nature of the situation" is the date of wrongful retention). The district court did not clearly err by identifying July 7, 2023, as the date of retention.

B. Habitual Residence Prior to Retention

Our next task is to ascertain A.P.'s "habitual residence 'immediately before' the alleged ... retention." *Redmond*, 724 F.3d at 738 n.5 (quoting Convention, art. 3). As we noted in *Redmond*, "[t]he Convention does not define the term 'habitual residence.'" *Id.* at 742. But the Supreme Court's recent decision in *Monasky* sheds light on the meaning of that term. See 589 U.S. 68. In *Monasky*, the Court expressly rejected the view "that habitual residence depends on an actual agreement between a child's parents." *Id.* at 77. Instead, "[t]he place where a child is at home, at the time of ... retention, ranks as the child's habitual residence." *Id.*

Determining where a child was at home at the time of retention is a "fact-driven inquiry," "not a categorical

one." *Id.* at 78, 77. The inquiry "must be 'sensitive to the unique circumstances of the case and informed by common sense.'" *Id.* at 78 (quoting *Redmond*, 724 F.3d at 744). Among the factors to consider are "facts indicating acclimatization," which "will be highly relevant," and "the intentions and circumstances of caregiving parents." *Id.* at 78. But "[n]o single fact ... is dispositive across all cases," and so courts must consider "the totality of the circumstances specific to the case" to determine a child's habitual residence. *Id.* at 78, 71.

Monasky also announced the standard that an appellate court must apply when reviewing a district court's habitual-residence determination. The Court concluded that the inquiry presents a mixed question of law and fact because a district court must first "correctly identif[y] the governing totality-of-the-circumstances standard." *Id.* at 84. Once a district court has identified the appropriate standard, "what remains for the court to do in applying that standard ... is to answer a factual question: Was the child at home in the particular country at issue?" *Id.* Thus, so long as a district court applies the correct legal standard, its habitual-residence determination "should be judged on appeal by a clear-error review standard deferential to the factfinding court." *Id.*

1.

Here, the district court applied the totality-of-the-circumstances standard to determine where A.P. was at home on July 7, 2023. Patterson argues, however, that the totality-of-the-circumstances standard does not apply. In his view, the habitual-residence clause of the

Illinois Allocation Judgment, which states that A.P.'s habitual residence for purposes of the Convention is Cook County, should have been conclusive upon the court. Baz conceded in her petition that this provision purported to determine the child's future habitual residence, and so we can take the meaning of the provision as established. The critical question that Patterson raises is whether a parental stipulation as to their child's future habitual residence conclusively establishes residence, or if instead it is simply a factor (albeit a powerful one) for the totality-of-the-circumstances test. We conclude that it can be only the latter.

Patterson's theory suffers from two fatal flaws. First, it rests on the fallacy that Baz's and Patterson's stipulation can bind third parties (such as A.P.'s guardian *ad litem*, who was not a party to the Illinois Allocation Judgment) or the district court. Patterson has directed us to no Convention case in which a court concluded that either it or a non-party was bound by a parental stipulation about the *future* habitual residence of a child, and neither are we aware of such a case. To the contrary, the courts that have confronted arguments of the kind that Patterson presses have found them unpersuasive. See, *e.g., Karkkainen v. Kovalchuk*, 445 F.3d 280, 292-93 (3d Cir. 2006) (concluding that a habitual-residence stipulation was no longer binding because the child's circumstances had changed since the agreement was made).

In other contexts, we have refused to allow stipulations between the parties to bind third parties or to dictate the district court's factual determinations. As we noted in

United States v. Barnes, a sentencing case, "[g]enerally, stipulations are not binding on the fact-finder." 602 F.3d 790, 796 (7th Cir. 2010) (citing *Analytical Engineering, Inc. v. Baldwin Filters, Inc.*, 425 F.3d 443 (7th Cir. 2005)). In that case, we observed that a stipulation is merely "a contract between two parties to agree that a certain fact is true" and thus could not "bind a third party—the district court judge—without his consent as well." *Id.* Various treatises likewise take the position that stipulations cannot bind third parties without their consent. See, *e.g.*, 83 C.J.S. Stipulations § 53 (2024) (noting that "[p]arties cannot by stipulation affect any rights but their own" and that "there is no binding effect on parties to the action who do not join in the stipulation, especially when the rights of those not made parties involve a matter of public interest"); 73 Am. Jur. 2d Stipulations § 8 (2024) ("[I]t is recognized that a stipulation is not binding upon those who are not parties either to the stipulation or to the action or proceeding in which it is entered into."). We decline to carve out from that general rule an exception for habitual-residence determinations in Convention cases.

The second flaw in Patterson's theory is that it assumes that parental intent alone can dictate a child's habitual residence. That assumption is mistaken. Courts have long recognized that the Convention has as its central goal the best interests of the child, and so the child's perspective is relevant to determining his habitual residence. See, *e.g.*, *Feder v. Evans-Feder*, 63 F.3d 217, 224 (3d Cir. 1995) (explaining that a determination of habitual residence "*must focus on the child* and consists of an analysis of the child's circumstances in that place *and* the parents'

present, shared intentions" (emphases added)); *Barzilay v. Barzilay*, 600 F.3d 912, 918 (8th Cir. 2010) (similar). The Supreme Court adopted that view in *Monasky*, where it concluded that "[w]hat makes a child's residence habitual is ... some degree of integration by the child in a social and family environment." 589 U.S. at 77 (quotation omitted).

Even before *Monasky*, we had rejected the view that a parental agreement about a child's future habitual residence should be given decisive effect. See *Redmond*, 724 F.3d at 732. The parents in *Redmond* had agreed in 2006 to raise their soon-to-be-born son in Ireland, and the district court had treated this agreement, which was evidence of "the parents' last shared intent[,] as a kind of fixed doctrinal test for determining a child's habitual residence." *Id.* We reversed, concluding that last shared parental intent at the time of the child's birth "shed[] little light on the question of [the child's] habitual residence in 2011." *Id.* Our decision was motivated by the belief that it would be "unwise to set in stone the relative weights of parental intent and the child's acclimatization." *Id.* at 746.

There is little to distinguish the parental agreement in *Redmond* from the stipulation upon which Patterson relies. Both the agreement and the stipulation seek to determine a child's habitual residence *ex ante*, rather than at the time specified in the Convention. Although Baz and Patterson attempted to tie the court's hands in the Illinois Allocation Judgment with respect to the future habitual residence of their child, the district court correctly determined that the stipulation can be only one factor among others to consider when applying the totality-of-the-circumstances test.

In reaching this conclusion, we do not suggest that the habitual-residence provision of the Illinois Allocation Judgment carries no weight, nor do we imply in any way that either parent was foolish to make such an agreement. A parental stipulation as to their child's future habitual residence will often be powerful evidence of "the intentions and circumstances of caregiving parents," which are "relevant considerations." *Monasky*, 589 U.S. at 78. In other cases, it may be evidence of the last shared parental intent, which we have said "is one fact among others, and indeed may be a very important fact in some cases." *Redmond*, 724 F.3d at 744. Our conclusion does not disturb these principles. But in the end, a child's habitual residence depends not on any one fact, but on the totality of the circumstances specific to the case.

2.

Because the district court applied the correct legal test, we review its finding that Germany was A.P.'s habitual residence at the time of retention only for clear error. For this purpose, Patterson advances two arguments. First, he insists that the district court erred by considering evidence of A.P.'s acclimatization in Germany. In his telling, facts about A.P.'s time in Germany are tainted as evidence of post-abduction acclimatization, because Baz wrongfully removed A.P. to Germany and retained him there.

This argument is a non-starter—and not simply because Patterson has never brought a claim under the Convention. *Cf. Kijowska v. Haines*, 463 F.3d 583, 588-89 (7th Cir. 2006) (explaining that a father who did not pursue

a remedy under the Convention "enabled [the child] to obtain a habitual residence in the country to which her mother took her, even if the initial taking was wrongful"). Patterson agreed to Baz's relocation to Germany with A.P. when he entered into the Illinois Allocation Judgment and again when he signed the German Consent Order. He cannot now claim that an arrangement that he authorized constitutes a wrongful removal or retention of A.P. Patterson resists that conclusion by pointing to evidence in the record that Baz procured permission to return to Germany under false pretenses, namely, by disingenuously telling the Illinois state court that she would continue to pursue lawful immigration status in the United States when she had no actual intent to do so. But the district court evaluated that evidence and (unlike the Illinois state court) did not find it persuasive. This was a credibility determination to which we defer on clear-error review. On the basis of the facts the district court found, it properly considered evidence of A.P.'s acclimatization.

Patterson next argues that, even if the district court did not err in considering A.P.'s acclimatization to Germany, we should still reverse because it did not properly weigh the evidence. Yet the court's habitual-residence determination was based on a close examination of the record and a careful weighing of the circumstances specific to the case. The court acknowledged that significant evidence suggests that A.P.'s habitual residence was Chicago: the Illinois Allocation Judgment expressed the parents' shared intent in May 2022 that Cook County would be A.P.'s habitual residence; the German Consent Order arguably reaffirmed that shared parental intent

in May 2023; and A.P. has siblings in Chicago, as well as extended family elsewhere in the United States.

The district court nonetheless concluded that there was more evidence showing that A.P. had acclimated to social life in Germany. The evidence of acclimatization included the following points: A.P. had been attending kindergarten and was set to begin first grade in Germany; he had participated in extracurricular activities in Germany; he spoke German and his schooling, extracurriculars, and medical services were conducted in that language; he had friends and extended family in Germany; he visited the United States only during school breaks; and neither the Illinois Allocation Judgment nor any other evidence indicated that the parents had made plans for A.P. to return permanently to the United States. In the light of these competing factors, we see no clear error in the district court's weighing of the evidence.

