

No. \_\_-\_\_\_\_

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**In the Supreme Court of the United States**

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MINNA-MARIE BRANDT,  
*Petitioner,*

*v.*

DAMIAN CARACCIOLO,  
*Respondent.*

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On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Fourth Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

The Hague Convention on the Civil Aspects of International Child Abduction “seeks ‘to secure the prompt return of children wrongfully removed to or retained in any Contracting State.’” *Chafin v. Chafin*, 568 U.S. 165, 168 (2013) (quoting Hague Convention art. 1.). In wrongful-retention cases under the Hague Convention, the question whether a retention is wrongful turns on the parents’ custody rights under the laws of their child’s country of residence at the time of the allegedly wrongful retention. *Id.* Given the above background, this case presents the following question:

Did the Fourth Circuit below err in concluding—in conflict with the text of the Hague Convention and the cases of this Court and six other circuits<sup>1</sup>—that United States courts can consider circumstances other than those relevant under the laws of the country of residence to determining parties’ custody rights under the laws of that country at the time of an allegedly wrongful retention?

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<sup>1</sup> *Golan v. Saada*, 142 S. Ct. 1880, 1888 n.1, 213 L. Ed. 2d 203 (2022); *Monasky v. Taglieri*, 140 S. Ct. 719, 723 (2020); *Redmond v. Redmond*, 724 F.3d 729, 741 (7th Cir. 2013); *Livingstone v. Livingstone*, No. 22-1308, 2023 WL 8524922, at \*4 (10th Cir. Dec. 8, 2023); *Barzilay v. Barzilay*, 600 F.3d 912, 917 (8th Cir. 2010); *Abou-Haidar v. Sanin Vazquez*, 945 F.3d 1208, 1215 (D.C. Cir. 2019); *Darin v. Olivero-Huffman*, 746 F.3d 1, 10–11 (1st Cir. 2014); *Asvesta v. Petroutsas*, 580 F.3d 1000, 1017–20 (9th Cir. 2009).

### **PARTIES TO THE PROCEEDING**

Petitioner is Minna-Marie Brandt.

Respondent is Damian Caracciolo.

### **STATEMENT OF RELATED PROCEEDINGS**

This case arises from and relates to the following proceedings in the United States Court of Appeals for the Fourth Circuit and the United States District Court for the Western District of North Carolina:

- *Brandt v. Caracciolo*, No. 3:22-CV-00304 (W.D. N.C.), judgment entered Nov. 29, 2022.
- *Brandt v. Caracciolo*, No. 22-2320 (4th Cir.), judgment entered Oct. 25, 2023, petition for re-hearing denied on Nov. 21, 2023.

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## PETITION FOR WRIT OF CERTIORARI

This Court appears to have heard recent Hague Convention cases to make sure that lower courts follow the convention's plain text. In 2020 and 2022, the Court reversed lower courts for applying certain aspects of the convention in ways that did not comport with the convention's text. *See Golan*, 142 S. Ct. at 1896; *Monasky*, 140 S. Ct. at 723. This case gives the Court the opportunity to ensure fidelity to the convention's text in another important area: evaluating whether a removal or retention to the United States is wrongful.

In a wrongful-retention case under the Hague Convention, a petitioner must establish, among other things, that the respondent retained her child in the United States wrongfully. *Maxwell v. Maxwell*, 588 F.3d 245, 250 (4th Cir. 2009).<sup>2</sup> Wrongfulness turns on the parties' custody rights over the child under the laws of the child's country of residence at the time of the removal or retention.<sup>3</sup>

The lower court took a new approach that conflicts with the text of the convention and the decisions of

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<sup>2</sup> The other two elements of a petitioner's prima facie case are that the children were "habitually resident" in the petitioner's country of residence and the petitioner had been exercising her custody rights at the time of retention. *Id.*

<sup>3</sup> The Convention on the Civil Aspects of International Child Abduction, done at the Hague, October 25, 1980, T.I.A.S. No. 11,670, at 1, 22514 U.N.T.S. at 98; *Golan*, 142 S. Ct. at 1888 n.1; *Monasky*, 140 S. Ct. at 723; *Redmond*, 724 F.3d at 741; *Livingstone v. Livingstone*, No. 22-1308, 2023 WL 8524922, at \*4; *Barzilay*, 600 F.3d at 917; *Abou-Haidar*, 945 F.3d at 1215; *Darin*, 746 F.3d at 10–11; *Asvesta*, 580 F.3d at 1017–20.

this Court and six other circuits.<sup>4</sup> The majority evaluated wrongful retention based on factors other than the parties' home-country custody rights at the time of an allegedly wrongful retention—such as post-retention changes in custody and the majority's own subjective notions of consent and status quo. *Brandt*, 2023 WL 7015680, at \*3–4.

The Court should grant certiorari to make clear that the Hague Convention's text requires courts to evaluate wrongfulness based on parties' home-country custody rights as they existed at the time of an allegedly wrongful retention.

### OPINIONS BELOW

The Fourth Circuit's decision (Pet. 1a–15a) is not reported but is available at 2023 WL 7015680. The district court's memorandum and order (Pet. 16a–23a) is not reported but is available at 2022 WL 17326114.

### JURISDICTION

The district court properly exercised subject-matter jurisdiction under 28 U.S.C. § 1331, the International Child Abduction Remedies Act (“ICARA”), 22 U.S.C. § 9001, *et seq.*, and the Convention on the Civil Aspects of International Child Abduction, done at the Hague, October 25, 1980 (The “Hague Convention” or the “Convention”), T.I.A.S. No. 11,670, at 1, 22514 U.N.T.S. at 98, *reprinted in* 51 Fed. Reg. 10,493 (1986), *text available at* [http://www.hcch.net/index\\_en.php?act=conventions.pdf&cid=24](http://www.hcch.net/index_en.php?act=conventions.pdf&cid=24) (last accessed Feb. 22, 2023). The parties consented to a trial before a magistrate judge, whose ruling was appealable to the Fourth Circuit Court of Appeals under

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<sup>4</sup> See *supra* note 3.

Federal Rule of Civil Procedure 73(c) and 28 U.S.C. § 636(c)(3). Pet. 133a.

The Fourth Circuit Court of Appeals jurisdiction derived from 28 U.S.C. § 1291, ICARA, the Convention, and the Notice of Appeal filed by Petitioner Minna-Marie Brandt. Brandt timely filed her notice of appeal on December 28, 2022, after the district court denied Brandt’s petition on November 27, 2022.

Petitioner invokes this Court’s jurisdiction under 28 U.S.C. § 1254. She timely filed this Petition for a Writ of Certiorari within ninety days of the United States court of appeals’ denying her petition for rehearing on November 21, 2023. Pet. 24a.

### **TREATY AND STATUTORY PROVISIONS INVOLVED**

Pertinent treaty and statutory provisions are reproduced in the appendix. Pet. 25a–82a.

### **STATEMENT OF THE CASE**

#### **A. In this Hague Convention case, the parties’ custody rights turn on Swedish law.**

This is a Hague Convention case.<sup>5</sup> As enacted by the ICARA, the Hague Convention provides for the return of a child to a petitioning parent in the child’s home country if a respondent parent has wrongfully removed a child to or retained her in the United States.

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<sup>5</sup> The International Child Abduction Remedies Act (“ICARA”), 22 U.S.C. § 9001, *et seq.*, enacted under United States law the Convention on the Civil Aspects of International Child Abduction, done at the Hague, October 25, 1980 (The “Hague Convention” or the “Convention”), T.I.A.S. No. 11,670, at 1, 22514 U.N.T.S. at 98, *reprinted in* 51 Fed. Reg. 10,493 (1986). This brief will refer to the foregoing together as the “Hague Convention.”

22 U.S.C. § 9003. Although a Hague Convention petitioner must prove several elements to secure the return of a child, this case concerns only the element that requires a petition to show that a removal or retention is wrongful. Pet. 16a–23a (ruling for Brandt on the other elements of her claim and issuing no rulings on Respondent’s affirmative defenses). The Hague Convention provides—as the caselaw did until this case—that a removal or retention is wrongful if it violates the petitioner’s custody rights as they existed under the laws of the home country at the time of the removal or retention. *Chafin*, 568 U.S. at 168 (quoting Hague Convention art. 1.).

Swedish law determines the parents’ custody rights in this case. The Swedish Children and Parents Code provides that parents with joint custody “ha[ve] the right and the obligation to make decisions concerning the child’s personal affairs.” Pet. 70a, Föräldrabalk [FB] [Children and Parents Code] 1983:47; 2005:430 (Swed.). Indeed, if parents have joint custody, only a Swedish court or a written agreement of the parents approved by the Swedish Social Welfare Committee can change a child’s residence. Pet. 72a (section 14a of the Swedish Children and Parents Code. Föräldrabalk [FB] [Children and Parents Code] 2006:458 (Swed.)).

**B. When Respondent began refusing to return Brandt’s children to Sweden, the parties had joint custody over the children under Swedish law.**

This wrongful-retention case arises from a Swedish child-custody dispute that Swedish courts had not yet resolved when Respondent started refusing to return Brandt’s children from the United States to Sweden—Brandt and the children’s country of residence.

Although Brandt and Respondent never married, they have two children together. Pet. 136a–137a. Both children were born in Sweden and have Swedish citizenship. Pet. 137a–139a. Under Swedish law, Brandt had sole custody over the children until the parties agreed to have joint custody in March 2020. Pet. 141a.

The parties' dispute arose after their romantic relationship soured. Pet. 139a. When Respondent brought Brandt's children to the United States in April 2021 for what was supposed to be a three-month trip, Brandt and Respondent had joint custody rights over the children. Pet. 142a–146a. A Swedish court order reaffirmed the parties' joint custody over the children on July 6, 2021. Pet. 115a–119a. The July 2021 order stated, "Minna-Mari [sic] Brandt and Damian Caracciolo for the time being until the question has settled by a judgment or a decision that has become legally binding or the parties have reached an agreement of the issue that has been approved by the social welfare board [*have*] *continued joint custody of the joint children of the parties.*" Pet. 118a (emphasis added). The Swedish court also ordered an investigation into the parties. *Id.*

One day after the July 6 joint-custody order issued, Respondent began refusing to return the children. Pet. 146a. On July 21, 2021, Brandt began pursuing Hague Convention relief in Sweden and repeatedly asked Respondent to return the children to Sweden. Pet. 146a–151. The court-ordered investigation concluded in September 2021 when a Swedish Family Services secretary proposed that Respondent have sole custody of the children. Pet. 82a–114a, 113a. Consistent with chapter 6, section 19 of the Children and Parents Code, the proposal indicated that a Swedish court would have to accept it. Pet. 82a, 113a. The

report noted also that the parties considered and rejected an agreement under which Respondent would relocate the children to the United States. Pet. 85a–92a. According to the report, the parties went to Swedish social services to discuss a written agreement under which the children would go to the United States to live with Appellee. *Id.* However, the meeting ended, and the agreement was “not signed by the guardians.” Pet. 92a. Only on March 22, 2022, did a Swedish court award sole custody of the children to Respondent. Pet. 120a–132a. In doing so, the Swedish court stated that Respondent “kept the Children in the USA in violation of the parties’ agreement.” Pet. 131a. Additionally, the Swedish court awarded sole custody to Respondent in part because “there [were] also major practical problems with joint custody, as [Respondent] now lives in the United States.” Pet. 129a.

As to what will happen if the children return to Sweden, Brandt testified that she would seek custody of the children if the district court returned them to Sweden, and Respondent indicated he would go to Sweden with the children. Pet. 147a–148a.

**C. The district court denied Brandt’s petition because it believed that the March 2022 order showed that, in July 2021, Respondent had the right to relocate the children to the United States permanently, and the court of appeals affirmed.**

On July 6, 2022, Brandt timely filed a petition asking the district court to return her children to Sweden, and after submitting trial briefs, the parties tried the case to the district court on November 10, 2022. On November 29, 2022, the trial court denied Brandt’s petition and found that Brandt did not establish a prima

facie case of wrongful retention. The district court ruled that Brandt established by a preponderance of evidence that (1) the children were “habitually resident” in her country of residence at the time of retention and (2) Brandt had been exercising the custody rights under the law of her home state. *Brandt*, 2022 WL 17326114, at \*3. The district court denied Brandt’s petition, however, because it thought she failed to show that Respondent breached her Swedish-law custody rights by retaining her children in the United States. *Id.* at \*3–\*4. Without analyzing any provisions of the Swedish Children and Parents Code, the district court reasoned that although the March 2022 order “is not dispositive as a matter of law on the issue of wrongful retention,” it was “compelling evidence that the initial removal and subsequent retention of the children were proper.” *Id.* at \*4.

Brandt timely appealed the district court’s decision. Over a dissent, the Fourth Circuit affirmed the district court’s judgment on October 25, 2023. The majority held that the district court did not err in relying on the March 31, 2022 custody order to determine the parties’ custody rights. *Brandt v. Caracciolo*, No. 22-2320, 2023 WL 7015680, at \*3 (4th Cir. Oct. 25, 2023). Glossing over Swedish law, as the district court did, the majority concluded that Respondent did not wrongfully retain the children in the United States, because “the children indefinitely staying with the joint custodial father, in the United States, was the status quo.” *Id.* at \*3–4. The majority appears to have believed that Brandt had to prove that she did not consent to Respondent’s relocating the children to the United States permanently even though mere informal consent is insufficient under Swedish law for a parent with joint custody to change a child’s residence—and even though the Hague Convention

provides for an affirmative defense under which a *respondent* must prove that a petitioner consented to a removal or retention that would otherwise be wrongful. Pet. 70a–71a, Föräldrabalk [FB] [Children and Parents Code] 1983:47; 2005:458 (Swed.); 22 U.S.C. 9003(e)(2); Hague Convention art. 13(a).

In dissent, Judge Quattlebaum concluded that the Hague Convention’s plain language required reversal. According to the dissent, Respondent breached Brandt’s Swedish custody rights at the time of the wrongful retention in July 2021 because no Swedish court had decided with whom the children should live. *Brandt*, 2023 WL 7015680, at \*5 (Quattlebaum, J., dissenting). The dissent explained that under section 11 of Sweden’s Children and Parents Code, Brandt, “as a parent with joint custody, had a right to make decisions concerning the children’s personal affairs” and that “both parents with joint custody have the right to participate in deciding which parent the children live with.” *Id.* Because “no court had decided which parent the children would live with” in July 2021, the dissent continued, Respondent’s retention of the children in the United States was wrongful because it violated Brandt’s Swedish custody rights. *Id.* On November 25, 2023, the Fourth Circuit denied Brandt’s timely filed petition for rehearing, and the Fourth Circuit’s mandate was entered on November 29, 2023.

### **REASONS FOR GRANTING THE PETITION**

The Court should grant this Petition at least because the approach the panel majority adopted (1) conflicts with decisions from this Court and other circuit courts, (2) disregards the text of the Hague Convention and this Court’s instructions for interpreting the



Hague Convention, and (3) incentivizes parents who are party to foreign custody disputes to subvert home-country custody proceedings by bringing their children to the United States.

**I. The panel majority’s approach conflicts with this Court’s and other circuit courts’ Hague Convention caselaw.**

The panel majority has sanctioned a new, improper approach to evaluating wrongfulness in Hague Convention cases. Until now, courts around the country had followed this Court’s instructions by evaluating wrongfulness based on parties’ custody rights under the law of their children’s country of residence at the time of an alleged wrongful retention or removal. *See, e.g., Golan*, 142 S. Ct. at 1888 n.1; *Monasky*, 140 S. Ct. at 723; *Chafin*, 568 U.S. at 168; *Redmond*, 724 F.3d at 741; *Livingstone*, 2023 WL 8524922, at \*4; *Barzilay*, 600 F.3d at 917; *Abou-Haidar*, 945 F.3d at 1215; *Darin*, 746 F.3d at 10–11; *Asvesta*, 580 F.3d at 1017–20; *White v. White*, 718 F.3d 300, 307 (4th Cir. 2013).<sup>6</sup>

Under the above well-accepted (and required) approach, this should have been an easy case. All the district court and the majority should have done was recognize the following, none of which Respondent disputes:

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<sup>6</sup> As the majority below recognized, “[w]hile *White* dealt with wrongful removal, other courts have applied *White* to instances of wrongful retention.” *Brandt*, 2023 WL 7015680, at \*3 n.6 (citing *Velasquez v. Funes de Velasquez*, 102 F. Supp. 3d 796, 801 (E.D. Va. 2015)).

1. In July 2021, the parties had joint custody over their children under Swedish law.<sup>7</sup>
2. Under Swedish law, a parent with joint custody over a child cannot change the child's residence without securing a written agreement signed by the other parent and approved by the Swedish Social Welfare Committee or a Swedish court order.<sup>8</sup>
3. In July 2021, Respondent purported to change Brandt's children's residence to the United States without securing either of the foregoing.<sup>9</sup>

Because of these three undisputed facts, Respondent interfered with Brandt's Swedish-law custody rights when he refused to return her children to her in July 2021 such that Respondent's retention of Brandt's children in the United States was wrongful.

But the panel majority adopted a new approach that allowed it—and will allow other courts—to determine wrongfulness based on what rights it thought Respondent *should* have rather than the rights Swedish law actually gave him in July 2021. According to the majority, courts considering wrongfulness can consider factors other than those relevant under home-country law to determine parents' home-country custody rights at the time of an allegedly wrongful retention. *Brandt*, 2023 WL 7015680, at \*3

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<sup>7</sup> Pet. 116a.

<sup>8</sup> Pet. 72a (section 14a of the Swedish Children and Parents Code). Föräldrabalk [FB] [Children and Parents Code] 2006:458 (Swed.).

<sup>9</sup> Pet. 116a, Pet. 118a

(“Moreover, nothing in our precedent prevents the district court from considering the full panoply of circumstances surrounding the alleged retention.”). For example, the majority allowed the district court to consider a Swedish court order that gave Respondent sole custody over the children well after he began wrongfully retaining them in the United States. *Id.* And rather than determining the parties’ custody rights by looking to Swedish law, the majority applied its own subjective notions of consent and status quo to determine that Respondent somehow had the right to relocate Brandt’s children to the United States permanently in July 2021. *Id.* at \*3. Indeed, rather than analyzing whether Respondent secured a written agreement approved by the Swedish Social Welfare Committee or a Swedish court order, the majority concluded that Bandt failed to establish wrongfulness simply because she failed to prove that she did not agree that Respondent could take her children to the United States forever. *Id.* at \*4. In short, the majority has adopted a new approach that will allow United States courts to resolve foreign custody disputes based on factors they think are important rather than, per the Hague Convention’s text, the factors home-country law requires them to consider. *Id.* at \*3–4. Because this new approach conflicts with this Court’s caselaw and that of other circuit courts, the Court should grant this petition.

## **II. The panel majority’s approach contravenes the Hague Convention’s plain text.**

The text of the Hague Convention forecloses the lower court’s decision. This Court has been clear that “[t]he interpretation of a treaty, like the interpretation of a statute, begins with its text.” *Abbott v.*

*Abbott*, 560 U.S. 1, 10, 130 S. Ct. 1983, 176 L. Ed. 2d 789 (2010) (quoting *Medellín v. Texas*, 552 U.S. 491, 506, 128 S. Ct. 1346, 170 L. Ed. 2d 190 (2008)).

