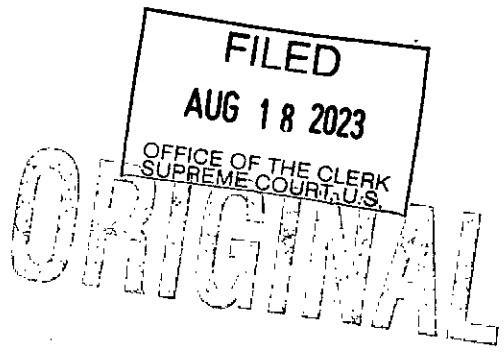
23-5425



ORIGINAL

No. 22-A-1078

IN THE
SUPREME COURT OF THE UNITED STATES

MARLON ABRAHAM ROSASEN,

Petitioner,

v.

THEA MARIE ROSASEN,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

According to the International Child Abduction Remedies Act ("ICARA") 42 U.S.C. §§ 11601-11610 (2000) and the Hague Convention on the Civil Aspects of International Child Abduction ("Convention"), a parent may file a petition for return of their Child to the child's country of habitual residence, if it appears that the child has been wrongfully abducted or retained.

First Question presented: Was the order to vacate trial ex-parte in chambers, revoking granted oral arguments and cross examination, Constitutional. *See Gitter v. Gitter,* 396 F. 3d 124, 131 (2d Cir. 2005), *Monasky v. Taglieri,* 140 S. Ct. 719, 723 (2020). *Troxel v. Granville,* U.S. 570 (2000).

Second Question presented: When the ameliorative measures imposed are ignored, and habitual residence since was found by the State Department to be the United States, what other remedies exists to restore fundamental rights and end emotional abuse, but to invoke the Convention's Article 18, return remedy. *See Washington v. Glucksberg*, 521 U.S. 702 (1997), held that the Constitution, and specifically the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to direct the care, upbringing, and education of their children, *See also Chafin v. Chafin*, 568 U.S. 165, 179 (2013), and *Mozes v. Mozes,* 239 F.3d 1067, 1078 (9th Cir. 2001)). *See* State Departments views. (App. D).

RELATED PROCEEDINGS

(A) Central District Court of California, (CD. Cal)

United States v. Marlon Abraham Rosasen

CD. Cal 16-cr-00502-JFW, July 18, 2016

(B) Los Angeles, Superior Court of California

Marlon Abraham Rosasen v. Thea Marie Rosasen

19STFL11397, Sept. 23, 2019

(C) Central District Court of California, (CD. Cal)

Thea Marie Rosasen v. Marlon Abraham Rosasen

CD. Cal 19-cv-10742-JFW, Dec. 19, 2019

(D) Los Angeles, Superior Court of California

Thea Marie Rosasen v. Marlon Abraham Rosasen

20STHC1000, Jan. 8, 2020

(E) Central District Court of California,

Marlon Abraham Rosasen v. Thea Marie Rosasen

CD.Cal 20-cv-01140, Feb. 4, 2020.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Marlon Abraham Rosasen respectfully petitions for a Writ of Certiorari to review the order of the United States Court of Appeals for the Ninth Circuit, (entered January 9, 2023) and denied En banc on March 21, 2023, holding that the March 31, 2020, Central District Court of California court order vacating scheduled bench trial, was lawful.

OPINIONS BELOW

The Memorandum of the United States Court of Appeals for the Ninth Circuit is not reported and is included in the Appendix. No opinion exists and the memorandum is unreported. The underlying final order of the United States District Court for the Central District of California is not reported and is included in the Appendix.

STATEMENT OF JURISDICTION

The Memorandum of the court of appeals, upholding the district court decision, on Jan. 9, 2023, Appendix A, (App. A). The March 31, decision to vacate trial is attached as (App. B). Petition for rehearing was denied March 21, 2023, (App. C). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

42 U.S.C. §§11601-11610 (2000), in relevant part: To establish procedures to implement the Convention on the Civil Aspects of International Child Abduction, done at the Hague on October 25, 1980., the ("Convention"). The Convention is implemented in the United States through the International Child Abduction Remedies Act ("ICARA"), 22 U.S.C. §§ 9001–9011, which in relevant parts states:

Article 1: *The objectives 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 to custody and of access under the law of one Contracting State are effectively respected in the other States.*

Articles 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.*

Article 5: For purposes of this Convention – **a)** "rights to 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.