We freely concede that another judge considering the same circumstances might have weighed the evidence differently. Even Baz acknowledges in her appellate briefing that some evidence suggests A.P. is at home in Cook County; she goes so far as to suggest that perhaps the court could have made that finding. As we have said, however, appellate courts must review a habitual-residence determination under the deferential clear-error standard. See *Monasky*, 589 U.S. at 84. When applying that standard, we cannot reverse "[i]f the district court's account of the evidence is plausible in light of the record viewed in its entirety." *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573-74, 105 S. Ct. 1504, 84 L. Ed. 2d 518

(1985). And "[w]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Id.* at 574. The district court's finding that A.P. was at home in Germany on July 7, 2023, is plausible, and so we must accept its determination.

C. Wrongful Nature of Retention

The third inquiry requires us to determine whether Patterson's retention of A.P. was wrongful. A retention is wrongful under the Convention only if it violates the petitioning parent's "'rights of custody,'" which "'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.'" *Abbott*, 560 U.S. at 11 (quoting Convention, art. 5). A parent's rights of custody are determined by "the laws of the country in which the child has his or her 'habitual residence.'" *Altamiranda Vale*, 538 F.3d at 583 (quoting Convention, art. 3). Our task, then, is to determine whether the retention of A.P. breached Baz's rights of custody under German law. The district court's interpretation of foreign law is a question of law that we review *de novo*. See Fed. R. Civ. P. 44.1. In interpreting the content of German law, we "may consider any relevant material or source[.]" *Id.*; see also *Animal Science Prods., Inc. v. Hebei Welcome Pharmaceutical Co. Ltd.*, 585 U.S. 33, 42-43, 138 S. Ct. 1865, 201 L. Ed. 2d 225 (2018).

The district court properly concluded that Baz had rights of custody under German law. The German Consent Order specifically states that the joint parental care and custody required by the Illinois Allocation Judgment

would remain in place. Dr. Andreas Hanke, an expert in German family law and procedure, testified that this settlement gave Baz joint custody rights under German law. Patterson did not dispute Dr. Hanke's interpretation of German law, nor did he submit evidence showing that he was authorized to retain A.P. in the United States at the time of retention. The balance of the evidence thus shows that Patterson's refusal to abide by the parental agreements, as evidenced by his efforts to seek sole custody and his claim to have agreed to the German Consent Order under duress, breached Baz's rights of custody under German law.[5]

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5. The dissent seems to look past the record evidence to find error in the district court's analysis. For example, as support for its suggestion that we should view Baz's request for relief from the German court in early 2023 as a breach of parental rights, the dissent speculates (without any apparent basis in the record) about possible motives underlying Baz's decision to seek relief from the German court. See *post* at 41, 44. (Conveniently absent from this theory is the fact that in January 2023 Patterson refused to hand over A.P.'s U.S. passport at the end of his parenting time, as required by the Illinois Allocation Judgment—a finding that, unlike any speculation about ill motives, was made by the district court and is amply supported by the evidence in the record.) The dissent also suggests that Patterson's claim to Bender that he agreed to the German Consent Order under duress "had no apparent effect" on Bender or the Illinois state court. *Post* at 44 n.6. But there is evidence that Patterson's claim did affect Bender, see *supra* n.2, and the record is silent on its effect on the Illinois state court.

We think it is unusual, to say the least, to fault the district court for not considering evidence not before it. The dissent's approach is also inconsistent with the standard of review adopted by *Monasky*. Under clearerror review, "[o]ur 'task on appeal[]' ... 'is not to see

D. Exercise of Rights of Custody

We arrive at the fourth and final inquiry: whether Baz was exercising her rights of custody at the time of the retention. "The standard for finding that a parent was exercising his custody rights is a liberal one." *Walker*, 701 F.3d at 1121. A person who has valid custody rights to a child under the law of the country of the child's habitual residence "'cannot fail to "exercise" those custody rights under the Hague Convention short of acts that constitute clear and unequivocal abandonment of the child.'" *Id.* (quoting *Friedrich v. Friedrich*, 78 F.3d 1060, 1066 (6th Cir. 1996) (alteration omitted)). Nothing in the record suggests that Baz abandoned, or sought to abandon, A.P. Quite the opposite, the evidence shows that Baz actively sought to maintain regular contact with A.P. and that she was able to do so. That is enough to establish that she was exercising her rights of custody at the time of the retention.

IV

We close with an important reminder. All that we have decided today is that A.P. was wrongfully retained away from his habitual residence, and that the Convention

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whether there is any evidence that might undercut the district court's finding; it is to see whether there is any evidence in the record to support the finding.'" *United States v. Dickerson*, 42 F.4th 799, 804 (7th Cir. 2022) (quoting *United States v. Cruz-Rea*, 626 F.3d 929, 938 (7th Cir. 2010)). As we have said, the district court's findings of fact are plausible in light of the record evidence, and so our inquiry ends there.

entitles Baz to have him returned to Germany. Our decision does not touch on any matters of custody. The Convention seeks to promote the best interests of the child by entrusting custody proceedings to the country where the child is at home. As we have explained, "[t]he merits of [a] child custody case—what a parent's custody and visitation rights should be—are questions that are reserved for the courts of the habitual residence." *Redmond*, 724 F.3d at 737 (quotation omitted). As such, if future custodial disputes involving A.P. should arise while his habitual residence remains in Germany, the task of resolving them will fall on the tribunals established in that country for the resolution of such issues. It is entirely possible that the German courts would conclude that they should defer to the Illinois Allocation Judgment, under principles of *lis pendens* or other doctrines. But that is a question that they, not we, must resolve. The Convention is an anti-abduction treaty; it "is not a vehicle for resolving competing jurisdictional ... claims in [an] underlying custody dispute." *Id.* at 740.

The judgment of the district court is AFFIRMED. The stay we issued in this case will dissolve when our mandate issues.

HAMILTON, *Circuit Judge*, dissenting. We should reverse the district court's order to return A.P. to Germany. The order was based on two important legal errors. Those errors, accepted by the majority, will make it significantly more difficult to resolve international child custody issues by agreement.

First, the district court gave no meaningful weight to the parents' May 2022 agreement, accepted and ratified by the court in Illinois, where both parents and the child had lived and where earlier custody issues had been adjudicated. The mother was about to leave the United States because her visa was expiring. The parents' agreement, called the Illinois Allocation Judgment, resolved a host of issues, including custody, visitation, schooling, and support. It also included agreement that the child's habitual residence for Hague Convention purposes would remain in Illinois as he would be traveling back and forth between the father in Illinois and the mother in Germany.

To encourage such fair and sensible agreements, courts should enforce them absent unusual circumstances threatening the well-being of the child. Cf. *Barzilay v. Barzilay*, 600 F.3d 912, 921 (8th Cir. 2010) (rejecting agreement that habitual residence would be nation where child had never lived).

The majority, by refusing to enforce the agreement based on nothing more than the parents having carried out its terms that allowed the child's temporary move to Germany, and despite the habitual residence disclaimer,

signals that the father was indeed foolish to reach that agreement. The child was in Germany only temporarily, pursuant to the terms of the agreed Illinois Allocation Judgment. See generally *Monasky v. Taglieri*, 589 U.S. 68, 78, 140 S. Ct. 719, 206 L. Ed. 2d 9 (2020) (reason that child is present in one nation is relevant to habitual residence determination).

Under the reasoning of the district court and the majority, if the father wanted to ensure that the Illinois court retained legal control over the child's care, he should have eschewed any agreement. He should instead have fought in court in May 2022 to prevent the mother from taking the U.S.-resident child to Germany, even temporarily.

The district court's second legal error was holding that the father's act of supposedly "wrongful retention" under the Hague Convention was filing in the Illinois court a petition to modify custody. That holding is wrong for several reasons. Both parents had agreed the Illinois court would have continuing and exclusive jurisdiction over such matters. We should interpret the Hague Convention to encourage court involvement rather than self-help. And adding insult to injury, if we are going to treat any court petitions as acts of wrongful retention, the mother's earlier resort to a German court in February 2023 to seek sole custody was a far clearer breach. She tried to strip the father of his rights under the law of the child's habitual residence in Illinois. Moreover, the father filed his supposedly wrongful July 2023 petition only after the mother had refused to allow him to take the child to the

United States on June 19, 2023. The mother's refusal was wrongful under both the Illinois and German court orders.

I. Parental Agreements and the Hague Convention

My greatest concern about the majority opinion is its failure to give much greater weight to the parents' agreement. That agreement offered a comprehensive resolution of custody, visitation, and support issues. Those issues were especially challenging because the parents intended to live in different countries, though the mother had agreed her residence in Germany would be only temporary. Given the international dimension, a critical term of that agreement was that the United States would remain the child's habitual residence for purposes of the Hague Convention. In the absence of powerful contrary reasons, based on the best interests of the child, courts should respect and enforce such agreements.

Every step of the district court's and majority's reasoning begins with the finding that the child's habitual residence had shifted to Germany by July 2023. That finding contradicts the parents' agreement as set forth in the Illinois Allocation Judgment. The logic underlying that critical finding will undermine parents' and state courts' ability to resolve difficult family law disputes by agreement.

The majority and I agree that a child's country of habitual residence is a critical concept under the Convention, and the Supreme Court has held that habitual residence is a question of fact that must be determined

based on the totality of the circumstances. *Monasky*, 589 U.S. at 77-78. The majority and I also agree that parents cannot contract their way out of the Convention, at least not *conclusively*. We also agree that, on the path the parents chose here in their 2022 agreement—to share custody and arrange for frequent trans-Atlantic travel, thereby giving the child strong ties to both nations—their actions toward the child would send mixed signals about his habitual residence. Some facts favored the United States and others Germany. See ante at 23 (acknowledging another judge might have come to a different conclusion on the child's habitual residence).

As a practical matter, courts have every reason to give such agreements great weight. Doing so will encourage parents to work out these problems by agreement rather than forcing parents toward premature, unnecessary, and corrosive litigation to establish sole custody or to prevent temporary relocations abroad. Giving such agreements great weight, subject to exceptions for serious threats to a child's best interests, is entirely consistent with the Supreme Court's decision in *Monasky*.

