International Family Law

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Recommended Citation
The International Law Year in Review: Family Law

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I. International Litigation

A. THE HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION (“THE CHILD ABDUCTION CONVENTION”)

Most United States (US) international family law litigation involved the Child Abduction Convention and its implementing legislation, the International Child Abduction Remedies Act (ICARA).1 US federal and state courts have concurrent jurisdiction to decide a request for return of a child under the Convention.

The Child Abduction Convention operates to promptly return children to their habitual residence. To obtain an order returning the child, a petitioner must prove that the child was wrongfully removed from or retained outside of the child’s “habitual residence” and that the petitioner had “a right of custody,” which he/she was “actually exercising” (or would have exercised, but for the abduction), under the law of the child’s habitual residence.2

1. Applicability of the Abduction Convention

The Child Abduction Convention only applies to countries that have ratified or acceded to it, and between countries that have accepted the other as a treaty partner. It cannot be made applicable to a case by the parties’ stipulation. The Convention ceases to apply when the child in question turns age sixteen.3 A retention or abduction occurs at a particular moment in time and if that time was before the United States recognized the other country’s accession to the Convention, then the Convention is not applicable.4

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2. Id.
3. Id. art. 4.
A court can rarely decide whether a child should be returned or not based on the pleadings filed with the court because most of the determinations require an analysis of the facts.5

2. Child’s Habitual Residence

a. Intent Cases

The Child Abduction Convention does not define the term “habitual residence.” Therefore, courts have made this fact-based determination in a number of cases, leading to a split among the circuits as to its definition. The majority view, pioneered by the Ninth Circuit, looks to the parents’ shared intent in determining their child’s habitual residence. In one case, a Cuban mother seeking political asylum in the United States was required to send her son back to his father in Canada because both parents were political refugees who abandoned Cuba with the intent to settle in Canada.6 In another case, the parents and child left El Salvador intending to enter the United States illegally.7 The parents were deported but the child remained with an aunt.8 The parents’ actions clearly indicated they abandoned their habitual residence in El Salvador, which meant the child had a habitual residence in the United States and therefore the parents’ action to seek the child’s return to El Salvador was rejected.9

In a North Carolina case, the court determined that most of the evidence indicated that the child’s stay in the United States was not intended to be permanent.10 The mother obtained employment and enrolled the child in preschool upon arriving in the United States.11 However, before leaving Sweden, she enrolled the child in a Swedish preschool, signed a tenancy agreement with the father that allowed her to seek a housing allowance from the Swedish government, maintained a Swedish bank account, continued to receive a child benefit from the Swedish government, and the child remained enrolled in the Swedish health system.

To the same effect is a Louisiana case, where the court found that the parents’ shared intent was not to relocate the children from Bangkok, Thailand to New Orleans.12 Instead, the father initially communicated to the mother that the New Orleans trip was a vacation to see the children’s grandparents—consistent with past summer visits. Before this trip, both children resided in Thailand for six years. Both children went to school in Thailand and lived with their parents there. The court concluded that the

8. Id.
9. Id. at 832.
11. Id. at 556.
parents never agreed on changing the children’s habitual residence from Thailand to the United States. In determining whether the parties agreed to change the child’s habitual residence, the court must often sort through conflicting testimony. In a Texas case, the court concluded based on conflicting testimony that the parents mutually agreed to move to Mexico either permanently or at least for an indefinite duration, and that they made “a joint decision” to raise the child in the new country and therefore changed the child’s habitual residence to Mexico. If the court is unable to determine credibility when analyzing their intent, the court must resort to other facts to determine the parents’ probable intent.

An Arizona court determined that it is entirely possible that the parties intended one child to live in Canada and the other to live in the United States. Therefore, the Court returned one child to Canada with the other child staying in Arizona.

b. Acclimatization Cases

The Sixth and Eighth Circuits continue to adhere to the doctrine that a child’s perspective determines his habitual residence. However, the Sixth Circuit recently held that in cases involving very young children it would be appropriate to use the shared parental intent standard. In another Sixth Circuit case, the child’s “habitual residence” was Italy rather than the United States, supporting the father’s petition for return of the child to Italy. The child was born in Italy and resided there exclusively until her mother took her to the United States when she was eight weeks old.

The Sixth Circuit overturned a district court ruling that if a child has been wrongfully taken from the United States, a habitual residence can never be established in the abducted-to country regardless of the time spent there. This fact, the appeals court said, cannot outweigh the child’s acclimatization to the new country, at least when the left behind parent has failed to pursue procedures under the treaty to have the child returned.