Article 8: *Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the children.*

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 form the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

Article 13: *Notwithstanding the provisions of the preceding Article, if the judicial or administrative authority of the requested State determines wrongful removal or retention it 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.
Article 16: *After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.*

Article 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 III, Section 2 of the U.S. Constitution, in pertinent part:

The judicial power shall extend to all cases, in law and equality, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority: - to all cases effecting ambassadors, other public ministers and consuls; - to all cases of admiralty and maritime jurisdiction; - to controversies to which the United States shall be a party; -to controversies between two or more states; - between a state and citizens of another state; - between citizens of different states; - between citizens of the same state claiming lands under grants of different states, and between a state, or the citizen's thereof, and foreign states, citizens or subjects.

AMENDMENT XIV, Section 1, the U.S. Constitution in pertinent part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*

STATEMENT OF THE CASE

Petitioner, hereinafter "Father", and Respondent, hereinafter "Mother", married in the United States in 2013 and the twin children, United States citizens by birth, were born abroad in 2015. In 2016, the parties altered their habitual residence to California. As in *Chafin v. Chafin,* 568 U.S. 165 (2013), in this case, Mother described to friends and family that she lived and worked in the United States.

This case presents questions involving balancing the Hague Convention on the Civil Aspects of International Child Abduction (the "Convention"), also known as the International Child Abduction Remedies Act ("ICARA") 42 U.S.C. §§ 11601-11610 (2000), with the need to protect the Constitution. The Convention establishes uniform legal procedures to be employed when a child is abducted from one country to another. *See* 42 U.S.C. 11601(a). The

Convention provides that children abducted in violation of a parent's custody rights, be promptly returned to their country of habitual residence, unless a grave risk of harm exemption is established. Return is for example not required where there is a grave risk that it would expose a child to physical or psychological harm and is denied if a parent was not exercising custody rights. *See* Convention Article 5a).

Habitual residence was as noted in the district court order, United States from 2016, however, habitual residence in the United States did not end in 2017. Temporarily residing abroad, does not ordinarily alter habitual residence. The order to vacate trial, deprived Due Process, that hindered Father to show among others, [t]hat, 1. He did not transfer his supervision to Norway. 2. Visiting Norway did not alter habitual residence, 3. The parties did not buy a house in Norway in spring of 2018 or rent a home in Denmark in 2019, 4. Shipping the car and luggage to California in 2019, had significance, 5. The Norwegian Immigration found habitual residence to be the United States, 6. Mother's actions, such as securing a job offer were consistent with intending to continue to live in California, *See*, district court DKTs. 46,47,48 and 51. 7. The grave risk of harm would make ameliorative measures ineffective, and 8. Given the Norwegian Child Protective Services, ("CPS"), involvement, the children would not again see their Father and additionally risk losing their Mother, if the court failed to recognize United States as the Children's habitual residence.

Mother's actions from 2013 to 2019, are inconsistent with habitual residence being Norway, and Father

violating rights to custody under Norwegian laws. Rather, Father was exercising custody rights under U.S. laws since 2016, but have despite being a clear Convention treaty violation and deprivation of Constitutional rights, as seen below, not seen the children since.

Here a Convention meant to deter international child abductions, wrongful retention and forum shopping, succeeded due to misrepresentations and the onset of Covid, in just that, abduct children.

In a manner not previously seen in a Convention case but similar in facts to *Larry Risk v. Kingdom of Norway*, 707 F. Supp. 1159 (N.D. Cal. 1989), the children have been abducted to Norway. However, here the parties are married and has shared custody and no custody proceedings besides CPS inquiry existed in 2019.

The parties intended to return March 18, 2018, in line with Father's tourist visa, but was delayed to 2019. In 2019, the Norwegian Immigration found habitual residence to be the United States, *unjustly depriving rights to family life". See* C.D. Cal, *Rosasen et al. v. Norway et al.* 21-cv-06811, DKT. 35, Ex. 4.

On July 2, 2019, Father returned to the United States and on July 4, 2019, CPS instructed Mother to bring the children in by July 18, 2019. Instead, Mother took the children, U.S. passports and as many belongings as the car could fit and left Norway on July 11, 2019. Thereafter Mother filed paperwork with the Danish authorities, of having immigrated to the United States.

On July 31, 2019, Mother left the children by mutual consent in Father's care, *See Friedrich v. Friedrich*, 78 F.3d 1060, 1070 (6th Cir. 1996). On the party's mutual birthday, July 23, 2019, the one-way tickets from England to Los Angeles, California, were bought. Mother and Father reaffirmed their commitment to continue living in the United States altering their agreement slightly as the children and Mother would now visit Norway for summer and every second new-year holiday, without Father.

