APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 23-8078

Raphael Stein
Petitioner-Appellant

v.

Adeena Kohn
Respondent-Appellee

Filed: January 14, 2024

ORDER

Appellant, Raphael Stein, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 23-8078

Raphael Stein
Petitioner-Appellant

v.

Adeena Kohn
Respondent-Appellee

Appeal from the November 20, 2023 order of the United States District Court for the Southern District of New York (Vincent L. Briccetti, J.).

ARGUED: November 14, 2024
DECIDED: November 21, 2024

BEFORE: AMALYA L. KEARSE, REENA RAGGI, MARIA ARAÚJO KAHN, Circuit Judges

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order is AFFIRMED.

Petitioner-Appellant Raphael Stein ("Stein") appeals pro se from the denial of his petition for the return of his three Canadian-born minor children to Montreal, Canada, pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89, reprinted in 51 Fed. Reg. 10,494 (Mar. 26, 1986) (the "Convention"), and its implementing statute, the International Child Abduction Remedies Act, 22 U.S.C. § 9001 et seq. The petition alleged that the children's mother, Respondent-Appellee Adeena Kohn ("Kohn"), wrongfully retained the minors in Monsey, New York, after a trip to this country in 2020. Stein here faults the district court's findings, following a bench trial, that (1) his return petition was untimely filed more than a year after the alleged wrongful retention and (2) the children were "now settled" in Monsey. We assume the parties' familiarity with the underlying facts, the procedural history, and the issues on appeal, to which we refer only as necessary to explain our decision to affirm.

We review the district court's factfinding for clear error and its "application of the Convention to the facts" de novo. Marks ex rel. SM v. Hochhauser, 876 F.3d 416, 418 (2d Cir. 2017). The clear error standard is deferential, and we will "accept the trial court's findings unless we have a definite and firm conviction that a mistake has been committed." Tereshchenko v. Karimi, 102 F.4th 111, 124 (2d Cir. 2024) (quoting Souratgar v. Lee, 720 F.3d 96, 103 (2d Cir. 2013)). Because Stein appeals pro se, we construe his briefs liberally to raise the strongest arguments they

suggest. See Sharikov v. Philips Med. Sys. MR, Inc., 103 F.4th 159, 166 (2d Cir. 2024).

Stein primarily argues (as he did below) that Kohn's wrongful retention of the children occurred not in March or October 2021, but instead at some point in January 2022, when he realized that Kohn had changed the locks on her apartment. That distinction matters because, if credited, it would mean that Stein's December 2022 petition was timely and foreclose Kohn's defense that the children are "now settled" in this country, thereby requiring their return to Canada. See Convention, art. 12.

Retention of children is wrongful where "(a) it is in breach of rights of custody . . . 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 [by the petitioner]." Id., art. 3. In cases where the petitioning parent originally consented to the child's stay outside its habitual residence, wrongful retention occurs on the date that the petitioning parent is informed that the co-parent will not be returning the child to its country of habitual residence. See Marks, 876 F.3d at 421–22.

We identify no error in the district court's finding that wrongful retention of the children here occurred on March 6, 2021, or, at the latest, on October 4, 2021. On March 5, 2021, Stein told Kohn that he did not agree with the children staying in New York permanently, and that he wanted the family to resume living in Canada as soon as

possible. The next day, Kohn responded that the parents were not on the same page and that she would not return to Montreal. Because the parties agreed that Kohn would not live apart from the children, the district court reasonably found that "Stein understood Kohn would keep the children with her wherever she was living." Special App'x 32.

Alternatively, Kohn's October 4, 2021 divorce filing—wherein she sought custody of the children—clearly alerted Stein to her intent to remain in New York with the children. See Hofmann v. Sender, 716 F.3d 282, 291 (2d Cir. 2013). Either way, the wrongful retention occurred more than a year before Stein filed his petition on December 19, 2022, meaning the "now settled" defense was available to Kohn.

Article 12 of the Convention requires the district court to grant even an untimely petition for the return of the child to its habitual residence, "unless it is demonstrated that the child is now settled in its new environment." Convention, art. 12. The respondent bears the burden of proving this "now settled" defense by a preponderance of the evidence. See 22 U.S.C. § 9003(e)(2)(B).

In determining whether a respondent carried this burden, a district court properly considers whether "the child has significant emotional and physical connections demonstrating security, stability, and permanence in its new environment," Lozano v. Alvarez, 697 F.3d 41, 56 (2d

Cir. 2012), an inquiry informed by the following nonexhaustive factors:

(1) the age of the child; (2) the stability of the child's residence in the new environment; (3) whether the child attends school or day care consistently; (4) whether the child attends church [or participates in other community or extracurricular school activities] regularly; (5) the respondent's employment and financial stability; (6) whether the child has friends and relatives in the new area; and (7) the immigration status of the child and the respondent.