13. Id.
18. Id.
21. Id. at 879.
23. Id.
One court noted that in a wrongful retention case, it is necessary to date the point in time when the abduction/retention occurred.\(^{24}\) The Court determined an abduction/retention to exist when the non-abducting parent is clearly on notice that the abducting parent does not intend to return the child from the country to which the child was taken.\(^{25}\) The period prior to the point in time when the abduction/retention occurred is when it is to be determined whether the child is acclimatized to the new country.\(^{26}\)

3. **Rights of Custody and Their Exercise**

a. **Rights of Custody**

A removal or retention is only wrongful if the left-behind parent had a right of custody and was “actually exercising” that right at the time of removal, or would have exercised that right but for the removal.\(^{27}\) A right of visitation does not constitute a right of custody and most federal courts will not enforce such rights.\(^{28}\) While normally the petitioner is the left behind parent, rights of custody can exist in public bodies and institutions.\(^{29}\)

The Mexican doctrine of *patria potestas* confers a right of custody upon parents of a child.\(^{30}\) Such a right is not extinguished by a divorce decree unless the decree specifically so provides.\(^{31}\) In Ireland, an unwed father has a right of custody by living with their child’s mother for at least twelve consecutive months, three of which occurred after the child’s birth.\(^{32}\) His absence for overnight work did not require the time period to begin again.\(^{33}\) The mother’s contention that her child’s father lacked custody rights is belied by the fact she had him sign a “temporary consent” allowing her to bring the child to the United States for what he thought was a short visit.\(^{34}\)

When a sole custodian father dies and the court appoints the child’s paternal uncle as custodian, the child’s mother does not have a right of custody.\(^{35}\) When the parties’ divorce decree ordered the husband to have custody of the children until the end of March 2017, whereupon the mother would then have custody, the father’s right of custody expired on that date.\(^{36}\)

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25. Id. at *13.
26. Id. at *12.
27. Id. at *7-8.
31. Id.
33. Id.
Therefore, the mother’s removal of the children after that date was not wrongful because it did not violate a right of custody.\textsuperscript{37} In an unusual case, an American father argued that the Dominican mother was not a parent, but rather was a surrogate, and therefore had no custody rights.\textsuperscript{38} The court rejected the father’s argument.\textsuperscript{39}

\textbf{b. Exercise of the Right to Custody}

Normally the question of whether a parent was exercising his/her custody rights is not an issue in the case. However, in one case, a father failed to establish that he was exercising his custodial rights under Turkish law at the time of the children’s removal by their mother to the United States.\textsuperscript{40} The father was a dual American-Turkish citizen. The custody rights at issue were the right to withhold consent to the children’s removal from his home, and/or his right to determine the children’s religious education. The father provided financial support to his estranged wife and children. However, the father largely acquiesced to the removal of the children from his home, did not maintain a physical presence in the children’s lives, did not provide them with physical care, and had not visited the children in America. There was no evidence showing that the father communicated his ideas regarding the children’s religion at any time.\textsuperscript{41}

\textbf{4. Defenses}

There are a number of defenses that a respondent may assert in arguing that a child should not be returned to the child’s habitual residence.

\textbf{a. Child is Settled in His/Her New Environment}

Article 12 of the Child Abduction Convention provides that authorities need not return a child if more than one year has elapsed between the child’s abduction or retention and the child is now settled in the child’s new environment.\textsuperscript{42} The one-year period runs from the date the retention or removal became “wrongful.”\textsuperscript{43} The factual findings used in determining the “now settled” defense are reviewed under the clear error standard. A trial court that dismissed a return petition because it was filed more than one year after the abduction without determining whether the child was settled must be reversed and remanded to make that determination.\textsuperscript{44}

\begin{itemize}
  \item \textsuperscript{37} Id.
  \item \textsuperscript{38} Duran-Peralta v. Luna, 16 CIV. 07939 (JSR), 2017 WL 2558758, at *3 (S.D.N.Y. May 30, 2017).
  \item \textsuperscript{39} Id. at *2.
  \item \textsuperscript{40} Leonard v. Lentz, 297 F. Supp. 3d 874, 885 (N.D. Iowa 2017).
  \item \textsuperscript{41} Id. at 888.
  \item \textsuperscript{42} Castellanos Monzon v. De La Roca, 731 Fed. Appx. 117, 118 (3d Cir. 2018).
  \item \textsuperscript{43} Id.
  \item \textsuperscript{44} Id.
\end{itemize}
i. Child Not Returned