In two recent cases, this Court granted petitions for writs of certiorari like this one to ensure that lower courts adhere to the text of the Hague Convention. For instance, this Court recently reversed the Second Circuit Court of Appeals for adopting a requirement “inconsistent with the text and other express requirements of the Hague Convention.” *Golan*, 142 S. Ct. at 1888. The Court noted also in *Golan* that “the Convention generally requires the ‘prompt return’ of a child to the child’s country of habitual residence when the child has been wrongfully removed to or retained in another country” and that “[t]his requirement ‘ensure[s] that *rights of custody and of access under the law of one Contracting State* are effectively respected in the other Contracting States.’” *Id.* (emphasis added) (first quoting Treaty Doc. art. 1(a) at 7; then quoting *id.* art. 1(b) at 7; and then quoting *id.* art. 12, at 9). In *Monasky*, the Court “granted certiorari to clarify the standard for habitual residence, an important question of federal and international law, in view of differences in emphasis among the Courts of Appeals.” 140 S. Ct. at 725. And the Court began with “the text of the treaty and the context in which the written words are used.” *Id.* at 726 (internal quotation marks and citations omitted). Justin Thomas, concurring, further emphasized that courts should adhere to the plain meaning of the convention’s text. *Id.* at 731–34 (Thomas, J., concurring). Thus, this Court’s decisions make clear that United States courts applying the Hague Convention must follow the convention’s text.

The Court should grant this Petition because the majority below disregarded the text of the Hague Convention (and the above cases), allowed the district court to do the same, and has encouraged other courts to do so as well. Under article 3 of the Hague Convention, the removal or retention of a child is “wrongful” where “it is in breach of rights of custody attributed to a person, an institution or any other body, jointly or alone, *under the law of the State in which the child was habitually resident immediately before the removal or retention.*” Hague Convention art. 3 (emphasis added). Thus, the majority should have looked to Swedish law to determine what custody rights Respondent had in July 2021 when he refused to return Brandt’s children to Sweden.

Instead, the majority disregarded the Hague Convention’s text and Swedish law by evaluating wrongfulness based on factors other than the rights the home country’s law provided at the time of the wrongful retention—namely, a change in custody that occurred under Swedish law well after Respondent began wrongfully retaining Brandt’s children in the United States and the majority’s subjective notions of consent and status quo.

First, by considering the March 2022 custody order to determine whether Respondent had wrongfully retained Brandt’s children in July 2021, the district court evaluated the parties’ rights as they existed in March 2022, not as they existed “immediately before the removal or retention.” *Id.* Had the majority and the district court looked to the March 2022 order for evidence of the rights Respondent had in July 2021, they would have found that Swedish law gave Respondent no right in July 2021 to move Brandt’s

children to the United States permanently. Indeed, the March 2022 order states that Respondent “kept the children in the USA in violation of the parties’ agreement.” Pet. 131a. The March 2022 order indicates, therefore, that Respondent had no right under Swedish law to relocate Brandt’s children to the United States permanently in July 2021. Thus, by allowing the district court to rely on the March 2022 order, the majority has allowed other lower courts to sanction wrongful removals and retentions based on subsequent changes in custody rather than the parties’ rights “*immediately before the removal or retention.*” Hague Convention art. 3 (emphasis added).

Second, the majority below evaluated Respondent’s rights in July 2021 based on its own subjective notions of consent and status quo rather than Swedish law. The Swedish-law provisions cited herein told the majority exactly what it should have analyzed: whether, before the alleged wrongful retention, Respondent secured (1) a written agreement signed by Brandt and approved by the Swedish Social Welfare Committee that allowed him to change the children’s residence to the United States or (2) a Swedish court order doing the same. Pet. 72a (section 14a of the Swedish Children and Parents Code. Föräldrabalk [FB] [Children and Parents Code] 2006:458 (Swed.)). Instead, the majority determined that Respondent had the right to relocate Brandt’s children to the United States permanently because, according to the majority, she somehow consented to the relocation in an informal way. *Brandt*, 2023 WL 7015680, at \*4. But as the dissenting judge recognized, the majority disregarded the text of the Hague Convention and Swedish law. After analyzing the same provisions of Swedish law on which Brandt has relied, the dissent stated, “I

fail to see how Brandt has not made a prima facie case that her custody rights were breached based on the plain language of Article 3 of the Hague Convention.” *Id.* at \*5. Ultimately, the majority’s licensing of lower courts to evaluate wrongfulness based on considerations other than those the plain text of the Hague Convention allows courts to consider warrants review and reversal.

Furthermore, unless this Court intervenes, the majority’s approach will render at least one of the Hague Convention’s affirmative defenses superfluous. *See Abbott*, 560 U.S. 1, at 22 (citing Hague Convention art. 13). The doctrine of *verba cum effectu sunt accipienda* requires courts to give every word and every provision effect. *See Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 668, 127 S. Ct. 2518, 168 L. Ed. 2d 467 (2007) (“But this reading would render the regulation entirely superfluous.”); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69, 174 (Thomson/West, 2012). Here, the Hague Convention states that “the judicial or administrative authority of the requested State is not bound to order the return of the child if the person \* \* \* which opposes its return establishes that the person, institution or other body having the care of the person of the child \* \* \* had consented to or subsequently acquiesced in the removal or retention.” Hague Convention art. 13(a). A respondent bears the burden of establishing this affirmative defense. *Bader v. Kramer*, 484 F.3d 666, 668–69 (4th Cir. 2007). Thus, by requiring Brandt to show that she did not consent to Respondent’s decision to permanently move the children to the United States, the lower courts placed the burden on Brandt to prove that no consent occurred, even though the Hague

Convention requires respondents to prove consent. *See Brandt*, 2023 WL 7015680, at \*3 (“While the parties dispute the permanency of this stay, [Brandt] bore the burden of proving that [Respondent] wrongfully retained the children.”). The Fourth Circuit’s improper burden-shifting warrants reversal.

### **III. The Fourth Circuit’s approach incentivizes people to thwart home-country custody proceedings by bringing children to the United States.**

The panel’s novel approach also incentivizes the conduct the Hague Convention seeks to prevent. The Hague Convention exists to “ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.” Hague Convention art. 1, at 4. As the Third and Ninth Circuits have respectively stated, the Hague Convention “ensures that cases are heard in the proper court,” and “[t]he central purpose of the Convention is to prevent forum shopping in custody battles.” *Valenzuela v. Michel*, 736 F.3d 1173, 1176 (9th Cir. 2013); *Baxter v. Baxter*, 423 F.3d 363, 367 (3d Cir. 2005). Moreover, a district court has recognized that “[t]he normal wrongful detention cases usually happen when one custodial parent grants the other parent permission to temporarily visit another country with their children, only to have that parent decide to not return and keep the children in the new country.” *Slight v. Noonkester*, No. CV 13-158-BLG-SPW, 2014 U.S. Dist. LEXIS 9133, at \*14 (D. Mont. Jan. 24, 2014).

Although the majority below should have viewed this case as a “normal wrongful detention case[,]” its



new approach ignores the foregoing, licenses United States courts to settle foreign custody disputes, and incentivizes people to bring children here to gain the upper hand in foreign custody proceedings. *Slight*, 2014 U.S. Dist. LEXIS 9133, at \*14.

This case illustrates the problem with the panel's approach. While Brandt and Respondent had joint custody over the children, and therefore equal rights to determine their children's residence, Respondent unilaterally changed the children's residence by bringing them to the United States and refusing to return them to Sweden. The Swedish courts then decided to give Respondent sole custody over the children in part because they were already with him in the United States at the time of the sole-custody decision. *See* Pet. 129a. Indeed, even though the Swedish court recognized that Respondent "kept the children in the USA in violation of the parties' agreement," the Swedish court stated that "there [were] also major practical problems with joint custody, as Damian Caracciolo now lives in the United States." Pet. 131a. Essentially, Respondent retained the children in the United States in violation of Brandt's custody rights and, in doing so, caused the Swedish courts to award him sole custody of the children. The majority's approach approves of Respondent's wrongful conduct and thereby incentivizes others to act similarly to Respondent. This Court should therefore review the majority's decision to prevent the United States from becoming a haven for parents seeking to upend foreign-court-ordered custody arrangements.

**CONCLUSION**

For the foregoing reasons, Brandt respectfully requests that this Court grant her Petition for a Writ of Certiorari.

Respectfully submitted.

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FEBRUARY 20, 2024

## **APPENDIX**

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1a

**APPENDIX A**

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 22-2320

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MINNA-MARIE BRANDT,

*Petitioner - Appellant,*

v.

DAMIAN CARACCIOLO,

*Respondent - Appellee.*

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Appeal from the United States District Court for the  
Western District of North Carolina, at Charlotte.  
David Shepardson Cayer, Magistrate Judge. (3:22-cv-  
00304-DSC)

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Argued: May 3, 2023

Decided: October 25, 2023

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Before GREGORY, THACKER and QUATTLEBAUM,  
Circuit Judges.

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Affirmed by unpublished opinion. Judge Thacker  
wrote the majority opinion, in which Judge Gregory  
joined. Judge Quattlebaum wrote a dissenting opinion.

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ARGUED: William Greg Fox, WINSTON & STRAWN LLP, Dallas, Texas, for Appellant. Steven Blaine Ockerman, EPPERSON LAW, PLLC, Charlotte, North Carolina, for Appellee. ON BRIEF: Lauren E. R. Watkins, EPPERSON LAW, PLLC, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

THACKER, Circuit Judge:

Minna-Marie Brandt (“Appellant”) appeals the denial of her verified petition for return of her minor children from the United States to Sweden pursuant to the Hague Convention. The district court held that Appellant failed to establish a prima facie case of wrongful retention by the children’s father, Damian Caracciolo (“Appellee”).

Upon review, we hold that Appellant has failed to demonstrate wrongful retention of the minor children in violation of her custody rights. Therefore, we affirm.

I.

Appellant, a Swedish citizen, met Appellee, a United States citizen, in 2015 while Appellee was in Sweden. The two began an on-again, off-again relationship that continued through 2021. Throughout their relationship, the parties sometimes resided together in Sweden. Although they never married, Appellant and Appellee have two children together: a son, S.C., and a daughter, J.C. The children were born in Örebro, Sweden, in 2016 and 2019 respectively, and are Swedish citizens. Until April 16, 2021, the children lived continuously in Sweden with Appellant. Appellee also resided with them intermittently. During this time, the children

took a few shorts trips to visit Appellee's family in the United States.

Appellant maintained sole custody until March 2020, when the parties reached a custody agreement. *See Föräldrabalk [FB] [Children and Parents Code] 1994:1433 (Swed.)* (“Both parents of a child shall have custody of the child from birth, *if they are married*, to each other; *otherwise the mother shall have sole custody.*”) (emphasis supplied). Thereafter, Appellant agrees the parties held joint custody pursuant to their agreement.

On December 30, 2020, social services in Sweden (“social services”) began an investigation into the safety of Appellant's home and the children's' welfare. According to Appellant, social services advised that the children may be moved to foster care. Appellant contends that the parties then discussed Appellee taking the children to the United States for a three-month trip. In contrast, Appellee claims the parties agreed that the entire family would move to the United States and Appellee would obtain citizenship for the children.

On April 16, 2021, Appellee and the children traveled to North Carolina, where they have remained. Appellee brought along the children's passports, as well as most of their clothing and toys.<sup>1</sup> On July 3, 2021, Swedish social services sent a letter to the parties stating that “[s]ocial services were planning to place the children in temporary care,” but that the parties had “finally [come] to the agreement that the

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<sup>1</sup> Appellee claims that Appellant also gave him the children's birth certificates. Appellee Resp. Br. 4 (citing J.A. 178, 257). However, Sweden does not issue birth certificates. Rather, Appellant obtained population registration certificates from the Swedish tax agency for the children.

children could live with [Appellee] and [his] family in the U.S. for some time.” *Id.* at 304. On July 6, 2021, as part of the ongoing custody dispute in Sweden, a Swedish district court entered an “interim decision” confirming that the parties had joint custody of the children, pending resolution of the custody dispute. *Id.* at 341. And while it acknowledged that the children resided with Appellee in the United States, the Swedish district court’s interim order did not require Appellee to return the children to Sweden. Nevertheless, on July 7, 2021 when the children did not return to Sweden, Appellant reported that they had been kidnapped by their father. On July 21, 2021, Appellant filed an application with the Swedish Ministry for Foreign Affairs pursuant to the Hague Convention,<sup>2</sup> seeking return of the children to Sweden.

On March 31, 2022, the Swedish district court entered a final order awarding Appellee *sole custody* of the children and providing Appellant with a right of contact in the form of a weekly call. Thereafter, on July 6, 2022, Appellant filed a petition in the Western District of North Carolina, for return of the children. To resolve the petition, the district court held an evidentiary hearing on November 10, 2022,<sup>3</sup> during which the district court considered documentary

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<sup>2</sup>The Hague Convention is an international treaty on civil child abduction intended to “secure the prompt return of children wrongfully removed to or retained in any Contracting state” to the Convention; and “to ensure the rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.” Hague Convention on Civil Aspects of Child Abduction, art. 1, *concluded* Oct. 25, 1980, T.I.A.S. No. 11,670, at 2, 1343 U.N.T.S. 89.

<sup>3</sup> The parties consented to proceed before a magistrate judge pursuant to 29 U.S.C. § 636 (c).



evidence as well as the testimony of Appellant and Appellee. Documentation from social services worker, Madelina Barnes, supported Appellant’s position that Appellee taking the children to the United States was supposed to be temporary. *See* J.A. at 64<sup>4</sup> (stating the parties “finally agreed, before social services, that the children would accompany [Appellee] to the United States for three months”). However, a social services report authored in September 2021, contained contradictory information which the North Carolina district court found persuasive. Specifically, the district court noted that the social services report concluded, “in retrospect, [Appellant] believes that [the parties] did not agree on how long [Appellee] would be in the U[nited] S[tates] with the children.” *Id.* And during the evidentiary hearing before the district court, Appellant conceded that the parties had not agreed on a specific departure or return date and that “it was up to [Appellee] to decide [the departure and return dates] himself.” J.A. 147.

The social services report further “substantiate[d] [Appellee’s] testimony that when he brought the children to the United States, he did so pursuant to the parties’ agreement with [s]ocial [services] that ‘the best thing for the children would be for [Appellee] to go to the United States with them’ and that if the parties had not so agreed, foster care would have been considered.” *Id.* at 257 (quoting *id.* at 331). The report concluded that Appellee “is suitable as sole guardian of the children.” *Id.* After considering the evidence, the district court denied Appellant’s petition.

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<sup>4</sup> Citations to the “J.A.” refer to the Joint Appendix filed by the parties to this appeal.

Appellant filed a timely notice of appeal of that decision.

## II.

In Hague Convention matters, we review “factual findings for clear error and legal conclusions regarding domestic, foreign, and international law de novo.” *White v. White*, 718 F.3d 300, 303 (4th Cir. 2013).

## III.

The Hague Convention’s “first stated objective is to secure the prompt return of children who are wrongfully removed or retained in any Contracting State.” Hague International Child Abduction Convention; Text and Legal Analysis, 51 Fed. Reg. 10494-01, 10505 (March 26, 1986). The United States has signed the Hague Convention as a contracting state and subsequently codified its obligations through the International Child Abduction Remedies Act (“ICARA”), 22 U.S.C. §§ 9001, *et seq.* Sweden is also a contracting state to the Hague Convention.

“The removal or the retention of a child is to be considered wrongful where . . . it is in breach of rights of custody attributed to a person . . . either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal.” Hague Convention on Civil Aspects of Child Abduction, art. 3(a), *concluded* Oct. 25, 1980, T.I.A.S. No. 11,670, at 2, 1343 U.N.T.S. 89. “Wrongful retention refers to the act of keeping the child without the consent of the person who was actually exercising custody.” 51 Fed. Reg. 10494-01, 10503. Here, the district court concluded that Appellant “failed to establish a prima fac[i]e case of wrongful retention.” J.A. 260. We agree.

In order to prevail on her wrongful retention claim, Appellant must prove by a preponderance of the evidence that (1) the children were “habitually resident”<sup>5</sup> in her country of residence at the time of retention; (2) the retention was in breach of her custody rights under the law of her home state; and (3) she had been exercising those rights at the time of retention. *Maxwell v. Maxwell*, 588 F.3d 245, 250 (4th Cir. 2009) (citing *Miller v. Miller*, 240 F.3d 392, 398 (4th Cir. 2001)). The district court ruled in Appellant’s favor on the first element, concluding that the children’s habitual residence was Sweden. *See* J.A. 260 (district court holding that Appellant’s testimony, that “the children had always returned to Sweden following earlier visits” supports the first element). As to the third element, Appellee did not contest that Appellant was exercising her custody rights at the time of retention. Therefore, the sole issue on appeal is whether Appellee retained the children in breach of Appellant’s custody rights pursuant to Swedish law.

Appellant argues that the district court erred by ignoring her joint custody rights and improperly placing exclusive reliance on the March 31, 2022 order from the Swedish district court, which, despite being issued nearly a year after the alleged wrongful retention, awarded Appellee sole custody. *See* Appellant’s Opening Br. at 18 (asserting that, “rather than analyzing [Appellant’s] custodial rights as they existed when Appellee began wrongfully retaining the children . . .

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<sup>5</sup> “Habitually resident” is not defined by the Hague Convention, but this court has adopted a case-by-case analysis whereby we consider “whether the parents share an intent to make a particular country the child’s home and . . . whether enough time has passed for the child to acclimatize to the residence.” *Smedley v. Smedley*, 772 F.3d 184, 186 (4th Cir. 2014).

the district court chose to recognize[] and enforce[] the Swedish March 2022 order”) (citation and internal quotation marks omitted) (alterations in original). However, this is not what the district court did.

The district court began by correctly identifying “the relevant time period [a]s April through July 2021,” the period when the children traveled to the United States. J.A. 259. As this court has explained, “the only reasonable reading of the [Hague] Convention is that a removal’s wrongfulness depends on rights of custody *at the time of removal.*” *White v. White*, 718 F.3d 300, 306 (4th Cir. 2013) (emphasis is original).<sup>6</sup> Thereafter, the district court explicitly stated that “[t]he March 2022 custody order is not dispositive as a matter of law on the issue of wrongful retention . . . [b]ut the [c]ourt [did] consider that order as evidence.” J.A. 261 (internal citation omitted).

While the Hague Convention prevents a person from “insulat[ing] the child from the . . . return provisions merely by obtaining a custody order in the country of new residence, or by seeking there to enforce another country’s order,” it does not preclude the court from considering the facts and circumstances surrounding any such order. 51 Fed. Reg. 10494-01, 10504. To the contrary, the Hague Convention expressly permits “the judicial or administrative authorities of the requested

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<sup>6</sup> While *White* dealt with wrongful removal, other courts have applied *White* to instances of wrongful retention. See *Velasquez v. Funes de Velasquez*, 102 F. Supp. 3d 796, 801 (E.D. Va. 2015) (stating that courts should “examine[] the parties’ custodial rights at the time of retention”) (citing *White*, 718 F.3d at 308); see also *Madrigal v. Tellez*, No. 15-cv-181, 2015 WL 5174076 (W.D. Tex. Sept. 2, 2015).

State<sup>[7]</sup> [to] take account of the reasons for [a decision relating to custody] in applying this Convention.” Hague Convention art. 17, T.I.A.S. No. 11,670, at 5. Moreover, nothing in our precedent prevents the district court from considering the full panoply of circumstances surrounding the alleged retention. This includes the March 31, 2022 order. Therefore, the district court did not err in considering the March 31, 2022 final custody order.

“Rights of custody” as defined by the Hague Convention arise by: (1) operation of law; (2) judicial or administrative decision; or (3) an agreement having legal effect pursuant to the law of the state of habitual residence of the child prior to the wrongful abduction. 51 Fed. Reg. 10494-01, 10506 (citing Hague Convention, art. 3, T.I.A.S. No. 11,670, at 2). And, pursuant to Article 14 of the Hague Convention, a court “may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of habitual residence” in order to determine whether the removal breached Appellant’s custodial rights. Hague Convention art. 14, T.I.A.S. No. 11,670, at 5.