Id. at 57 (alterations in original) (internal quotation marks omitted).

Here, the district court carefully evaluated each factor. Viewing the record as a whole, we identify no clear error in its factual findings. The children—who at the time of trial were seven, five, and three—had "lived in Monsey for at least half their lives," with the youngest having "lived in Monsey nearly her entire life." Special App'x 38. Thus, the district court reasonably found that, "most, if not all," of the two elder children's "memories are likely of Monsey, not Montreal." Id. The district court further found the children to have lived continuously in the same apartment complex for the whole of their time in Monsey, surrounded by their maternal grandparents, "great grandmother, aunts, and several of the children's cousins." Id. at 39. Also, each child had consistently attended daycare and school in Monsey, and regularly

joined Kohn's extended family at their local synagogue. The children frequently played with local friends and cousins. Nor was there any risk of deportation given that "Kohn is [a] U.S. citizen, and at least the two older children [already] have U.S. passports." Id. at 41.

The only factor weighing against settlement is Kohn's failure to maintain stable employment in New York. The district court was not required to accord this factor great weight because Kohn has the support of her family, and the children have enjoyed a stable environment throughout their time in Monsey. Accordingly, the district court did not err in finding Kohn to have demonstrated that the children are now settled in New York.

As the district court acknowledged, this is not to deny the children's continuing ties to Montreal. But the question before the district court was whether the children had nevertheless "become so settled in a new environment that repatriation might not be in [their] best interest." Lozano, 697 F.3d at 53 (internal quotation marks omitted). The district court did not err in answering that question "yes."

We have considered Stein's remaining arguments and conclude that they are without merit. Accordingly, we AFFIRM the decision of the district court.

FOR THE COURT: Catherine O'Hagan Wolfe, Clerk of Court

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 22-cv-10683-VB

Raphael Stein
Petitioner-Appellant

v.

Adeena Kohn
Respondent-Appellee

FILED: November 20, 2023

ORDER

For the reasons stated on the record today at a hearing attended by all parties and all counsel, the Petition for Return of Children to Canada (Doc. #1) is DENIED.

The Clerk is instructed to close this case.

SO ORDERED:

Vincent L. Briccetti United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 22-cv-10683-VB

Raphael Stein
Petitioner-Appellant

v.

Adeena Kohn
Respondent-Appellee

Transcript of Oral Decision
November 20, 2023

At the conclusion of the four-day evidentiary hearing in this case, I told the parties that I intended to issue a bench ruling resolving the matter today, and I am now prepared to do that. Petitioner Raphael Stein seeks an order granting his petition for the return of his three children to Canada pursuant to the Hague Convention on the Civil Aspects of International Child Abduction as implemented in the United States by the International

Child Abduction Remedies Act or ICARA, I-C-A-R-A, which is at 22 United States Code Sections 9001 to 9011.

For the reasons I'm about to explain, the petition is denied. The Court has jurisdiction pursuant to 22 of the United States Code Section 9003. An evidentiary hearing was conducted on the petition on October 23, 24, 25, and 26, 2023, at which petitioner, respondent, respondent's psychiatrist, Dr. Richard Price, and respondent's mother, Rivka Kohn, testified. I have weighed the credibility of these witnesses and considered their testimony as well as the parties' joint stipulation of facts, the evidence submitted at trial, and the written submissions from the parties.

And I make the following findings of fact: Petitioner Raphael Stein and respondent Adeena Kohn have dual citizenship in the United States and Canada. They were born, grew up in, and met in Canada, and they married in Canada on September 23, 2011. They primarily resided in Montreal from the time of their marriage until August 2020.

Stein and Kohn have three children, all of whom were born in Canada. J, who was born in 2016 -- J Stein, I should say -- Z, born in 2018, and -- and I'm probably mispronouncing that, , who also goes by the name S -- born in 2020. I will refer to these children as JS, ZS, and AZ. I should say AS. JS, ZS, and AS. They are currently seven, five, and three years old respectively. All three of

the children are Canadian citizens, and the two older children, JS and ZS, have United States passports.

The events relative to this case begin with the birth of AS on March 5, 2020, just days before the Canadian government, on March 12, 2020, implemented restrictions to curtail the spread of COVID-19, including a curfew and travel and social distancing restrictions. These COVID restrictions were difficult for the family, and during the summer of 2020, Stein and Kohn decided to go with their children to Monsey, New York, where Kohn's mother, sisters, and certain other family members had relocated. The parties agree they intended to leave Monsey in August 2020, but they vigorously dispute how long they intended to go. In early August, 2020, the family packed up items they would need for an extended stay in Monsey. However, they did not pack all their belongings, and they left furniture and appliances, among other things, in their Montreal apartment.