In a Minnesota case, the court refused to return the children to Israel.\(^{45}\) The petition was filed more than one year after the abduction and the father’s testimony that the delay was due to his inability to locate the mother was, the court decided, not credible. The children are now fluent in English and well integrated into their school.

ii. Child Returned

On the other hand, a New Jersey court\(^{46}\) found that the child was to be returned to Ecuador even though more than one year had passed before the filing of the return petition. The most convincing factors were that most of the child’s family lived in Ecuador, the child was only seven years old, and the child and mother have an uncertain immigration status.

b. Grave Risk of Harm/Intolerable Situation

i. Defense Not Sustained

Under Article 13(b), a court need not return a child if 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.”\(^{47}\) Such a defense cannot be decided on a motion to dismiss but requires an evidentiary hearing.\(^{48}\)

A California court decided that this defense cannot be sustained unless (1) the foreign court is incapable of or unwilling to adequately protect the child; and (2) there is no alternative remedies that California could implement to avoid or minimize the risk of harm that would otherwise exist and still allow the child’s return to the foreign country.\(^{49}\) When faced with conflicting testimony between the petitioner and the respondent, the court can only make its determination based on the credibility of the parties.\(^{50}\) Given the respondent’s high burden of proof for this defense, the usual result is the child being returned.\(^{51}\)

The child’s comfort level in his current environment is not a basis for the refusal to return the child.\(^{52}\) “Whatever re-adjustment period the child may have to undergo in” . . . {the habitual residence} . . . is not considered a

\(^{47}\) Id. at *8.
\(^{50}\) Saltos, 2018 WL 3586274, at *1.
\(^{51}\) Alvarado, 2018 WL 3715753, at *6.
“grave harm” under the Convention.”\textsuperscript{53} “It is an unfortunate consequence that nearly every child wrongfully removed \{will\} experience.”\textsuperscript{54}

A Honduran mother argued that the Honduran courts, which favor fathers in custody cases, created an intolerable situation because gender discrimination is incorporated into the country’s laws.\textsuperscript{55} The argument was rejected because she failed to show how this would harm the child and failed to explain how Honduran law creates an intolerable situation for the child. The court found there was no credible evidence that the father harmed the child or threatened to harm the child.\textsuperscript{56} In another case, evidence that the Arizona school system can better cope with a child’s dyslexia than the Italian school system, along with the father smoking marijuana, was insufficient to constitute a grave threat to the child.\textsuperscript{57}

Although harm to the child is required under 13(b), most courts recognize that sustained spousal abuse can, in some instances, create such a risk. Where a court considers spousal abuse and finds it does \textit{not} create a grave risk to the child, the appellate court will affirm unless the factual findings are in clear error and there is an abuse of discretion.\textsuperscript{58}

In a North Carolina case, a mother failed to make out a 13(b) defense because she was unable to produce sufficient evidence that El Salvador was a war zone.\textsuperscript{59}

\textit{ii. Defense Sustained}

In the Second Circuit, the 13(b) defense was sustained when there was overwhelming evidence of the father’s extreme violence and uncontrollable anger, as well as his psychological abuse of the mother over many years, much of which was witnessed by the child.\textsuperscript{60}

In Michigan, a court refused to return children to Mexico when both the petitioner and respondent had moved to the United States and the children voiced fears about being returned to a country where neither of their parents lived.\textsuperscript{61} In Montana, a court refused to return children to Mexico because the father’s emotional and physical abuse of the mother, witnessed by their sons, presented a grave risk of psychological harm to the boys.\textsuperscript{62} However, if the father could show that protections available in Mexico will reduce threats to the children’s safety, they might someday be returned.

\textsuperscript{53} Id.
\textsuperscript{54} Id.
\textsuperscript{56} Id.
\textsuperscript{58} Soto v. Contreras, 880 F.3d 706, 712 (5th Cir. 2018).
\textsuperscript{60} Davies v. Davies, 717 Fed. Appx. 43, 48-49 (2d Cir. 2017).
iii. Conditional Returns

In Virginia, a court determined that the mother's extraordinary use of drugs created an unreasonable risk of harm.\(^\text{63}\) However, the child was still to be returned to the habitual residence if the parties could agree to undertakings that would protect the child that would be enforced by the Canadian courts. Another district court noted that a court only has the power to order a child returned to a particular jurisdiction.\(^\text{64}\) A court does not have the power to dictate who should exercise custody over the children during their travel back or upon their arrival.\(^\text{65}\)

c. Mature Child's Objection

In applying this Article 13(b) defense, courts must consider whether the child objects to being returned to the country of the child's habitual residence and not whether the child has a preference to live in a specific country.\(^\text{66}\) This issue is subject to review under the clear error standard.\(^\text{67}\) In Michigan, the court refused to return children to Mexico when both the petitioner and respondent had moved to the United States and the children voiced fears about being returned to a country where none of their parents lived.\(^\text{68}\)