On Aug. 7, 2019, CPS with police visited Mother at the job were she had put in notice to quit by August 30, 2019, and summoned her to meet with CPS on Aug. 9, 2019. The court's order to vacate trial, found that Mother had contacted CPS, citing *Baxter v. Baxter*, 423 F.3d 363, 371 (3rd Cir. 2005). However, this is not true as Mother went to great lengths to avoid CPS, including leaving the Children as seen in App. F., with Father. At the meeting CPS insisted Mother abscond from returning to California stating that, *if Mother could find a way to get the children to Norway, and their investigation without Father, the agency be less concerned for Mother's parental abilities for the time being.* CPS informed Mother after she stated the children where in the United States, that CPS knew that the children were in Belgium and intimidated Mother into requesting police assistance, which she refused. After the meeting, Mother called Father and warned him. The following day, Father returned to the United States, updated vaccines and reenrolled the Children in the preschool they had attended daycare in before. These are not the actions of a left behind parent, but of parents cooperating to protect their children from a

grave risk of harm. *See*, CD. Cal: 2:21-cv-06811, *Rosasen et. al. v. Norway et al.* DKT. 39-1, Ex. 3 and DKT. 39-4, Ex. 11. The text messages referred in the order to vacate, refers to Mother having committed infidelities while Father and children were alone. The messages do not diminished Fathers custody rights, alter habitual residence or revoke consent.

After Mother failed to return Aug. 30, 2019, Father filed for separation and joint custody on Sept. 23, 2019, at the Superior Court of California, Los Angeles, case no. 19STFL11397. Despite Mother's behavior, Father thought Mother would return as that's what she told the children when they did speak. Mother knew the children day care center as seen in Jan. 10, 2020, transcripts. Mother never disclosed this to CPS or her own mother. (App. E), transcript 3.

After Mother was served the above joint custody case on Oct. 4, 2019, *See* district court DKT. 47. Mother approved this petition that was sent by the Norwegian Central Authority, ("NCA")[1] on Nov. 4, 2019. On Nov. 20, 2019, given discrepancies, the State Department requested additional information. Instead of responding, NCA retained U.S. counsel to circumvent the State Department and State custody proceedings. These facts despite being unknown to the district court, are relevant upon review.

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[1] NCA is Mothers foreign counsels place of employment from 2007-2016, District court DKT. 53, foreign counsel knew or should have known that habitual residence was the United States and that Norwegian immigration had concluded habitual residence to be the United States.

On Dec. 18, 2019, Mother's counsel sent an observer to monitor Fathers request for emergency order. (App. E), (*1st transcript*). The actions were forum shopping in both state and federal court. Mother had been served Dec. 16, 2019. *See.* (App. E), (*2nd* transcript).

On Dec. 19, 2019, NCA retained counsel for Mother, filed this petition on Mother's behalf, under-seal, and requested an arrest warrant for Father, which was denied Dec. 23, 2019, due to prior contradictory knowledge by the court about Father. On Dec. 25, 2019, Mother arrived in Los Angeles, California and was served the Emergency order by LAPD. Mother thereafter and despite it being Christmas, to meet with the children that day and until Jan. 6 and Jan. 8, 2020, when Mother's mother permitted her to go. The visits are referred to as good by the parties in state court transcripts from Jan. 10, 2020. (App. E). Mother did not tell Father about her counsels plans to circumvent the shared custody proceedings.

On Jan. 10, 2020, Mother in case no. 19STFL11397, again failed to appear. The court as a result, continued those proceedings to April 20, 2020, and made Father aware this Convention case, assigned case no. 20STHC10001 filed Jan. 6, 2020. The case was filed in conjunction with the Los Angeles District Attorneys office.[2]The actions were meant to circumvent the State court case and the State

[2] The Los Angeles District Attorney, ("DA"), was unaware that the petition was not verified by the U.S. Department of State or filed under seal and denied Dec. 23, 2019.. Once the case was transferred to federal court as CD. Cal: 2:20-cv-01140, the DA failed to make an appearance.

Department need for additional information and alternative dispute solution attempts. As the State Department was closed Jan. 10, 2020, due to a snowstorm, Father first learned of the petition being returned due to discrepancies, after release of files on Feb. 15, 2021, from the Norwegian Ministry of Justice and Public Security, ("NMOJ"). (App. F).

On Jan. 10, 2020, the state court in relevant parts; ordered the children to stay with Father, denied request for GPS devices to be put on the children and granted Mother and grandmother a two-hour visit for Jan. 11, 2020. Mother had a job offer in California and did not have to travel to Norway to continue supporting herself as alleged, *See* Jan. 10, 2020, transcripts and the district court DKT. 46.