According to Stein, both parties intended the trip would be temporary and that they planned to stay for approximately one month. Stein testified that in July of 2020 Kohn's mother, whom I will refer to by her first name, Rivka, to avoid confusing her with respondent Adeena Kohn, called Stein and told Stein that a neighbor was vacating their apartment. According to Stein, Rivka said, quote, it would be a great opportunity for the family to come to Monsey for a month and give Adeena a change of scenery, end quote, because New York had already

lifted many of the social distancing and other COVID restrictions that were still in place in Montreal.

Although the parties had occasionally discussed living somewhere other than Montreal in the future, Stein testified the parties did not intend to permanently leave Montreal during the summer of 2020. And just so the record is complete, the testimony that I just quoted from is the trial transcript, page 71. So, again, Stein testified the parties did not intend to permanently leave Montreal during the summer of 2020. However, according to Kohn, the trip to Monsey was the party's first step to leave Montreal permanently. Indeed, Kohn testified that although they had not decided exactly where their new home would be, the parties had agreed it would be somewhere in the United States and, in any event, not Montreal.

As between the two accounts, I found -- I find Stein's account more credible, that the agreement between the parties, at least at first, was that the trip to Monsey was intended to be temporary. This is because Kohn later testified the parties agreed in January of 2021 that they would permanently move to the United States -- that's the transcript at page 581 -- which is inconsistent with her testimony that this agreement was reached before they even left Montreal in August 2020. Also, as I already noted, the parties kept most of their belongs in an apartment that they still rented in Montreal.

Before the parties left Montreal in August 2020, Kohn began exhibiting strange behavior, including an experience that the parties later learned was a psychotic episode. As a result her mother, Rivka, traveled to Montreal and ultimately took Kohn to the emergency room on August 7, 2020. Kohn was admitted to the hospital and treated for acute postpartum psychosis for one week. She was discharged August 14, 2020.

Two days later the -- on August 16, the parties, along with their three children, left Montreal for Monsey. The family moved into a one-bedroom apartment across the hall from Rivka's apartment at 11A Edison Court in Monsey. And I will refer to this apartment as Apartment 11A. Rivka had furnished apartment 11A with secondhand furniture. While they lived in Apartment 11A, Stein and Kohn slept in a single bed -- in the single bedroom with their youngest child, who slept in a pack and play crib. The two older children slept on a cot in a pull-out couch in common areas.

Shortly after arriving in New York, Kohn began receiving psychiatric treatment from Dr. Price. Dr. Price's treatment of Kohn continues to this day. Kohn likewise began treatment by a psychologist at Dr. Price's office named Fradel, F-R-A-D-E-L, or she's often referred to as Frady, F-R-A-D-Y Binet, B-I-N-E-T. Also, upon arriving in Monsey, the parties enrolled the older children in day-care. The youngest, who was only five months old at the time, was too young for day-care. The parties tried to enroll the oldest child, JS, in school instead of day-care

when they arrived in New York, but with COVID restrictions the school could not admit him at that time. He was, however, enrolled in day-care and was enrolled in school by January 2021.

Although the older children were immediately enrolled in day-care in Monsey, Stein testified he continued to pay for the children's day-care in Montreal. Stein also testified he continued to work remotely from Monsey for the same Canadian employer until his employment was ultimately terminated in June of 2022. Around that time Stein began working for a company based in Monsey. As for Kohn, she did not maintain consistent employment while living in Monsey. On August 31, 2020, Stein emailed Kohn, setting forth his, quote, position regarding the kids attending school in Monsey for the short time we are here. I want to do whatever you need to recover. If that includes having the kids near you, then that is what we will do as long as we can. However, it should be clear that this is a very temporary measure, and we intend to take them back to their schools in Montreal as soon as we can, end quote. That's Petitioner's Exhibit 9.

In late August 2020, the parties jointly attended Kohn's psychiatric counseling session with Dr. Price. In email correspondence on September 8 and 9, 2020, Dr. Price explained to Stein that he expected Kohn's acute psychiatric issue to resolve in approximately one to six months. That's Petitioner's Exhibit 18. Accordingly, Stein testified he believed Kohn needed to remain under Dr.

Price's care and, therefore, in Monsey until approximately March of 2021. In addition, Dr. Price credibly testified that the acute condition did, in fact, resolve within this time frame by approximately March of 2021. On September 14, 2020, Stein called the police because, according to the police incident report, quote, his wife refused to give him his children's passports, end quote. That's from Petitioner's Exhibit 94.