In Idaho, the court returned a fifteen-year-old to England because, although mature, the child:

[Had] not acquired close friendships here, and spends much of his free time doing solitary indoor activities, which is what he did in the United Kingdom. There is no evidence that he is having unique experiences here that he could not have in the United Kingdom. He had no strong pre-removal desire to come to the United States, but testified that he made up his mind to leave with his mother just prior to coming here. Importantly, he testified that if he was returned to the United Kingdom, he was not sure whether he would return to the United States when he turned sixteen.\(^\text{69}\)

Another court refused to return a fifteen-year-old to Italy because the child appeared to be unduly influenced by her mother when he objected.\(^\text{70}\)

\(^\text{66}\) Custodio v. Samillan, 842 F.3d 1084, 1089 (8th Cir. 2016).
\(^\text{67}\) Id. at 1090.
\(^\text{68}\) Neumann, 310 F. Supp. 3d at 836; see also Kovacic v. Harris, 328 F. Supp. 3d 508, 526 (D. Md. 2018) (fifteen-year-old girl did not have to be returned to Croatia because she preferred to stay in the US and her reasons were well thought out and articulate).
\(^\text{69}\) Smith v. Smith, No. 1:17-CV-489-BLW, 2018 WL 953338, at *4 (D. Idaho Feb. 20, 2018; see also Saltos, 2018 WL 3386274, at *1 (seven-year-old girl's preference not to be returned to Ecuador not followed because she was under the influence of her mother).
\(^\text{70}\) Von Meer, 2018 WL 1281949, at *5.
d. Human Rights and Fundamental Freedoms

Article 20 provides that the return of a child “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.” As usual there were no cases discussing this defense.

e. Consent/Acquiescence to the Removal

A mother’s consent that the children live with their father in the United States on the implicit condition that she would be joining them as soon as she received a visa did not establish her consent that the children should live permanently in the United States.

In Tennessee, a court found that the father/petitioner had filed the Hague return proceeding to avoid divorce and custody proceedings in Tennessee and forced the mother/respondent into the difficult position of having to pursue proceedings in father’s preferred forum in Canada. Although the court did not expressly hold that this use of the Hague Convention to “forum-shop” disqualified petitioner from succeeding in the case, it did state that in its opinion it ought to do so.

5. Other Issues under the Child Abduction Convention and ICARA

a. Attorney’s Fees

A trial court reduced the amount of attorney fees because the lawyer was inexperienced in Hague return proceedings and, although an admitted expert in intellectual property, he was not warranted in charging the same fee that he would in those cases. Therefore, his hourly fee was reduced from $850 to $400. Another federal court held that the fees charged by an attorney experienced in Hague return cases who sat second chair while an associate successfully tried the case must be deducted from the final bill.

One federal court reduced the requested fee by one-third because an award of all fees would be over 80% of the respondent’s annual salary before taxes, which “would be a substantial burden on anyone let alone a parent who does not have permanent status in her child’s resident country.” In

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74. Id. at *11.
75. Duran-Peralta, 2018 WL 1801297, at *3.
76. Id. at *6.
Louisiana\textsuperscript{79}, a court reduced the mother’s attorney fees request by one-third given the comparative economic resources of the parties. Moreover, in Oklahoma, a court awarded the petitioner $5,583.30 out of the $28,989.44 requested because of the extreme discrepancy in finances between the parents.\textsuperscript{80} The entire award was for costs incurred by the petitioner and none was for attorney fees.