I can explain this concern best by looking back to May 2022 and the dilemma that this father and mother faced. The child was then five years old. He had been born in the United States as a United States citizen. He had lived his entire life in the United States. The father and mother had a difficult relationship, but they had managed for more than four years to share custody of the child and even a residence. But they all faced a crisis in May 2022. The mother's student visa was about to expire. Her efforts

to find another way to stay in the United States legally had not been successful. Her departure from the United States was imminent.

The mother had a powerful and obvious desire to take her child with her, regardless of what the future might bring. The father also had a powerful and obvious desire to stay involved in the child's life. He could rightly fear that if he agreed to the mother taking the child to Germany, even temporarily, he would have no assurance the child would ever return or the mother would even let him visit.

What options were available to them? The Illinois court had the power to deny the mother's request to take the child to Germany. If the court did so and the mother wanted to stay a part of her son's life, she would need to figure out a way to return to the United States legally, either permanently or temporarily, to see him on periodic visits.

The Illinois court also had the power to allow the mother to take the child to Germany, temporarily or even permanently. Once that happened, though, the Illinois court would have little if any power to protect the father's rights to stay involved in the child's life.

So should the Illinois court have allowed the removal or not? Either choice would have bad consequences for the child and both parents. Each parent risked a devastating and possibly permanent loss through further litigation.

The alternative was to work out an agreement—one in which both parents could have confidence. Facing those

pressures, and with the help of the Illinois court and the child's guardian ad litem, the parents worked out the May 2022 Illinois Allocation Judgment.

That agreement was comprehensive. It certainly seems to have been fair to both parents and the child. It was a sensible solution to the dilemma the parents and child faced. Most important for present purposes, it also included carefully negotiated provisions for resolving disputes that might arise, including disputes under the Hague Convention.

Under the agreement, the parents agreed to joint custody and decision-making on major issues, including education and health care. The mother would take the child to Germany—temporarily—and would enroll him in school there. The father would have the child in the United States over the summer, Christmas holidays, and his school spring break, and would have parenting time with him in Germany during the autumn and late winter school breaks.

Several provisions emphasized the temporary nature of the departure to Germany. Most important here, the parents agreed that the habitual residence of the child would remain in the United States, specifically in Illinois. Illinois Allocation Judgment, Art. VI. They also agreed that the Illinois court was the appropriate venue for resolving any disputes about the child's custody, support, and so on. Art. VI(B). The mother agreed to "continue to make efforts towards applying for temporary or permanent Visas" for the United States and to report to the father every six months on her progress. Art. III,

¶ 3.01(G). The parties also agreed: "Nothing in the order shall aver or imply that either party has consented, or acquiesced to the permanent removal of the child to or retention in any country other than the United States of America." Art. VI(D). Both parents also agreed to waive the Convention's one-year "statute of limitations," agreeing that neither would raise as a defense to a return order that the child had resided in a foreign state in excess of one year. Art. VI(C).

The agreement further specified that if "either party fails to comply with the terms of this Order and fails to return the minor child to the State of Illinois ... then for purposes of any proceedings or litigation under the Hague Convention" that party will be responsible for attorneys' fees. Art. VI(F). This, again, shows that the parties intended the child's move to Germany to be temporary and that Illinois would continue to be the child's permanent home.

After the move to Germany, disputes between the mother and father arose, as they and the Illinois court had anticipated might happen and for which they had planned. The agreed plan was to address them in the Illinois court under the Illinois Allocation Judgment. Both the district court and the majority opinion effectively disregard the parents' fair and sensible agreement.

There can be no doubt that, as of May 2022, the child's habitual residence was the United States. The district court found, though, that the one year the child spent (primarily) with his mother in Germany under the terms of the Illinois agreement was sufficient to move his

habitual residence to Germany. That reasoning caused the agreement effectively to self-destruct within a year. In May 2022, both parents and the Illinois court agreed (a) that the mother could take the child temporarily to Germany subject to the visitation and other terms, and (b) that the temporary removal to Germany would *not* change the child's habitual residence.

In other words, the district court blew up the Illinois agreement based only on events that were agreed, planned, and designed into the comprehensive agreement. There was nothing unexpected here, no external shock to disrupt the parties' expectations (such as an illness, a pandemic, civil disorder in one country, loss of a job forcing another international move, one parent's practical abandonment of the child, etc.).

Under these circumstances, in the interest of promoting agreed-upon resolutions of dilemmas like the one faced by this family in May 2022, courts should give much greater weight to such agreements. In this case, where no unexpected or unforeseeable factors would render the agreement contrary to the child's best interests, it should have controlling weight.

The majority, after explaining why it is disregarding the parents' agreement here, asserts "we do not suggest that the habitual-residence provision of the Illinois Allocation Judgment carries no weight, nor do we imply in any way that either parent was foolish to make such an agreement." Ante at 21. With respect, that assurance strikes me as wishful thinking about a difficult issue.

Consider what happens the next time parents in the United States face a similar dilemma. One parent needs to leave the United States and would like to take a child along for more than a month or two. If the parent remaining in the United States cannot count on the courts to enforce an agreement like this one, that parent will have a powerful incentive to refuse to agree to even a temporary removal, no matter how much sense it might otherwise make for the parents and child. I do not know what advice the majority would give such a parent, other than to litigate to the bitter end before the other parent is allowed to travel abroad with the child. Such divisive litigation will be corrosive for both parents and for the child. It would be unnecessary if courts were willing to enforce agreements like this one.

The majority acknowledges that an agreement like this "will often be powerful evidence of 'the intentions and circumstances of caregiving parents,' which are 'relevant considerations.'" Ante at 21, quoting *Monasky*, 589 U.S. at 78. That's exactly the case here. All the evidence the district court relied upon to find a change in habitual residence consisted of actions that the parties had agreed to in the same Illinois court order in which they also agreed the move to Germany would not change the child's habitual residence. See *Monasky*, 589 U.S. at 78 (reason that child is physically present in a country is a factor when determining habitual residence). See also *Gitter v. Gitter*, 396 F.3d 124, 132 (2d Cir. 2005) (directing courts to "pay close attention" to the intentions of the parents "to determine whether the child's presence at a given location is intended to be temporary, rather than permanent"); *Mozes v. Mozes*, 239 F.3d 1067, 1079 (9th Cir.

2001) ("Despite the superficial appeal of focusing primarily on the child's contacts in the new country, ... in the absence of settled parental intent, courts should be slow to infer from such contacts that an earlier habitual residence has been abandoned."), abrogated on other grounds by *Monasky*; *Feder v. Evans-Feder*, 63 F.3d 217, 224 (3d Cir. 1995) (reversing habitual residence determination partly because district court gave insufficient weight to the shared intent of the parents).

The goal of the Hague Convention was to discourage forum-shopping in international child custody disputes, both by literal abductions and refusals to comply with court orders. E.g., *Walker v. Walker*, 701 F.3d 1110, 1116 (7th Cir. 2012) (Convention serves "to deter parents from absconding with their children and crossing international borders in the hopes of obtaining a favorable custody determination in a friendlier jurisdiction"); *Mozes*, 239 F.3d at 1079 ("The Convention is designed to prevent child abduction by reducing the incentive of the would-be abductor to seek unilateral custody over a child in another country."); *Barzilay*, 600 F.3d at 922 (father engaged in "precisely the sort of international forum shopping the Convention seeks to prevent" by seeking to resolve custody disputes in Israel where he expected more favorable disposition than in United States where his children had lived for five years).

Yet the district court and majority have rewarded just such actions by the mother in this case. She told the Illinois court she wanted to take the child to Germany temporarily. She assured the Illinois court and the father

that she would "continue to make efforts towards applying for temporary or permanent Visas that enable her to travel to and from the United States." Illinois Allocation Judgment, Art. III, ¶ 3.01(G). She also promised to provide updates to the father every six months about her progress. *Id.* And of course she further agreed that any future disputes would be resolved through the Illinois court. Art. VI(B).[6]

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6. There is good reason to believe that the mother deliberately misled the Illinois court and the father in assuring them in May 2022 that she intended only a temporary stay in Germany, until she could obtain a visa for the United States. She told the German court that the Illinois guardian ad litem had "suggested that my son should stay with his father and I should live alone in Germany until my Green Card applications are decided. Since I had already read his report, and the prospect of losing my child was so distressing for me, my lawyer said we should tell the court that I would return if I got a Green Card. Otherwise, we might lose."A-54. This damning admission (understandable in human terms, but difficult for courts to tolerate, especially when both parents face similarly powerful pressures) was the subject of testimony in the district court. The court made no findings about the admission, which is difficult to reconcile with that court's ultimate decision. The majority seems to treat the district court's silence as an implicit credibility finding. Ante at 22. The better reading is that the district court simply failed to confront the force of this powerful evidence of deliberate deception.

It should be black-letter law under the Convention that a party should not be able to better her position by such deception, and that evidence of a child's acclimatization obtained wrongfully should be discounted in any habitual residence determination. See *Monasky*, 589 U.S. at 78 (explaining "that an infant lived in a country only because a caregiving parent had been coerced into remaining there ... should figure in the calculus"); *id.* at 82 ("When all the circumstances are in play, would-be abductors should find it more, not less, difficult to manipulate the reality on the ground, thus

Then, the first time a dispute arose with the father, eight months after departing the United States, the mother did not go to the Illinois court. Instead, she filed an entirely new action in a German court seeking "transfer of sole parental custody" of the child. A-48. In doing so, she also appears to have lied to the German court when she swore: "The father has consented to a permanent move to Germany via court approval." A-52. He had done no such thing. He agreed to *temporary* removal under all the terms of the Illinois Allocation Judgment. The child's guardian ad litem also testified to the district court that it was the Illinois state court's understanding at the time of the May 2022 agreement that the move would be temporary—otherwise the Illinois court would not have approved the arrangement.