Appellant contends that, as joint custodian of the minor children at the time of retention, Swedish law provides her with the right to “make decisions concerning the child[ren’s] personal affairs,” including determining where the children reside. J.A. 270; Föräldrabalk [FB] [Children and Parents Code] 1983:47 (Swed.). In support, Appellant directs this court to section 14a of the Swedish Children and Parents Code. But nothing in section 14a suggests Appellee violated Appellant’s

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<sup>7</sup> The “requested State” refers to the country to which the children have been purportedly removed or retained. Here, the United States is the requested State.

joint custody rights. Section 14a merely states, “[i]f both parents have custody of the child the court may, on application of one or both of them, decide which of the parents the child is to live with.” Föräldrabalk [FB] [Children and Parents Code] 2006:458 (Swed.). Here, the parties both presented evidence that a Swedish custody dispute and child welfare investigation was ongoing during the time period preceding the purported retention. And to prevent the children from being placed in foster care, the parties agreed that Appellee would take the children to the United States. *See* J.A. 156–57 (Appellant testifying that social services “told [Appellee] and me that, because the [living] situation with [Appellee] was unbearable for everyone” the children may be moved to foster care). While the parties dispute the permanency of this stay, Appellant bore the burden of proving that Appellee wrongfully retained the children. She failed to do so.

In reaching its conclusion that Appellant had failed to meet her burden to demonstrate wrongful retention, the district court relied on Appellant’s own testimony that she, as a joint custodian, had consented to the children taking an indeterminate trip to the United States to live with Appellee. Specifically, the district court relied upon Appellant’s testimony at the evidentiary hearing that “it was up to [Appellee] to decide [the departure and return dates] himself.” J.A. 147. Thus, by Appellant’s own concession, there was not a meeting of the minds that Appellee would return the children on a specific date -- or at all.

“A fundamental purpose of the Hague Convention is to protect children from wrongful international removals or retentions by persons bent on *obtaining* their physical and/or legal custody.” 51 Fed. Reg. 10494-01, 10504 (citing Hague Convention, art. 1, T.I.A.S. No.

11,670, at 2 (emphasis supplied)). But here, Appellee possessed physical and legal custody of the children at the time of the alleged retention. And since a primary purpose of the Hague Convention is to “preserve the [pre-removal or pre-retention] status quo,” we conclude that the children indefinitely staying with the joint custodial father, in the United States, was the status quo. *White*, 718 F.3d at 306 (quoting *Miller v. Miller*, 240 F.3d 392, 398 (4th Cir. 2001)). As such, there was no wrongful retention in the first instance.

Finally, we note the practical impact of the Swedish court’s final order awarding Appellee sole custody of the children. Based upon the Swedish court’s conclusion as to the best interests of the children, the facts here are “atypical for a child abduction proceeding,” in that, even were we to order the children returned to Sweden, Appellee would retain sole custody and could immediately return -- with the children -- to the United States. J.A. 260; *see also* Oral Argument at 9:56–11:40, *Brandt v. Caracciolo*, No. 22-2320 (4th Cir. May 3, 2023), <http://www.ca4.uscourts.gov/oral-argument/listen-to-oral-arguments> (Appellant’s counsel acknowledging that it would not be improper for Appellee, upon returning the children to Sweden, to take the children and immediately board a plane back to the United States).

#### IV.

For these reasons, the district court’s ruling is

*AFFIRMED.*

QUATTLEBAUM, Circuit Judge, dissenting:

I would like to join with my good colleagues in the majority. I really would. It seems the least disruptive and most efficient way to resolve this unfortunate situation. But regrettably, the law, as I see it, points in a different direction. So, I would reverse.

As Judge Thacker has ably described the background of this appeal and the applicable law, I will not repeat that information. And Judge Thacker also accurately frames the ultimate issue we must decide—has Minna-Marie Brandt established by a preponderance of the evidence that her children have been wrongfully removed or retained within the meaning of the Hague Convention. *See* 22 U.S.C. § 9003(e). The majority concludes that Brandt failed to demonstrate wrongful retention of the minor children in violation of her custody rights under Swedish law. It reasons that at the time the children left for the United States with Damian Caracciolo, Brandt agreed to their removal. In fact, the majority rightly notes that at that time, had Caracciolo not taken the children to live with him, they would likely have been placed in foster care. And finally, the majority points out that neither the June 29, 2021 order nor the March 31, 2022 order from the Swedish court indicated that Caracciolo’s retention of the children was wrongful.

I agree with those facts. But they do not mean Brandt failed to show the breach of her custody rights under Swedish law. We examine her custody rights at the time of the alleged wrongful retention, which was July 2021, not as of the March 31, 2022 order. *See White v. White*, 718 F.3d 300, 308 (4th Cir. 2013). At that time, the Swedish court had granted the parties “continued joint custody of the joint children of the parties” for the time being until the question of custody



was settled by a legally binding decision or an approved agreement. J.A. 341. And under Swedish law, a parent with joint custody “has the right and the obligation to make decisions concerning the child’s personal affairs” jointly, with the other custodian. J.A. 270; Föräldrabalk [FB] [Children and Parents Code] 1983:47; 2005:430 (Swed.). Similarly, both parents with joint custody have the right to participate in deciding which parent the children live with. Föräldrabalk [FB] [Children and Parents Code] 2006:458 (Swed.).

In July 2021, Brandt attempted to exercise the right to partake in the decision about the return of the children to Sweden. She continually sought information from Caracciolo and his parents about when the children would be returning. Then, on July 21, 2021, having received no assurances about their return, Brandt applied with the Swedish Ministry for Foreign Affairs under the Hague Convention for the return of the children to Sweden.

Under § 11 of Sweden’s Children and Parents Code, she, as a parent with joint custody, had a right to make decisions concerning the children’s personal affairs. To be sure, as a parent with joint custody, Brandt did not have superior rights to those of Caracciolo. But when, as here, the parents with joint custody cannot agree on custody, the Swedish courts must decide. *See* Föräldrabalk [FB] [Children and Parents Code] 2006:458 (Swed.) (“If both parents have custody of the child, the court may, on the application of one or both of them, decide which of the parents the child is to live with.”). Absent such a decision from the Swedish court, Caracciolo’s refusal to return the children to Sweden deprived Brandt of her right to make decisions concerning the children’s affairs. And as of July 2021, no court had decided which parent the children would live with.

Based on all of this, I fail to see how Brandt has not made a prima facie case that her custody rights were breached based on the plain language of Article 3 of the Hague Convention. And the Hague Convention and the International Child Abduction Remedies Act (“ICARA”) command that if a petitioner’s custody rights have been breached, the child must be returned to their country of habitual residence. *See Abbott v. Abbott*, 560 U.S. 1, 5 (2010).

In this case, that result is far from satisfying. In its March 31, 2022 order, the Swedish court awarded Caracciolo permanent custody of the children. Given that, it seems pointless at best and disruptive at worst to return the children from the United States to Sweden. But under our *White* decision, a subsequent custody cannot inform our analysis of Brandt’s custody rights at the time of the alleged wrongful retention. *White*, 718 F.3d at 308 (“The . . . order, which was in effect at the time of the child’s removal, therefore controls this case.”). We look at the parties’ custody rights as of July 2021. And at that time, Brandt had joint custody and all the rights related to that status. So, the Hague Convention and ICARA require us to order the children to be returned to Sweden.

But that does not mean the March 31, 2022 order has no bearing on what happens after the children are returned to Sweden. Based on that order, it appears Caracciolo could, after touching down with the children in Sweden, immediately return to the United States with them. Since he has now been awarded full custody, taking the children back would not be wrongful under Swedish law.

Going through those motions may seem like a waste of time and money. It may also unnecessarily disrupt the children’s lives. I wish all of that could be avoided.

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But as I read them, the Hague Convention and ICARA are clear. And I am not permitted to turn a blind eye to their requirements because they produce an inefficient, or even undesired, result in this case.

I would reverse the district court's order.

**APPENDIX B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF  
NORTH CAROLINA  
CHARLOTTE DIVISION

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CIVIL ACTION NO. 3:22-CV-00304-DSC

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MINNA-MARIE BRANDT,  
*Petitioner,*

v.

DAMIAN CARACCILO,  
*Defendant.*

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MEMORANDUM AND ORDER

THIS MATTER is before the Court on Petitioner’s “Verified Petition for Return of Children under the Hague Convention” (document # 1) as well as the parties’ briefs and exhibits.

On October 17, 2022, the parties consented to Magistrate Judge jurisdiction pursuant to 29 U.S.C. § 636 (c). On November 10, 2022, the Court held an evidentiary hearing in this matter. The parties filed post trial briefs on November 28, 2022.

Having fully considered the record, the authorities and the parties’ arguments, the Court *denies* the Petition as discussed below.

## FACTUAL BACKGROUND AND FINDINGS

Petitioner and Respondent are the parents of two minor children who are the subject of this action. The parties have never been married. Petitioner is a citizen and resident of Sweden. Respondent is a United States citizen and resident of North Carolina. The parties met in 2015 and began a relationship. They cohabitated for about six months. In 2016, Respondent ceased living with Petitioner. On October 1, 2016, the minor child S.C. was born in Orebro, Sweden. On September 11, 2019, the minor child J.C. was born in Orebro, Sweden. Prior to the end of 2020, Petitioner was the children's primary custodian. There was no court order or other formal determination of custody in effect.

On December 30, 2020, the Orebro Social Welfare Committee began a Social Care investigation into the safety of Petitioner's home and the children's welfare. The investigation continued through at least March 2022.

The Social Welfare Committee's report is significant. Exhibit 2. It substantiates Respondent's testimony that when he brought the children to the United States, he did so pursuant to the parties' agreement with Social Welfare that "the best thing for the children would be for [Respondent] to go to the United States with them" and that if the parties had not so agreed, foster care would have been considered. The report also states that "in retrospect, [Petitioner] believes that they did not agree on how long [Respondent] would be in the U[nited] S[tates] with the children." Although there were risk factors as to both parents, including "mental and physical illness [of Petitioner] and to some extent [Respondent] . . . [and] domestic violence between [them]," the primary concern was "[Petitioner's] drug abuse and mental health." The report concluded that "in our investigation, no information

has come to light that indicates any concern about [Respondent's] parent[ing] or suitability as guardian . . . . We judge that he is suitable as sole guardian of the children." The report recommends that Petitioner have weekly video calls with the children. The report also stated that if Respondent took the children to Sweden, visits with Petitioner would be appropriate, as well as if she traveled to the United States to see them.

On April 16, 2021, Respondent traveled to the United States with the children where they have remained. They brought the majority of the children's clothing and toys. Petitioner gave Respondent the children's birth certificates and passports. The children speak English and attend school here.

Sometime after the children traveled to the United States, Petitioner initiated a child custody action in Sweden. On July 6, 2021, the Swedish court entered an interim order awarding the parties joint custody of the children.

On March 31, 2022, and relying on the report discussed above, the Swedish court awarded Respondent sole custody of the children and granted Petitioner weekly video visits. Exhibit 4. In a factual finding, the Order states that the children were removed to the United States pursuant to an agreement between the parties that they go for three months and then be returned. Petitioner's "Post Hearing Brief . . ." at 11 (document #22). Petitioner appealed that order, which was denied by the Swedish court. Petitioner moved the Swedish court to hold Respondent in contempt, which was also denied.

On July 6, 2022, Petitioner filed the instant Petition. She contends that the parties only agreed to the children having a three month stay in the United States.

## DISCUSSION

The Hague Convention aims 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.” *Hague Convention*, Art. 1. Accordingly, the Convention secures the prompt return of children wrongfully removed to or retained in another Contracting State. *Id.* The United States has signed the Convention as a Contracting State and subsequently codified its obligations in the International Child Abduction Remedies Act, 22 U.S.C. §§ 9001, *et seq.*

The Court is not empowered to adjudicate the underlying custody dispute between the parties. Rather, the issue is “whether the child has been wrongfully removed or retained from his or her habitual residence.” *Salguero v. Argueta*, 256 F. Supp. 3d 630, 635 (E.D.N.C. 2017). “The Hague Convention seeks 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 secure protection for rights of access.” *Sundberg v. Bailey*, 293 F. Supp. 3d 548, 554 (W.D.N.C. 2017), *aff’d*, 765 F. App'x 910 (4th Cir. 2019) (citation omitted). “The primary purpose of the Hague Convention is ‘to preserve the status quo and to deter parents from crossing international boundaries in search of a more sympathetic court.’” *Miller v. Miller*, 240 F.3d 392, 398 (4th Cir. 2001) (quoting *Friedrich v. Friedrich*, 983 F.2d 1396, 1400 (6th Cir.1993) (“Friedrich I”).

To secure the return of a child under the treaty, “a petitioner must show by a preponderance of the evidence that the child was ‘wrongfully removed or

retained' within the meaning of the Convention." *Sundberg*, 293 F. Supp. 3d at 554 (citing 22 U.S.C. § 9003(e)(1)(A) and Convention, Art. 3). At issue here is whether Respondent has wrongfully retained the children in the United States. The relevant time period is April through July of 2021, when Respondent removed the children to the United States and retained them despite Petitioner's request that they be returned.

To establish a prima facie case of wrongful retention, Petitioner must show by a preponderance of the evidence that:

- (1) the children were 'habitually resident' in the petitioner's country of residence at the time of removal [or retention];
- (2) the removal [or retention] was in breach of the petitioner's custody rights under the law of [her] home state; and
- (3) that the petitioner had been exercising those rights at the time of removal [or retention].

*Sundberg*, 293 F. Supp. 3d at 554. Respondent does not contest that Petitioner has met the third element.

The Hague Convention does not define "habitual residence." The Fourth Circuit has adopted a case-by-case analysis that takes into consideration "whether the parents share an intent to make a particular country the child's home and second whether enough time has passed for the child to acclimatize to the residence." *Smedley v. Smedley*, 772 F.3d 184, 186 (4th Cir. 2014) (internal citation omitted).

Petitioner contends that at the time the children left Sweden she "intended to remain in Sweden with the children permanently and was under the belief that [Respondent] shared these intentions." Petitioner's



“Brief” at 8 (document #15). She testified that the fact the children had always returned to Sweden following earlier visits here supports that conclusion.

As to the second element, Petitioner must prove that the retention was wrongful because her custody rights were breached. 22 U.S.C. §9003(e)(1)(A). “Rights of custody” as defined by the Hague Convention arise by (1) operation of law; (2) judicial administrative decision; or (3) an agreement having legal effect under the law of the state of the habitual residence of the child prior to the abduction or wrongful retention. Hague Convention, Art. III. The Court may take judicial notice of the law of the habitual residence in order to determine whether the removal breached Petitioner’s custodial rights. Hague Convention, Art. IVX.

Applying those legal principles to the evidence in this case, Petitioner has failed to establish a prima face case of wrongful retention. At the outset, the facts here are atypical for a child abduction proceeding. *Miller*, 240 F.3d at 398 (“The primary purpose of the Hague Convention is ‘to preserve the status quo and to deter parents from crossing international boundaries in search of a more sympathetic court.’”) (quoting *Friedrich*, 983 F.2d at 1400.) Respondent had no need to remove the children from Sweden and seek a more sympathetic court in order to obtain custody. Initially, through the involvement of Swedish Social Welfare, he became the primary physical custodian of the children. The July 2021 temporary custody order contains no requirement that Respondent return the children to Sweden. In March 2022, the Swedish court awarded sole custody to Respondent. Petitioner’s efforts to appeal the orders or have Respondent held in contempt for violating them were denied. In short, far from the

typical child abduction case, the Swedish authorities were satisfied with the children remaining here.

Moreover, if the children were returned to Sweden, they would remain in Respondent's custody or possibly be placed in foster care. Recognizing that fact, Petitioner testified that if the children are returned to Sweden she intends to file a petition to re-open the custody proceeding. There is nothing in the record indicating that the children must be present in Sweden for Petitioner to re-open the custody case.

Petitioner argues that the permanent custody order is irrelevant to the determination of whether Respondent's decision to retain the children was wrongful. Petitioner's "Brief" at 8 (document #15) and "Post Hearing Brief ..." at 15-17 (document #22) (citing *White v. White*, 718 F.3d 300, 307-08 (4th Cir. 2013) (holding that a custody decision issued two years after the child's removal had no bearing on the issue of whether the removal was a breach of the petitioner's custody rights)).

Petitioner's argument misses the point. The March 2022 custody order is not dispositive as a matter of law on the issue of wrongful retention. *White*, 718 F.3d at 307-08. But the Court may consider that order as evidence. Indeed, each party argues that the Court should consider certain factual findings in that order. Petitioner's "Post Hearing Brief . . ." at 11 (document #22) and "Respondent's Final Brief" at 3 (document #23). The custody orders and the Social Welfare Committee's report are compelling evidence that both Respondent's initial removal of the children and subsequent retention of them here were proper. Those documents contemplate that the children would remain in the United States.

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In contrast, the evidence concerning the parties' initial agreement that the children would visit in the United States for three months and return is conflicting. Even Petitioner testified that the agreement did not include a definite return date.

For those reasons, Petitioner has failed to establish that Respondent wrongfully retained the children. She has failed to state a prima facie case and her Petition must be *denied*.

ORDER

1. Petitioner's "Verified Petition for Return of Children under the Hague Convention" (document # 1) is DENIED.
2. The parties shall pay their own costs.
3. The Clerk is directed to send copies of this Memorandum and Order to counsel for the parties.

SO ORDERED.

Signed: November 29, 2022

/s/ David S. Cayer

David S. Cayer

United States Magistrate Judge

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**APPENDIX C**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

[FILED: November 21, 2023]

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No. 22-2320  
(3:22-cv-00304-DSC)

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MINNA-MARIE BRANDT

*Petitioner - Appellant*

v.

DAMIAN CARACCIOLO

*Respondent – Appellee*

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ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Gregory, Judge Thacker, and Judge Quattlebaum.

For the Court

/s/ Nwamaka Anowi, Clerk

**APPENDIX D**

**28. CONVENTION ON THE CIVIL ASPECTS OF  
INTERNATIONAL CHILD ABDUCTION<sup>1</sup>**

*(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
- 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.

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<sup>1</sup> This Convention, including related materials, is accessible on the website of the Hague Conference on Private . 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.).

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## 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.

## 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.

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

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- 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



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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.

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

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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.

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

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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

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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

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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.

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.

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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.

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

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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 authorisation 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



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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

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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.

#### 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.

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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.

#### 41a

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.

#### 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.

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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.

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

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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.

**APPENDIX E**

22 USC Ch. 97: INTERNATIONAL CHILD  
ABDUCTION REMEDIES

From Title 22—FOREIGN RELATIONS AND  
INTERCOURSE

CHAPTER 97—INTERNATIONAL CHILD  
ABDUCTION REMEDIES

Sec.

9001. Findings and declarations.

9002. Definitions.

9003. Judicial remedies.

9004. Provisional remedies.

9005. Admissibility of documents.

9006. United States Central Authority.

9007. Costs and fees.

9008. Collection, maintenance, and dissemination of  
information.

9009. Office of Children's Issues.

9010. Interagency coordinating group.

9011. Authorization of appropriations.

§9001. Findings and declarations

(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.

(Pub. L. 100–300, §2, Apr. 29, 1988, 102 Stat. 437.)

#### EDITORIAL NOTES

##### REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act” meaning Pub. L. 100–300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

##### CODIFICATION

Section was formerly classified to section 11601 of Title 42, The Public Health and Welfare.

##### STATUTORY NOTES AND RELATED SUBSIDIARIES

##### SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–370, §1, Oct. 25, 2004, 118 Stat. 1750, provided that: “This Act [amending section 9006 of this title] may be cited as the ‘Prevention of Child Abduction Partnership Act’.”

##### SHORT TITLE

Pub. L. 100–300, §1, Apr. 29, 1988, 102 Stat. 437, provided that: “This Act [enacting this chapter and amending section 663 of Title 42, The Public Health and Welfare] may be cited as the ‘International Child Abduction Remedies Act’.”