Based on the testimony of both parties as well as Rivka's testimony, Kohn took the two older children's passports from where they had been stored in Apartment 11A and gave them to Rivka. Kohn asked Rivka to put them somewhere safe. So Rivka put them in a safe deposit in the bank. The youngest child's birth certificate was not put in the safe deposit box. Kohn testified she gave her mother the passports because -- quote, because Stein was threatening to take away the children, end quote, from Kohn and file for divorce. That testimony is at page 565 to 566 of the trial transcript. This testimony is supported by records of Kohn's session with Frady Binet on October 20, 2020, which state that Kohn was, quote, unsure if she should return the passports to her husband and risk that he leaves with the children or keep the passports in her mother's safe and risk her husband calling the divorce lawyer, end quote. That's Petitioner's Exhibit 107 at Bates Number R-1446.

Stein testified he began looking for the children's documents because, quote, something raised his suspicion about when we would be going back to Canada, end quote.

That's at page 111 -- at this Transcript 111. At this time, September 2020, Stein testified he, quote, knew Kohn wanted to stay in Monsey longer, end quote, but did not know that Kohn wanted to stay in Monsey permanently. Also page 111. The September 14 police incident report supports Stein's account. It says Stein, quote, was inquiring what are his options if the wife, Adeena Kohn, decides to stay in New York and not return to Canada. He states Adeena did not tell him that she was going to stay in New York, but he was just curious about solutions if he faces various conflicts in the future, end quote. That's from Petitioner's Exhibit 94. Although the parties' recollections of the events surrounding the children's passports are somewhat different, they're not inconsistent, and I find both accounts to be credible.

In January 2021 Stein, Kohn, and the children traveled to Florida. They took the kids to Disney world, visited friends, and went to the beach, but Stein testified he and Kohn were also, quote, looking around to see if anywhere could be nice to live, end quote, and discussed buying a home in Florida. That quote is from page 253 of the transcript. In fact, Stein received a mortgage preapproval -- excuse me. In fact, Stein received a mortgage preapproval letter to purchase a home in Florida, and beginning January 10, 2021, he communicated by email with a rabbi and a local Jewish school principal about what it would be like to live in Jacksonville, noting that the parties were also considering Boca Raton or Orlando. And that's in Petitioner's Exhibit

72 at Stein 485-86 and, also, Respondent's Exhibit BB, B as in boy, BB.

On January 6, 2021, the parties exchanged a series of text messages, which are a part of Exhibit -- Respondent's Exhibit UUUU. Stein said that if the parties stayed together, we will have a big house with a permanent guest room only for your mom. I just can't make a 30-year commitment to a place I don't like. Stein also said, quote, I commit to visiting Monsey often, end quote. To this Kohn replied, quote, but not Montreal for me, end quote. Stein, in turn, responded, quote, I know, end quote, with a sad face emoji and said, quote, I wish you could be happy in Montreal, end quote, to which Kohn replied, quote, I know it's hard for you. I appreciate the sacrifice. It means the world to me, end quote.

Finally, Stein says, quote, I'm not going to make you live somewhere where you're unhappy. It's a no-brainer. I wish you could be happy in Montreal though, end quote. In these January 6, 2021, messages -- text messages, Kohn unequivocally states she will not return to Montreal. However, based on Stein's messages, including that he will not, quote make Kohn live somewhere where she's unhappy, end quote, I find that Stein, as of January 2021, was still consenting to the children living in Monsey temporarily.

On March 5, 2021, Stein emailed Kohn with a different tone. He said, quote, Dear Adeena, I am not in agreement with the current living arrangements for our

kids. I prefer for them to be in our primary residence in Montreal, and I hope we can restore that as soon as possible, end quote. Petitioner's Exhibit 10. Kohn testified she did not respond to this email via email. The following day on March 6, 2021, Stein texted Kohn and said, quote, sorry. And this is followed by a sad face emoticon, which is different from an emoji. But it's an emoticon. And then, quote, I don't want to make you feel bad. You are completely safe. I just needed to make sure it's in writing. It doesn't change anything though, end quote.

That comes from Respondent's Exhibit VVVV. Kohn responded, quote, well, it doesn't make me safe -- let me read it again. Well, it doesn't make me feel safe at all. You know I don't want to be in Montreal and for good reason. If you want to, quote, restore that, end quote -- and that reference to "restore that" was a reference to Stein's March 5 email where Stein says he wants to restore the children living in Montreal. Kohn says, quote, we are not on the same page, and I'm not safe at all, end quote. Again, the same Exhibit VVVV.

Stein in turn responded. Quote, I didn't realize it was news to you that I preferred Montreal over Monsey, end quote, to which Kohn responded we are not discussing preferences here. We're discussing what's safe, end quote. The same exhibit. Later in the conversation, Stein also wrote, quote, living in Monsey more than a few months is not an option for me, end quote. That comes from Petitioner's Exhibit 71. Kohn responded in part. Quote, I know you don't want to be in Monsey forever. Come here

so we can discuss how to move forward at our appointments with Dr. Price, end quote. It also comes from Exhibit 71.