To sum up the point, by disregarding the parents' agreement and by effectively rewarding the mother's deceptive forum-shopping tactics, the decision in this case will make it more difficult for parents facing similar issues in the future to resolve them through fair agreements. That result is not required by the Convention nor by case law interpreting it. We should instead adopt not a bright-

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impeding them from forging 'artificial jurisdictional links ... with a view to obtaining custody of a child,'" quoting 1980 Conférence de La Haye de droit international privé, Enlèvement d'enfants, E. Pérez-Vera, Explanatory Report in 3 Actes et documents de la Quatorzième session, p. 428 ¶ 11 (1982)); *Miller v. Miller*, 240 F.3d 392, 400 (4th Cir. 2001) ("a parent cannot create a new habitual residence by wrongfully removing and sequestering a child"). Cf. *Redmond v. Redmond*, 724 F.3d 729, 743 (7th Cir. 2013) (parent's removal of child from country A to country B was not wrongful, so district court did not error in giving weight to time child had spent in country B when determining habitual residence).

line rule that such agreements are always controlling, but a strong presumption that such an agreement about habitual residence should be honored absent extraordinary circumstances requiring otherwise in order to serve the best interests of the child. There are no such circumstances here, so we should honor the agreement and treat the United States as this child's habitual residence.[7]

II. Wrongful Retention

The second major legal error in the district court's decision was finding that the father engaged in what the Hague Convention calls "wrongful retention." That finding triggered the mother's right to demand the remedy of return. The supposedly wrongful act was the father's filing of an ex parte petition for a temporary restraining order and preliminary injunction to bar the mother from contacting the child or removing the child back to Germany. The majority apparently endorses this theory. Ante at 24-25.

With respect, I believe this theory of wrongful retention is profoundly mistaken—both in general and especially on the specific facts in this case. I also believe this theory is incorrect even if the district court and majority were correct to find the child's habitual residence had switched to Germany.

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7. The majority's emphasis on deferential appellate review might be understood to narrow the breadth of this precedent. That point about deferential review will not, however, offer meaningful comfort ex ante to a parent deciding whether to agree to or fight a temporary departure from the United States.

As a general matter, asking a court with at least arguable jurisdiction to grant relief through fair legal procedures is hard to call wrongful. The central focus of the Hague Convention, after all, is international *abductions* of children. Putting an issue of custody before a court, for the court to decide, is the antithesis of abduction or other extra-judicial self-help measures the Convention is meant to avoid. This case presents a disagreement about jurisdiction and choice of forum, not an abduction or wrongful retention of a child in the United States. See *Toren v. Toren*, 191 F.3d 23, 28 (1st Cir. 1999) (rejecting argument that mother's filing of custody complaint in state court when prior agreement between parents provided that custody disputes would be handled by Israeli courts was a wrongful retention because "it is in no way linked to the retention of children").

More specific to this case, even if some uses of one nation's courts might be deemed wrongful under the Convention, it's especially hard to call the father's action wrongful in this case. See, e.g., *Abou-Haidar v. Sanin Vazquez*, 945 F.3d 1208, 1217-18, 444 U.S. App. D.C. 482 (D.C. Cir. 2019) (wrongful retention occurred when mother unilaterally filed in D.C. courts brand new custody suit seeking permanent sole custody of child and informed father that she no longer intended to return to France with the child as previously agreed). Unlike the mother in *Abou-Haidar* , the father here asked for judicial relief *from the court that both parents had agreed would have jurisdiction* to decide all such questions between them. With respect, how can that be wrongful?

To declare that action wrongful, the mother, the district court, and the majority engage in circular reasoning. Whether the action is potentially wrongful depends on whether it violated the mother's rights under the law of the child's habitual residence. *Redmond v. Redmond*, 724 F.3d 729, 737-38 (7th Cir. 2013). In July 2023, when the father filed his petition in the Illinois court, he had every reason to think that Illinois remained the child's habitual residence. The mother had even repeated her agreement to that point—*just a few weeks earlier*—by ratifying the Illinois Allocation Judgment in the German Consent Order on May 31, 2023.

Thus, the only reason the father's July 2023 court filing could be a "wrongful retention" was because the district court found, ex post, that the child's habitual residence had shifted to Germany immediately prior to that July filing. But this essentially punishes the father for a good-faith reliance on the May 2022 agreement, recently reaffirmed in the May 31, 2023 German Consent Order, just a few weeks before he filed his July 2023 petition. As discussed above, a disagreement over whether a court has jurisdiction to address a custody dispute is not in and of itself a wrongful retention.[8]

Adding to the irony and inconsistency here, consider events from a few months earlier, in February 2023. That's

8. Perhaps further highlighting the oddities here, if the district court had ordered the child returned to Germany on the date of the alleged "wrongful retention," that order would have conflicted with the agreed terms of the German Consent Order providing the father with parenting time in the United States through the end of July 2023.

when the mother filed an entirely new case in a German court asking that court to award her sole custody. If the courts are going to treat *any* requests for judicial relief as wrongful under the Convention, the mother's action in February 2023 was an earlier and worse breach of the father's rights. See *Abou-Haidar*, 945 F.3d at 1217-18. The mother had agreed only nine months earlier that she would take no such action and that the Illinois court would retain exclusive jurisdiction over the child's custody, support, visitation, and so on. Back in February 2023, the case for treating Illinois as the child's habitual residence was even stronger than it was five months later in July.[9]

At that point, perhaps, under the majority's reasoning, the father would have been well-advised to launch his own Hague Convention petition in Germany for a court order returning the child to the United States. But we should not fault him for trying to work things out by further agreement, at least for a few months.[10]

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9. The majority says that this dissent goes outside the record to speculate here about the mother's motives. Ante at 25 n.5. Neither point is correct. I am not speculating about the mother's motives, which do not matter, at least under my view of the case. For the relevant facts, I am relying on her filings in the German courts. Those filings were before the district court and are before this court. See Resp. Tr. Ex. 14 at A-47-74. The details of the parents' dispute over just when, where, and how the father was supposed to turn over the child's U.S. passport in January 2023 show the kind of squabbles that often can arise between parents impatient and frustrated with each other. The salient point, though, is that the mother had agreed to address such foreseeable disputes before the Illinois court.

10. The father's approach here is not fairly comparable to events in *Kijowska v. Haines*, 463 F.3d 583, 588-89 (7th Cir. 2006), cited by the majority on this point. We suggested in *Kijowska* that a father in

Another odd aspect of the majority opinion is its conclusion that the father's "*efforts* to secure sole custody" of the child "breached [the mother's] rights of custody under German law." Ante at 24-25 (emphasis added). With respect, I do not see how an *effort* to modify the other parent's legal rights in court violates those rights. See *Toren*, 191 F.3d at 28 (court filing seeking modification of visitation agreement was not wrongful retention). That question of rights is the question put to the court. If the effort is not successful, it's hard to find a violation. And if the effort is successful, it's even harder to find a violation of legal rights, at least subject to further review and appeal.

The district court's theory was that the father's going to the Illinois court in July 2023 violated the mother's rights under German law, as established under the German Consent Order of May 31, 2023. That was also a mistake. The German Consent Order recognized that the child was "living" with his mother at the moment, using the present tense. But it also ratified the Illinois Allocation Judgment, under which the German residence was supposed to be temporary and with no effect on habitual residence for Convention purposes. Remember, as well, that the Illinois Allocation Judgment fixed the Illinois court with "continuing and exclusive jurisdiction"

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the United States should have sought relief under the Convention in Poland, where the child was a habitual resident, rather than seek ex parte relief from a court in Illinois. In *Kijowska*, however, the father had previously disavowed interest in seeking custody, and there was no prior court case at all, let alone one in which the mother had agreed that a state court in the United States should decide custody and related issues.

over custody disputes. In the German Consent Order, both parents reaffirmed the Illinois Allocation Judgment, and nothing in the German Consent Order expressly displaced that provision or any other term of the Illinois Allocation Judgment. The German Consent Order was also only an interim agreement. It was temporary, to apply pending an anticipated broader and more permanent out-of-court agreement that the parents were never able to reach.

Moreover, by the time the father went to the Illinois court on July 7, 2023, the mother had already blown up the interim German Consent Order. That happened when she refused to allow the father to take the child to the United States on June 19 for the scheduled summer visit through the end of July. The father had done what he had agreed to do under the German Consent Order. The day after it was signed, he submitted a translation of the order to the Illinois court. It was not the official translation (which was not available that quickly), but it was substantially correct and reliable. It communicated to the Illinois court that the father had agreed to withdraw pending requests to modify the Illinois agreement, including his March 2023 emergency motion requesting the court to give him sole physical custody.[11]

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11. One of the best facts for the mother's case is that in early June, the father told the child's guardian ad litem in Illinois that he had agreed to the German Consent Order only under "duress." As best I can tell, however, neither the guardian ad litem nor the Illinois court gave any credence to that assertion. It was a mistake for the father to make that claim, but it had no apparent effect. See ante at 8 n.2.

Under both the Illinois Allocation Judgment and the new German Consent Order, the mother clearly was required to allow the father to take the child on June 19 to the United States. She did not do so. If there was any wrongful retention in this case, that was it. (The majority recognizes this fact in its factual review, ante at 9, but ignores it in the key paragraph affirming the wrongful retention finding, ante at 16.) The mother's breach came several weeks before the father sought help from the Illinois court. Whichever country was correctly deemed the child's habitual residence as of June 19, 2023, the father had a legal right to that visitation under the court orders of *both* countries.

CONCLUSION

This is no doubt a difficult case, and I do not claim to know what arrangements are in the best interests of this child. That sort of decision is beyond our role here, which is limited to deciding the appropriate forum for resolving the parents' disputes. I agree with my colleagues that, even under this court's decision, the German courts retain discretion to defer to the Illinois court under the Illinois Allocation Judgment. For the reasons explained above, however, the precedent set in this appeal is not required under the Convention or applicable precedents. This precedent will make it more difficult for families to reach agreements on international custody arrangements and to resolve new disputes when they inevitably arise. I respectfully dissent.

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED DECEMBER 13, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case No. 23 C 5017

ASLI BAZ,

Petitioner,

v.

ANTHONY PATTERSON,

Respondent.