From Jan. 11 to 12, 2020, the parties spent twelve hours together. During this time Father offered Mother all his savings, in return for her to stay and co-parent but Mother claimed Father would change her mind if she stayed. On Jan. 12, 2020, Father and the children drove Mother and grandmother to the airport.

On Feb. 4, 2020, Father removed the petition to federal court, due to Civil Rights Violation if the children were removed to a country from which he was banned, and which was not their habitual residence. Case was assigned case no 20-cv-01140-FMO. That case was consolidated with the under seal denied Petition of Dec. 19, 2019, in case no. 19-cv-10742-JFW, here upon review.

On Feb. 14, 2020, Mother and Father's counsel without Father's consent, agreed to "jointly" Motion to let Mothers petition for return take precedence before Fathers Motion to dismiss for perjury and criminal harassment. Only to be stricken after a expedited schedule was set. *See* DKTs. 1-28, only seen in the consolidated case no. 20-cv-01140, DKTs.

Despite Mother written statement in district court DKT. 52, being signed by her, Mother asserted to Father that she did not state the allegations in paragraph 42. The allegation are slanderous, perjury and judicial deceit having caused irreparable harm, requiring remand to district court to cross examine.

After March 21, 2020, grandmother again refused Mother to meet the children without her, while Father refused to meet with the grandmother, out of fear the children be abducted. Father emailed Chamber for advice. *See* Ninth Circuit DKT. 6, Ex. A.

On March 30, 2020, as the children's preschool had been closed since March 16, 2020, and Mother continued to refuse to meet since March 21, 2020, Father took the children on a road trip. The perspective the children held in fall and spring of 2019/2020, was that they had returned and were at home and settled.

On March 31, 2020, the district court without serving Father, issued an order, that Mother had met her heavy burden of demonstrating, by clear and convincing evidence, that Norway was habitual residence and would not subject [them] to a grave risk of harm. As Norway is not on the Department of

State Hague Convention "noncompliance" list, a believed violation of the Sean and David Goldman International Child Abduction Prevention and Return Act of 2014, § 2(b), 128 Stat. 1809, the district court was unaware of the noncompliance. *See* ADF 2019 Report & Recommendation. (App.G).

This Court, has advised that "courts can and should take steps to decide these cases as expeditiously as possible, for the sake of the children who find themselves in these unfortunate situations". *Chafin v. Chafin,* 568 U.S. 165, 179 (2013). However, violating the Due Process Clause at the expense of the Convention is not what the legislators intended. All Convention cases ruled on by this Court, had 3 to 9 days of bench trials.

On April 3, 2020, at 10:18PM the children without an Amber Alert or Father being served, or allowed to accompany the children, were **removed** by Law Enforcement in Dubuque, Iowa. April 7 to 9, 2020 bench trial had been vacated in chamber. If Father was fleeing as alleged, Father would not have used his electronic devises or informed Mother of the trip.

The County Attorney continue to refuse a subpoena to release the body cameras. Father believes the denial is due to awareness that the actions were unlawful. As Father had custody and was not served, the actions constituted Civil Rights violations.

Father was at the district court represented by counsel and therefore the district court abused its ample discretion by vacating trial while counsel was incapacitated. The actions caused Mother's counsel

to gain an unfair advantage and avoid oral arguments and cross examination. This Court declared in *Washington v. Glucksberg*, 521 U.S. 702 (1997), that the Constitution, and specifically the Due Process Clause of the Fourteenth Amendment, protects the right of parents to direct the care, upbringing, and education of their children. Also *See Troxel v. Granville,* 530 U.S. 57 (U.S. 2000).

The facts presented went undetected due to the pandemic panic, affecting the district courts better judgment. Indeed, Covid is sited in the court order as the reason to vacate, despite state and federal court stating Dec 23, 2019, Jan 10, 2020, and March 3, 2020, that no *prima facie* case existed.

On April 7, 2020, NMOJ notified CPS, that the children were in Norway, who reopened a custody removal inquiry. Reports from that inquiry, shows that the children did not want to go, started crying and had to be dragged onto the plane. The same evidence shows that Mother stated that U.S. counsel told her to flee the country or risk being stuck and having to co-parent. After Mother stated that maybe in ten years the children can see their Father, CPS closed its inquiry. *See* CD, Cal: 21-cv-06811-SPG-SP, *Rosasen et al. v. Norway et. al.* DKT. 40-4, at Ex. 11, or the district court DKT. 69, p. 80-423 of 698.