An abducting mother must pay the expenses incurred by the father’s lawyer, even though the attorneys provided their services for free.\textsuperscript{81} But, the fact that the attorney provided his/her services pro bono can be a factor in reducing the total amount of the fee.\textsuperscript{82}

An abducting mother’s “good faith” belief that she is permitted to remove her son from the Czech Republic without the father’s consent is not a defense to the father’s request for fees in a successful return action.\textsuperscript{83} A father’s request for a $58,600 fee award was cut by three-quarters because the requested award would have a negative effect on the mother’s ability to care for the child, given that the father will not pay child support.\textsuperscript{84}

If a child is voluntarily returned, there is no authority to provide for attorney fees.\textsuperscript{85}

Attorney fees awarded in a proceeding under the Child Abduction Convention cannot be discharged in bankruptcy.\textsuperscript{86}

b. Procedural Issues

A voluntary return moots a return proceeding.\textsuperscript{87} A court, however, does not lose jurisdiction to enforce its own order.\textsuperscript{88} Nor does a court lose jurisdiction when the petitioner moves permanently to the country when the respondent abducted the children.\textsuperscript{89}

c. Stays

If the state court will not decide all the issues, it is appropriate for the federal court to order a stay in the state court proceedings until the federal


\textsuperscript{82} Duran-Peralta, 2018 WL 1801297, at *2.

\textsuperscript{83} Rath v. Marcoski, 898 F.3d 1306, 1312 (11th Cir. 2018); see also Sundberg, 2018 WL 1220576, at *3.


\textsuperscript{86} In re Coe, No. 16-13895-BFK, 2017 WL 5054312, at *3 (Bankr. E.D. Va. Nov. 2, 201.

\textsuperscript{87} Garcia, 2017 WL 6757647, at *2.

\textsuperscript{88} Duran-Peralta, 2018 WL 637420, at *1.

\textsuperscript{89} Neumann, 310 F. Supp. 3d at 834.
court can determine the abduction claim. But, a state court need not automatically stay its own proceeding when informed of a Hague return proceeding if it is clear that the Child Abduction convention does not apply. Any error becomes harmless when the federal abduction proceeding is ended by summary judgment in favor of the respondent.

d. Temporary Restraining Orders

A petitioner seeking a preliminary injunction must establish that he or she is likely to succeed on the merits, that he or she is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his or her favor, and that an injunction is in the public’s interest. Of particular importance is the past history of respondent in secreting the child. Another major consideration is whether there is a risk of the respondent removing the child to a country that is not a party to the Child Abduction Convention.

However, when the allegations in the petition for return are merely conclusory on habitual residence and rights of custody, a court may properly deny a temporary restraining order because it is not clear that the petitioner would prevail on the merits.

e. Relationship to the UCCJEA

The question of whether a United States court should recognize a foreign court’s refusal to return the child is a question of comity. But, a foreign court’s decision on the return question does not decide custody and therefore does not deprive a United States court of jurisdiction to decide the custody of the child.

93. See Smith, 2017 WL 6040068, at *2 (TRO is especially appropriate when the abductor has moved several times to prevent service of process); Calixto on behalf of M.A.Y. v. Lesmes, No. 8:17-CV-2100-T-33JSS, 2017 WL 3877650, at *1 (M.D. Fla. Sept. 5, 2017).
97. Id. at *5.
f. Other Procedural Issues

It is usually never appropriate for a federal court to abstain from deciding an abduction case merely because a proceeding for custody had been previously filed in state court. Abstention is only proper if the state proceeding will decide all the issues in the abduction case.

A federal court has the authority to allow the left-behind parent to testify remotely. Normally such a request will be granted, and documents relating to the custody proceeding in the foreign country should be admitted via certificates or affidavits.

B. The Hague Service Convention

Failure to follow the procedures of The Hague Service Convention means that New York can refuse to enforce a Greek child support order. It also means that service of process on a Greek husband by mail when Greece objects to service by mail makes the service insufficient and requires dismissal of the Delaware divorce.

C. The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters

The continuing saga of the attempts of a German divorce court to obtain information from an American husband continued in In Re Mutual Assistance of Local Court of Wetzlar, Germany, where the court issued an order compelling the husband to comply with subpoenas issued by the US attorney’s office.

99. See id.
106. See id. at *2-3 (denying the motion to seal the United States application for appointing a commissioner and appointing an Assistant US attorney as a commissioner).
D. THE HAGUE CONVENTION OF 19 OCTOBER 1996 ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN

This Convention has been signed by the United States, but it has not been ratified. In a very startling decision, the Washington Court of Appeals applied the Convention.\(^\text{107}\) The father in that case convinced an Italian tribunal to take “urgent measures” under Article 11 of the Convention.\(^\text{108}\) The Italian court did so and the husband asked the Washington court to enforce the order. The trial court in Washington determined that it had jurisdiction to make a custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act and declined to enforce the Italian order.