Importantly, both parties testified Kohn would not have allowed the children to live separately from her and that the parties never contemplated Stein living with the children alone, meaning separately from Kohn, in Canada. That appears several times in the trial transcript at pages 380, 485, and 708. In other words, when Kohn said she did not want to live in Montreal, she also meant the children would not return to Montreal. Between December 2020 and March 2021, Stein accompanied Kohn to several of her appointments with Dr. Price. At a session on March 17, 2021, which the parties jointly attended, Dr. Price wrote Kohn a prescription, stating Kohn had to, quote, remain in New York until completion of treatment, end quote. That's Petitioner's Exhibit 19. Dr. Price testified he wrote this prescription so Stein and Kohn could travel between Monsey and Montreal without having to comply with quarantine restrictions then in effect in Canada.

Also, in March 2021 Stein informed the parties' landlord in Montreal that they would not be renewing the lease for the Montreal apartment, and the lease did expire in June of 2021. As a result Stein and Kohn took multiple trips to Montreal in May and June of 2021 to pack up and move their belongings out of the Montreal apartment. Stein drove their belongings in a U-Haul to Monsey where they were stored in Kohn's sister's home. Based on all of

this, I find that the March 5, 2021, email and the March 6, 2021, text messages represent, first, a definitive statement by Kohn that she and the children were not returning to Montreal, and, second, that Stein was withdrawing his temporary consent for the children to live in the United States along with Stein's demand that the children return to Montreal within a few months.

This finding is supported by Stein's testimony that as of March 2021, Kohn had made it clear that she and the children were not going back to Canada and that he disagreed with this approach. That's in the transcript at pages 350 to 351. It's also supported by Stein's statement in a document filed in the subsequently filed divorce action that, quote, at Kohn's suggestion we finally let the lease on our Montreal apartment lapse, end quote, because it became clear that Kohn was not returning to Montreal. That's from Respondent's Exhibit ZZ at RESP-853.

On April 14, 2021, Stein again emailed Kohn and said, quote, Dear Adeena, this is to reiterate that I'm not in agreement with the current arrangements of keeping the kids in Monsey away from our primary residence, their school, and their friends in Montreal, end quote. That's from Petitioner's Exhibit 11. There is no email or other response from Kohn in the record. On June 4, 2021, Kohn texted Stein, requesting financial assistance for living expenses, and as part that text stated, quote, I can't go back to stressful living in Montreal no matter how much you argue it's a cheaper cost of living, end quote.

That's from Petitioner's Exhibit 93. The record does not contain a response from Stein to that text message.

On July 23, 2021, Stein again emailed Kohn and said: "Dear Adeena, this is to reiterate in writing that I am completely opposed to moving to a new dwelling place in Monsey. We either must remain in the current apartment, come up with a new mutually agreed upon place to live, or split the time between Montreal and wherever you choose. I have been complying with your wishes to be in Monsey for nearly an entire year at this point. I will not allow us to become further entrenched here -- there, I should say -- to become further entrenched there. There is absolutely no room to negotiate on this. I am at my limit." That's Petitioner's Exhibit 45.

There is no email or other response from Kohn in the record. By August of 2021, Kohn testified that the two older children were attending school together, and the younger child was in day-care, the same day-care that JS and ZS had previously attended. Kohn also credibly testified all three children had friends, often spend time with their cousins, regularly saw a primary care physician and a dentist, and regularly attended synagogue a few minutes' walk from the apartment complex where they lived. Kohn also testified JS had a singing role in the prayers at the synagogue and that the children would visit Kohn's grandmother for kugel, a Jewish dessert, on Friday afternoons. I find this testimony is a credible description of the children's lives in Monsey in August of 2021.

On September 6, 2021, when responding to a text from Kohn asking whether Stein understood her needs, Stein stated in nearly all capital letters, quote, yes, and that's why I've said over and over I'm okay with you staying in Monsey and letting the kids be there most of the time, exclamation point, end quote. That's Respondent's Exhibit N as in Nancy, NNN. Because of the capital letters and the tone of frustration in this message, I decline to find that this text message represents Stein's consenting to the children and Kohn living in Monsey permanently.

On September 16 and 22 of 2021, Stein applied for teaching jobs in New Jersey. That's Respondent's Exhibit XXXX. I find Stein's testimony credible that he applied to these jobs specifically because, quote, it seemed like the family would be in New York for some additional time, end quote, and these jobs, quote, were part-time and seasonal, end quote -- and that testimony was at page 473 to 74 of the trial transcript -- meaning he could resign at the end of the school year and return to Montreal. And I decline to find that Stein's applying to these jobs in New Jersey is evidence that he decided he would remain in Monsey permanently.