Judge Jorge L. Alonso

MEMORANDUM OPINION AND ORDER

Before the Court is Petitioner Asli Baz's petition for return of the parties' child, A.P., to Germany. For the below reasons, the Court grants the petition and orders Respondent Anthony Patterson to return A.P. to Germany forthwith.

Appendix B

FINDINGS OF FACT

The Court makes the following findings of fact following a two-day evidentiary hearing, which included witness testimony, documentary evidence, and the parties' arguments.

While visiting Florida from the United Kingdom, Baz met Patterson, who at that time lived in Miami, and they then began a relationship in approximately 2013. In 2015, Baz moved to Chicago on a student visa to pursue a doctoral degree in clinical psychology, and the parties moved in together. They did not marry, and had a son, A.P., who was born in 2017. Shortly after, the parties separated, and lived on different floors of their home with A.P. pursuant to an Illinois state court custody order. On November 24, 2017, Patterson committed a domestic battery against Baz, for which he was later charged and convicted. (*See* Pet. Ex. 8.)

For several years, the parties litigated custody and other issues related to A.P. in the Circuit Court of Cook County, Illinois (the "Illinois state court"). On August 5, 2019, that court allowed Baz to relocate with A.P. to Wisconsin for her pre-doctoral internship. On September 2, 2020, the court allowed her to relocate with A.P. to Minnesota for her post-doctoral fellowship. Patterson remained in Chicago, and A.P. would split his time between the parties.

Baz completed her post-doctoral fellowship in 2021, and her student visa was set to expire in May 2022. After

failing to obtain employment or another basis to lawfully remain in the United States, Baz sought permission from the Illinois state court to relocate with A.P. to Germany. The court granted Baz's request over Patterson's objection and the recommendation of the guardian ad litem, Michael Bender.

On May 23, 2022, the Illinois state court entered the parties' proposed consent order related to the relocation, titled "Allocation Judgment: Allocation of Parental Responsibilities and Parenting Plan" (the "Allocation Judgment"). (Pet. Ex. 7.) Among other things, the Allocation Judgment provided that Patterson would have parenting time with A.P. during summer and other school breaks, and could visit A.P. in Germany, but otherwise A.P. would spend his time with Baz. (*Id.* art. 3.01.) The parties could modify this arrangement by written agreement. (*Id.* art. 3.01(G).[1]) Patterson also was allowed daily video calls with A.P., and Baz was to "continue to make efforts towards applying for temporary or permanent Visas that enable her to travel to and from the United States." (*Id.* arts. 3.01(G), 3.03.) Under the Allocation Judgment, A.P. would attend school in Dusseldorf, Germany, with each parent paying half the tuition fee. (*Id.* arts. 1.04, 4.3(a).) Each parent was to maintain physical possession of A.P.'s United States passport during their respective parenting time, and the parents were to exchange the passport during pickup/ drop-off periods. (*Id.* art. 3.05(D).) The parents also agreed that, specifically with respect to the

1. The Allocation Judgment erroneously contains two successive articles 3.01(G)—this citation refers to the second such article of the Allocation Judgment, titled "Modification."

Hague Convention, "[t]he 'Habitual Residence' of the minor child is the United States of America, specifically the County of Cook, State of Illinois, United States of America," and that they had not "consented, or acquiesced to the permanent removal of the child to or retention in any country other than the United States of America." (*Id.* arts. VI, VI(D).) The Allocation Judgment also stated, "So long as at least one parent resides in the State of Illinois, the Circuit Court of the State of Illinois shall retain exclusive and continuing jurisdiction over this cause to enforce or modify the terms and provisions of this Allocation Judgment." (*Id.* art. 7.05.) Baz's move to Germany was intended to be temporary while she sought to return to the United States, though the Allocation Judgment did not provide a termination date. (*See* Pet. Ex. 7, art. 3.01(B) (detailing parenting time for 2022-23 and indefinite future years).)

Based on the Allocation Judgment, and after getting rid of most of her belongings in the United States, Baz and A.P. relocated to Germany on approximately May 13, 2022. Baz currently lives in Erkrath, Germany. Prior to this, A.P. had attended school in Chicago during his parenting time with Patterson and participated in extracurricular activities including soccer, swimming, art classes, and gymnastics. A.P. also has siblings who live in Chicago and extended family elsewhere in the United States.

A.P. attended kindergarten at the International School on the Rhine in Dusseldorf from August 2022 until December 2022, then attended Johanniter Kindergarten in Erkrath, Germany from January 2023 until July 2023.

A.P. was then enrolled and scheduled to begin first grade on August 8, 2023, at Regenbogen Grundschule Primary School in Erkrath, Germany. Patterson has visited A.P. while A.P. is in Germany and has exercised parenting time in the United States.

A.P. is fluent in English, German, and Turkish and has extended family and friends in Germany. In addition to his German schooling, A.P. has participated in swim classes and has a German pediatrician, dentist, and therapist—all of which are conducted in German.

At the conclusion of his parenting time with A.P. on January 5, 2023, Patterson did not return A.P.'s United States passport to Baz. In response, Baz first sought the help of German police to obtain A.P.'s passport, then filed a legal case in Germany seeking an order preventing A.P. from being removed from Germany and a custody order. The German court entered interim orders prohibiting A.P.'s removal from Germany. Patterson retained German counsel, who represented him during those proceedings.

In March 2023, Patterson filed with the Illinois state court an "Emergency Motion to Modify Parenting Time and Allocation of Parental Responsibilities and Parenting Time," which the Court deemed not an emergency and continued. (Resp. Exs. 7, 26.) In April 2023, the Illinois state court granted Baz's attorney leave to withdraw in that state case and ordered Baz to file a supplemental appearance. (Resp. Ex. 7.) To date, she has not done so.

On May 31, 2023, the parties and their counsels negotiated a settlement in the German proceedings and

reached an agreement, memorialized in a "Consent Order" signed that day. (Pet. Ex. 4.) Pursuant to the Consent Order, and among other things, the parties agreed that A.P. "is currently living in Germany with the Child's Mother," but Patterson "is authorized and required to have parenting time or contact with [A.P.] during the period from 06/19/2023 through 07/31/2023" and "commits himself to return [A.P.] to Germany after the end of his parenting time." (*Id.* at AB000411-12.) They agreed that Patterson was allowed other discrete contact time with A.P. in Germany in August 2023, and that Patterson would keep A.P.'s American passport and Baz would keep A.P.'s German passport. (*Id.* at AB000412.) The parties also were "in agreement that the custody related matters pertaining to [A.P.] . . . in the USA and in Germany will not currently be pursued further in view of the interim settlement." (*Id.*) Patterson also committed himself "to submit the settlement . . . to the court in Chicago," and "to request that the American court suspend the proceedings in view of the fact that the German attorneys want to come up with an out-of-court solution." (*Id.* at AB000413.) The parties otherwise agreed "that the court settlement from the Circuit Court of Cook County, Illinois, from 05/23/2022 should continue to apply," referring to the Allocation Judgment. (*Id.* at AB000411; *see also id.* at AB000412 ("As long as no further specifications have been adopted, the rules in the settlement from 05/23/2022 shall remain in place.").) On June 1, 2023, Patterson notified the Illinois state court of the parties' agreement.

However, Patterson then immediately claimed to the guardian ad litem in the Illinois state case, Michael

Bender, that he had agreed to the Consent Order under duress.[2] At some point, Patterson filed an "Emergency Motion to Modify Parenting Time and Allocation of Parental Responsibilities and Parenting Plan and Petition for Rule to Show Cause and for a Finding of Indirect Civil Contempt"[3] before the state court, and appears to have pursued that motion notwithstanding his commitment to request that the proceedings be suspended under the Consent Order.[4] (*See* Resp. Exs. 18, 26.[5]) In light of Patterson's actions, Baz believed that Patterson would not return A.P. following his summer 2023 parenting time. Accordingly, she did not send A.P. to the United States on June 19, 2023, as required by the Consent Order and Allocation Judgment.

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2. The Court does not find that Mr. Patterson was under duress at that time—he was represented by retained counsel, voluntarily participated in the May 31, 2023, settlement proceedings, and presented no evidence that he signed the Consent Order under duress.

3. This motion likely was the same as or related to Patterson's "Emergency Motion to Modify Parenting Time and Allocation of Parental Responsibilities and Parenting Time," filed in March 2023. (*See* Exs. 7, 26.)

4. The Court was not provided with a copy of the motion itself.

5. There was some confusion at the evidentiary hearing regarding the proper numbering for Patterson's exhibits. For clarity and consistency, the Court applies the exhibit numbering of the tabbed binder of Patterson's exhibits that was submitted to the Court and reflects the exhibits in the order they were exchanged by Patterson to Baz's counsel on October 31, 2023. This may not always correspond with the numbers used for Respondent's exhibits during the evidentiary hearing.

Appendix B

On June 27, 2023, the state court considered Patterson's "Emergency Motion to Enforce the May 23, 2022 Court Order and to Modify Parental Responsibilities and Parenting Plan." (Resp. Ex. 20.) It found that Baz had not turned A.P. over to Patterson on June 1, 2023—though the Consent Order had revised the exchange date to June 19, 2023, which likewise had passed—ordered Baz to turn over A.P. to Patterson immediately, and authorized Patterson to travel to Germany to retrieve A.P. (*Id.*)

Patterson travelled to Germany, and on July 3, 2023, he arrived at A.P.'s kindergarten and took A.P. with him. The kindergarten staff called the German police, who stopped Patterson at the Dusseldorf airport but ultimately allowed him to leave with A.P. because the Consent Order confirmed that Patterson was within his summer parenting time.

Sometime around July 7, 2023, Patterson appears to have filed an "Emergency Ex Parte Petition for Temporary Restraining Order and Preliminary Injunction," requesting that Baz be ordered to return A.P. to Chicago and requesting sole custody.[6]

On July 18, 2023, Baz filed a Hague Convention Application for Return to the Central Authorities for the United States and Germany, seeking the return of A.P. to Germany. On August 1, 2023, she filed her pending

6. The Court has not been provided with a copy of this petition, and Patterson disputes that he requested sole custody. However, the Illinois state court did grant the petition and awarded Patterson exclusive parenting time on July 10, 2023.