Father appealed the district court's order timely on April 29, 2020.

Thereafter, on May 6, 2020, during a meeting on a visitation and legal fees, Mother's counsel stated that Norway was heavily invested and reserved the

rights to deny a interim visitation. *See* Ninth Circuit DKT. 6, Ex. H, statement and DKT. 20, Ex. C, CPS.

The district court DKT. 125-1, of $334,399.00, subsequently filed May 8, 2020, are unlawfully redacted. Father asks this Court to seek as part of Appendix, that Mother provide a non-redacted version of DKT. 125-1, to assist this Courts review.

Father did not appeal district court DKT. 128, ordering him to pay $150,000.00 in legal fees as the costs were covered by Norway. Mothers Answering brief, concedes to $750,000.00 in legal fees, not the average cost of litigating a Convention case.

On May 15, 2020, Father's counsel with consent, filed a motion to be relieved as counsel. On May 18, 2020, after Norway refused the parties to agree on an interim visitation, Father filed, now pro se, Emergency Motion, Ninth Circuit, DKTs. 6.

On Oct. 30, 2020, after Mother had broken off phone contact July 13, 2020, and was refused to enter an interim agreement, the State Department sent a verified petition for return of the children to their habitual residence of California due to wrongful retention. *See* Convention Article12. *See* (App.D).

On Dec. 7, 2020, the Ninth Circuit granted Father's Motion for Appointment of counsel, *See* DKT. 19, but withdrew the same in DKT. 23, on Aug. 13, 2021. The same reasons sited in DKT 19, still exists.

As a result of the State Department verified return Petition, the Oslo District Court asked Mother on

Nov. 16, 2020, if the children could visit their Father in the United States. The next day, Mother replied that visits existed in the form of "phone" visitation.

On March 29, 2021, Mother stated to Father and the Children that one call Father back for goodnight time story, but never did. Father has attempted to call every day since. Father views Mother as fearful of losing custody to CPS unless she seized contact.

On Dec. 17, 2020, the Oslo District Court held a hearing on return of the children, the court ruled on Dec. 23, 2020, that it did not matter if Mother had changed her mind before or after and refused to rule on visitation pending this appeal.

On Feb. 11, 2021, the Borgarting Court of Appeals, upheld the decision, not to return but added that if U.S. Courts ordered return due to grave error of law that Norwegian courts would most likely enforce such an return order. The decisions are believed to Convention treaty obligations by refusing to order interim physical access and stating the parties did not dispute Norway as habitual residence. Habitual residence is at the core of the disputes facts. App. H).

On Feb. 15, 2021 the NMOJ informed that two files could not be made public out of conerns for Norway's foreign policy interests. *See* (App. F).

On April 9, 2021, the Norwegian Supreme Court refused a Writ of Certiorari, and shortly after all phone contact was again cut off, Father the children had not heard from Father since. State Department views on the foreign judiciary, "*That the Office of*

Children Issues cannot publicly criticize the foreign sovereign judiciary"., can be seen in (App. D).

On Aug. 24, 2021, after the Ninth Circuit withdrew granted motion for appointment of counsel, Father filed suit against Norway at the Central District Court of California that was assigned case no. 21-cv-06811 captioned *Marlon Abraham Rosasen et al. v. Kingdom of Norway et al.*, under 28 U.S.C. 1601-1611, Foreign Sovereign Immunities Act, ("FSIA").

Upon attempt to serve defendants, Father contacted the Oslo District Court on Aug. 30, 2021, in accordance with the Convention on The Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, (November 15,1965).

On Sept. 9, 2021, at the Central District Court of California, Honorable Judge John F. Walter who presided the case here upon review and *Broidy Capital Management v. State of Qatar*, 982 F.3d 582, (9th Cir. 2020), denied transfer request in *Rosasen et al. v. Norway et al.*, DKT. 12, citing the case raises legal questions that needs to be properly heard.

On Sept. 10, 2021, the Oslo District Court revoked executing proof of service as Norway objected to Article 10 of The Hague Convention on Proof of Service Abroad, Article 10 c), reads: *the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.*

As result, Father retained a process server who was hindered and described a hostile environment. *See Rosasen et al. v. Norway et al.* DKT. 16 and DKT 17. On Oct. 21, 2021, the same process server Father retained, ABC Legal, was retained by the Oslo District Court to unlawfully serve Father to terminate his rights of custody. The same address used is listed in *Rosasen et al. v. Norway et al.,* and the actions appears to be retaliation for Fathers suit.