## §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.

(Pub. L. 100–300, §3, Apr. 29, 1988, 102 Stat. 437.)

#### EDITORIAL NOTES

##### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” meaning Pub. L. 100–300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note under section 9001 of this title and Tables.

##### CODIFICATION

Section was formerly classified to section 11602 of Title 42, The Public Health and Welfare.

##### §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.

(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;

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(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.

(Pub. L. 100–300, §4, Apr. 29, 1988, 102 Stat. 438.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (f) to (h), was in the original “this Act” meaning Pub. L. 100–300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note under section 9001 of this title and Tables.

## CODIFICATION

Section was formerly classified to section 11603 of Title 42, The Public Health and Welfare.

## §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 well-being 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.

(Pub. L. 100–300, §5, Apr. 29, 1988, 102 Stat. 439.)

## EDITORIAL NOTES

## CODIFICATION

Section was formerly classified to section 11604 of Title 42, The Public Health and Welfare.

## §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.

(Pub. L. 100–300, §6, Apr. 29, 1988, 102 Stat. 439.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 11605 of Title 42, The Public Health and Welfare.

§9006. United States Central Authority

(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 [42 U.S.C. 301 et seq.], 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.

(Pub. L. 100–300, §7, Apr. 29, 1988, 102 Stat. 439; Pub. L. 105–277, div. G, title XXII, §2213, Oct. 21, 1998, 112 Stat. 2681–812; Pub. L. 108–370, §2, Oct. 25, 2004, 118 Stat. 1750.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b), (c), (e), and (f), was in the original “this Act” meaning Pub. L. 100–300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9001 of this title and Tables.

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

CODIFICATION

Section was formerly classified to section 11606 of Title 42, The Public Health and Welfare.

## AMENDMENTS

2004—Subsec. (f). Pub. L. 108–370 added subsec. (f).

1998—Subsec. (e). Pub. L. 105–277 added subsec. (e).

## EXECUTIVE DOCUMENTS

EX. ORD. NO. 12648. IMPLEMENTATION OF CONVENTION  
ON CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Ex. Ord. No. 12648, Aug. 11, 1988, 53 F.R. 30637,  
provided:

The United States of America deposited its instrument of ratification of the Hague Convention on the Civil Aspects of International Child Abduction (“Convention”) on April 29, 1988. The Convention entered into force for the United States on July 1, 1988. Article 6 of the Convention imposes upon Contracting States an obligation to designate a “Central Authority” for the purpose of discharging certain specified functions.

In order that the Government of the United States of America may give full and complete effect to the Convention, and pursuant to section 7 of the International Child Abduction Remedies Act, Public Law No. 100–300 (1988) [22 U.S.C. 9006], it is expedient and necessary that I designate a Central Authority within the Executive branch of said Government:

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of Title 3 of the United States Code and section 7 of the International Child Abduction Remedies Act, it is ordered as follows:

SECTION 1. Designation of Central Authority. The Department of State is hereby designated as the Central Authority of the United States for purposes of

the Hague Convention on the Civil Aspects of International Child Abduction. The Secretary of State is hereby authorized and empowered, in accordance with such regulations as he may prescribe, to perform all lawful acts that may be necessary and proper in order to execute the functions of the Central Authority in a timely and efficient manner.

RONALD REAGAN.

§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.

(Pub. L. 100–300, §8, Apr. 29, 1988, 102 Stat. 440.)

#### EDITORIAL NOTES

#### CODIFICATION

Section was formerly classified to section 11607 of Title 42, The Public Health and Welfare.

§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.

## (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.

(Pub. L. 100–300, §9, Apr. 29, 1988, 102 Stat. 440.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original “this Act” meaning Pub. L. 100–300, Apr. 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note under section 9001 of this title and Tables.

CODIFICATION

Section was formerly classified to section 11608 of Title 42, The Public Health and Welfare.

§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.

(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



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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.

(Pub. L. 106–113, div. B, §1000(a)(7) [div. A, title II, §201], Nov. 29, 1999, 113 Stat. 1536, 1501A-419).

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, and not as part of the International Child Abduction Remedies Act which comprises this chapter.

Section was formerly classified to section 11608a of Title 42, The Public Health and Welfare.

§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

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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.

(Pub. L. 100–300, §10, Apr. 29, 1988, 102 Stat. 441.)

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 11609 of Title 42 The Public Health and Welfare.

§9011. Authorization of appropriations

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.

(Pub. L. 100–300, §12, Apr. 29, 1988, 102 Stat. 442.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” meaning Pub. L. 100–300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note under section 9001 of this title and Tables.

CODIFICATION

Section was formerly classified to section 11610 of Title 42, The Public Health and Welfare.

**APPENDIX F**

The Children and Parents Code (1949:381)

With amendments up to and including Swedish Code of Statutes 2012:319

Chapter 6. On custody, residence and access

Introductory provisions

Section 1

Children are entitled to care, security and a good upbringing. Children shall be treated with respect for their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment. Act (1983:47).

Section 2

Both or one of the parents of a child shall have custody of the child, unless a court has entrusted custody to one or two specially appointed custodians. Custody of a child shall continue until the child reaches the age of eighteen or enters into marriage before then.

The person who has custody of a child is responsible for the child's personal circumstances and shall ensure that the child's needs as stated in Section 1 are met. The child's custodian is also responsible for ensuring that the child receives the supervision that is necessary with regard to his or her age, development and other circumstances and shall see to it that the child is satisfactorily provided for and educated. Furthermore, in order to prevent the child causing damage adversely affecting some other person, the custodian shall ensure that the child is kept under supervision or that other appropriate measures are taken.

## 64a

Chapters 9–15 contain provisions on responsibility in matters concerning the financial affairs. Act (1994:1433).

### Section 2a

The best interests of the child shall be the primary consideration in all custody, residence and access decisions.

When assessing the best interests of the child, particular attention shall be paid to

- the risk of the child or another member of the family being subjected to abuse or of the child being unlawfully removed or retained or otherwise suffering significant harm, and

- the child's need for close and good contact with both parents.

The wishes of the child shall be taken into account, subject to his or her age and maturity. Act (2006:458).

### Section 2b

Repealed by Act (2006:458).

## Custodians

### Section 3

Both parents of a child shall have custody of the child from birth, if they are married to each other; otherwise the mother shall have sole custody. If the parents later enter into marriage with one another, both of them shall have custody of the child from that point in time, unless a court has previously entrusted custody to one or two specially appointed custodians.

If a decree of divorce is granted between the parents, both parents shall continue to have custody of the child, unless joint custody is dissolved as provided in

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Sections 5, 7 and 8. If both parents are to continue to have custody of the child after the decree of divorce, the court shall remind them in the decree that joint custody still applies. Act (1994:1433).

Section 4

If only one of the parents has custody of the child and the parents wish to have joint custody, the court shall, on their joint application, make an order in accordance with their request, unless joint custody is manifestly incompatible with the best interests of the child.

If the child is registered in the Swedish population records, the parents may also obtain joint custody by means of registration with the Swedish Tax Agency after they have jointly notified

1. the social welfare committee, in conjunction with acceptance by the committee of an acknowledgement of paternity or an acknowledgement of parenthood as provided in Chapter 1, Section 9, or

2. the Swedish Tax Agency, provided no custody order has previously been made. Act (2012:319).

Section 5

If both parents have custody of the child or one of them does and if either of them wishes the custody arrangements to be changed, the court shall order that the parents shall have joint custody or entrust custody to one of the parents.

When assessing whether the parents shall have joint custody or custody shall be entrusted to one of the parents, the court shall pay particular attention to the ability of the parents to cooperate in matters concerning the child. The court may not order joint custody if both parents are opposed to it.

## 66a

Questions concerning a change in the custody arrangements as provided in the first paragraph shall be considered on the application of one or both of the parents. In a divorce case the court may, of its own motion, entrust custody of the child to one of the parents, if joint custody is manifestly incompatible with the best interests of the child. Act (2006:458).

### Section 6

If both parents have custody of the child or one of them does, they may enter into an agreement that they are to have joint custody or that one of them is to have custody of the child. This agreement shall be valid if it is in writing and the social welfare committee approves it.

If the parents have entered into an agreement on joint custody, the social welfare committee shall approve the agreement if it is not manifestly incompatible with the best interests of the child. Act (2006:458).

### Section 6a

Repealed by Act (1998:319).

### Section 7

If, when exercising custody of a child, a parent is guilty of abuse or neglect or otherwise so fails to take care of the child that it entails a lasting risk to the child's health or development, the court shall order a change in the custody arrangements.

If both parents have custody of the child and what is said in the first paragraph applies to one of them, the court shall entrust sole custody to the other parent. If that parent also fails to take care of the child, in the manner stated in the first paragraph, the court shall transfer custody to one or two specially appointed custodians.

## 67a

If only one parent has custody of the child, the court shall, in cases referred to in the first paragraph, transfer custody to the other parent or, if it is more appropriate, to one or two specially appointed custodians.

Questions concerning a change in the custody arrangements under this Section shall be considered on the application of the social welfare committee or of the court's own motion in a divorce case between the parents or in other cases coming under Section 5. Act (1998:319).

## Section 8

If a child has been habitually cared for and brought up in a private home other than his or her parental home and if it is manifestly in the best interests of the child for the existing arrangement to continue and for custody to be transferred to the person or persons who have received the child or to one of them, the court shall appoint the person or persons concerned to exercise custody of the child as specially appointed custodian or custodians.

Questions concerning a transfer of custody under the first paragraph shall be considered on the application of the social welfare committee. Act (2006:458).

## Section 8a

If both parents have custody of the child and one of them is prevented by a lasting impediment from exercising custody, the court shall entrust sole custody to the other parent. If the impediment applies to both parents, the court shall transfer custody to one or two specially appointed custodians.

If only one parent has custody of the child and this parent is prevented by a lasting impediment from exercising custody, the court shall transfer custody to

the other parent or, if it is more appropriate, to one or two specially appointed custodians.

Questions concerning a change in the custody arrangements under this Section shall be considered on the application of the social welfare committee or of the court's own motion in a divorce case between the parents or in other cases coming under Section 5. Act (2005:430).

#### Section 9

If both parents have custody of the child and one of them dies, the other parent shall have sole custody. If both parents die, the court shall, upon notification by the social welfare committee or when the fact otherwise becomes known, entrust custody to one or two specially appointed custodians.

If only one of the parents has custody of the child and that parent dies, the court shall, on the application of the other parent or upon notification by the social welfare committee, entrust custody to the other parent or, if it is more appropriate, to one or two specially appointed custodians. Act (1994:1433).

#### Section 10

If one or two specially appointed custodians have custody of the child and if one of the parents wishes custody to be transferred to him or her, or both wish custody to be transferred to them, the court may order this. The court may not transfer custody to the parents jointly if both parents are opposed to it.

Questions concerning a change in the custody arrangements as provided in the first paragraph shall be considered on the application of both parents or one of them or on the application of the social welfare committee. Act (2006:458).



Section 10a

If a custodian is to be specially appointed, a person who is fit to provide the child with care, security and a good upbringing shall be chosen. A minor may not be appointed as a custodian. Two persons may be appointed to exercise joint custody, if they are married to each other or are cohabiting partners.

In the case of siblings, the same person shall be appointed as custodian, unless there are special reasons to the contrary.

If a custodian is to be appointed after the death of the child's parents and the parents have or one of them has made known who they wish to be custodian, that person shall be appointed, unless it is inappropriate to do so. Act (2005:434).

Section 10b

A specially appointed custodian has the right to be relieved of the charge at his or her request.

If the child has two specially appointed custodians and one of them wishes joint custody to be discontinued, the court shall, on the application of one or both of them, entrust custody to one of them. In a divorce case between the custodians, the court may also, of its own motion, make an order concerning custody as provided here, if joint custody is manifestly incompatible with the best interests of the child. Act (2006:458).

Section 10c

A specially appointed custodian shall be discharged if, when exercising custody, he or she is guilty of abuse or neglect or is for some other reason no longer suitable as a custodian.

## 70a

If the child has two specially appointed custodians and one of them is discharged or dies, the other shall have sole custody. If both custodians are discharged or die, the court shall appoint one or two other persons as specially appointed custodians.

Questions concerning a change in custody arrangements under this Section shall be considered on the application of the social welfare committee. Act (1994:1433).

### Section 10d

Repealed by Act (1998:319).

### The exercise of custody

### Section 11

The custodian has the right and the obligation to make decisions concerning the child's personal affairs. In doing so the custodian shall increasingly take the child's views and wishes into account as the child becomes older and more mature. Act (1983:47).

### Section 12

The child himself or herself may enter into a contract of employment or other work, but only if the custodian consents to the contract. The child himself or herself may terminate the contract and, if he or she has attained the age of sixteen years, enter into a contract for other work of a similar nature without obtaining renewed consent.

The child or the custodian may terminate the contract with immediate effect if this is necessary with regard to the child's health, development or education. If the custodian has terminated the contract for this reason, the child may not subsequently enter into a new contract without the custodian's consent.

## 71a

Chapter 9, Sections 6 and 7 contain provisions on the consequences of a child alone having entered into a contract for work without being entitled to do so. Act (1983:47).

### Section 13

If two custodians have custody of the child, the provisions of Sections 11 and 12 shall apply to them jointly.

If, owing to absence, illness or some other reason, one of the custodians is prevented from sharing in decisions concerning custody of the child that cannot be postponed without inconvenience, the other custodian alone shall make such decisions. However, this person alone may not make decisions of far-reaching significance for the child's future unless it is manifestly required by the best interests of the child.

Section 8a contains provisions on a change in the custody arrangements when one parent is prevented by a permanent impediment from exercising custody. Act (2005:430).

### Section 13a

If two custodians have custody of the child and only one of them consents to a measure of support for the child, the social welfare committee may decide that the measure may be taken without the consent of the other custodian if this is necessary in the best interests of the child and the measure concerns

1. a psychiatric or psychological examination or treatment under the Health and Medical Services Act (1982:763),
2. non-institutional treatment provided pursuant to Chapter 4, Section 1 of the Social Services Act (2001:453),

3. appointment of a contact person or a family as referred to in Chapter 3, Section 6, third paragraph of the Social Services Act, or

4. a measure provided in accordance with Section 9, point 4, 5 or 6 of the Act concerning Support and Service for Persons with Certain Functional Impairments (1993:387). A decision under the first paragraph may be appealed to an administrative court. Leave to appeal is required for an appeal to an administrative court of appeal.

Decisions in matters referred to in paragraph one apply immediately. The court may, however, determine that its decision shall not apply until it has become final and non-appealable. Act (2012:131).

#### Section 14

The Social Services Act (2001:453) contains provisions on the right of children and custodians to receive support and help from the social welfare committee. The social welfare committee may arrange contacts with other public advisory agencies. Act (2001:456).

#### The residence of the child

##### Section 14a

If both parents have custody of the child, the court may, on the application of one or both of them, decide which of the parents the child is to live with.

The parents may enter into an agreement concerning where the child is to live. This agreement shall be valid if it is in writing and the social welfare committee approves it. Act (2006:458).

Access

Section 15

The child shall be entitled to access to a parent with whom he or she does not live. The access can take place by the child and the parent meeting one another or by some other contact between them.

The child's parents have a joint responsibility to ensure that, as far as possible, the need for access to a parent with whom the child does not live is met. Specially appointed custodians have a corresponding responsibility.

The child's custodian or custodians have a responsibility to ensure that, as far as possible, the child's need for access to any other person with a particularly close relationship with the child is met.

If both parents have custody of the child and the child is to have access to a parent with whom he or she does not live, the other parent shall provide such information about the child as will support the access, unless there are special reasons to the contrary. If the child is to have access to a parent who does not have custody or to some other person who has a particularly close relationship with the child, the information referred to in the first sentence shall be provided by the custodian. Act (2006:458).

Section 15a

On the application of a parent who wants access to his or her child, the court may make an order on access between the child and the parent. Such an application may also be brought by the social welfare committee.

On the application of the social welfare committee, the court may make an order on access between the child and someone other than a parent. When

#### 74a

assessing whether to bring such an application, the social welfare committee shall pay particular attention to the child's need for access to his or her maternal and paternal grandparents and to other people who have a particularly close relationship with the child.

If both parents have custody of the child or one of them does, they may enter into an agreement concerning the child's access to a parent with whom the child does not live. This agreement shall be valid if it is in writing and the social welfare committee approves it. Act (2006:458).

#### Section 15b

If the child lives with only one parent, that parent shall contribute to the cost of the travel accordance with what is reasonable, having regard to the financial capacity of the parents and other circumstances.

A judgment or agreement concerning the cost of travel may be adjusted by the court with respect to the period after the application commencing proceedings, if this is warranted by a change in circumstances. Act (1998:319).

#### Section 15c

When the court makes an order on access to a parent with whom the child does not live, the court may, if the child needs this, decide that a person appointed by the social welfare apply for a certain period of time.

Before a decision on access support is delivered, the court shall obtain an opinion from the social welfare committee.

After the decision of the court on access support, the social welfare committee shall appoint a certain person to assist in the access.

## 75a

The social welfare committee shall monitor the functioning of access and seek to ensure that support does not continue to be provided longer than necessary. Act (2010:740).

Procedure in cases and matters concerning custody, etc.

### Section 16

A notification under Section 4, second paragraph, concerning joint custody for parents who are not married to each other shall be considered by the Swedish Tax Agency. The notification shall be made in writing by both parents.

A notification under Section 4, second paragraph, point 2, may be submitted to the Swedish Tax Agency or the Swedish Social Insurance Agency.

An appeal against a decision of the Swedish Tax Agency may be made to the administrative court in whose jurisdiction the child was registered at the time of the decision.

Leave to appeal is required for an appeal to the administrative court of appeal. Act (2009:775).

### Section 17

Questions concerning custody, residence or access shall be considered by the court in the place where the child habitually resides. Such questions may also be considered in conjunction with matrimonial cases. In the absence of any other court with jurisdiction, these questions shall be considered by the Stockholm City Court.

Questions concerning custody referred to in Sections 4, 5, 7 8a and 10 and in Section 10b, second paragraph, and questions concerning residence and access shall be considered under the procedure laid down for civil

## 76a

cases. The question of the division of the cost of travel as described in Section 15b shall be regarded as part of the question of access. If both parents have custody of the child or one of them does and the parents are agreed on the matter, they may commence proceedings by making a joint application.

Other questions concerning custody shall be considered under the procedure laid down for court matters.

In cases concerning custody and residence, maintenance contributions for the child may be applied for without a summons. Act (2005:430).

## Section 17a

Under Chapter 5, Section 3 of the Social Services Act (2001:453), parents can receive assistance in reaching an agreement on custody, residence and access.

The social welfare committee in the municipality where the child is registered shall consider whether an agreement between the parents under Section 6, Section 14a, second paragraph, or Section 15a, third paragraph, shall be approved.

When considering the parents' agreement, the social welfare committee shall ensure that questions concerning custody, residence and access are properly investigated. Notwithstanding the secrecy requirement laid down in Chapter 26, Section 1, first paragraph of the Public Access to Information and Secrecy Act (2009:400), another social welfare committee that has access to information that could be of significance in assessing the question has an obligation to supply such information at the request of the social welfare committee that is to consider the agreement.



## 77a

No appeal may be made against a decision of the social welfare committee under the second paragraph. Act (2009:404).

## Section 17b

If a social welfare committee has approved an agreement on custody, notification of the terms of the agreement shall be sent on the same day to

1. the Swedish Tax Agency,
2. the Swedish Board for Study Support (CSN), if the agreement relates to a child who has reached the age of fifteen,
3. the Swedish Social Insurance Agency (Försäkringskassan). Act (2004:797).