Verified Petition for Return of Child to Germany in this Court.[7] (ECF No. 1.)

On July 25, 2023, the Illinois state court converted its temporary restraining order against Baz into a preliminary injunction. Despite Baz's request, the Illinois state court has not stayed its custody case and has kept its preliminary injunction in effect. (Resp. Ex. 41.) Since then, Patterson has not allowed A.P. to return to Germany.

On November 20 and 27, 2023, the Court held an evidentiary hearing, during which the parties presented witness testimony, documentary evidence, and arguments to support their respective positions. Following the hearing, each side submitted proposed findings of fact and conclusions of law, which the Court has considered.[8]

CONCLUSIONS OF LAW

The Hague Convention, to which both the United States and Germany are signatories,[9] is designed "to

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7. The Court is aware that the Hague Convention envisions a six-week timeline to adjudicate Hague cases. Hague Convention art. 11. Unfortunately, that timeline was not feasible in this case due to the parties' schedules.

8. This includes Patterson's submission, a physical copy of which was filed with the Court on December 8, 2023.

9. *See* Hague Conference on Private Int'l Law, Convention of 25 Oct. 1980 on the Civil Aspects of Int'l Child Abduction, Status Table, https://www.hcch.net/en/instruments/conventions/statustable/?cid=24.

address the problem of international child abductions during domestic disputes." *Monasky v. Taglieri*, 140 S. Ct. 719, 723, 206 L. Ed. 2d 9 (2020) (internal quotation marks and citation omitted). The Convention "ordinarily requires the prompt return of a child wrongfully removed or retained away from the country in which she habitually resides," with certain exceptions. *Id.* "The Convention's return requirement is a 'provisional' remedy that fixes the forum for custody proceedings." *Id.* (citation omitted). In the United States, the Hague Convention is implemented by the International Child Abduction Remedies Act ("ICARA"), 22 U.S.C. § 9001 *et seq.*

"The central question in any petition seeking the return of a child under the Hague Convention and ICARA is whether the child who is the subject of the petition has been 'wrongfully' removed or retained within the meaning of the Convention." *Redmond v. Redmond*, 724 F.3d 729, 737 (7th Cir. 2013). "[A] removal or retention is wrongful where (a) 'it is in breach of rights of custody attributed to a person . . . either jointly or alone, under the law of the State (b) in which the child was habitually resident immediately before the removal or retention'; and (c) 'at the time of removal or retention[,] those rights were actually exercised . . . or would have been so exercised but for the removal or retention." *Vilchez v. Aranguren*, No. 22-cv-3806, 2023 U.S. Dist. LEXIS 148055, 2023 WL 5431352, at *5 (N.D. Ill. Aug. 23, 2023) (quoting Hague Conv. art. 3). The petitioner must prove these elements by a preponderance of the evidence. 22 U.S.C. § 9003(e)(1). If she does so, the burden shifts to the respondent to show that an exception applies, including an affirmative

defense of grave risk of harm under Article 13(b) by clear and convincing evidence. 22 U.S.C. § 9003(e)(2).

A court thus asks four questions to determine whether a removal or retention was wrongful: "(1) When did the removal or retention of the child occur? (2) In what State was the child habitually resident immediately prior to the removal or retention? (3) Was the removal or retention in breach of the custody rights of the petitioning parent under the law of the State of the child's habitual residence? and (4) Was the petitioning parent exercising those rights at the time of the unlawful removal or retention?" *Redmond*, 724 F.3d at 737. The Court now turns to those questions.

1. Date of Retention

Baz argues that Patterson retained A.P. on three possible dates:

1) June 2, 2023, when Patterson told the guardian ad litem in the Illinois state case that he had agreed to the German Consent Order under duress;

2) July 7, 2023, when Patterson purportedly requested sole custody of A.P. in Illinois state court; or

3) July 18, 2023, when Baz filed her Hague Convention Application seeking A.P.'s return.

Patterson counters that no retention occurred on any date.

The Court concludes that July 7, 2023 is the proper date of Patterson's retention of A.P. for purposes of its Hague Convention analysis. "Wrongful retentions typically occur when a parent takes a child abroad promising to return with the child and then reneges on that promise[.]" *Redmond*, 724 F.3d at 738 n.5. As other circuits have found, this is "'the date consent was revoked' or 'when the petitioning parent learned the true nature of the situation.'" *Abou-Haidar v. Sanin Vazquez*, 945 F.3d 1208, 1216, 444 U.S. App. D.C. 482 (D.C. Cir. 2019) (quoting *Palencia v. Perez*, 921 F.3d 1333, 1342 (11th Cir. 2019)). On July 3, 2023, Patterson took A.P. to the United States after invoking his parenting time and getting permission from the Illinois state court to do so. But on or around July 7, 2023, Patterson appears to have sought sole custody of A.P. in Illinois state court, thus indicating his refusal to abide by the parties' Consent Order and that he would not be returning A.P. to Germany at the end of the month (as indeed he did not). The Court thus considers July 7, 2023, as the date of Patterson's retention of A.P. to ground its analysis—though its conclusions below as to Baz's Hague Convention petition would be the same for any of the other proposed retention dates in June-July 2023, including when Patterson refused to return A.P. after July 31, 2023 (the last date of Patterson's parenting time under the Consent Order). *See Abou-Haidar*, 945 F.3d at 1217 ("Given the temporal concentration of these events and the lack of any material effect on the analysis of choosing one date over another, we need not isolate

one definitive act of retention. . . . [O]ne or more of these actions suffices to identify a retention.").

2. Habitual Residence

"The place where a child is at home, at the time of removal or retention, ranks as the child's habitual residence." *Monasky*, 140 S. Ct. at 726. This requires a "fact-driven inquiry," and courts "must be 'sensitive to the unique circumstances of the case and informed common sense.'" *Id.* at 727 (quoting *Redmond*, 724 F.3d at 744). "For older children capable of acclimating to their surroundings, courts have long recognized, facts indicating acclimatization will be highly relevant." *Id.*; *see also id.* at 727 n.3 (listing factors, including a change in geography combined with the passage of an appreciable period of time, age of the child, academic activities, participation in sports programs and excursions, meaningful connections with the people and places in the child's new country, and language proficiency). The parents' intentions are "relevant considerations" too. *Id.* at 727. "No single fact, however, is dispositive across all cases." *Id.*

Here, certain facts weigh against Baz. Most notably, the parties explicitly agreed in the May 23, 2022, Allocation Judgment that A.P.'s habitual residence of the minor child was the United States of America. (Pet. Ex. 7, art. VI.) As this Court already recognized, the Allocation Judgment purported to determine A.P.'s habitual residence as of

May 23, 2022—not as of the date of retention, July 7, 2023. (ECF No. 24 at 5.) But the parties then appeared to reaffirm A.P.'s United States residence when they reiterated in their May 31, 2023, Consent Order that the provisions of the Allocation Judgment largely remained in place except for certain carveouts—evidently agreeing that the United States remained A.P.'s habitual residence at that time too. (*See* Pet. Ex. 4 at AB000411-12.) The parties' shared intentions are relevant to determining habitual residence, and the parties' arguably mutual agreement that A.P.'s habitual residence was the United States as of May 31, 2023, weighs in favor of concluding that the United States remained A.P.'s habitual residence on July 7, 2023, just over one month later. *See Hulsh v. Hulsh*, No. 19 C 7298, 2020 U.S. Dist. LEXIS 258564, 2020 WL 11401634, at *7 (N.D. Ill. July 21, 2020) ("Parents' intentions and circumstances pertaining to the parents . . . are relevant considerations[.]")

Still, in *Monasky*, the Supreme Court rejected the view that the parties' shared intentions control the habitual-residence inquiry, and pointed to foreign decisions finding that "the purposes and intentions of the parents [are] merely one of the relevant factors." *Monasky*, 140 S. Ct. at 728-29. It therefore concluded "that the determination of habitual residence does not turn on the existence of an actual agreement." *Id.* at 726. Thus, even if the parents agreed in May 2022 and again in May 2023 that the United States was A.P.'s habitual residence as of those dates, that

is but one factor. The Court considers the totality of the circumstances to determine whether A.P. was at home in Germany when Patterson retained him in July 2023.

Any agreement reflected in the Allocation Judgment and Consent Order as to A.P.'s habitual residence is outweighed by the evidence of A.P.'s acclimation in Germany and other factors that establish Germany as A.P.'s habitual residence. *See Martinez v. Cahue*, 826 F.3d 983, 992 (7th Cir. 2016) (concluding that Mexico was a child's habitual residence where, among other things, "[w]hile A.M. had spent most of his life in Illinois, that fact is not dispositive. . . . By the end of his first year in Mexico, he displayed all of the indicia of habitual residence, including friends, extended family, success in school, and participating in community and religious activities."). As Baz testified at the hearing, and Patterson did not meaningfully challenge, A.P. had been attending kindergarten and was enrolled in school in Germany, participated in extracurricular activities in Germany, and was fluent in German—which was the language in which his schooling, extracurriculars, and medical services were conducted. The Allocation Judgment also does not set a deadline for A.P.'s presence in Germany, even to the extent that Baz committed to continue seeking immigration authorization to return to the United States. It is little surprise, then, that after A.P. spent many months in Germany with Baz, attended school and other activities there, and did not return to the United States except

during school breaks, and the parties had no definitive plans for A.P. to return permanently to the United States, Germany would have become A.P.'s habitual residence under the Hague Convention notwithstanding A.P.'s prior United States residence. *See Monasky*, 140 S. Ct. at 727 ("locating a child's home is a fact-driven inquiry"); *see also Koch v. Koch*, 450 F.3d 703, 715 (7th Cir. 2006) ("The establishment of a habitual residence requires an actual change in geography, as well as the passage of an appreciable amount of time. . . . [S]hared intent to someday return to a prior place of residence does not answer the primary question of whether the residence was effectively abandoned and a new residence established[.]"); *Garcia v. Pinelo*, 122 F. Supp. 3d 765, 776 (N.D. Ill. 2015) ("Even a temporary move can effectuate a change of a child's habitual residence."); *Capalungan v. Lee*, No. 2:18-cv-1276, 2019 U.S. Dist. LEXIS 117321, 2019 WL 3072139, *4 (S.D. Ohio July 15, 2019) ("Ten months is a considerable amount of time to form bonds with family and friends considering [the child] was only five years old."). Indeed, the parties acknowledged in the Consent Order that, as of May 2023, A.P. was "currently living in Germany" with Baz. (Pet. Ex. 4 at AB000411.) The Court therefore concludes that based on the totality of the circumstances and the evidence presented, A.P.'s habitual residence as of the date of retention was Germany.