On Oct. 23, 2021, Father filed an Opening brief. On Nov. 1, 2021, Father acting pro se, responded to the Norwegian courts that it lacked jurisdiction and venue, referring to the Convention's Article 16..

On Nov. 25, 2021, Mother's foreign counsel response was that no U.S. appeal existed and that the order of March 31, 2020, was final. The response went on to explain that even if an appeal existed, the longtime of no contact would make a return at this point harmful. The court ordered that it did not matter if there was an ongoing appeal in the United States, and that the custody determination case would proceed. As a result, Father informed the court that he would not participate to avoid mootness here, and return upon final legally binding U.S. court orders.

On Jan. 31, 2022, Mothers Answering brief conceded to several facts including circumventing the State Department. The brief of 51 pages, misnamed 2263 pages of Excerpts as Appellants, it was Appellees.

On Feb. 10, 2022, the district court denied a default judgment in Rosasen et al. v. Norway et al. But ordered Father to either re-execute proof of service

or file motion for the Clerk to execute proof of Services via diplomatic channels on or by March 28, 2022, as Father subsequently did. On July 14, 2022, the district court instead of filing for proof of service, issued a Report and Recommendation. On Sept. 21, 2022, the case was closed. Appeal can be seen in Ninth Circuit case no. 22-54980, as *Rosasen et al. v. Norway et al., See also Risk v. Kingdom of Norway,*707 F. Supp. 1159, N.D.Cal 1989.

On April 5, 2022, Father filed a Reply brief and on Jan 5, 2023, the Circuit upheld the order to vacate trial. See (App. A).

On Jan. 23, 2023, Father subpoenaed the body camera footage and sought assistance from Iowa Senator Grassley, however the the County Attorney continues to deny to release the evidence. (App. F).

On March 21, 2023, the Circuit denied a rehearing en banc, leaving Father with no legal recourse.

On June 8, 2023 Father filed an Application for Extension of time to file Writ of Certiorari, that was granted on June 14, 2023 to August 18, 2023.

On March 21, 2023, the Circuit denied a rehearing en banc, leaving Father with no legal recourse.

REASONS FOR GRANTING THE PETITION FOR A WRIT

The Below Ruling Causes a Circuit Split on how to Determine Habitual Residence, Ameliorative Measures and What the Due

Process Clause Entails Under the Constitution Pursuant to the Hague Convention on the Civil Aspects of International Child Abduction and the International Child Abduction Remedies Act, (42 U.S.C. 11601-11610 (2001))

The Convention is a multilateral treaty created "to protect children internationally from the harmful effects of their wrongful removal or retention." Hague Convention, Oct. 25, 1980, T.I.A.S. No. Ee, / 1343 U.N.T.S. 89, reprinted in 51 Fed. Reg. 10,494 (Mar. 26, 1986). Congress implemented the Convention through the International Child Abduction Remedies Act, ("ICARA"). See 22 U.S.C. §§ 9001–9011.

This case raises questions of National importance as the decision below violated the requirement that Mother must demonstrate a prima facie case by a preponderance of the evidence, *See* 42 U.S.C. § 11603(e). As no hearing was held on habitual residence and in the alternative, the grave risk defense, and no Opinion, but a Memorandum and district court order vacating, is all that exist, the questions presented merits this Court's review.

The courts try to rely on the State Department Guidance that cautions against the use of ameliorative measures—specifically, The Guidance provides, when there is "unequivocal evidence that return would cause the child a 'grave risk' of physical or psychological harm," it would be "less appropriate for the court to enter extensive undertakings than to deny the return request." Letter from Catherine W. Brown, Assistant Legal

Adviser for Consular Affairs, U.S. Dep't of State, to Michael Nicholls, Lord C.'s Dep't, Child Abduction Unit, United Kingdom (Aug. 10, 1995). See, e.g., *Van De Sande v. Van De Sande,* 431 F.3d 567, 572 (7th Cir. 2005); *Simcox v. Simcox,* 511 F.3d 594, 607 (6th Cir. 2007).

The decision below implicates a conflict among the federal and state courts of appeals—as to whether, after a finding of no *prima facie* case, a hearing on habitual residence can be vacated. The order to vacate and remove the children to Norway, violated Father's rights of custody. *See Abbott v Abbott,* 560 U.S. 1 (2010). The district court erred in comparing *West v. Dobrev*, 735 F.3d 921, 929 (10th Cir. 2013) (quoting *March v. Levine,* 249 F.3d 462, 474 (6th Cir. 2001)), "[A] meaningful opportunity to be heard . . . . is all due process requires in the context of a Hague Convention petition." *Dobrev*, 735 F.3d at 932. Here, Father exercised custody rights. In *West v. Dobrev,* Respondent violated French custody orders, and Petitioner had custody rights while Respondent a U.S. attorney had visitation he had not appealed.