## Section 18

Under Chapter 5, Section 3 of the Social Services Act (2001:453), parents can receive assistance, in the form of cooperation discussions, in reaching an agreement on questions of custody, residence and access.

In cases concerning custody, residence or access, the court may instruct the social welfare committee or some other body, in the interests of the child, to arrange cooperation discussions with a view to achieving agreement between the parents.

If the court gives instructions under the second paragraph, it may order a stay of proceedings for a certain period. The same shall apply if cooperation discussions have already begun and further discussions may be assumed to be beneficial. If there are special reasons for doing so, the court may extend the stay. Act (2001:456).

## Section 18a

The court may instruct a mediator to try to induce the parents to reach a consensus solution that is compatible with the best interests of the child. The court may give the mediator more detailed directions concerning what to consider when carrying out the instructions.

Within the time determined by the court, the mediator shall deliver a report on the measures that have been taken. The time allowed may not be set at more than four weeks. However, the court may grant an extension if there are prospects of reaching a consensus solution.

The mediator is entitled to reasonable compensation for work done, time lost and expenses required by the assignment. The court shall decide on the compensation. The compensation shall be paid from public funds. Act (2006:458).

## Section 19

The court shall ensure that questions concerning custody, residence and access are properly investigated.

Before the court settles a case or matter involving custody, residence or access, the social welfare committee shall be given an opportunity to supply information. If the committee has access to information that could be of significance in assessing the question, the committee has an obligation to supply such information to the court.

If further investigation beyond that referred to in the second paragraph is necessary, the court may instruct the social welfare committee or some other body to appoint someone to carry out such investigation. The court may lay down guidelines for the investigation and set a date by which the investigation is to be

completed. If necessary, the court may extend the time allowed. The court shall ensure that the investigation is conducted without delay.

If it is not inappropriate, the person carrying out the investigation shall seek to ascertain the views of the child and report them to the court, as well as delivering a proposed decision.

Notwithstanding the secrecy requirement laid down in Chapter 26, Section 1, first paragraph of the Public Access to Information and Secrecy Act (2009:400), a social welfare committee that has access to information that could be of significance to the investigation has an obligation to supply such information at the request of the social welfare committee referred to in the third paragraph. The same applies when the information is requested by the person whom the social welfare committee has appointed to carry out the investigation.

The child may be heard by the court if there are special reasons for doing so and it is manifest that it cannot harm the child to be heard. Act (2009:404).

#### Section 20

In cases or matters concerning custody, residence or access, the court may, if necessary, decide on custody, residence or access until such time as the question has been settled by a judgment or decision that has become final and non-appealable or the parents have entered into an agreement concerning the question and the agreement has been approved by the social welfare committee.

Before a decision under the first paragraph is issued, the opposite party shall be given an opportunity to express an opinion on the question. The court may obtain information on the question from the social

welfare committee. Before the social welfare committee supplies information it shall, if appropriate, hear the parents and the child. If the court has issued a decision that is still in force when the case or matter is to be settled, the court shall review the decision.

A decision under this Section may be enforced in the same way as a judgment that has become final and non-appealable. The decision may, however, be modified by the court at any time. Act (2006:458).

#### Section 21

In cases or matters concerning custody, residence or access, the court may, in conjunction with giving a judgment or decision in the matter and if there are special reasons for doing so, on the application of one party order the opposite party to surrender the child on penalty of a fine. If a conditional fine has been ordered in conjunction with a decision referred to in Section 20, first paragraph, the court may direct that the order shall have immediate effect.

An appeal against an order under the first paragraph may only be made in conjunction with an appeal against the judgment or decision concerning custody, residence or access.

A question of imposing a fine that has been ordered shall be examined by the court on the application of the party who has requested the order. The matter shall be processed under the Court Matters Act (1996:242). Act (2006:458).

#### Section 22

In cases or matters concerning custody, residence or access, the question of legal costs shall be governed by the second and third paragraphs of this Section, rather

than by Chapter 18, Sections 1 7 of the Code of Judicial Procedure.

Each party shall bear his or her own legal costs. A party may, however, be required to reimburse the opposite party fully or in part for that party's legal costs, if he or she has acted in such a manner as is referred to in Chapter 18, Section 3 or 6 of the Code of Judicial Procedure or if there are other special reasons for this.

If, under the second paragraph, a party is to reimburse the opposite party's legal costs fully or in part and if the first party's representative, agent or counsel has acted in such a manner as is referred to in Chapter 18, Section 3 or 6 of the Code of Judicial Procedure and has thereby caused some or all of the costs, he or she may be required to reimburse the costs together with the party concerned. The court may make such a decision even in the absence of an application from either party.

This Section shall also apply when the case or matter is considered by a higher court. Act (1998:319).

**APPENDIX G**

Authority activities	Date
Individual and family care	20210927
Family law	
Case manager	
Celina Edin	
Phone extension 01921 29 56	
Case no. T 265421	
MinnaMari Brandt / Damian Caracciolo	
Reason for investigation	
Örebro district court requests an investigation according to ch. 6. Section 19, third paragraph of the Parental Code regarding custody, accommodation and access regarding S [REDACTED] and J [REDACTED] Caracciolo.	
Investigation time 210927211208	
Investigators Celina Edin and Madelene Barnes	
Implementation of the investigation	
210927 - MinnaMari is absent from investigative interviews	
210928 - Investigative interviews with Damian are canceled by investigators	
211007 - Investigative interview with MinnaMari	
211012 - Investigative interview with Damian	
211015 - Reference interview with adult case manager	
211021 - Investigative interview with Damian and home visit (video interview)	
211027 - Investigative interview with MinnaMari	

## 211029 - Home visits by social services in the United States

██████████'s preschool in the USA has received a request to respond to reference information within the framework of the investigation. They have declined and indicated that they do not want to be involved in custody matters.

### THE CHILD'S CURRENT SITUATION

Since spring 2021, S██████████ and J██████████ are together with Damian in North Carolina, USA. They have had no contact with MinnaMari since they left Sweden and they have no one regular contact. S██████████ goes to preschool and J██████████ is at home with Damian's mother.

### SUMMARY OF RECORDS

#### Social register

S██████████, J██████████ and Damian Caracciolo do not appear in social records in Stanley, North Carolina.

S██████████ and J██████████ C██████████ appear in Örebro municipality's social register as below: 210616210617  
Investigation according to SoL 11:1

Notification is received via email from Kvinnokliniken USÖ. Worry when mother arrived at the women's clinic to have an abortion and is perceived by doctors as heavily drug-affected. Driven there by police. Admits cannabis use and overconsumption of prescription medicine. Is wanted by the police through emergency psychiatric care. Mother states that the children are kidnapped by their biological father USA. Not previously applicable.

An investigation is launched to clarify where the children are and whether they are in need of protection from social services. It appears in the

investigation that S [REDACTED] and J [REDACTED] are together with their father at home with his grandparents in North Carolina USA. There are no data that provide cause for concern that the children would do badly with their father. Based on this, it is judged not to exist reason to continue conducting an investigation, etc. SoL 11:1

A decision is made to end the investigation in accordance with SoL 11:1

MinnaMari Brandt appears in Örebro municipality's social register as below:

210621210803 Investigation according to SoL 11:1

MinnaMarie applies for support in the parental role based on the fact that the children are in the US with their father. Wishes support in how she should treat the children in the situation they are in. MinnaMarie states that Laxä municipality has claimed that they witnessed mother and father make an agreement that the children must be abroad for a certain period of time. MinnaMarie says that Damian's friends have tried to impale her with a spear. Damien hangs out with "banditos", he's come home with one jacket from Hells Angels. MinnaMarie then states that she has contact with a counselor and will also talk with a specialist on Åland regarding trauma for children. She receives information about the parents' phone via Örebro Municipality. MinnaMarie withdraws her application.

210805211021 Investigation according to SoL 11:1

An application is received from MinnaMari for protection based on fear that her former partner will harm her. In conversation with the reception unit, MinnaMari states that her partner has thrown her out of the apartment after he wanted to end the



relationship, she says that she got help from a friend to move her things, the friend has offered a place to sleep but MinnaMari is afraid that the roommate will apply up and expose her and/or the friend to violence. The partner knows where the friend lives and there is a risk that he could subject them to violence. The investigation initially shows that MinnaMari wants support in the form of protection from her partner who exposes MinnaMari to violence. MinnaMari is placed at Hjorten's assisted living facility during the investigation period but the effort ends after MinnaMari chooses to go to Åland and based on what MinnaMari states that the threat does not come from the partner but from outsiders. MinnaMari states that she has moved back in with her partner and is in an ongoing custody dispute regarding the children. The children are, according to MinnaMari, still in the US with her father. MinnaMari has contact with addiction centers and meets both doctor, counselor and has also established a psychologist contact. MinnaMari has had an active abuse in the past but it is unclear what it looks like at the moment. Assuming that MinnaMari has established a contact with a psychologist via the dependency center, she withdraws the application for CMV.

Based on the fact that MinnaMari no longer wants interventions via social services, the assessment is made that hers the application is withdrawn, whereupon the case is dismissed and the investigation in accordance with ch. 11 § SoL is concluded.

S■■■■ and J■■ C■■■ appear in Laxä municipality's social register as below:

200605 Custody agreement (S■■■■)

MinnaMari contacts social services on May 26, 2020. She says that S■■■■'s father and she have joint

custody. Damian has a residence permit in Sweden but works in the USA. He is coming visiting home for a couple of weeks sometimes. It is difficult when, for example, papers have to be signed. They have another child together, S■■■■'s little sister whom MinnaMari has custody of alone. MinnaMarie wants to sign an agreement that she will have sole custody of S■■■■. and says that both agree and have no dispute about this.

MinnaMari and father Damian come to the social office to sign a custody agreement. Both identifies himself via ID document. The undersigned social secretary informs about the legality of the agreement effect. MinnaMari and Damian sign the agreement. They each receive a copy of the agreement. The document is added to Procapita as well as physical file.

201230 Investigation according to SoL 11:1

The investigation was initiated after contact with Damian. The majority of reports of concern were received shortly after that from various authorities. Reports have also been received in the past, but which did not lead to an investigation.

The investigation reveals that J■■■■ and S■■■■ live in an environment that is considered very risky and which over time risks damaging their development. Identified risk factors are: psychological and physical illness in the mother and to some extent in the father, drug abuse in the mother, violence in the home between the parents, neglect, lack of housing, unemployment, weak economy and conflicts in the social network. Furthermore, the parents cannot come to a decision about where the children should have theirs fixed point without the plan constantly changing according to the mood and mood of the parents.

Protective factors are that J■■■ and S■■■ are considered physically well. There is nothing to indicate that they are not well, except for alarming rashes on the body, especially on J■■■, which guardian has sought care for. J■■■ and S■■■s behavior and interaction with their father looks nice and adequate. It is unclear what the interaction looks like between the children and their mother then not sufficiently observed in this investigation. They have only been seen together briefly an opportunity in the waiting room at the social service. The reason is that J■■■ has been in the US for a certain part of the investigation period, as well as the fact that MinnaMari has spent a lot of time in Örebro and not in Laxå the children.

On one occasion, an attempt was made to visit the mother and the children at home, but the social service was there not admitted by MinnaMari who was perceived to be very upset. J■■■ heard and saw her mother be very loud and aggressive towards social services.

The parents are perceived to be very busy focusing on their own needs and problems. They have then difficult to see what effects it has on the children and what needs the children have. The guardians say many contradictory things about each other and others, which is perceived to be a way of slandering the other and to shift the focus from the real problems that need to be solved, namely those the above risks. The assessment is also that both parents are mentally ill and are very tired and stressed in their relationship.

During the course of the investigation, placement in a family home was considered in accordance with the Youth Care Act (LVU) because the guardians did not take any practical steps to change the children's situation. This however, was not implemented as Damian and MinnaMari finally agreed, before social services,

that the children would accompany Damian to the United States for three months. This decision is considered by social services to be the best for the children under the current circumstances.

From 210416 onwards until the children go to the USA, they live with their father and grandfather. This is a temporary voluntary arrangement proposed by social services and to which both guardians agree consent to. Home visits and protection assessments are made in the home and the assessment is that it is a safe environment for the children while waiting for the departure to the USA which takes place on April 16th. Damian calls social services on April 28 and states that the children and himself are fine. They have then been abroad for just under two weeks, but MinnaMari has changed her mind and requests that he fly back to Sweden with the children. The investigation was concluded without intervention as none of the guardians wants to receive support at the moment and because the children are no longer staying in Sweden.

The following reports of concern have been received during the course of the investigation:

211228 from Damian concern for the children's care with their mother

210112 Anonymous report regarding the children experiencing violence and drug abuse in the home in Laxå

210305 from doctor USÖ concern regarding MinnaMari's drug abuse.

210322 from the counselor care center concerns about MinnaMari's mental health, drug abuse, neglect of the children, financial difficulties, homeless.

210406 from Pia Jansson, MinnaMari's aunt. She leaves concerns about the care of the children, conflicts between the parents, drug abuse and mental illness in MinnaMari.

210406 The children's grandfather reports concern that the children are witnessing conflicts and violence in the home.

210407 MinnaMari's friend reports that the children's grandfather and father are unsuitable to be with the children and that Damian is violent.

210408 The police authority reports concerns about violence and conflicts in the home between the parents.

210408 Emergency psychiatry USÖ reports concerns about MinnaMari's mental state and drug abuse.

210413 MinnaMari's aunt reports child neglect, mental illness, violence and drug abuse at MinnaMari.

210420 The police are concerned that a known criminal is living with the children (the children's uncle Marko) and that MinnaMari's ex-boyfriend/boyfriend (no name) has been found outside the children's residence, is threatening and carries a knife.

210428 The social service received a document from the property owner for the apartment that is in MinnaMari's name. The rent has not been paid and the debt is SEK 15,000. The tenant's contract is therefore completed.

210429 Social services in Orebro have received information from MinnaMari that she is worried about the children. She states that the children have been in the US with their father for 1.5 months and that she haven't had contact with them in three weeks. Damian is said to have uses violence against her on several occasions and the children, according to MinnaMari.

## 210108 Agreement

Guardian MinnaMari calls the undersigned social secretary on the grounds that she and the children's father Damian wants joint custody of the children. As it is now, MinnaMari has sole custody. MinnaMari tells them that they are going to apply for citizenship for the children in the United States so they will have dual citizenship. The plan is the whole family will then move to the USA.

Damian and MinnaMari come to the social welfare office and sign a joint custody agreement. The parents say that Damian will go to the United States with J■■■■ to make arrangements citizenship also in the US, which takes about a month. The idea is then that MinnaMari and S■■■■ goes there and that citizenship is also arranged for S■■■■

Damian and MinnaMari each receive a copy of the agreement.

## 210415 Agreement

Signed (out) Minna and Damian meet at the social services office for them to sign the accommodation agreement that they wanted and agreed to write. The agreement states that J■■■ and S■■■■ will live with his father Damian in the USA. This agreement has been written after Minna's and Damian's wish. The plan was earlier in the day that Damian and Minna would come in separately because Damian expressed that he was afraid of threats and violence from the person who drove Minna away Örebro to Laxå. Later, Damian announces that he will sign the agreement together with Minna because she gets angry otherwise and he doesn't dare contradict her.

Both parties arrive together and Minna's brother Marko also enters the waiting room. Out reads up and shows the contract to Minna and Damian. Minna then says that Damian can do what he wants with it to sign but that if he signs, she takes it as if he doesn't trust her. She states suddenly that she doesn't think it's necessary because she and Damian think the same, and that they have a stable and loving relationship. She sees no purpose in an agreement. She asks Damian to look at her and not listen to Ut when I try to explain what the initial purpose of the agreement was and why they previously decided to sign this agreement. Minna says that social services use this as a threat to them but that it is up to Damian if he wants to sign it. Our experiences show that Minna is very threatening to Damian in her body language and words. Out states that they both get to think separately what will be good for the children and not what is good for themselves or their relationship alone. Ut asks Minna to stop persuading Damian and interrupting him when he's talking with Out. Damian says he doesn't dare sign because it might hurt his and Minna's relationship bad. Ut then states that it was understood that the conversations were characterized by both the guardians talk about themselves and that Damian talks a lot about how he can do to Minna should not be angry and so that she feels good, but less about what they can do for the children to feel good. Ut also believes that it was characterized by both guardians changing their minds about various major matters around the children from one day to another. Damian is silent but says he can't sign. Memory is perceived to be angry at Ut and says briefly, then so, then it's done and then she gets up to leave. However, both Damian and Minna say that the plan is for Damian and the children to travel to the US by

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themselves tomorrow. Damian tells Minna that he trusts her to let him go with them without a deal is written. The meeting ends. The housing agreement is not signed by the guardians.

/Madelene Barnes, Social Worker

Police records

MinnaMarie does not appear.

Damian does not appear in Swedish or American police records.

Rasmus Söderström (MinnaMarie's partner/cohabitant) appears as below:

Judgment 20210831

Violation of the law on the prohibition of knives and other dangerous objects

Daily fine 50 if SEK 50.

HOME VISIT

Damian

In connection with an investigative interview, Damian shows us around the house where they live, at Damian's parents. The children have their own rooms and a playroom. They live in a large house with a garden, pool and with spaces for the children to play. We try to have a little chat with S████ before he goes to preschool. He sits with Damian meanwhile who tries to support him in answering. We ask what he usually does with dad at home, what it's like to live in the US and if he talks to morn sometimes. S████ doesn't answer but then nods when we ask if he



usually speaks Swedish with his grandfather. S [REDACTED] then shows his room together with Damian, and then talks a lot and energetically about his various toys. As they show further in the house, J [REDACTED] enters the conversation. She shows little of his room. Both children naturally seek their father and they feel they have a close relationship with him him.

Damian (US Social Services)

10/29/2021

4:30 p.m

7829 Oak Haven Ln  
Stanley, NC 28164

Social Worker arrived at the home and was greeted by Damian Caracciolo (date of birth: May 8th, 1994). Also present were J [REDACTED] C [REDACTED] (Date of birth: [REDACTED], 2019) and S [REDACTED] C [REDACTED] (date of birth: [REDACTED] 2016). This is the residence of Damian's parents Wendy Caracciolo (date of birth: January 14th, 1964) and Lewis Caracciolo (date of birth: September 9th, 1964). They were not present; they are staying at the beach while their home is being sold. Damian does not have a new address yet, but will be staying at this address until further notice. The children were dressed appropriately, clean, and free of visible marks and bruises. They were wearing Halloween costumes because the family was going to an event after the Social Worker left.

The children were very excited to go out for the evening and enjoy their weekend. The home was appropriate with electricity, water, and proper plumbing. There were safe places for everyone to sleep, plenty of food, functioning smoke detectors on both floors, and no firearms. Damian states the family is

working on custody and visitation as well as possible dual citizenship for the children. Social worker states she does not know the legal information for citizenship but will help find someone that might. Social worker stated she would forward the information back to the social services of Sweden and left her contact information if Damian needed any other help.

Lauren, Kelly  
Social Worker IAT, Children & Family Services  
Gaston County Department of Health & Human  
Services

#### DATA FROM

MinnaMari Brandt

#### Current situation

MinnaMari lives with her partner Rasmus. She doesn't work because she has one back injury, a diagnosed herniated disc. Previously, she thought it could have been an injury from the birth with one of the children. Now she thinks it comes from being abused by her Damian for many years. Minna has lived in sheltered accommodation for a time when things have not been stable at home. It was because it was not safe for her and Rasmus to live in the apartment. There were a lot of people there. Someone tried to set fire to something at the apartment and it was thrown in sharpened sticks. MinnaMari says that Damian's acquaintances are doing this. MinnaMari has reported to the police everything and she often sends updates to the police and checks on their work in various mailers concerning her.