The appellate court noted that Article 11 also limits the duration of urgent protective measures taken under it:

(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.\(^\text{109}\)

The appellate court determined that the Italian urgent order lapsed under the Convention because Washington is the habitual residence of the child and took the measures required by the situation. The court appeared not to understand the difference between being a member of the Hague Conference on Private International Law and ratifying one of the Conference’s conventions.\(^\text{110}\)

E. OTHER CASES INVOLVING INTERNATIONAL FAMILY LAW LITIGATION

1. Marriage and Divorce

An Italian woman, unable to personally appear in her husband’s Massachusetts divorce action, should have been allowed to testify electronically.\(^\text{111}\) In Texas, when service has been by publication and the defendant does not appear, the court must appoint an attorney to represent the defendant.\(^\text{112}\) The failure of the trial court to do so meant that a Texas

\(^{108}\) Id. at 991.
\(^{109}\) Id. at 993
\(^{110}\) In re Marriage of Long & Borrello, 421 P.3d at 993.
husband’s divorce against his Kyrgyzstan wife was vacated and the case remanded for a new trial.\textsuperscript{113}

2. \textit{Children’s Issues}

a. Custody

i. \textit{Jurisdiction and Enforcement}

\textit{Home State}

New York has no jurisdiction to hear an original child custody determination when the child’s home state is Pakistan.\textsuperscript{114} When Germany had home state jurisdiction and had not declined to exercise it when the termination petition was filed, the North Carolina trial court could not have jurisdiction under the UCCJEA.\textsuperscript{115}

Oregon adopted the totality of the circumstances test, rather than the duration test or the intent test, to determine whether the child’s absence from Indonesia was a “temporary absence” within the meaning of the Uniform Child Custody Jurisdiction and Enforcement Act or whether the child’s stay in Indonesia was long enough to qualify Indonesia as the child’s home state.\textsuperscript{116} Illinois followed suit in a case involving Illinois and Canada and determined that the parties’ three years in Canada were temporary, especially given the parties agreement that the United States was the child’s habitual residence.\textsuperscript{117}

Minnesota determined that the six months extended home state period does not begin to run until the left-behind parent had reason to recognize the permanency of the out-of-state absence.\textsuperscript{118} Therefore, when the mother took the children to Japan, the six-month period did not begin until four months after her departure when it became clear that she was not going to return.\textsuperscript{119}

\textit{Significant Connections}

Oregon adopted the totality of circumstances test to determine whether an absence is temporary and therefore had significant connections.

\textsuperscript{113} \textit{Id.} at *3.
\textsuperscript{114} Sadia I. v. Waquas I., 68 N.Y.S.3d 380 (N.Y. Fam. Ct. 2017); \textit{see also} Ramamoorthi v. Ramamoorthi, 918 N.W.2d 191, 196 (Mich Ct. App. 2018) (Michigan does not have jurisdiction to determine the custody of children when their home state is India); Banergee v. Banergee, 2017 WL 6347988 (La. Ct. App. 2017) (Louisiana does not have jurisdiction over children who have lived their entire life in India).
\textsuperscript{116} \textit{In re} Marriage of Schwartz and Battini, 410 P.3d 319, 325 (Ore Ct. App. 2017).
\textsuperscript{117} \textit{In re} Marriage of Milne, 2018 IL App (2d) 180091, ¶ 36, 109 N.E.3d 911, 921 (Aug. 2, 2018).
\textsuperscript{118} Cook v. Arimitsu, 907 N.W.2d 233, 239 (Minn. Ct. App. 2018).
\textsuperscript{119} \textit{Id.} at 241.
jurisdiction in a case where the mother, a United States citizen from Oregon, and father, a French national, were married in France in 2010.120 In March 2011, the parties came to Oregon to stay with the mother's family shortly before she gave birth to the child in April of the same year.121 After the child's birth, the parties bounced between Oregon, France, and Indonesia, staying no more than seven months in one place. The parties remained in Oregon until the child was five or six months old, at which time they traveled to Aixen-Provence, France, where they stayed for five months. They then returned to Oregon for three months. Next the family went to Bali, Indonesia, where the mother's parents have a home in which they live half time. The parents and child:

stayed for two months and followed up with a trip to Paris, where they remained for seven months. They then returned to Bali, where they remained for almost six months. Then, on September 27, 2013, mother flew from Bali to the United States to see friends and family. Father remained in Bali but relocated to Singapore shortly thereafter. The parties had been contemplating moving to Singapore, where father had been pursuing employment, but were also contemplating a move to New York.122

Emergency
While Hawai'i properly exercised temporary emergency jurisdiction over a child whose home state was Canada, it should have vacated the order once an order was obtained from Canada.123

