No. 24-390

IN THE

Supreme Court of the United States

ANTHONY PATTERSON,

Petitioner,

v.

ASLI BAZ,

Respondent.

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

BRIEF OF AMICI CURIAE STATE BAR ASSOCIATIONS IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Amici are a consortium of Bar Associations, as represented by their family law sections and individual family law practitioners who are members of those sections (hereinafter "Consortium")[2]. The Consortium submits this Amici Curiae brief in support of Anthony Patterson's *Petition for a Writ of Certiorari* (hereinafter "Petition") pursuant to Rule 37.2. Members of this Consortium dedicate their professional resources and practices to serving their communities' needs for representation, and in the case of the various family law sections, to improving the quality of family law practice in their respective localities throughout the United States. Representative matters of "family law" include divorce, child custody and visitation, spousal support, child support, enforcement of existing orders, modification of orders effecting children, domestic violence, and international custody claims which include those pursuant to the Hague Convention on the Civil Aspects of International Parental Abduction (the "Convention") by way of the International Child Abduction Remedies Act ("ICARA"). Frequently, parents' concerns regarding international travel with children are resolved

1. Pursuant to Rule 37.6, no part of this brief was authored by counsel for any party, and no person or entity has made any monetary contributions to this brief other than Amici Curiae and their counsel. Counsel for both parties received timely notice of intent to file this brief pursuant to Rule 37.2 from its author.

2. Neither this brief nor the decision to file it should be interpreted as reflecting the views of any judicial member of the Consortium or the views of any association to which Counsel for Amici Curiae is a member, who is not listed in the Appendix. Members of the Consortium are listed in the Appendix to this brief alphabetically.

by agreement that there will be a particular location for habitual residence. Indeed, that is how Patterson's case in Cook County, Illinois was resolved.

Attorneys affiliated with or employed by these organizations include those engaged in private practice, attorneys in the employ of cities and counties who provide social services to their residents, administrators of such associations, and attorneys who work as guardians *ad litem* representing the best interests of minor children. Resolution of the circuit split is important to the Consortium because the precedent set by the Seventh Circuit leaves us, and our many colleagues who have not joined this brief, with far less certainty to advise clients properly. Specifically, the Seventh Circuit's decision created a fissure in existing law with respect to enforceability of private agreements between parents regarding habitual residence of their children and the availability of remedies under the Convention and the manner in which their custody agreements will be enforced. Regularly, members of the Consortium encourage clients to resolve their international custody issues by private agreements, which are incorporated into court orders.

A common problem faced by practitioners, particularly those in large, metropolitan areas containing residents and citizens from all over the world, is how to account for the potential problem of one parent absconding with a minor child to a foreign country after the divorce or custody dispute concludes and facing custody litigation in a foreign jurisdiction. Frequently, it is a significant concern dealt with during settlement negotiations and often an impediment to resolution. The lack of clarity with respect to enforceability of such agreements will create forum shopping in international custody disputes,

increased litigation, and increase parental abductions if a litigant believes they have a better chance of persuading a court to overlook private agreements or state court orders concerning the forum agreed-upon for habitual residence[3].

SUMMARY OF ARGUMENT

Custody agreements and stipulation clauses regarding habitual residence are regularly used throughout the United States by family law attorneys and clients. Their enforceability and effect are of major importance to courts, practitioners and litigants alike. The lack of clarity that exists after the ruling in this case is problematic and the questions remaining require answers so consensual solutions to these problems can be reached in state courts.

Obtaining an answer to the second question presented in Patterson's Petition is crucial to the uniform treatment of jurisdictional stipulations to resolve questions of forum in international custody disputes. It is also fundamental to resolving the equally important issue of custodial arrangements between parents without litigation, which is favored by the Convention and public policy. Without certainty as to whether such stipulations will be enforced, settlement between parent litigants will be impeded significantly and litigation will increase as will forum shopping.