The home is too small for her to have the children in. She needs a bigger one when they come back to

Sweden. Minna says that she and Rasmus have chosen to live separately now. They think it's best that way that she and the children can bond again and Rasmus can come in later. Minna says that she has been clean from drugs since 6 months ago. She submits regular urine samples to the Addiction center. She also has meetings there every week. Minna has PTSD from everything she has been victimized by Damian. Minna says at the second call that she receives support in the form of a psychologist and a curator. She does not think that she needs any contact at the Addiction Center because there will be too many people to be in contact with. Minna has been told by a psychologist that it may have a negative effect if she has too many contacts. Right now she is not in an addiction and needs therefore no support regarding it. Minna says that the counselor and the psychologist help her with this in that case. Minna is unsure exactly what the counselor versus the psychologist will help her with. Minna says that she would not refuse help from the Addiction Center if needed. The living situation at the second call is such that Minna lives with Rasmus. However, she is not written on the address, she says. In the future, she wants Rasmus, her and the children to be able to live Together. But she will not live with Rasmus when the children arrive because she wants her and the children's relationship must become strong again. Rasmus' apartment is also too small for all of them. Minna gets the question if it is correctly understood that she lives with Rasmus now, because in the last conversation she first said that they lived together and then they lived separately. Minna says they live together now.

## Association/contact

It had been 4-5 months since Minna spoke to S [REDACTED]. Both she and Damian have made attempts to find times that might suit, but they have not been able to agree on a time. Damian has suggested that Minna talks to the children in the morning before they go to school or at 18 their time. Memory don't think it's good. In the morning she feels that it becomes too stressful for the children, while at 18 American time is midnight in Sweden and she thinks that is too late for herself.

Minna refers to taking medicine and according to the doctor she needs to sleep at 12 o'clock in order not to have a psychosis. Minna herself has suggested a time for conversation at 22 Swedish time when it is better for her. Then maybe Damian has stopped work and picked up the children, Minna thinks. But it hasn't worked.

The communication between Damian and Minna is not working well, according to Minna. It consists of them writing to each other. Minna often gets vulgar answers back to her questions. Such as accusations that she is a whore. Or that he writes ha, ha, that's a joke, when she says she wants to talk. She gets no pictures sent to him of the children. Minna therefore tries not to write to Damian. She has received the advice from the police that there is no point in trying to talk/write to Damian. Last when Minna wrote that she has received a summons for S [REDACTED]'s 5 year vaccination, Damian wrote back that he had not cared about things that happened in Sweden. He has only replied that the children are fine and that they better off without her. When S [REDACTED] turned one, she tried to get in touch with S [REDACTED] but that did not work.

The information that Minna has about the children is that J [REDACTED] is awaiting trial in the United States because she has been subjected to abuse. Minna explains later in the investigation that the trial is about something J [REDACTED] was exposed to by a family member in Sweden. The children do not have US citizenship and they have no valid passports because Minna has revoked the passports at a police station in Sweden with help of his lawyer. The police have ongoing investigations regarding Minna and Damian. These applies to: assault, theft and kidnapping. The police tell Minna that they are working hard on these errands.

J [REDACTED] and S [REDACTED]

Minna says that important people for the children in Sweden are BVC staff, the church in Örebro, Rasmus and his parents. She has no contact with her own family. They helped Minna move on one way where they just put everything in garbage bags and it wasn't helpful. They also helped Damian drive the children to the airport when he kidnapped them. They have contact with Damian. Sometimes Minnas drives siblings past her home and then they point the finger at her. Another relative tried to strangle her and there Minna is waiting for the trial which will soon take place.

The cohabitation period

Minna and Damian met in 2015 outside a pub in Örebro. In 2019, they separated and started both two new relationships. At first Minna had sole custody of a child, but then they signed over to shared custody. Damian was in the US himself for a while and he then had contact with the children because Minna wanted

them to maintain contact. In January 2021, Damian came back to Sweden again on Valentines Day. Minna thought it was because he wanted to be with the kids but it was because he wanted to marry her. Minna didn't want that. They both began to abuse together. During this time they had contact with Laxä social services. Minna says she stayed daily abused by Damian. The contact with social services was based on her drug abuse and the conflict between her and Damian. Minna and Damian's contact has worked well when Damian has got what he wants. When the children were placed with Minna's father, Damian spent the night there and then went to Minna's to smoke weed.

Special problems (violence, threats, abuse)

Minna says Damian pushed and kicked her daily last winter, once Minna was unconscious afterwards. The police came and evicted Damian. He has also thrown things at Minna. He also tried to break Minna down psychologically, which he succeeded in doing. Minna believes the reason for the violence is that Damian was angry because Minna had met a new guy and that she didn't want to marry Damian. Minna says that she herself has hit Damian in self-defense. The children have witnessed everything and

S■■■■ has shown aggressive behavior as well. For example, he has tried to give his father one uppercut with his fist. In preschool he was also rowdy with another child on one occasion. S■■■■ has been lifted by the jacket and thrown into the air by Damian. S■■■■ has also been pushed against the wall by Damian. Minna doesn't know if Damian uses drugs but she thinks so because it's legal in the US. Damian also has head injuries from his football career. Damian

will receive compensation after treatment for the injuries paid by David Beckham but Minna does not know if it is so. The injuries affect him through memory lapses.

#### The parental role

Minna describes that as a parent, she is the children's cornerstone. She has been with them and supported them emotionally in their development. It worked fine when she was alone with the kids though less good when she was with the kids along with Damian. She then left the children with Damian, something she says she got shit for afterwards. Minna says she knows she is a good mother. Minna thinks Damian is doing his best at being a parent. He needs support in his parenting because he can be too violent. The police have now received all text messages between Minna and Damian, says Minna. She says that there are ongoing cases with the police regarding violence such as Damian has exposed the family to. Damian's family in the US drinks alcohol daily, says Minna. It is a turbulent family if they don't get what they want. When Minna visited them for the first time like that Minna thought they drank too much. She took S [REDACTED] to a nearby park to play and The family then became very angry about it.

#### Future custody, accommodation and access

Minna wants sole custody of both children. She also wants their accommodation to be with her. The children are Swedish and need to be in Sweden. She and Damian agreed that they would travel away for 3 months, but as soon as they left, Damian sent her a message writing: Good luck, I'm not coming back.

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Minna says that the children went sometime around the 6th, 7th or 8th grade

April this year (2021). Minna further says that she wants the children to live with someone they know. Either herself or Damian. Minna says that when the children come to Sweden, she wants support in her parenting so she can respond to them properly because she believes they will be in denial. If neither she nor Damian are deemed suitable parents, she wishes the children placed in family homes in Sweden, but not in the USA. Minna says that it is not good for the children to be in The USA with Damian because he himself has not been much in the USA. He has been to Sweden and Europe much and has no network or contacts in the US. Damian needs aggression therapy to be a good parent.

Minna wants her to have sole custody of the children because she takes care of their practical needs and takes them to school and health center if necessary, which Damian does not. Minna does not want the children to be vaccinated in the USA because it must take place in Sweden as they are Swedish children. She is worried about children's reaction to vaccines in the US because her own sister had a negative reaction to another kind of vaccine.

Regarding contact, Minna thinks that it may be the case that the children meet their father, but not in the United States because he has kidnapped them. Minna has no trust in Damian. Minna hopes that she and Damian can get along in the future and make joint decisions around the children. Minna wants the children have contact with their father but in orderly ways.



## DATA FROM

Damian Caracciolo

## Current situation

Damian works Monday Friday at his brother's construction company. He lives with S [REDACTED] and J [REDACTED] at Damian's parents in Stanley, North Carolina. Damian's mother takes care of J [REDACTED] during the day and S [REDACTED] goes to preschool. The plan is for J [REDACTED] to start preschool, but since the children are not citizens, he does not receive financial support for it. It would cost approximately SEK 2,000 per week. Damien instead tries to save as much money as he can so that he can buy another house of his own and the children. It works well for J [REDACTED] to be with his mother. The parents help him a lot and the children have a close relationship with them. Damian is going through the process of getting US citizenship, but he can't do anything without MinnaMari's consent. If he gets sole custody, he can make that decision himself. Damian's brother lives nearby and has four children. They spend a lot of time together, the whole family. The network around Damian and the children in the US is good. They hang out often and go boating, go to playgrounds to the sea where Damian's parents have a house. Sa will soon start playing football, which he is looking forward to.

Damian has no contact with MinnaMari and she has no regular contact with the children neither. He has suggested times when she can talk to them, but it hasn't happened. She has said that she is at work all those hours. She has wanted to talk to them during daytime in the US when Damian is working and not with the children. He has said she can contact Damian's mother at those times, which she has not done.

Damian has texted her when the children turned one to ask if she wants to talk to them, but she hasn't answered. MinnaMari last spoke to the children 3 months ago then. Then she told S [REDACTED] that Damian was a terrible father who kidnapped them and that Damian would go to jail for that. Damian says that wasn't good for S [REDACTED] to hear.. Damian knows she has a new boyfriend, but is unsure if they are a couple. None of their former mutual friends have any contact with MinnaMari. Damian knows nothing about how she is now. She told him once that she was going into treatment for her addiction. Damian himself is feeling much better now than during the last time he was in Sweden. That time was tough and ate away at him. He is exercising again and eating more. He has gained weight and is feeling well again, both physically and mentally. Damian says his parents have been a big support in his recovery.

S [REDACTED] and J [REDACTED]

Damian describes that the children are doing well and have a safe existence with him. It's going well for S [REDACTED] in preschool. Both S [REDACTED] and J [REDACTED] have friends they enjoy being with. They have been to the doctor just now because both children have been diagnosed with scabies. This was suspected that they already had when they lived in Laxä. Otherwise, there are no concerns about the children's health. They sleep well and eat well. They are calmer now than when they just came to the US. S [REDACTED] could yell at Damian and argue with him. It has been an adjustment for them, but now they have landed more emotionally. They could ask a little about MinnaMari at the beginning, but now they don't do that anymore. When they have talked about her Damian tries to confirm what they're saying and say they can talk to her. S [REDACTED] was

reminded of MinnaMari at one point and then said to forget her. Damian doesn't want them to have that feeling for their mother and he tries not to affect them. She is their only one mother and what happened is very sad.

Damian tries to speak Swedish to J■■■ and S■■■, to remind them of some Swedish. But he doesn't know Swedish very well himself, but they keep it up mostly through their contact with the family in Sweden. The children have contact with their grandfather, his partner and the children's aunt each week via video call. Damian thinks it is good and important that they can keep in touch with their family in Sweden. They sent packages to the children when they turned one. Damian has a good relationship with MinnaMaris Family.

#### Special problems (abuse, violence)

Damian says he never used drugs, except when he tried marijuana in high school. He drinks beer occasionally, about once a month. No one in his family uses any kind of drugs. His parents drink sometimes, but in moderation and usually some beer. Damian has a concern that MinnaMari's drug use may have gotten worse. She has a brother who is a criminal and has been doing it a lot with drugs, he's in prison, as far as Damian knows. Damian says there is probably a risk that MinnaMari abuses alcohol, but he is more worried about all drugs. MinnaMari's brother is more addicted to alcohol. Damian doesn't think MinnaMari is doing so well. But he hasn't been able to ask her because she gets very angry right away when he asks her such things. She must have been in the hospital in Örebro during the summer and then said that Damian had

kidnapped the children. Both police and social services called Damian to ask if the children were with him.

Damian describes that the children have been there when he and MinnaMari have been angry with each other, which he regrets, but there was never any violent incident. Damian tells about a couple of occasions when they have had major conflicts and it has become physical. Once at a loud conflict she took a laptop from Damian and he ran after him. He pushed her back so that she hit the head. MinnaMari has subsequently said that he hit the computer on her head. By one another time he wanted his phone, tripped over her and they both fell down a flight of stairs. Her brother says it was Damian who threw her down the stairs. Damian hit his head and suffered amnesia after this. On one occasion in a hotel in Stockholm, MinnaMari hit him in the head and then he put her in order not to be hit again. Then ██████████ was awake and saw the incident. Damian says he never wants S ██████████ or J ██████████ to see anything like that again. Damian says that the children have never been exposed to violence and neither has anyone else in the family, except said events.

Now the children are fine but if they would have grown up in such a situation that was in the family it would become very bad for them. MinnaMari was Damian's first girlfriend and he had a hard time leaving her. They had a family and he wanted to keep it. It took him a long time to realize that he needed to feel good for the sake of the children, and the relationship ended chaotically. According to Damian, it was definitive the separation just after he returned to the US with the children last spring. He describes that they were a couple when he moved, but it was unclear

between them. Damian wanted the family, but MinnaMari chose the drugs before.

### The parental role

Damian describes himself as caring as a parent. He says the parental role was more challenging when they came to the US, especially with S■■■■ based on everything that happened in the family. He thought that Damian was the bad person and acted out on him. Damian says he needs to meet S■■■■ calmly and talk to him. Now S■■■■ is calmer and more himself again. He wants Damian to be with him every night before he goes to sleep and searches a lot for safety in Damian. J■■■ has a rather hot temper and likes to decide. She can take limits, but still wants to do the same thing again which she doesn't get. She wants to do everything S■■■■ does but which she may not be able to handle. She may get frustrated and sad if she loses one toy or is not allowed to do anything she wants. Then Damian tries to pick her up and talk to her. It was a change when they were only with Damian when they lived with MinnaMari. He has more strict rules and routines than they had with MinnaMari. She has let them do what they want. Damian says it's hard to deal with how MinnaMari is as a parent now. She has not arranged for them talking on the phone or e.g. wooed them on their birthdays. J■■■ asks about her mother and Damian says it's hard to know how to talk about them calling their mom, when she does not make herself available. He wants them to keep their hopes up, but MinnaMari makes it difficult for them.

## Future custody, accommodation and access

Damian wants sole custody of the children and for them to live in the US with him. They have a good and safe home here and a family that takes care of them. In the US, Damian can cater their needs and give them more than he can do anywhere else. Damian wants it to be okay between him and MinnaMari. Every time they have talked she has a bad attitude towards him and says he has ruined her life. Damian describes that she herself said that the best would be if he went with the children to the United States. She said he needed to take them out of her life, which is too dangerous for them. Damian describes that it will not be possible to have a communication with MinnaMari for so long she is not sober. If she quits drugs completely and tries to get her life in order, it might work, though not now. She is not thinking clearly. In the district court, she didn't even know how old the children were. Damian describes that the best way to hang out now would be for them to go to MinnaMari every year or so. She also comes to the US. But the way she's feeling now, Damian doesn't want her to come along by herself the children. He wants her to be a part of their lives and if she can prove she isn't in addiction longer and feel completely fine again, it is good for the children to have contact with their mother. But she needs to get a stable life again. Damian says J■■■■ should get her 2 year vaccine but MinnaMari says they have to come to Sweden to do it. It is the same vaccine in the US, but Minna- Mari does not agree to her taking it in the US. Damian thinks it's a way for her to get them back to Sweden. Damian is unsure of what to do to avoid making a legal mistake.

## REFERENCES

Vjollca Kelmendi and AnnMarie Thuring

Reference interview with responsible social secretary in ongoing investigation regarding MinnaMari.

The ongoing investigation for which Vjollca and AnnMarie are responsible was initiated based on the fact that MinnaMari applied for support from social services. The reception group then granted a protective placement for MinnaMari at Hjorten, a shelter for women. The initial data was that she needed protection from his former partner. But during the investigation it emerges that the threat is from the father of MinnaMari's children and his friends who are in Orebro. At the placement MinnaMari tested positive for cannabis and had, according to his own information, used drugs for several years. Now she states that she has been drug-free for 23 months, has a support contact at the Addiction Center and takes regular urine samples. The protective placement ends on September 9 based on MinnaMari going to Åland. Now social services received information that she is living with her partner again. MinnaMari has applied for support from CMV based on the threats and violence she states she has been exposed to from the children's father. Violet and AnnMarie state that it has been difficult to find out exactly how MinnaMarie's life situation looks.

## SUMMARY/ASSESSMENT

## Introduction

We have to assess S [REDACTED] and J [REDACTED]'s best interests in matters of custody, accommodation and socializing. To basis for our assessment we have information from

social registers in Orebro and Laxa municipality, talks with the parents, reference talks with social workers, home visits where we got to meet S [REDACTED] and J [REDACTED] via video calls and home visits from social services in the United States.

### Custody

In the assessment of the best interests of the children in the matter of custody, both parents must assess suitability as guardians and their ability to jointly exercise it. Custody is now common. Damian and MinnaMari are both claiming sole custody.

It appears in the investigation that Damian and MinnaMari have had major cooperation problems during a longer time. The relationship has been characterized by conflicts even during the time they lived together in Laxä about which the social service in Laxä has documented concern. Identified risk factors from social services in Laxä was mental and physical illness in the mother and to some extent in the father, drug abuse in the mother, domestic violence between the parents, neglect, lack of housing, unemployment, weak economy and conflicts in the social network. Both parents felt very stressed and not prosperous in their relationship. Based on the documentation from the social service in Laxä, the parents in the spring of 2021 agreed that the best thing for the children would be for Damian to go to the United States with them. In retrospect, MinnaMari believes that they did not agree on how long Damian would be in the US with the children. Social services did the assessment that the best thing for the children was to be with Damian, otherwise it was relevant to consider a placement.



In our investigation, there is a concern about MinnaMari's drug abuse and mental health. MinnaMari describes that she has been drug-free since last summer and has no addiction problems now. She describes that she submits regular urine samples to the addiction center and receives support via a counselor and psychologist. MinnaMari says she has PTSD based on the violence she was exposed to from Damian. This is one reason why, according to her doctor, she cannot talk to the children on the phone after 24 at night because she might have a psychosis. We can note a concern for MinnaMari's ability to pose the stability required to have sole custody of the children. It is important that over time she can demonstrate that she is drug-free and that she is in a stable state of mind. It has been difficult to get a clear picture of MinnaMari's life situation and who she has been subjected to violence or threats from. In her application for support from the social service (autumn 2021) it initially appears that she was subjected to threats from her partner Rasmus and is afraid that he will be violent towards her, he will then have thrown her out from their apartment. Later, she describes the threat as being from Damian or people he knows.

In our investigation interviews with MinnaMari, she first describes that she lives with Rasmus and later they chose to live separately. This is because MinnaMari wants to live alone with the children when they come back to Sweden. Currently, MinnaMari and Rasmus are registered at the same address. Rasmus was sentenced in August 2021 according to "Breach of the law on the prohibition of knives and other dangerous objects" (see police records). In our investigation, no information has come to light that indicates any concern about Damian parentage or

suitability as guardian. The concern that Laxa municipality has documented

Around the parents, we judge them to have been connected to the life situation and relationship that he and Minna-Mari lived in during their time together. In conversation with Damian during the investigation, he is experienced being healthy and more well-being compared to when they had contact with social services in Laxä. Damian does not appear in social registers or police registers. According to our observations and home visits from Social authorities in the USA are deemed Damian to have created a safe existence for the children where he too accommodates the children's contact with the family on MinnaMari's side in Sweden.

The parents themselves have reasoned on several occasions that the best thing for the children is that whoever is with the children should have sole custody, based on the long distance between the USA and Sweden. From from our conversations with Damian, we understand that it is his intention to live in the US where he has his entire network with family, friends and work. What made it relevant for him to live and come to Sweden have been the children and the relationship with MinnaMari, which according to Damian has been back and forth but which definitely ended in the spring of 2021. According to MinnaMari, they separated in 2019. Based on the long distance that exists between the parents and the major cooperation problems they had during the children's upbringing, we judge, like the parents, that joint custody would involve major obstacles for the children in their everyday life. We judge that the parents do not have the ability to take joint responsibility for the children based on the distance, but also based on the lack of communication in a concrete way will go out on

the children. There has been ambivalence between the parents regarding various important decisions during the time they lived in Lax& There is a concern that Damian has not had the ability to resist MinnaMari's demands and treatment when he met her physically in various visits to social services.