3. Custody Rights

A retention is wrongful under the Hague Convention only if it violates the petitioner's "rights of custody," which "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." *Abbott v. Abbott*, 560 U.S. 1, 9, 130 S. Ct. 1983, 176 L. Ed. 2d 789 (2010). Because Germany is A.P.'s habitual residence, the Court considers that issue under German law. *See Norinder v. Fuentes*, 657 F.3d 526, 533 (7th Cir. 2011). Here, Baz had custody rights under German law. The parties' Consent Order stated "that joint parental care and custody shall currently remain in place," and Dr. Hanke, Baz's German lawyer and expert, testified before and during that Baz had joint custody rights under German law. (Pet. Ex. 4 at AB000411; *see also* Pet. Exs. 1, 2.) Patterson presented no opposing expert or argument disputing this interpretation of German law or indicating that because Patterson was authorized under the parties' Consent Order and the Illinois state court's later orders to keep A.P. in the United States, Baz lacked custody rights for purposes of the Hague Convention.

Next, the Court considers whether Baz was exercising her custody rights at the time of Patterson's retention of A.P. "The standard for finding that a parent was exercising his custody rights is a liberal one, and courts will generally find exercise whenever a parent with *de jure* custody rights keeps, or seeks to keep, any sort of regular contact

with his or her child," and "a person cannot fail to exercise his custody rights under the Hague Convention short of acts that constitute clear and unequivocal abandonment of the child." *Walker v. Walker*, 701 F.3d 1110, 1121 (7th Cir. 2012) (internal quotation marks and citations omitted). Here, Baz plainly was exercising her custody rights at the time of Patterson's retention—she was able to stay in regular contact with A.P., and there is no evidence that Baz failed to do so or abandoned A.P. (*See* Pet. Ex. 7, art. 3.03.)

Baz thus has shown a *prima facie* case of wrongful retention under the Hague Convention. The Court now turns to Respondent's affirmative defense.

4. Affirmative Defenses

In his answer, Patterson pled an affirmative defense under Article 13(b) of the Hague Convention, claiming that returning A.P. to Germany would create a grave risk of harm to A.P. or place A.P. in an intolerable situation. (*See* ECF No. 33 at 26-27.) Patterson presented no evidence or argument of grave risk during or after the evidentiary hearing and certainly has not supported this affirmative defense by clear and convincing evidence. *See* 22 U.S.C. § 9003(e)(2)(A). The Court accordingly finds that Baz has shown a *prima facie* case under the Hague Convention, Patterson has not established an affirmative defense, and thus A.P. must be returned to Germany.

To be clear, the Court's decision in this case is not a custody determination, and A.P. might ultimately return to the United States based on the parties' custody proceedings.[10] But this Court's task has been to decide only whether Patterson wrongfully retained A.P. outside of A.P.'s habitual residence on July 7, 2023, under the Hague Convention—and it concludes that he did. The Court thus must order the return of A.P. to Germany forthwith. *See* Hague Conv. art. 12.

CONCLUSION

The Court grants Baz's petition for return of A.P. to Germany (ECF No. 1) and orders Patterson to return A.P. to Germany. The Court directs the parties to confer and cooperate regarding reasonable arrangements for promptly returning A.P. to Germany.[11] The Clerk of the Court shall release A.P.'s German passport to Baz and

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10. The Allocation Judgment specifically provides that the Illinois state court, which has been the parties' agreed chief forum for their custody disputes, and to which the German courts have deferred, shall have "exclusive and continuing jurisdiction" over the parties' custody proceedings. (Pet. Ex. 7, art. 7.05.) That court found in July 2023 that Baz "has exhibited extremely concerning behavior as to direct violations of the [Allocation Judgment]" and "has shown utter disregard to the orders entered in this Court," and has granted Patterson sole custody of A.P. (Resp. Ex. 17.)

11. The Court is aware that Baz will be leaving the United States for Germany on December 15, 2023. The parties shall make reasonable efforts to allow A.P. to accompany Baz on that trip.

A.P.'s United States passport to Patterson. Civil case terminated.

SO ORDERED.

ENTERED: December 13, 2023

/s/ Jorge Alonso
HON. JORGE ALONSO
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED JUNE 6, 2024

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 23-3407

ASLI BAZ,

Petitioner-Appellee,

v.

ANTHONY PATTERSON,

Respondent-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:23-cv-05017 – Jorge L. Alonso, *Judge.*

June 6, 2024

Before DIANE P. WOOD,* DAVID F. HAMILTON, and JOHN Z. LEE, *Circuit Judges.*

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* Circuit Judge Wood retired effective May 1, 2024, and did not participate in the consideration of this petition.

Appendix C

ORDER

Respondent-appellant filed a petition for rehearing *en banc* and, alternatively, for a stay of the mandate pending a petition for writ of certiorari on May 14, 2024. No judge in regular active service has requested a vote on the petition for rehearing *en banc* therefore the petition for rehearing *en banc* is DENIED.

The court GRANTS the respondent-appellant's request for a stay only to the extent that the mandate is STAYED for 28 days. The mandate will issue on July 5, 2024, absent a stay from the Supreme Court.

APPENDIX D — RELEVANT STATUTORY AND TREATY PROVISIONS

22 U.S.C.A. § 9001
Formerly cited as 42 USCA § 11601

§ 9001. Findings and declarations

Effective: August 8, 2014

(a) Findings

The Congress makes the following findings:

(1) The international abduction or wrongful retention of children is harmful to their well-being.

(2) Persons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention.

(3) International abductions and retentions of children are increasing, and only concerted cooperation pursuant to an international agreement can effectively combat this problem.

(4) The Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, establishes legal rights and procedures for the prompt return of children who have been wrongfully removed or retained, as well as for securing the exercise of visitation rights. Children who are wrongfully removed or retained within the meaning

of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies. The Convention provides a sound treaty framework to help resolve the problem of international abduction and retention of children and will deter such wrongful removals and retentions.

(b) Declarations

The Congress makes the following declarations:

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

(2) The provisions of this chapter are in addition to and not in lieu of the provisions of the Convention.

(3) In enacting this chapter the Congress recognizes--

(A) the international character of the Convention; and

(B) the need for uniform international interpretation of the Convention.

(4) The Convention and this chapter empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims.

Appendix D

22 U.S.C.A. § 9002
Formerly cited as 42 USCA § 11602

§ 9002. Definitions

For the purposes of this chapter--

(1) the term "applicant" means any person who, pursuant to the Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention;

(2) the term "Convention" means the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980;

(3) the term "Parent Locator Service" means the service established by the Secretary of Health and Human Services under section 653 of Title 42;

(4) the term "petitioner" means any person who, in accordance with this chapter, files a petition in court seeking relief under the Convention;

(5) the term "person" includes any individual, institution, or other legal entity or body;

(6) the term "respondent" means any person against whose interests a petition is filed in court, in accordance with this chapter, which seeks relief under the Convention;

(7) the term "rights of access" means visitation rights;

(8) the term "State" means any of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term "United States Central Authority" means the agency of the Federal Government designated by the President under section 9006(a) of this title.

Appendix D

22 U.S.C.A. § 9003
Formerly cited as 42 USCA § 11603

§ 9003. Judicial remedies

(a) Jurisdiction of courts

The courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention.

(b) Petitions

Any person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed.

(c) Notice

Notice of an action brought under subsection (b) shall be given in accordance with the applicable law governing notice in interstate child custody proceedings.

(d) Determination of case

The court in which an action is brought under subsection (b) shall decide the case in accordance with the Convention.

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(e) Burdens of proof

(1) A petitioner in an action brought under subsection (b) shall establish by a preponderance of the evidence--

> **(A)** in the case of an action for the return of a child, that the child has been wrongfully removed or retained within the meaning of the Convention; and
>
> **(B)** in the case of an action for arrangements for organizing or securing the effective exercise of rights of access, that the petitioner has such rights.

(2) In the case of an action for the return of a child, a respondent who opposes the return of the child has the burden of establishing--

> **(A)** by clear and convincing evidence that one of the exceptions set forth in article 13b or 20 of the Convention applies; and
>
> **(B)** by a preponderance of the evidence that any other exception set forth in article 12 or 13 of the Convention applies.

(f) Application of Convention

For purposes of any action brought under this chapter--

> **(1)** the term "authorities", as used in article 15 of the Convention to refer to the authorities of the state of

the habitual residence of a child, includes courts and appropriate government agencies;

(2) the terms "wrongful removal or retention" and "wrongfully removed or retained", as used in the Convention, include a removal or retention of a child before the entry of a custody order regarding that child; and

(3) the term "commencement of proceedings", as used in article 12 of the Convention, means, with respect to the return of a child located in the United States, the filing of a petition in accordance with subsection (b) of this section.

(g) Full faith and credit

Full faith and credit shall be accorded by the courts of the States and the courts of the United States to the judgment of any other such court ordering or denying the return of a child, pursuant to the Convention, in an action brought under this chapter.

(h) Remedies under Convention not exclusive

The remedies established by the Convention and this chapter shall be in addition to remedies available under other laws or international agreements.