The facts in this case are not comparable to *West v. Dobrev,* 735 F.3d 921, 929 (10th Cir. 2013), where habitual residence was clearly Belgium due to French court orders. In this case Father was never given meaningful opportunity to be heard as seen by the fact that the district court misunderstood Father's defense as an article 13b) rather than Article 3 and 5a), due to vacated trail.

The court should have considered In *Parham v. J.R.* 442 U.S. 584 (1979), the Court upheld a state's

voluntary civil commitment procedures that allowed minors to be committed to state mental hospitals by their parents without an adversarial hearing before an impartial tribunal. Such a hearing, according to the Court, would create an unacceptable intrusion into the parent-child relationship, and would be inconsistent with the traditional presumption of parental competence and good intentions.

The district court ruling to vacate trial, in relevant part stated, 1: " *[A] district court has a substantial degree of discretion in determining the procedures necessary to resolve a petition filed pursuant to the Convention and ICARA. Specifically, neither the Convention nor ICARA, nor any other law of which we are aware including the Due Process Clause of the Fifth Amendment, requires 'that discovery be allowed or that an evidentiary hearing be conducted' as a matter of right in cases arising under the Convention".*

And 2: *"Moreover, the two key determinations in this case -- the habitual residence of the Children and whether Mother consented to the Children's removal to the United States -- may be resolved based on undisputed facts or documentary evidence that clearly corroborates Mother's testimony. An evidentiary hearing in this context would be a futile exercise and would merely delay the prompt return of the Children to their country of habitual residence (especially in light of the uncertainty caused by the coronavirus pandemic)*". Unquote:

In *Troxel v. Granville*, 530, U.S. 57, (2000), this Court evaluated a Washington State law that

allowed any person to petition a court at any time to obtain visitation rights whenever visitation may serve the best interests of a child. There, a child's grandparents were awarded more visitation with a child against the wishes of the sole surviving parent. A majority of the Court agreed that the statute was invalid, with a plurality of Justices concluding that the law's lack of deference to the parent's wishes infringed upon the parent's fundamental right and contravened the traditional presumption that a fit parent will act in the best interests of a child. Justice Thomas summarized an important aspect of this Court's precedential opinion in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), writing that "parents have a fundamental constitutional right to rear their children, including the right to determine who shall educate and socialize them." *Troxel* at 80 (Thomas, J., concurring). This fundamental right is just as critical and sacred today as when Justice Thomas wrote those words twenty years ago and when this Court cemented that truth in 1925. Justice Thomas proceeded to the next step in the analysis by concluding: "I would apply strict scrutiny to infringements of fundamental rights." These are case laws absent from the district court order to vacate trial in-chamber during the onset of Covid. Unless this case is heard, given the facts, the case will set an unconditional case law.

The Ameliorative Measures split should be resolved:

The First, Eighth, and Eleventh Circuits have indicated that, once a district court determines that there is a grave risk that the child will be exposed to

harm, the court need not consider any ameliorative measures but deny a return.

In *Baran v. Beaty*, 526 F.3d 1340 (11th Cir. 2008), the Eleventh Circuit affirmed the district court's denial of the petition for return and held that the district court had no obligation to consider the petitioner's proposal of undertakings. Id. at 1351–52. The district court had found that returning the child to the petitioner-father—an Australian citizen who had abused the respondent-mother— would expose the child to a grave risk of harm. Id. at 1346. It cautioned that, because the court granting or denying a petition for return lacks jurisdiction to enforce any undertakings it may order, even the most carefully crafted conditions of return may prove ineffective in protecting a child from risk of harm." Id. at 1350. By contrast, the Second, Third, and Ninth Circuits require district courts to consider a range of ameliorative measures that would permit return, even when the court finds that there is a grave risk that a return exposes a child to physical or psychological harm, causing a Circuit split.

The Ninth Circuit in *Gaudin v. Remis*, 415 F.3d 1028 (9th Cir. 2005), likewise adopted the Second Circuit's approach. The district court had denied a petition under the Convention after finding that the children in question would suffer a "grave risk of psychological harm" if returned to the mother. Id. at 1033. The Ninth Circuit reversed and held that "the district court erred in failing to consider alternative remedies by means of which the children could be returned without risking psychological harm." Id. at 1035 (citing *Blondin*, 189, F.3d at 249).