On September 26, 2021, Stein texted Kohn a screenshot of a document entitled, quote, Application for Divorce, end quote, to be filed in a court in Canada. That's in Respondent's Exhibit QQQQ. He sent it with a text message that stated: "I worked on our paperwork today." This is a quote. "I worked on our paperwork today. I'm not

waiting around for your lawyer anymore. We will have a defined schedule for who takes the kids when. I put down that I should have at least 4 or 14 days." And that's from Respondent's Exhibit QQQQ. Kohn did not respond to this message.

On September 29, 2021, Stein texted Kohn again. This time the message was a draft text message, and Stein said he and Kohn could share with family and friends, announcing their separation. That's Respondent's Exhibit C. Part of the message said, quote, Adeena will be living in Monsey with the kids there most of the time, and I will likely be somewhere else, end quote. On October 2, 2021, however, Stein sent a different text message to a group chat titled, quote, Immediate Steins, end quote. And this is Respondent's Exhibit P as Peter, PPPP, four Ps. It stated, quote, Adeena (her mother really) has hired a very expensive lawyer to try to keep the kids in Monsey permanently. I'm not so happy about that, but number one priority is that the kids are happy and everything stays normal, end quote.

The following day on October 3, 2021, Stein posted in the group chat Immediate Steins again. And this is Petitioner's Exhibit 106. Stein said, quote, I shouldn't have posted anything yet last night. It was premature. The lawyer may not have actually -- the lawyer may not have actually been hired. Still lots of unknowns and trying to work it out. I won't post anymore, end quote.

On October 4, 2021, the next day, Kohn filed for divorce in New York State Supreme Court, Rockland County. That's Respondent's Exhibit AAA. The divorce complaint, which was served on Stein on October 6, seeks relief in the form of, quote, granting plaintiff, meaning Kohn, custody of the unemancipated children of the marriage. That's Exhibit AAA at RESP-569. Stein testified he understood Kohn's demand for full custody as, quote, standard, end quote, in divorce papers and that he did not understand this to mean she actually wanted sole custody of the children in Monsey. That's from the transcript at page 253 to 59.

However, considering the communications he had with Kohn that I just described about Kohn's desire to stay in Monsey with the kids and the unambiguous language of the divorce complaint, I find that Stein's testimony was not credible on this point. Instead, I conclude the divorce complaint was another clear and direct statement by Kohn that she intended to remain with the children in Monsey permanently. Stein left Apartment 11A on October 5, 2021, the night before he was served with the divorce papers. He testified he still kept his belongings there and had not yet officially moved out but that he generally slept elsewhere.

On October 19 Stein emailed Kohn, trying to reconcile and requesting that Kohn withdraw the divorce filings. That's Petitioner's Exhibit 49. He concluded that e-mail by saying he would give Kohn, quote, the space, end quote, she asked for and proposing, quote, one full month with only a few short visits with the skids, end

quote. That's from Petitioner -- again, Petitioner Exhibit 49. Kohn did not respond.

On October 21, 2021, Stein again emailed Kohn and said he was trying to give her the space that she asked for but that he had, quote, always been a very hands-on dad, end quote, and before -- and, quote, before our final arrangements are worked out, it doesn't make sense for me to only show up sporadically, end quote. Again, that's in Exhibit 49. Rivka testified around this time in October 2021 she, as well as Stein's rabbi, Rabbi Lichtenstein, and the rabbi for the Kohn family, Rabbi Schabes -- that's S-C-H-A-B-E-S -- prepared a list of conditions that Stein and Kohn could agree to as part of a, quote, divorce and get agreement, end quote. A copy of this list is in the record listed as Exhibit 60.

In Judaism, a get, G-E-T -- get is the way in which a marriage is terminated. One of the conditions listed in the divorce and get agreement was that Stein would, quote, go away for three months to do intense therapy and see a psychiatrist to get medication if necessary, end quote. Again, that's Petitioner's Exhibit 60. And other conditions in that document were that Kohn would be the, quote, primary custodial parent, end quote, and that Kohn's home would be the primary custodial abode -- quote, abode. Rivka testified that Rabbi Lichtenstein showed this list of conditions to Stein. That was in the trial transcript at 762.

Kohn, likewise, testified that after receiving the October 19 and 20 -- excuse me -- the October 19 and October 21 emails from Stein, she was approached by Rabbi Lichtenstein about an offer by Stein to give Kohn three months of physical space. However, on October 29, Rabbi Lichtenstein texted Kohn that Stein had, quote, rescinded his offer to leave for three months, end quote, and that, quote, the deal is off -- this deal is off, end quote. That's Respondent's Exhibit O as in over, OOOO.