Here, where the precedent in the Seventh Circuit diverges from that of at least five (5) other federal circuits,

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3. The Consortium is not arguing that parties may agree to impose subject matter jurisdiction upon any court which does not have it independently.

the unanswered question can also lead to a hotbed for parental abductions in jurisdictions where these otherwise-valid stipulations are now not enforced. Both the Convention and the guidance from its primary lens of interpretation, the Perez-Vera Report, favor parents entering into private agreements. The Consortium respectfully requests answers to these questions which were raised through the divergence from established authority by the precedent set by the Seventh Circuit below.

ARGUMENT

I. Background of Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") and Interplay with Convention.

In 1997, the Uniform Law Commission ("ULC") sought to standardize how jurisdiction for custody determinations would take place throughout the United States by enacting the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). Unif. Child Custody Jurisdiction and Enforcement Act §§ 101-405 (1997). On November 1, 2024, the ULC issued a commentary describing the interplay between the UCCJEA, which provides for subject matter jurisdiction in state courts for child custody matters and the Convention, which provides for forum based on habitual residence. Commentary on UCCJEA Subject Matter Jurisdiction & Hague Abduction Convention, Joint Editorial Board for Uniform Family Law, https://www.uniformlaws.org/viewdocument/commentary-on-uccjea-subject-matter?CommunityKey=1e989ea5-ad22-4777-9805-cb5f14cae658&tab=librarydocuments (last visited November 11, 2024). Subject matter jurisdiction

for custody disputes cannot be fixed by parties through stipulation or otherwise. *Ibid.* This is to be distinguished from the Convention, that is not a jurisdictional statute, but one that determines habitual residence as "[t]he Convention's return requirement is a provisional remedy that fixes the forum for custody proceedings . . . and [u]pon the child's return, the custody adjudication will proceed in that forum." *Monasky v. Taglieri*, 589 U.S. 68, 72, 140 (2020). The Consortium agrees with the ULC commentary in its entirety.

The UCCJEA provides, *inter alia*, that if there is an existing custody order, plus at least one parent remaining in a jurisdiction, that jurisdiction shall be the sole place where custody matters are determined. *Ibid.* Here, Patterson and Baz agreed that habitual residence would remain in Cook County, Illinois, and agreed for Cook County to have ongoing subject matter jurisdiction per the UCCJEA, so long as one party remained there, in compliance with the UCCJEA; meaning so long as there was a permissible grant of subject matter jurisdiction for custody pursuant to the UCCJEA. Petition, at 6. Indeed, their agreement to litigate further custody matters was conditional and tracked the language of the UCCJEA. *Id.* at 7-8. Their agreement was proper, and subsequent to its entry as an order in Cook County Circuit Court, Patterson remained there throughout the litigation. *Ibid.* This is not a case where the parties attempted to agree to subject matter jurisdiction impermissibly. Rather, they agreed as to which conditions would apply per the statute, and such circumstances existed at the time of Baz's petition for return in the U.S. District Court for the Northern District of Illinois. The agreement was for forum per the Convention, not a private contract for subject matter

jurisdiction. These sorts of agreements are standard and intended to ensure that the relocating parent does not seek custody determinations elsewhere. Their agreement for habitual residence to remain in Illinois was also proper per the Convention.

II. Answer to Petitioner's Second Question Presented is Key; Confidence With Respect to Enforcement is Critical to Advancing Public Policy.

A. Remedies Such as Enforcement, Contempt, and Return Depend on Courts Enforcing Stipulations When Otherwise Legal and Whether This Occurs Now Depends on Which Federal Circuit You Bring a Claim.

Commonly, parents involved in custody litigation ask what will happen if the other parent does not follow an agreement. Petition, i. Stipulations which involve habitual residence are an example. A common response from family law counsel to such a question is a candid acknowledgement that neither counsel nor client can control the behavior of the other parent, however, if the other parent violates the settlement agreement or consent order, certain remedies exist. For example, filing actions for contempt of court, enforcement, and/or return of the child pursuant to the Convention, in the worst-case scenario of an abduction or wrongful retention. All of the foregoing countermeasures to a parent's noncompliance with a stipulation assume that a court will find that the stipulation is still effective, as it should, absent traditional defenses to contract including fraud, mistake, and overreaching. *See Christian Legal Soc'y Chapter of the Univ. of Cal. v. Martinez*, 561 U.S. 661, 677-78 (2010).