During our investigation, the issue of vaccines was also raised by both parents. Damian asked us what he can do with J■■■■'s 2-year vaccine, which according to him is the same as in Sweden. Minna-Mari does not agree to the children being vaccinated in the United States. She is worried about the children's reaction to vaccines i USA because her sister had a negative reaction to a different kind of vaccine.

Based on the above information that emerged in our investigation, we assess that there are several factors that create concern about MinnaMari's suitability as sole guardian. We distrust not that she actually cares about the children and has had a good relationship with them. But a sole custody requires a special stability that we cannot rule out a concern about the current MinnaMari. Furthermore, we have found no records to indicate any concern about Damian's parentage or suitability as guardian. On the contrary, we judge that he is suitable as sole guardian of the children. Our overall assessment and proposed decision is therefore that Damian should be awarded sole custody of J■■■■ and S■■■■. He is judged to be the parent best suited to have sole custody of the children and this is deemed to be compatible with the children's best interests.

#### Accommodation and socializing

Our assessment of the children's accommodation follows our above proposal for a decision on custody. From the information we obtained in the investigation,

we find no concern about how the children are doing at Damian's. We assess that S [REDACTED] and J [REDACTED] have a safe existence with Damian where they are catered for basic needs. They have a strong network of family and friends in the US. Damian has helped the children in contact with MinnaMari's family, with whom she herself has no contact. We judge that it is a good option for the children to live with Damian, as we cannot rule out concern for MinnaMari's health, previous substance abuse problems and criminality in her partner. We assess that there are no obstacles to contact between the children and MinnaMari, provided that she can demonstrate sobriety over time and has a sufficiently stable mental state. About her mental condition is so fragile as she describes, that she needs to sleep for a certain amount of time in order not to suffering from psychosis, it would mean problems for her to have the children over a longer period of time. If MinnaMari would have that responsibility for the children, e.g. overnight, she needs to be able to prioritize the children's needs before their own mental health. Based on the distance between the USA and Sweden however, we believe that a schedule for socializing via video calls is the most important thing for the children. Particularly Based on J [REDACTED]'s age, it is important that they start regular contact so that she can create an image of her mother before too much time has passed.

So far, Damian and MinnaMari have not been able to agree on their own times when the children are due able to talk to MinnaMari via video call. Words are against words between the parents what this has depended on and we judge that the parents need help in regulating such a decision in the form of times and days. Otherwise, we see a risk that the missing contact will continue as it has been until now.

Based on the children's ages, we judge that it is appropriate for them to have video calls with their mother 1-2 times a week, or more often if the parents want to agree on it. It is then important that the parents can keep the children out of their own possible conflict and that discussions between the parents can be taken without the children present.

We consider that it may be appropriate for Damian to go to Sweden on some/a few occasions per year when the children are free to spend time with MinnaMari in Sweden, or that she comes to the USA and greets the children. If the children decide to live in the US with Damian, it is important that MinnaMari can accept such a decision and give the children as much time with her as they need, if so it can take place in a safe and predictable way. However, there is a concern that MinnaMari previously has influenced Damian to make different decisions about the children than he previously thought, and therefore it is important that he can stick to a socializing plan.

Our overall assessment and proposed decision is that S [REDACTED] and J [REDACTED] should have their permanent residence with Damian and have the right to contact MinnaMari. The interaction should take place 1-2 times a week via video call, at a time agreed upon by the parents via the court. If the parents can fully accept a judgment from the district court, in accordance with our proposal, we judge that there are no obstacles for the children to have the right to longer contact with Minna-Mari on one or two occasions per year, in Sweden or the USA. This assumes that MinnaMari continues and over time can demonstrate drug freedom and a stable mental state.

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In the service

Celina Edin Madelene Barnes

Family Law Secretary Family Law Secretary

**APPENDIX H**

THE COURT

Chief councilor Anders Domert

PROTOCOL DRIVER

District notary Josephine Einar Sjöo

PARTIES

Plaintiff

Minna-Mari Helena Brandt, [REDACTED]-2466  
Södra Grey Rosengatan 14 Lgh 1404, 703 62 Örebro  
Personally present

Agent and counsel under the Legal Aid Act: Advokat  
Sofia Nordkvist

Advokatfirman Nordkvist AB, Klostergatan 23, 703  
61 Örebro

Present

Defendant

DAMIAN John Caracciolo, [REDACTED]-6852  
Citizen of the United States  
7829 Oak Haven Ln, North Carolina, United States  
Present by phone

OTHERS (present unless otherwise stated)

Interpreter

Maria Hammarstrom, present via telephone

THE THING

custody of children etc

The district court has technical problems with the video equipment in the hearing room. After several attempts to connect Damian Caracciolo via the video equipment are contacted Damian Caracciolo by phone. Damian Caracciolo is allowed to attend the meeting via phone.

Interpreter Maria Hammarstrom is reminded of previous interpreting, is reminded of its importance and appointed to interpret at today's meeting.

Damian Caracciolo had a hard time accepting the change of partner and bought her drugs. Damian Caracciolo himself was smoking cannabis at the time. She is now in contact with Addiction center to get help staying drug free. She is currently on sick leave, though will be available to the labor market as soon as she recovers. It is she who is the children's primary carer and the person to whom the children have a connection. She has it who have taken full responsibility for the children during their upbringing. She has taken responsibility for the children's livelihood by working. Damian Caracciolo has not supported the children and has nor worked in Sweden. In connection with the parties being at odds during the spring took Damian Caracciolo brought the children to the USA, it was April 7, 2021. Damian Caracciolo took advantage of the fact that the parties had agreed on joint custody. Damian Caracciolo took advantage the situation. Damian Caracciolo did not have her consent to bring the children to the United States.

Since Damian Caracciolo took the children to the United States, she has only been allowed to speak to S [REDACTED] once on the phone. Damian Caracciolo does not answer the phone or email. Damian Caracciolo has also changed his Facebook account. It is negative for the children that Damian Caracciolo brought them to the US and that he is keeping them from his mother. J [REDACTED] has one skin disease for which she sought treatment in Sweden and where test results are awaited. J [REDACTED] has one referral to the skin clinic, file attachment 4. She fears that J [REDACTED] will not receive the care that J [REDACTED] receives requires. Furthermore, the



children's tourist visas in the USA have expired, file attachment 13. During the spring, Damian Caracciolo also abused her. She has reported the incident to the police and the police investigation is ongoing. She has also reported Damian Caracciolo for arbitrariness children when Damian Caracciolo took the children abroad without consent. The children are Swedish citizen and has no right of residence in the USA. As far as she knows, Damian is missing

Caracciolo his own residence and work in the United States.

Damian Caracciolo essentially cites the following as the basis for his approach. J█ turns legitimately 2 years in September and S█ 5 years in October. The parties agreed that he would bring the children to the United States. When he came back to Sweden, the social services would take the children from Minna-Mari Brandt due to drugs and then Minna-Mari Brandt did not take care of the children. Minna-Mari Brandt is a good liar. In the social service's paper it says that it is not right for the children to live with her. The intention was for the whole family to move to the USA but Minna-Mari Brandt cheated on him with Rasmus, her current boyfriend, when he was in the US. When he came back to Sweden, Rasmus was high and threatened him with a knife. Rasmus also destroyed a doorway. The event has reported to the police. Minna-Mari Brandt has done many different things. Minna-Mari Brandt has hit him on one occasion. Minna-Mari Brandt has neglected to take J█ to the doctor when J█ got marks on herself, despite her family urging Minna-Mari Brandt to do so. When he came to Sweden, he was the one who took J█ to the doctor. When he came back to the USA, he arranged an appointment with a dermatologist and he has taken J█ there

three times. He takes well take care of the children. At Minna-Mari Brandt there is a lot of drugs with her boyfriend and friends. Minna-Mari Brandt is not fit to take care of the children. In the past few weeks, he has received two calls from social services and one call from the police because of the authorities wondering where the children were because Minna-Mari Brandt was in prison

DECISION (to be announced on July 6, 2021, at 11:00 am.)

1. Minna-Mari Brandt's and Damian Caracciolo's interim claims for alone custody of S [REDACTED] C [REDACTED], [REDACTED]-4977, and J [REDACTED] C [REDACTED], [REDACTED]-8349, is denied. This means that Minna-Mari Brandt and Damian Caracciolo for the time being until the question has settled by a judgment or a decision that has become legally binding or the parties have reached an agreement if the issue that has been approved by the social welfare board has continued joint custody of the joint children of the parties.

2. The court instructs the social welfare committee in Orebro municipality to appoint someone to carry out a custody, residence and visitation investigation regarding S [REDACTED] C [REDACTED], [REDACTED]-4977, and J [REDACTED] C [REDACTED], [REDACTED]-8349. The investigation must be reported to the district court at the latest on November 6, 2021.

Reason for the decision

When deciding matters relating to custody, the starting point is what is best for the child, 6 Cape. Section 2a of the Parental Code. In the assessment of what is best for the child, it must be particular attention is paid to the risk that the child or someone

else in the family is exposed to abuse or that the child is unlawfully taken away or kept or is otherwise harmed, partly the child's need for close and good contact with both parents.

When assessing whether custody should be joint or entrusted to one of the parents must the district court pay particular attention to the parents' ability to cooperate in matters such as concerning the child, ch. 6 Section 5, second paragraph of the parental code. The district court receives cases like that hereby announce an interim decision when necessary, i.e. decide what shall apply until the matter has been finally settled by judgment, decision or agreement, ch. 6 § 20 the parental code. The court should be restrictive in temporarily changing one functioning order and for a decision to be announced it is assumed that the reasons for change are urgent and require a quick solution. With regard to the documents received in the case and what was expressed at the preparatory meeting, the district court finds that sufficient reasons for an interim decision on sole custody are lacking. The custody of S [REDACTED] C [REDACTED] and J [REDACTED] C [REDACTED] must therefore remain unchanged.

In order for the district court to finally be able to take a position on the issues in the case, a custody, residence and association investigation is obtained.

#### HOW TO APPEAL

Point 1. Appeals are made to the Gota Court of Appeal and must have arrived at the district court no later than July 27, 2021.

Point 2. The decision according to point 2 can be appealed only on the basis stated in 49

**APPENDIX I**

Parties:

Plaintiff

Minna-Mari Helena Brandt, [REDACTED]-2466

Södra Grey Rosengatan 14 Lgh 1404

703 62 Örebro

Representative and assistant according to the Legal

Aid Act: Lawyer Sofia Nordkvist

The law firm Nordkvist AB

703 61 Örebro

Defendant

Damian John Caracciolo, [REDACTED]-6852

Citizen of USA

7829 Oak Haven Lane

North Carolina

Representative and assistant according to the Legal

Aid Act: Juvenile Scandal Johanna Gunne

The law firm Glimstedt Örebro HB

Jämtorgsgatan 12

703 61 Örebro

Judgment

1. Damian Caracciolo will have sole custody of S [REDACTED] C [REDACTED], [REDACTED]-4977, and J [REDACTED] C [REDACTED], [REDACTED]-8349.

2. S [REDACTED] and J [REDACTED] will have the right to socialize with Minna-Marie Brandt via video call every Sunday at 22.00 Swedish time, i.e. at 16.00 local time in North Carolina. Damian Caracciolo will be responsible for the children getting help talking to her.

3. Point 1 of the district court's interim decision of 6 July 2021 shall no longer apply.

4. What the district court decides on under items 1-3 shall apply immediately, notwithstanding that the judgment has not gained legal force.

5. The district court determines compensation in accordance with the Legal Aid Act (1996: 1619) for Sofia Nordkvist with SEK 43,260, of which SEK 34,608 for work and SEK 8,652 for VAT.

6. The district court determines compensation according to the Legal Aid Act (1996: 1619) for Johanna Gunne with SEK 48,261, of which SEK 38,213 for work, SEK 396 for wasted time and SEK 9,652 for VAT.

Claims M.M.

The parties have previously had a relationship and together have children S [REDACTED], born in 2016, and J [REDACTED] born in 2019.

Minna-Marie Brandt has primarily demanded that the district court decide that she should have sole custody of the children. If the district court should come to the conclusion that custody should continue to be joint, she has demanded that the district court decide that the children should have their permanent residence with her. In the event that Damian Caracciolo were to receive sole custody of the children or if the district court were to decide that they should have their permanent residence with him, she has demanded that the children have the right to visit her as follows:

-Every summer from 11 July to 7 August, Damian Caracciolo will be responsible for the children coming to Stockholm Arlanda, where they will be picked up by her. She will be responsible for the children's return trip to the USA Denver Airport, where they will be picked up by Damian Caracciolo. Damian Caracciolo

must send copies of travel documents to her no later than 1 June each year and she must send copies of travel documents to him or her no later than 15 June each year. Each party shall be responsible for the travel costs for their and the children's respective travel.

-Communication via video call every Sunday at 22.00 Swedish time, i.e. at 16.00 local time in North Carolina. Damian Caracciolo will be responsible for the children getting help with talking to her.

Damian Caracciolo has denied the claims for custody and housing as well as physical contact. He has admitted the request for video access. For his own part, he has primarily demanded that he be granted sole custody of the children and, secondly, that they have their permanent residence with him within the framework of joint custody. If the district court were to decide that Minna-Marie Brandt should have sole custody of the children or that they should have their permanent residence with her, he has handed over to the district court to decide that the children shall have the right to contact with him to an appropriate extent. He has demanded that the judgment apply immediately, without prejudice to the fact that it has not become final.

Minna-Marie Brandt has denied the claims for custody and housing.

In order to develop their action, the parties have essentially stated the following.

Minna-Mari Brandt:

It is in the best interests of the children that she has sole custody of them. Damian is unsuitable as a guardian due to his aggression problems. These have

been shown by the fact that he has subjected her to physical and mental abuse in front of the children. He has also been harsh on and exposed the children to violence and psychological abuse. Before Damian brought the children to the United States on April 14, 2021, he had only for short periods taken care of and taken responsibility for the children. He is also unsuitable as a guardian because he has since not wanted to help the children meet or have contact with her, with the exception of a few occasions when she had to talk to them via video call. He lacks the ability to meet the children's needs of the other parent. For her part, she has always made sure that the children had contact with Damian, who lived and stayed in the United States for a large part of the children's lives. On some occasions, Damian has had to stay with her during times when they were not a couple, so that he could meet the children. Damian has also abused cannabis and there is no information that he has taken up his addiction. If the district court decides that the children should live with Damian, it is in their best interests that they have regular contact with her. Due to the long distance, she has demanded a longer visit every summer.

She has a complicated relationship with her original family and was placed in a family home during her upbringing due to problems in the family. Her father and aunt Pia Jansson previously lived in Laxa and until the age of 20 she had sparse contact with her family. Since she had children, she has wanted to make contact more and let the children meet the family. Until 2019, when J■■■■ was born, however, contact was still limited. She lived alone with the children in Orebro while Damian was in Sweden sporadically. At that time, she felt that her need for support was great with two small children. She therefore moved to Laxa

to be able to get help with the children from her father and aunt Pia, which she also received mainly from Pia. However, there were problems in the family. She has a brother named Marko who has alcohol problems. Sometimes he stayed at home and drank alcohol in front of the children with Pia. She therefore had to refuse the help from Pia and after the summer of 2020, she took help from her only sporadically when it was absolutely necessary.

Her and Damian's relationship has been upside down and filled with changed plans. They met in 2015. Damian is a football player and has not been so much in Sweden. They were still a couple and in 2016 their first child together, S█████ was born. They arranged from the beginning so that they had joint custody of him. They lived in Örebro and since Damian was often away, it was she who had the main responsibility for S█████. In 2018, it ended between them. At that time she was pregnant and J█████ was born since 2019. They did not have joint custody of her because Damian lived in the USA and she would live alone with the children in Sweden. However, Damian came and visited sometimes and met the children. In December 2020 he came to Sweden and for a month in January and February 2021 Damian was with the children in the USA. They then returned to Sweden. The quarrel between them continued and she was forced to make an agreement with him that he would take the children to the United States for three months. In connection with that, he refused to sign a housing agreement. When they left, she thought they would come back because they agreed, even though he had not signed the accommodation agreement. However, this did not happen, as the children have lived in the United States ever since. Her social situation is stable today. She now lives in Örebro with her partner



Rasmus and studies. She is drug-free and leaves regular urine samples at the Addiction Center.

Damian Caracciolo:

It is best for the children that he gets sole custody of them and in any case that they may continue to have their permanent residence with him. Minna-Marie is unsuitable as a guardian and resident parent because she lacks care for the children due to mental illness and substance abuse problems. The parties are also not able to take joint responsibility in matters concerning the children and their cooperation difficulties affect the children in a concrete way. Minna-Marie lacks in putting the children's needs first. He is one of the parties who can best meet the children's needs for care, security and a good upbringing. It is best for the children that the physical contact between them and their mother remains unregulated. There are several risks in a physical relationship, e.g. that the children are forced to be in environments with mental illness, abuse, an insecure housing situation, violence and crime and that they therefore risk being harmed.

It is true that he traveled between Sweden and the United States while the children were growing up. It was about three months in each place. When S [REDACTED] was born in August 2016, he received a visa that allowed him to live more in Sweden. It was above all he who provided for Minna-Mari and the children and it was mostly he who took care of [REDACTED] and J [REDACTED]. When the children were alone with Minna-Marie during times when he was in the United States, there were shortcomings in caring for them. During those periods, Minna-Marie's aunt Pia helped with the children. The relationship between him and Minna-Marie deteriorated during the end of 2019 and the

beginning of 2020. He therefore planned to move back to the USA and live there. In June 2020, they reached an agreement that Minna-Marie would have sole custody even of S [REDACTED]. Later that year, they tried to make the relationship work again, but were unsuccessful. The plan was then for the whole family to move to the United States together. At the beginning of 2021, he traveled to the United States with the children that the parties had agreed on. There he would arrange citizenship for the children etc. before the move. When they returned to Sweden in February, the whole situation degenerated. The family did not move to the United States, but instead learned that Minna-Marie had met a new man, Rasmus. Information from the police and social services shows that he is punished and hangs out in circles where there is abuse. He was threatened by Rasmus with a knife when this was under the influence of drugs. In December 2020, the social services had initiated an investigation regarding the children in which they were considering caring for them according to LVU. It was the social services who told him that he and the children could no longer live with Minna-Marie. They then moved to the children's grandfather where they lived until they went to the United States. During the time the investigation was going on, there were several reports of concern regarding the children's situation with Minna-Marie. Despite the turbulent situation, they discussed reaching an agreement on the children's accommodation, meaning that he and the children would go to the United States so that they would not be forcibly taken into care. It is true that it was suggested that they should be there for three months. He has since ensured that the children have an orderly situation in the United States. They have entered preschool, gained access to care and they have a large

social network. The parties have not been able to agree on changing the children's housing situation after that. Initially, they lived with his parents in their house. He has just bought and completely renovated a house where he moved in with the children. Shortly after the move, Minna-Marie changed and no longer wanted the children to be in the United States. In December 2021, she applied for the children to be extradited in accordance with the provisions of the Hague Convention and claimed that he had kidnapped them. He then had to contact the Ministry of Foreign Affairs and explain the situation. Initially after the move, he tried to ensure that the children had contact with their mother through video calls. He suggested times often, taking into account the needs of the children and their routines. Due to the conflict between the parties, he also enlisted the help of his mother in the talks. Minna-Marie's aunt Pia also helped and mediated. However, Minna-Marie could not adapt to the children's needs. During a video call in May 2021, he heard Minna-Marie urging S██████ to sit alone so that he would not hear. Then she said "Dad is going to jail, he has kidnapped you and it is so that I will have another child now". S██████ was very negatively affected by the conversation and received, among other things: outbreak after the conversations with his mother and regressed in his development. Therefore, and because the parties have not been able to agree on what the contact should look like, there has been a longer break in the contact between Minna-Marie and the children. Even after the move, there have continued to be reports of concern regarding Minna-Marie, regarding e.g. that she was positive about cannabis in June 2021, that she abused for several years m.m.