Kohn testified that following the divorce filing in October of '21, Stein would not see the children unless he first asked Kohn. Stein testified that following the divorce filing, he was, quote, very much afraid, end quote, and, quote, worried, end quote, that the children were going to live in the United States permanently. That's from the transcript at 280 to 81. In November of '21 Stein began renting a separate two-bedroom apartment in Monsey. Stein continues to rent this apartment on a month-to-month basis.

On November 22, 2021, Kohn changed the locks on the door to Apartment 11A. On November 23, Stein texted Kohn asking Kohn to put certain of his belongings outside of the apartment so he could retrieve them. That's Respondent's Exhibit K. Also, in November 21, the parties and Rivka participated in divorce mediation with a rabbi named Rabbi Gruenbaum, G-R-U-E-N-E-B-A-U-M. On November 25, Rabbi Gruenbaum emailed Kohn and Stein a schedule for visitation and payment of child support that would be in effect during a, quote, temporary trial

until the end of the year, end quote. Petitioner's Exhibit 92. According to Stein, he was still trying to reconcile the marriage at this point by, quote, staying separate from, end quote, Kohn and avoiding, quote, any heavy discussions, end quote. That's from the trial transcript at page 205.

Regarding the changed locks for Apartment 11A, Stein testified he first realized Kohn had changed the locks in January of 2022. And that's from the transcript at pages 200 to 204. According to Stein, he came to Apartment 11A in January 2022 -- the exact date is not clear -- to pick up the children, but Rivka told Stein through the door that it wasn't his time now. That's from the transcript at page 201. Stein testified Rivka was referring to the visitation schedule set in Rabbi Gruenbaum's November 25 email but that Stein believed the schedule no longer applied because the trial separation had expired at the end of 2021.

After the divorce filing in October of 2021 but prior to that day in January of 2022, Stein testified he never had to use his key to access Apartment 11A because Kohn or Rivka would open the door and let the children out. According to Stein, being locked out in January of '22 was the first time he understood that Kohn was going to permanently retain the children in Monsey. However, I find that Stein's testimony in this regard is not credible for the reasons I've already discussed, including the clear language in the communications between the parties in March '21 and thereafter.

In February of 2022, Kohn and the children moved into a larger three-bedroom apartment in the same apartment complex in Monsey. On August 26, '22, Stein submitted a, quote, request for return of the child, end quote, to the Quebec Central Authority on Hague Convention applications. That's Petitioner's Exhibits 12 and 13. In the request Stein stated, quote, soon after the children were taken, Ms. Kohn, the alleged abductor, filed court actions in the United States in order to retain the children there, end quote. Petitioner's Exhibit 12 at page Stein-270. On October 14, 2022, Stein wrote a letter informing the Rockland County Supreme Court about his request to the Central Authority. That's Petitioner's Exhibit 89.

I will now review the procedural history of this case. On December 19, 2022, Stein, initially proceeding pro se, filed a petition for returning the children to Canada pursuant to the Hague Convention, a supporting memorandum of law, and accompanying exhibits. That's Documents 1 and 2 in the docket of this case. Kohn was served with the petition on December 27, 2022, and filed an answer to it with supporting exhibits on January 13, 2023. The same day Kohn's counsel filed the letter motion seeking a pre-motion conference to discuss whether Kohn could move for summary judgment, which counsel admitted was unusual in Hague cases. I denied that request and scheduled a conference for February 6, 2023.

Following the February 6 conference in an effort to encourage the parties to settle this dispute, I referred the

case to the Court-annexed mediation program. Shortly thereafter an attorney entered an appearance pro bono for Stein for the limited purpose of attempting to settle the matter. I held subsequent in-person conferences on April 3rd, May 18, June 29, August 16, and August 30 as well as a telephone conference on October 17, 2023. At these conferences we discussed settlement and mediation, discovery, and preparations for an evidentiary hearing. Stein also secured counsel this time, and his counsel filed a notice of appearance on May 5, 2023. Finally, an evidentiary hearing on the merits was held on October 23, 24, 25, and 26. On the final day, I scheduled today's conference to issue a bench ruling on the petition, and as I've already stated, I am denying the petition.

The remainder of my ruling will proceed as follows: First, I will discuss the legal standards applicable to this Hague Convention case, and, second, I will apply these standards to the factual findings I've already discussed and explain why I've decided to deny the petition.

Now I'll talk about the legal standards. This case is governed by the Hague Convention, the provisions of which is -- have been implemented in the United States through ICARA. Both the United States and Canada are signatories, that is, quote, contracting states, end quote. That's comes from the treaty itself to the Hague Convention.

The pertinent provisions of the convention are as follows: Article 1 provides that its two objects are, one, to secure

the prompt return of children wrongfully removed to or retained in any contracting state, and, two, to ensure that rights of custody and of access under the law of one contracting state are effectively respected in the other contracting states.