The precedent set by the Seventh Circuit in *Patterson* is that express waivers made through stipulation in state court will not be enforced in subsequent federal proceedings, even absent extenuating circumstances. This is in direct contrast to the authority in at least five (5) other circuits which either found implied waiver by conduct or simply recognized the ability to waive rights per the Convention. Petition, 12-17. The Seventh Circuit precedent drives a wedge directly into the core of authority relied upon by family law practitioners regularly, significantly eroding the confidence counsel and clients will have to settle these matters. If the Court does not intervene, members of the Consortium would be remiss not to advise their clients that a parent entering into an agreement with latent insincerity could, for example, move from their home in Los Angeles to Chicago and obtain a different result in a future proceeding pursuant to the Convention. Conversely, members of the Consortium on the other side of the equation would be correct in advising their clients that if they moved to a different jurisdiction, their expressed desire to renege on a stipulation can be actualized in the Seventh Circuit, but not certain others.

B. It is In the Public Interest to Reduce the Number of Abducted Children, Not to Create Policy that Creates Hotspots for Parental Abductions.

In 2021, 2,771 children were the subject of 2,180 return applications filed with the United States Central Authority[4]. HAGUE CONFERENCE ON PRIVATE INTERNATIONAL

4. The Office of Children's Issues at the Department of States operates as the Central Authority for the United States. HAGUE

Law, https://assets.hcch.net/docs/bf685eaa-91f2-412a-bb19-e39f80df262a.pdf (Last visited November 11, 2024). Precedent set by federal circuits should be uniform and cause this number to decrease. The current state of authority after the precedent set by the Seventh Circuit in *Patterson* is less clear and ripe for abuse by parents who seek to circumvent legitimate legal channels to resolve intractable family problems through self-help.

Parents should have certainty and uniformity for application of law no matter where their claim for return pursuant to the Convention is filed. A parent in Miami, Los Angeles, or Chicago must be able to rely on the same authority with respect to how their rightful agreements will be enforced; particularly those which have already passed judicial scrutiny in state court, which is where custody cases belong. Not acting to settle the disparities among the federal circuits will operate to create more litigated claims within the Convention and ICARA, not less.

Conference on Private International Law, https://www.hcch.net/en/states/authorities/details3/?aid=133 (last visited Nov. 11, 2024). Each member nation to the Convention is required to maintain a Central Authority to administer applications and assist left-behind parents to enforce their rights to have their children returned. The Hague Convention on the Civil Aspects of International Child Abduction, art. 6, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 49. The application to the Central Authority is distinct from filing a claim in federal court in the United States.

III. Settlement of Disputes is Favored by Existing Federal Policy and the Convention, Therefore, Clarifying Effect of Stipulations is Important.

A. Seventh Circuit Noted Policy Behind Fed. R. Evid. 408 Underlines Universal Favor of Settling Cases Especially in Context of Convention to Advance Best Interests of Children in *Walker v. Walker* and Contradicts Rationale from Its Holding in *Patterson v. Baz*.

The Consortium would not be going out on a limb to say that public policy favors the settlement of cases prior to litigation, or at least prior to disposition. Indeed, in *Walker v. Walker*, the Seventh Circuit noted as much when it overturned a District Court, at least partially, for admitting a piece of settlement correspondence into evidence. 701 F. 3d 1110, 1117-18 (7th Cir. 2012). The *Walker* Court underlined the public policy behind Fed. R. Evid. 408, i.e., to encourage out-of-court settlements. *Ibid.* In *Walker*, which involved a left-behind father's petition pursuant to the Convention, the court expressly noted that "admitting a document like the [settlement correspondence into evidence] has the potential to deter future efforts to settle international divorce and custody disputes." *Id*. at 1117.

The *Walker* Court opined that petitioners such as the left-behind father in this case would have a greatly reduced incentive to settle if they knew that these same settlement correspondence would be used against them in court. *Id*. Compare this with the case at bar, which involved negotiations which resulted in settlement via stipulation. The Consortium asks rhetorically, what

confidence can a party have, particularly in an already heated and distrustful dispute between two estranged parents, that their stipulations to habitual residence will be enforced, when counsel must tell them it depends on which federal circuit the claim is brought? Here, the Seventh Circuit declined to enforce a stipulation made for habitual residence, even when Baz acknowledged that she entered into the agreement knowing that she was not going to follow through. Petition, n.1. The Consortium asks the Court to hear the merits of this case to clarify one way or another, how such stipulations must be analyzed.