Modification
Washington appropriately modified an Italian order when the Italian court determined that it no longer had jurisdiction and Washington had significant connection jurisdiction.124 In addition, no other state could exercise jurisdiction.125

Forum Non Conveniens
New Jersey appropriately declined jurisdiction in favor of Canada where the child resided for several years pursuant to the parties' settlement agreement.126 A New York court should not decline jurisdiction in favor of Israel when the child had lived all its life in New York, even though the

121. Id. at 321.
122. Marriage of Schwartz and Battine, 410 P.3d at 335; see also Gorelick v. Gorelick 815 S.E.2d 330, 333 (Ga. 2018) (Georgia and Turkey are both significant connection states and since the Turkey proceeding was filed first Georgia must defer to it).
125. Id.
parties’ parenting agreement attempted to confer exclusive jurisdiction on the family court in Israel.\textsuperscript{127}

On the other hand, a dismissal of a petition for dissolution of marriage based on \textit{forum non-conveniens} was warranted in an action where Florida courts had jurisdiction over issues related to child under the UCCJEA but the dissolution of the marriage was being litigated in London.\textsuperscript{128} Although the trial court had jurisdiction over the issues involving the child, neither the parties nor the child had lived in Florida for over a year when the hearing was held, the parties owned no property in Florida, they had no family living in Florida, and no Florida witnesses had been identified.\textsuperscript{129}

Indiana enforced a custody order from Mali over the mother’s objection that Mali custody law violated fundamental principles of human rights.\textsuperscript{130} Her argument was rejected because the child custody decision was not based on the relative fault of the parties. Instead, the Malian court expressly stated that its decision was based solely on the best interests of the children, and it conducted an analysis of those interests not at all unlike the law of Indiana.\textsuperscript{131}

\hspace{1em} b. Relocation

A Pennsylvania appellate court affirmed an order prohibiting the mother from traveling to Russia because the United States and Russia “have had—and continue to have—a contentious relationship.”\textsuperscript{132} In Texas, a court determined that giving \textit{carte blanche} permission to the mother to control the child’s international travel to Kenya was contrary to the statute and reversed the order.\textsuperscript{133} In another case, a Florida trial court’s decision that a mother could take her child if she was ever deported to the Philippines was reversed for failure to consider all of the statutory factors.\textsuperscript{134}

Rhode Island prohibited a custodial mother from moving to Australia with her four children, even though it would have helped her financially to be living with her family.\textsuperscript{135} A court found that the children had “bonded” to Rhode Island because they lived in Rhode Island their entire lives.\textsuperscript{136} The court also noted that it took between 10 and 12 emails for the parents to arrange domestic visitation and questioned whether they could possibly arrange for international visitation.\textsuperscript{137}

But, Massachusetts allowed a mother to relocate to Germany with her child, over the father’s objection, because she has been the primary caregiver

\begin{itemize}
  \item \textsuperscript{128} \textit{DeStefanis v. Tan}, 231 So. 3d 537, 539 (Fla. Dist. Ct. App. 2017).
  \item \textsuperscript{129} \textit{Id.}
  \item \textsuperscript{131} \textit{Id.} at 921.
  \item \textsuperscript{133} \textit{Smith v. Karanja}, 546 S.W.3d 734, 741 (Tex. App.—Houston [1st Dist.] 2018, no pet.).
  \item \textsuperscript{134} \textit{Castleman v. Bicaldo}, 248 So. 3d 1181, 1183 (Fla. Dist. Ct. App. 2018).
  \item \textsuperscript{135} \textit{Ainsworth v. Ainsworth}, 186 A.3d 1074, 1084 (R.I. 2018).
  \item \textsuperscript{136} \textit{Id.}
  \item \textsuperscript{137} \textit{Id.}
\end{itemize}
and the move was in the child’s best interest.\textsuperscript{138} Minnesota approved an international joint custody arrangement whereby the child would attend school in Chile with the respondent for most of the year and spend breaks in Minnesota with the father.\textsuperscript{139}

c. Parentage and Child Support

A Saudi father who left Oregon when his student visa expired is nonetheless subject to the state’s jurisdiction in his wife’s child support action because the contacts formed with the state while the family lived there were sufficient.\textsuperscript{140} Colombia lost its continuing exclusive jurisdiction under the Uniform Interstate Family Support Act when both parents agreed to Missouri having jurisdiction.\textsuperscript{141}