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22 U.S.C.A. § 9004
Formerly cited as 42 USCA § 11604

§ 9004. Provisional remedies

(a) Authority of courts

In furtherance of the objectives of article 7(b) and other provisions of the Convention, and subject to the provisions of subsection (b) of this section, any court exercising jurisdiction of an action brought under section 9003(b) of this title may take or cause to be taken measures under Federal or State law, as appropriate, to protect the wellbeing of the child involved or to prevent the child's further removal or concealment before the final disposition of the petition.

(b) Limitation on authority

No court exercising jurisdiction of an action brought under section 9003(b) of this title may, under subsection (a) of this section, order a child removed from a person having physical control of the child unless the applicable requirements of State law are satisfied.

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22 U.S.C.A. § 9005
Formerly cited as 42 USCA § 11605

§ 9005. Admissibility of documents

With respect to any application to the United States Central Authority, or any petition to a court under section 9003 of this title, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application or petition, as the case may be, no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court.

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22 U.S.C.A. § 9006
Formerly cited as 42 USCA § 11606

§ 9006. United States Central Authority

Effective: August 8, 2014

(a) Designation

The President shall designate a Federal agency to serve as the Central Authority for the United States under the Convention.

(b) Functions

The functions of the United States Central Authority are those ascribed to the Central Authority by the Convention and this chapter.

(c) Regulatory authority

The United States Central Authority is authorized to issue such regulations as may be necessary to carry out its functions under the Convention and this chapter.

(d) Obtaining information from Parent Locator Service

The United States Central Authority may, to the extent authorized by the Social Security Act, obtain information from the Parent Locator Service.

(e) Grant authority

The United States Central Authority is authorized to make grants to, or enter into contracts or agreements with, any individual, corporation, other Federal, State, or local agency, or private entity or organization in the United States for purposes of accomplishing its responsibilities under the Convention and this chapter.

(f) Limited liability of private entities acting under the direction of the United States Central Authority

(1) Limitation on liability

Except as provided in paragraphs (2) and (3), a private entity or organization that receives a grant from or enters into a contract or agreement with the United States Central Authority under subsection (e) of this section for purposes of assisting the United States Central Authority in carrying out its responsibilities and functions under the Convention and this chapter, including any director, officer, employee, or agent of such entity or organization, shall not be liable in any civil action sounding in tort for damages directly related to the performance of such responsibilities and functions as defined by the regulations issued under subsection (c) of this section that are in effect on October 1, 2004.

(2) Exception for intentional, reckless, or other misconduct

The limitation on liability under paragraph (1) shall not apply in any action in which the plaintiff proves that the private entity, organization, officer, employee, or agent described in paragraph (1), as the case may be, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to the performance of responsibilities or functions under this chapter.

(3) Exception for ordinary business activities

The limitation on liability under paragraph (1) shall not apply to any alleged act or omission related to an ordinary business activity, such as an activity involving general administration or operations, the use of motor vehicles, or personnel management.

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22 U.S.C.A. § 9007
Formerly cited as 42 USCA § 11607

§ 9007. Costs and fees

(a) Administrative costs

No department, agency, or instrumentality of the Federal Government or of any State or local government may impose on an applicant any fee in relation to the administrative processing of applications submitted under the Convention.

(b) Costs incurred in civil actions

(1) Petitioners may be required to bear the costs of legal counsel or advisors, court costs incurred in connection with their petitions, and travel costs for the return of the child involved and any accompanying persons, except as provided in paragraphs (2) and (3).

(2) Subject to paragraph (3), legal fees or court costs incurred in connection with an action brought under section 9003 of this title shall be borne by the petitioner unless they are covered by payments from Federal, State, or local legal assistance or other programs.

(3) Any court ordering the return of a child pursuant to an action brought under section 9003 of this title shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of proceedings in the action, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.

Appendix D

22 U.S.C.A. § 9008
Formerly cited as 42 USCA § 11608

§ 9008. Collection, maintenance, and dissemination of information

(a) In general

In performing its functions under the Convention, the United States Central Authority may, under such conditions as the Central Authority prescribes by regulation, but subject to subsection (c), receive from or transmit to any department, agency, or instrumentality of the Federal Government or of any State or foreign government, and receive from or transmit to any applicant, petitioner, or respondent, information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child, except that the United States Central Authority--

(1) may receive such information from a Federal or State department, agency, or instrumentality only pursuant to applicable Federal and State statutes; and

(2) may transmit any information received under this subsection notwithstanding any provision of law other than this chapter.

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(b) Requests for information

Requests for information under this section shall be submitted in such manner and form as the United States Central Authority may prescribe by regulation and shall be accompanied or supported by such documents as the United States Central Authority may require.

(c) Responsibility of government entities

Whenever any department, agency, or instrumentality of the United States or of any State receives a request from the United States Central Authority for information authorized to be provided to such Central Authority under subsection (a), the head of such department, agency, or instrumentality shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality in order to determine whether the information requested is contained in any such files or records. If such search discloses the information requested, the head of such department, agency, or instrumentality shall immediately transmit such information to the United States Central Authority, except that any such information the disclosure of which--

> **(1)** would adversely affect the national security interests of the United States or the law enforcement interests of the United States or of any State; or
>
> **(2)** would be prohibited by section 9 of Title 13;

shall not be transmitted to the Central Authority. The head of such department, agency, or instrumentality shall, immediately upon completion of the requested search, notify the Central Authority of the results of the search, and whether an exception set forth in paragraph (1) or (2) applies. In the event that the United States Central Authority receives information and the appropriate Federal or State department, agency, or instrumentality thereafter notifies the Central Authority that an exception set forth in paragraph (1) or (2) applies to that information, the Central Authority may not disclose that information under subsection (a).

(d) Information available from Parent Locator Service

To the extent that information which the United States Central Authority is authorized to obtain under the provisions of subsection (c) can be obtained through the Parent Locator Service, the United States Central Authority shall first seek to obtain such information from the Parent Locator Service, before requesting such information directly under the provisions of subsection (c) of this section.

(e) Recordkeeping

The United States Central Authority shall maintain appropriate records concerning its activities and the disposition of cases brought to its attention.

Appendix D

22 U.S.C.A. § 9009
Formerly cited as 42 USCA § 11608a

§ 9009. Office of Children's Issues

(a) Director requirements

The Secretary of State shall fill the position of Director of the Office of Children's Issues of the Department of State (in this section referred to as the "Office") with an individual of senior rank who can ensure long-term continuity in the management and policy matters of the Office and has a strong background in consular affairs.

(b) Case officer staffing

Effective April 1, 2000, there shall be assigned to the Office of Children's Issues of the Department of State a sufficient number of case officers to ensure that the average caseload for each officer does not exceed 75.

(c) Embassy contact

The Secretary of State shall designate in each United States diplomatic mission an employee who shall serve as the point of contact for matters relating to international abductions of children by parents. The Director of the Office shall regularly inform the designated employee of children of United States citizens abducted by parents to that country.

Appendix D

(d) Reports to parents

(1) In general

Except as provided in paragraph (2), beginning 6 months after November 29, 1999, and at least once every 6 months thereafter, the Secretary of State shall report to each parent who has requested assistance regarding an abducted child overseas. Each such report shall include information on the current status of the abducted child's case and the efforts by the Department of State to resolve the case.

(2) Exception The requirement in paragraph (1) shall not apply in a case of an abducted child if--

(A) the case has been closed and the Secretary of State has reported the reason the case was closed to the parent who requested assistance; or

(B) the parent seeking assistance requests that such reports not be provided.

Appendix D

22 U.S.C.A. § 9010
Formerly cited as 42 USCA § 11609

§ 9010. Interagency coordinating group

The Secretary of State, the Secretary of Health and Human Services, and the Attorney General shall designate Federal employees and may, from time to time, designate private citizens to serve on an interagency coordinating group to monitor the operation of the Convention and to provide advice on its implementation to the United States Central Authority and other Federal agencies. This group shall meet from time to time at the request of the United States Central Authority. The agency in which the United States Central Authority is located is authorized to reimburse such private citizens for travel and other expenses incurred in participating at meetings of the interagency coordinating group at rates not to exceed those authorized under subchapter I of chapter 57 of Title 5 for employees of agencies.

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22 U.S.C.A. § 9011
Formerly cited as 42 USCA § 11610

§ 9011. Authorization of appropriations

Effective: August 8, 2014

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of the Convention and this chapter.

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28. CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION[1]

(Concluded 25 October 1980)

The States signatory to the present Convention,
Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,
Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,
Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are –
a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

1. This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under "Conventions" or under the "Child Abduction Section". For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Quatorzième session (1980)*, Tome III, *Child abduction* (ISBN 90 12 03616 X, 481 pp.).

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

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

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.

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Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

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.

CHAPTER II – CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Appendix D

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

a) to discover the whereabouts of a child who has been wrongfully removed or retained;

b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

d) to exchange, where desirable, information relating to the social background of the child;

e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;

g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III – RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain –

a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

b) where available, the date of birth of the child;

c) the grounds on which the applicant's claim for return of the child is based;

d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by –

e) an authenticated copy of any relevant decision or agreement;

f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

g) any other relevant document.

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Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

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Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.
The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.
Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return

of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

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Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV – RIGHTS OF ACCESS

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps

to remove, as far as possible, all obstacles to the exercise of such rights.
The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V – GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalisation or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.
However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any

application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

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Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody

or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units –

a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law

of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.
Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

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Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI – FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.
It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.
The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.
The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession.

Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.
The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.
Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all

its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.
Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

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Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.
Thereafter the Convention shall enter into force –
(1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
(2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.
If there has been no denunciation, it shall be renewed tacitly every five years.
Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period.
It may be limited to certain of the territories or territorial units to which the Convention applies.
The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

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Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following –

(1) the signatures and ratifications, acceptances and approvals referred to in Article 37;
(2) the accessions referred to in Article 38;
(3) the date on which the Convention enters into force in accordance with Article 43;
(4) the extensions referred to in Article 39;
(5) the declarations referred to in Articles 38 and 40;
(6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
(7) the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.