B. The Perez-Vera Report Recognizes that Custody Rights May be Determined by Agreement, Therefore, Parents Should be Able to Determine How Convention Will or Will Not Operate to Resolve Custody Disputes Amicably.

A document known as the Perez-Vera Report is "the 'official history' of the Convention and 'a source of background on the meaning of the provisions of the Convention[.]'" *Abbott v. Abbott*, 560 U.S. 1, 19 (2010) (citing Hague International Child Abduction Convention; Text and Legal Analysis, 51 Fed. Reg. 10503-10506 (1986)); E. Perez-Vera, Explanatory Report, in 3 Actes et Documents de la Quatorzieme Session, pp. 425-473 (1982); *see also Monasky*, 589 U.S. at 77; *Golan v. Saada*, 596 U.S. 666, 680 (2022). The Perez-Vera Report encourages resolution of international custody disputes by private agreements between parents. Perez-Vera Report, para. 70. The Seventh Circuit's precedent in *Patterson* calls into question how federal courts will interpret and apply the Convention and its departure from the guidance in the Perez-Vera Report

is another reason the Consortium asks for this case to be heard. Specifically, the Convention states that custody rights include the right to determine a child's residence and that rights "may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of agreement having legal effect under the law of the State." Convention, arts. 3, 5; *Hanley v. Roy*, 485 F.3d 641, 643 (11th Cir. 2007). Here, the stipulations made by Patterson and Baz were legitimate and accepted by the court in Cook County. Such stipulations were set aside by the Seventh Circuit, notwithstanding their validity and conformity with the UCCJEA and Convention.

Trial judges also face increased conflicting authority as the Federal Judicial Center's Guide for Judges on the Hague Convention also notes custody rights under article 3 of the Convention may arise by agreement, even if not "reduced to a judgment or incorporated into custody orders." Federal Judicial Center, The 1980 Hague Convention on the Civil Aspects of International Child Abduction: A Guide for Judges 44-45 (2d ed. 2015). Here, the agreement was incorporated into an order and the forum in which it was to be enforced was stipulated as well, yet Baz acknowledged she had no intention of following it when the parties stipulated to the provisions. Despite the order and Baz's unclean hands, it was not enforced. This precedent is problematic for practitioners, and the Consortium asks the Court to decide one way or another how these agreements and orders will be treated so that proper guidance can be given to international family law clients.

The Seventh Circuit left it unclear how custodial agreements will be treated, or at least *less clear*, which

is also in contravention to the guidance in the Perez-Vera Report. For example, in paragraph 70, the Perez-Vera Report calls for "the conditions imposed upon the acceptance of agreements governing matters of custody which the Convention seeks to protect [to be] as clear and flexible as possible." *Id.* Further, by enacting ICARA, "Congress explicitly recognized 'the need for uniform international interpretation of the Convention.'" *Lozano v. Alvarez*, 572 U.S. 1, 13 (2014) (quoting 22 U.S.C.S. 9001(b)(3)(B)). If the United States has different approaches to enforcing agreements which are favored under the Convention within its own federal circuits, how will courts meet the mandate pursuant to its implementing legislation to interpret it consistently with the treaty's other member nations?

CONCLUSION

Stipulated clauses such as those present here are used to settle custody disputes as a matter of routine practice among parties and counsel. Frequently, contested custody cases are rife with emotion and distrust. The added layer of uncertainty with respect to international enforcement of custodial agreements can only work in contravention to the intent of the United States' implementation of the Convention and the best interests of her children. This case is of significant public interest and involves a split among federal circuits. There is an important issue here with respect to uniform interpretation across such federal circuits and internationally to comply with the intent of the Convention and the statutory mandate. The Consortium would benefit greatly from clarification as to which interpretation of such agreements shall govern and

respectfully asks that Patterson's Petition be granted for these reasons.

Respectfully submitted,

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APPENDIX

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