**Reasons for Judgment:**

Minna-Mari Brandt has relied on written custody, housing and contact investigation, quick information, referral confirmation, text message conversation and decisions from the Swedish Tax Agency on population registration. At her request, a free interrogation of parties has been held with herself and an interrogation of witnesses with Wanja Lind at Beroendecentrum.

Damian Caracciolo has relied on custody, housing and contact inquiries and extracts from text messages as written evidence. At his request, free interrogation of the parties has been held with himself and interrogation of witnesses with Minna-Marie Brandt's aunt Pia Jansson.

**The District Court's Assessment:**

The best interests of the child must be decisive in all decisions about custody, housing and contact. In assessing what is best for the child, special attention must be paid to the risk that the child or someone else in the family is abused or that the child is illegally abducted or detained or otherwise harmed and the child's need for a close and good contact with both parents (Chapter 6, Section 2a of the Parental Code).

In assessing whether the parents shall have joint custody or whether one of them shall have sole custody, the court shall, in accordance with the wording of ch. 5 § 2 st. Since 1 July 2021, the Parents' Code has paid special attention to the parents' ability to put the child's needs first and take joint responsibility in matters concerning the child, instead of the former parents' ability to cooperate in such matters. The parents must have joint custody in all cases where it is best for the child. Joint custody still presupposes, to

a certain extent, a functioning co-operation between the parents, as it is necessary for them to be able to take joint responsibility in matters concerning the child. However, the forms of cooperation can look different, and the extent of the contacts between the parents can vary. The important thing is that the parents can handle questions that arise and that a lack of cooperation or lack of joint responsibility does not affect the child in such a way that it is better for the child that a parent has sole custody. The focus should be on the child and the consequences for the child of the parents' actions. It should not be decisive what the parents' contacts look like, but to what extent they can solve issues in a way that is good for the child, without their actions affecting the child in a negative way. (see Bill 2020/21: 150 p. 133 f.).

It appears from the social services' investigation and the information provided by the parties themselves that they have for a long time had difficulty cooperating on issues concerning the children. The difficulties have accelerated and obviously affected the children in a negative way. At present, there are also major practical problems with joint custody, as Damian Caracciolo now lives in the United States. Joint custody is therefore not compatible with the children's best interests, but custody must be entrusted to one of the parents alone.

With regard to the question of which of the parents should have custody of the children, the district court makes the following considerations. The investigation shows that Minna-Marie Brandt has for a long time abused drugs and had problems with her mental health. During the spring and summer of 2021, a number of reports of unrest were made in connection with Minna-Marie Brandt. that her partner was

arrested for possession of a knife outside the shared home and that in June 2021 she came to the Women's Clinic at USO and was then perceived as heavily under the influence of drugs. During that investigation, the Social Services also considered Chapter 11 of the Social Services Act. § 1 which was made in the spring of 2021 to take care of the children according to LVU, but did not do this because the parties agreed that the children would go to the USA with Damian Caracciolo. According to what i.a. Wanja Lind has told us that Minna-Marie Brandt's situation has stabilized and she is now drug-free and leaves regular tests at the Addiction Center. According to the district court's assessment, however, there are still many uncertain factors regarding her ability to take good care of the children and give them a safe home. Various information has been provided about a relapse into drug abuse as recently as December 2021 and whether she is still exposed to violence in the relationship she is now living in. Some information has emerged about concerns also about Damian Caracciolo during that time as the parties lived together, but the risk factors identified are mainly linked to Minna-Marie Brandt. As far as the children's current situation in the USA is concerned, it appears from the information obtained by the social services via the American authorities and the assessment made on the basis of these that there is now no concern about his parenthood or suitability as a guardian. All in all, it is therefore clear that Damian Caracciolo is in any case more suitable as a guardian than Minna-Marie Brandt. The children have now also lived with him in the USA for almost a year and have a safer and more stable life there than they had before. Given the conditions they previously lived under, it would not be good for them to be uprooted and have to move again. The only concern

that the district court now assesses is regarding Damian Caracciolo is whether he is able to ensure that the children get a good contact with their mother. Since he kept the children in the USA in violation of the parties' agreement and their contact with his mother has since been sporadic, there is a certain risk that the children may lose contact with Minna-Marie Brandt if he has sole custody of them. In an overall assessment, however, the district court believes that the risk is not so great that it considers the other factors that suggest that he should have sole custody of the children. In view of what has emerged about his way of caring for his children, the district court also believes that it can be assumed that he will not risk the children's well-being by denying them the right to contact their mother. Overall, it is therefore best for the children that Damian Caracciolo has sole custody of them and his claim should therefore be approved in that part.

The parties agree that the children shall have the right to video contact with Minna-Marie Brandt in accordance with what she has requested and this is also compatible with the children's best interests. It must therefore be decided on contact in accordance with this. With regard to physical contact between Minna-Marie Brandt and the children, the district court believes that in view of the uncertainty factors that still exist regarding her abuse and the relationship she now lives in, it is too early to decide on this. Such contact is not out of the question in the future, but it requires that Minna-Marie Brandt can show that her social situation has been stable for a long time. Her request for contact in the summers must therefore be rejected. In the opinion of the district court, there are also no conditions for currently

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decide on a less extensive physical contact or contact in the presence of contact support.

How to Appeal, see Appendix 1

An appeal must be submitted to the district court no later than 21 April 2022. It must be addressed to the GOta Court of Appeal.

On behalf of the district court

Helen Persson



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**APPENDIX J**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA

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Case No. 3:22-cv-00304-KDB-DSC

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MINNA-MARIE BRANDT,

*Plaintiff,*

v.

DAMIAN CARACCILO,

*Defendant.*

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JOINT STIPULATION OF CONSENT TO  
EXERCISE JURISDICTION BY A  
UNITED STATES MAGISTRATE JUDGE

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In accordance with the provisions of Title 28, United States Code, Section 636(c) and Fed. R. Civ. P. 73, the parties in this case consent to have a United States magistrate judge conduct any and all proceedings in the case, including trial, order the entry of a final judgment and conduct all post-judgment proceedings.

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<u>/s/ Kelly A. Cameron</u>	<u>Minna-Marie Brandt</u>	<u>10/17/2022</u>
Counsel's Signature	Party	Date

<u>/s/ [Illegible]</u>	<u>Damian Caracciolo</u>	<u>10/17/2022</u>
Counsel's Signature	Party	Date

_____	_____	_____
Counsel's Signature	Party	Date

_____	_____	_____
Counsel's Signature	Party	Date

_____	_____	_____
Counsel's Signature	Party	Date

_____	_____	_____
Counsel's Signature	Party	Date

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**APPENDIX K**

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

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No. 3:22-CV-304

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MINNA-MARIE BRANDT,  
*Petitioner,*

vs.

DAMIAN CARACCIOLO,  
*Respondent.*

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TRANSCRIPT OF EVIDENTIARY HEARING  
BEFORE THE HONORABLE DAVID S. CAYER  
UNITED STATES MAGISTRATE JUDGE  
THURSDAY, NOVEMBER 10, 2022 AT 9:30 A.M.

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APPEARANCES:

On Behalf of the Petitioner:

Natalia L. Talbot, Esq.  
Kelly A. Cameron, Esq.  
Waldrep Wall Babcock & Bailey PLLC  
370 Knollwood Street, Suite 600  
Charlotte, North Carolina 27103

On Behalf of the Respondent:

James L. Epperson, Esq.  
Epperson Law, PLLC

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13657 Providence Road  
Weddington, North Carolina 28104

Minna-Marie Brandt - Appearing virtually via Teams

\* \* \* \* \*

M. BRANDT - DIRECT

[6] Q. And can you just describe what kind of education you've received or are receiving for that?

A. I have received Azure Authentication. It's like a foundation for Azure, and it's a Microsoft program. With it you remove on-prem services—and that would be routers and service disk and hardware—and I move it to the Cloud. And I create their physical network in the organization's or government's netting system up to the Cloud and sort it out for them.

Q. And are you currently receiving—I'm sorry. Enrolled to receive a certificate or some type of certification for your job?

A. Yes, I am.

Q. And when will you be finished with that?

A. This week, hopefully.

Q. Ms. Brandt, how do you know the respondent, Mr. Caracciolo?

A. He is a previous partner of mine.

Q. Where did you meet him?

A. In Sweden.

Q. And when did you meet him?

A. 2015.

Q. You said he was a previous partner of yours. Do you mean a romantic partner?

A. Yes, that's correct.

[7] Q. Did you have a romantic relationship with him in 2015?

A. Yes, I did.

Q. How long did that relationship last?

A. It's been sporadically. It's been on and off. I don't—I can't set a time limit on it. It's been very emotional during that time.

Q. You're not in a relationship with him now; is that correct?

A. Yes, that is correct.

Q. And were the two of you ever married?

A. No, we were not.

Q. Did you at any point live with Mr. Caracciolo?

A. During times when he visited Sweden, yes. We were—we were close.

Q. When you say you were close, do you mean you lived together?

A. He would visit me and my children and sometimes he would not even be with us. He would be in other cities in Sweden.

Q. Were there short periods of time where he lived with you and the children?

A. Yes, that is correct.

Q. Okay. We've discussed your children a little bit. How many children do you have with Mr. Caracciolo?

A. We have two children.

Q. And what are their names?

[8] A. S. and J.

Q. How old is S.?

A. S. is six years old and J. is three years old.

Q. S. is six. So he was born in?

A. 2016.

Q. 2016?

A. Yes, that is correct. Yes.

Q. And J. is three. So she was born in 2019?

A. Yes, that is also correct.

Q. Let's talk about S. a little bit. Where was S. born? A. S. was born in Sweden in Orebro. And it is the same hospital that his sister was born at too.

Q. Is S. a Swedish citizen?

A. Yes, he is.

Q. Did you receive a population register certificate from the tax agency in Sweden showing you that he's a Swedish citizen?

A. Yes, I did.

Q. When S. was born, you say you were living in Orebro. Am I pronouncing that correct?

A. Yes, you are.

Q. Was Mr. Caracciolo living with you at that time?

A. Not the entire time, no.

Q. How long did he live with you when S. was born?

A. I think it was three to four months around his birth, [9] and then—it's been sporadically back and forth.

Q. When you say “sporadically back and forth,” was Mr. Caracciolo visiting you and staying with you and then sometimes traveling away? Is that what you mean by “sporadically”?

A. Yes, I do. And also, that our relationship was—it was really bruised. I really never knew where I had him, if we were on or off or if he was angry or not. So both emotionally and physically it was really sporadically, yes. It was a toxic relationship.

Q. All right. Let’s turn to J. You mentioned J. is three. Where was -

A. Yes.

Q. Where was J. born?

A. In Orebro, Sweden.

Q. Okay. Same place as her brother?

A. Yes, that is correct.

Q. And is J. a Swedish citizen?

A. Yes, she is also.

Q. Did you receive a population register certificate from the Swedish tax agency showing you that?

A. Yes, I did.

Q. Okay. And just to be clear, when did you receive that certificate?

A. This year.

[10] Q. Okay. When J. was born, were you living – were you and S. and she living together in Sweden?

A. Yes, we were.

Q. Okay. Was Mr. Caracciolo living with you at that time?

A. He came and stayed during J.'s birth, same as he did with S., and then he left.

Q. How long would you say he was living with you, J. and S. after she was born?

A. Approximately until she was three months.

Q. When J. and S. lived with you, did you also take care of them?

A. Yes, I did, of course.

Q. What kind of care did you provide J. and S. when they lived with you?

A. Well, of course, love and a warm home, food, clothes, school, school fees like daycare. I paid for activities, toys.

MR. EPPERSON: Objection at this point, Your Honor. I don't know how that's relevant to what the inquiry is about today.

THE COURT: How is that relevant, Ms. Talbot?

MS. TALBOT: Sure, Your Honor. One of the elements that we must prove the children were habitual residents of Sweden. Part of that analysis, according to the Supreme Court, is where the children are most at home. I'm just [11] eliciting the testimony that the children were at home in Sweden prior to them coming to the United States getting things going to school and food and clothes and living in a home and that type of thing.

THE COURT: Well, I'll allow it to this extent.

MS. TALBOT: May I proceed?

THE COURT: You may.

MS. TALBOT: Thank you.



BY MS. TALBOT:

Q. Ms. Brandt, did the children also receive medical care while they were in Sweden?

A. Yes, that is correct.

Q. And did J. receive any sort of medical care while she was in Sweden?

A. Yes. It is believed that we have a skin disease that is hereditary, and J. was showing signs of that when she was a child. She—she was supposed to go to a skin specialist here in Sweden and had a set date for when that last date would be to receive that care.

Q. Do you recall when that appointment was scheduled for?

A. I don't recall the exact date, but it was during 2021 and it was during the time they were kept in the U.S.

Q. And do you recall the month in 2021?

A. June – July.

Q. July?

[12] A. Yes, I believe that would be correct.

Q. Okay. Ms. Brandt, when the children lived with you, what was the custody arrangement between you and Mr. Brandt—sorry, Mr. Caracciolo?

A. I had sole custody of both the children. Damian had never had custody of our youngest child J.

MR. EPPERSON: Your Honor, I'm going to object as to her classification or characterization of custody. I don't think she's—I'm okay if she's going to testify to that as long as it's not a legal conclusion of custody

that she had physical care of the children. I think that's what she's really saying.

THE COURT: I'll overrule the objection.

BY MS. TALBOT:

Q. Ms. Brandt, you said that you had sole custody of the children. Did that change at some point? Did you at some point have joint custody with Mr. Caracciolo?

A. Yes.

Q. When did you have -

A. When Damian – when Damian returned to Sweden in the end of 2020, he asked for custody. So we agreed to have shared custody after that point, and we have had that until the March order in 2021 – 2022.

Q. You mentioned a March of 2022 order. What is your understanding of what that order said in terms of custody?

[13] A. The custody was to be solely given to Damian upon the children having a set time every Sunday to be able to talk to me.

Q. Okay. Prior to the March 2022 order, was there another order that was issued in 2021 that clarified the custody rights of yourself and Mr. Caracciolo?

A. Yes, that is correct. We had –

Q. When—Sorry. Go ahead.

A. I – I – I – I think you petitioned—I petitioned to get an interim decision regarding the custody order, and that interim decision states both Damian and I both have shared custody up until the March order.

Q. Just to clarify. Prior to the March of 2022 order, there was an interim custody order issued. Do you

recall when that order was issued, the approximate month and date?

A. I don't know. I'm sorry. I don't. I'm really stressed, so everything is just – I don't recall the exact date on that, no.

Q. Okay. But your understanding was that that order said that you and Mr. Caracciolo had joint custody of the children at the time?

A. Yes, that is correct.

Q. Okay. S. and J. were born in Sweden. Did they leave [14] Sweden at any point in time? Did they take trips?

A. Yes, they did.

Q. Where did they travel?

A. S. and J. traveled with Damian 2021 January to the U.S. so they could visit their grandparents. This was the first time J. went to the U.S. and this was the third time S. went to the U.S., if I'm remembering correctly.

Q. How long were they in the U.S. for that January of 2021 trip?

A. Up until February 14th. That would be about Valentine's Day.

Q. February 14th of 2021?

A. Yes, that is correct.

Q. When they returned from the U.S., did they continue to live with you in Sweden?

A. Yes, they still lived at our house with me.

Q. And you said that trip was to visit their grandparents; is that correct?

A. Yes, that is correct.

Q. And your understanding is that their grandparents live in North Carolina?

A. Yes, they do.

Q. After the January of 2021 trip, did you and Mr. Caracciolo discuss him taking another trip to the U.S. with the children?

[15] A. Yes, he did. He mentioned to me he wanted to take them to the U.S. again; and I said, no, that he'd have to go through Social Services and that agreement was supposed to be made there. And we did that. We had an agreement in front of a Social Services worker called Madelina.

Q. I'm sorry, Ms. Brandt. Can you repeat what you said? You said you had an agreement before a Social Services worker. Did you provide a name? I didn't catch that. A. We had. We made the agreement in front of a social worker called Madelina.

Q. That's the social worker's name?

A. Yes, that is correct.

Q. Madelina?

A. Yes.

Q. And when did that—when did that conversation with Madelina occur?

A. That was two weeks before Damian made the trip with the children.

Q. What month in 2021 was that, if you recall?

A. That would be March.

Q. So at some point in March you and Mr. Caracciolo had a discussion in front of Social Services

with Madelina regarding him taking the children to the U.S.?

A. Yes, for three-month trip.

Q. And you said you discussed a three-month trip?

[16] A. That is correct.

Q. Okay. So it was your understanding that Mr. Caracciolo would bring the children to the U.S. for three months and return them back to Sweden at the end of that three-month period; is that correct?

A. The agreement was that he would have three months on him to do the trip to the U.S. And if he decided he was going to do a shorter trip, that was fully allowed. The three months was limited because that is a visa limit for a non-U.S. citizen to visit the country.

Q. So the three months was a maximum amount of time. Is that what you're saying?

A. Yes, that is correct.

Q. Okay. Did you and Mr. Caracciolo agree upon exact departure and return dates for that trip?

A. No, we did not.

Q. Why not?

A. He—because it's so hard to get along with him sometimes. So I feel like I'm just letting him do him. So we said in the beginning of April—no—yes, in the beginning of April until the end of June, and that that was that because Damian wants to be in control of his own life.

Q. So your understanding was that the children would leave with him in the beginning of April, travel to the U.S., and

[20] Q. What type of plans did you make?

A. We prepared to move from the town we were living in to a bigger town that we had lived in before—that would be Orebro—to return to all of the familiars that we had there. And I still was waiting for a response from the health care. I had received calls from the school and made appointments to get them into school when they returned here.

Q. After you had that conversation with Wendy, did you attempt to contact Mr. Caracciolo again?

A. Yes, I have.

Q. And was that also through Facebook and email and text message that you mentioned earlier?

A. Yes, that is correct.

Q. Okay. At any point did Mr. Caracciolo tell you that the children were not returning to Sweden?

A. Yes, he did.

Q. And on July 7th of 2021, did the children return to Sweden?

A. No, they did not.

Q. What did you do when you realized they were not going to return?

A. I—I honestly did not know what to do. So I went to the police station and from there they explained to me how the process -

MR. EPPERSON: Objection.

[23] Q. So if the children return, you said you will file. When they return, will you have custody of the children?

A. No. No. No.

Q. And why is that?

A. Because Damian—because we have already had custody—a custody battle, and Damian was granted custody because the children cannot be forced back here through Swedish law.

Q. So you said –

MR. EPPERSON: I'm going to object, Your Honor.

THE COURT: Sustained.

BY MS. TALBOT:

Q. So you said that if the children returned you will file. Can you explain what you mean by that? What are you going to file?

A. The Swedish law is that during –

MR. EPPERSON: Objection.

THE WITNESS: —a custody battle –

THE COURT: Sustained.

THE WITNESS: —a child can live—

THE COURT: I'll sustain the objection. Hold on until the next question, ma'am.

THE WITNESS: Okay.

BY MS. TALBOT:

Q. Ms. Brandt, what is your intent to file? What do you plan to file?

[24] A. A custody order.

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Q. Do you mean a petition or a custody order?

A. Oh, yeah, a petition.

Q. Okay. A petition for what?

A. For custody.

Q. Okay.

MS. TALBOT: Your Honor, if I may have a moment.

THE COURT: Yes, ma'am.

MS. TALBOT: Thank you. Your Honor, I have no further questions at this time.

THE COURT: Mr. Epperson.

MR. EPPERSON: Thank you.

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