State courts, which also have jurisdiction in Convention petitions under ICARA, 22 U.S.C. § 9003(a), have adopted similarly conflicting approaches toward the court's role after a finding that return would subject the child to grave risk. Courts in those Florida, Illinois and New York, have affirmed denials of Convention petitions upon finding grave risk, without consideration of potential ameliorative measures. See, e.g., *Wigley v. Hares*, 82 So. 3d 932 (Fla. Dist. Ct. App. 2011); In *re M.V.U.*, No. 1-19-1762, 2020 WL 7074636 (Ill. App. Ct. Dec. 3, 2020); *Oliver A. v. Diana Pina B.*, 151 A.D.3d 485 (N.Y. App. Div. 2017); *In re Custody of A.T.*, 451 P.3d 1132 (Wash. Ct. App. 2019).

In contrast, appellate courts in California and Connecticut and now here, have held, relying on *Blondin*, that a trial court must consider ameliorative measures that could mitigate the grave risk before deciding a return petition. *See Maurizio R. v. L.C.*, 135 Cal. Rptr. 3d 93, 111 (Cal. Ct. App. 2011); *In re Marriage of Forrest & Eaddy,* 51 Cal. Rptr. 3d 172, 179 (Cal. Ct. App. 2006) (noting that, even if there was grave risk of harm, the court cannot deny the petition without considering "alternative remedies that it could implement to avoid or minimize the risk of harm" (citing *Blondin*, 189 F.3d at 248–50, and *Gaudin*, 415 F.3d at 1036)); *Turner v. Frowein*, 752 A.2d 955, 972 (Conn. 2000) (remanding the case for failure to consider undertakings as the court is "persuaded to follow *Blondin's* lead and conclude that, in exercising its authority to deny a return under article 13b,

following its determination of abuse, the trial court must conduct a analysis of ameliorative measures").

The interpretation of a treaty, like the interpretation of a statute, "begins with its text." *Medellin v. Texas,* 552 U.S. 491, 506 (2008). The requirement that a court consider ameliorative measures finds no support within the text of the Hague Convention. As courts have explained, "the concept of 'undertakings' is based neither in the Convention nor in the implementing legislation of any nation." *Danaipour*, 286 F.3d at (citation omitted). Rather, it is "a judicial construct, developed in the context of British family law." Ibid. (citation omitted); see also *Baran*, 526 F.3d at 1349. That alone should end the matter: there is no basis for requiring district courts to consider ameliorative measures, when it is not found in the Convention.

This case illustrates the problem of the Circuit approach, allowing the district court to vacate granted trial, the Circuit granting Fathers Motion for appointment of counsel before vacating the same, is fundamentally at odds with the Constitution.

The State Department has advised against the use of ameliorative measures beyond those that are simple and uncontroversial. Specifically, the State Department has emphasized that in cases of "grave risk," it is most appropriate for courts to "deny the return request" because to do otherwise could "embroil the court in the merits of the underlying custody issues and would tend to dilute the force of the [grave risk] exception." Letter from Catherine W. Brown, Assistant Legal Adviser for Consular Affairs,

U.S. Dep't of State, to Michael Nicholls, Lord C.'s Dep't, Child Abduction Unit, United Kingdom. "Undertakings that do more than [paying return airfare] would appear questionable under the Convention." The State Department's interpretation of the Convention is entitled to "great weight." *Blondin*, 238 F.3d at 162 n.10; *Danaipour*, 286 F.3d at 22; *Simcox,* 511 F.3d at 606. Numerous courts of appeals have relied upon the State Department's guidance in declining to return children in situation of risk of grave irreparable harm. See, e.g., *Van De Sande*, 431 F.3d at 572; *Simcox*, 511 F.3d at 606–07; *Danaipour*, 286 F.3d at 25–26; *Baran*, 526 F.3d at 1350. Here the State Department after the district court order, petitioned for the children's return.

This Court should review to resolve inconsistencies among the courts of appeals and make clear that district courts need to honor granted motions and Constitutional rights even during a State of Emergency.

Here, the children have not seen their Father since April 3, 2020, making it clear that the courts below erred to protect human rights and fundamental freedoms as seen in the United States.
Given the totality of facts presented, orders on return in accordance with the Convention's Article 18 and for a U.S. Child psychologist to hear the Children upon return to Father, are sought. Such orders are consistent with *Pierce v. Society of Sisters,* 268 U.S. 510 (1925), *Stanley v. Illinois*, 405 U. S. 645, 651, and *Troxel v. Granville* 530, 57, (2000).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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