California enforced an Italian child support order, finding that Italy was a state under the Uniform Interstate Family Support Act and had child support procedures equivalent to those under UIFSA.\textsuperscript{142}

d. Juvenile

In what seems like a unique case, New York determined that it could appoint a guardian for an undocumented transgender Honduran youth whose backpack is in Brooklyn, although the child is in an immigrant detention center in New Mexico.\textsuperscript{143} The child petitioned the court for appointment of a New York “friend and mentor” as her legal guardian for purposes of seeking Special Immigrant Juvenile Status under federal law.\textsuperscript{144} The court appointed such a guardian because under state law, a county family court may appoint a guardian for a “non-resident minor’s person or property, or both” if he or she “has property situated in that county.”\textsuperscript{145}

3. Other Cases

a. Criminal Law

In California, a defendant was convicted of violating a California statute that makes it a crime for “[e]very person who takes, entices away, keeps, withholds, or conceals a child and maliciously deprives a lawful custodian of a right to custody.”\textsuperscript{146} In that case, even though the initial removal of the

\textsuperscript{138} Miller v. Miller, 88 N.E.3d 843, 848 (Mass. 2018).
\textsuperscript{140} In re Marriage of Albar & Najjar, 424 P.3d 774, 779 (Ore. 2018).
\textsuperscript{141} Rosas v. Lopez, 536 S.W.3d 620, 625 (Mo. Ct. App. 2018).
\textsuperscript{142} Cima-Sorci v. Sorci, 225 Cal. Rptr. 3d 813, 822 (Ct. App. 2017).
\textsuperscript{144} Id. at 836.
\textsuperscript{145} Id. at 837.
\textsuperscript{146} People v. Jo, 224 Cal. Rptr. 3d 82, 102 (Ct. App. 2017).
child to South Korea may have been lawful, it became criminal when the defendant concealed the child from the father after the mother knew that the father had been awarded visitation privileges.

A federal court must give a detailed explanation for continuing the pretrial detention of a woman accused of kidnapping her children to Russia during a contentious divorce and remaining there with them for years. The woman’s allegation of domestic violence should be addressed when the district court reconsiders detention. The trial court would need additional details, other than the fact that she has dual US-Russian citizenship and a history of violating court orders.

A United Kingdom charge of child abduction criminalized the same essential conduct as United States international parental kidnapping. Thus, a fugitive’s extradition to the United Kingdom to face a charge of childhood abduction under United Kingdom’s Child Abduction Act of 1984—which outlawed removal of a child under the age of sixteen from one country to another by one parent in violation of a court order or in a manner that interfered with the other parent’s custodial or visitation rights—satisfied the extradition treaty's requirement of dual criminality. Both countries’ statutes outlawed the removal of a child under the age of sixteen from one country to another by one parent in violation of a court order or in a manner that interfered with the other parent’s custodial or visitation rights. Both were therefore punishable for a period of one year or more or by a more severe penalty.

Another chapter in the long running Miller-Jenkins saga came to an end when the Second Circuit upheld the conviction of Philip Zodhiates for aiding and abetting Lisa Jenkins in abducting the child and thus violating the International Parental Kidnapping Crime Act (“IPKCA”).

b. Torts

After proceedings in Israel concerning his divorce and child custody, a husband filed a civil complaint against the Rabbinical Courts of Israel for aiding and abetting in the kidnapping of his daughter, defamation, and intentional infliction of emotional distress. The State Department’s suggestion of sovereign immunity was accepted by the New Jersey courts.

c. Affidavit of Support

A Fijian wife’s contractual right to support under the federal affidavit filed by her husband in connection with her immigration to the US is enforceable

147. United States v. Mobley, 720 F. Appx 441, 444 (10th Cir. 2017).
148. Id. at 443.
150. Id. at 800–01; see also Fordham v. United States, No. 3:17-CV-00268-SLG, 2018 WL 832836, at *4 (D. Alaska Feb. 12, 2018) (denying mother’s habeas corpus petition).
153. Id. at 537.
in their state divorce action, even though she did not qualify for alimony due to the short length of the marriage.\footnote{154. In re Marriage of Kumar, 13 Cal. App. 5th 1072, 1083, 220 Cal. Rptr. 3d 863, 870 (Ct. App. 2017).} In determining income for purposes of deciding how much is owed under the affidavit of support, a woman’s food stamps are income and therefore reduce what her ex-husband must pay pursuant to the federal support affidavit he signed in sponsoring her immigration from Turkey.\footnote{155. Erler v. Erler, No. 12-CV-02793-CRB, 2017 WL 5478560, at *1 (N.D. Cal. Nov. 15, 2017).}