Article 3 defines "wrongful" for the purposes of the Convention. It states: "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 under the laws 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 or would have been so exercised but for the removal or retention."

Article 4 provides that the Convention applies to any child under the age of 16 who was habitually resident in a contracting state immediately before any breach of custody or access rights. Article 12 provides where a child has been wrongfully removed or retained in terms of Article 3 and a period of less than one year has elapsed from the date of the wrongful removal or retention to the date of the commencement of the proceedings before the judicial or administrative authority of the contracting state where the child is the authority shall order the return of the child forthwith. If, however, the proceedings have been commenced after the expiration of one year from the date of the wrongful removal or retention, Article 12 provides the court shall also order the return of the

child unless it is demonstrated that the child is now settled in its new environment.

Under ICARA the term "commencement of proceedings," as used in Article 12 of the Convention, means, with respect to the return of the child located in the United States, the filing of a petition in a court with jurisdiction in the United States in the place where the child is located. That's Section 9003(f)(3) of ICARA.

Article 13 of the Convention provides two other exceptions or defenses to the requirement that children be returned to their country of habitual residence. The court is not bound to order the return of the child if the person opposing the child's return establishes that the person seeking the child's return 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. And the other defense is the following: There is a grave risk that his or her return would expose the child to physical and psychological harm or otherwise place the child in an intolerable situation.

Article 14 of the Convention states: "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 -- it may take notice directly of the law of and of judicial or administrative decisions formally recognized or not in the state of the habitual residence of the child without recourse to the specific procedures of the

proof of that law or for the recognition of foreign decisions which would otherwise be applicable."

Finally, Article 16 provides that the court 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 notice. In other words, except under certain circumstances not applicable here, a United States District Court has the authority to determine the merits of an abduction claim but not the merits of the underlying custody claim. That's a quote from the Second Circuit case Blondin, B-L-O-N-D-I-N, against Dubois, D-U-B-O-I-S, 189 F.3d 240 at page 245, Second Circuit, 1999. That same principal is also embodied in Article 19 of the Convention, which states: "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."

Now, turning to the merits of the instant petition, the following legal standards apply: First, to succeed on a petition for repatriation of a child under the Hague Convention, the petitioner must prove that the child was removed from a state party in which he was habitually resident and that the removal was wrongful, and that comes from Hollis against O'Driscoll, 739 F.3d 108, Second Circuit, 2014.

Petitioner must prove his prima facie case by a preponderance of the evidence. That's from *ICARA, Section 9003(3)(e)(1)(A). Second, if a petitioner makes a prima facie case of wrongful removal or retention, the court must return the child unless the respondent can establish one of the Convention's enumerated defenses, end quote. And that's from In re Lozano, 809 F. Supp. 2d 197, a Southern District case from 2011, which was affirmed by the Second Circuit under the name of Lozano against Alvarez at 697 F.3d 41, Second Circuit, 2012 and then further affirmed by the Supreme Court in Lozano against Montoya Alvarez, and that's at 134 S. Ct. 1224 in 2014. A respondent must establish by a preponderance of the evidence the one-year and settled exception or one-year and settled defense set forth in Section -- in Article 12 of the Convention as well as the consent and acquiescence exceptions or defenses set forth in Article 13 of the convention, and that's from Section 9003(e)(2)(B) of ICARA.

Accordingly, Stein must demonstrate both that the children were wrongfully detained in New York and that immediately prior to such wrongful retention the children were, quote, habitually resident, end quote, in Canada. To be wrongful, the retention of a child must be in breach of the petitioner's custody rights under the law of the state of habitual residence, and petitioner must have been exercising those rights at the time of removal or retention. It's a quote from the Southern District case Nissim,

N-I-S-S-I-M, against Kirsh, K-I-R-S-H, 394 F. Supp. 3d 386, a Southern District case from 2019.

Rights of custody under Article 5 of the Convention include the right to determine the child's place of residence. Accordingly, the Convention contemplates a broad definition of rights of custody that is not constrained to traditional notions of physical custody. That comes from Royal Borough of Kensington & Chelsey against Bafna-, B-A-F-N-A, Louis, L-O-U-I-S, 2023 Westlaw 6173335 at Star 2. It's a Second Circuit case from September 22, 2023.

Here nothing suggests Stein lacked custody over his children under Canadian law or that he was not exercising those rights at any point in time. To the contrary, the record demonstrates that Stein was an actively involved parent that consistently exercised custody rights over his children. Accordingly, my task is to determine if and when Kohn precluded Stein from exercising his custodial right to determine where the children lived. According to Stein, the wrongful retention occurred in January of 2022 when he testified he first realized the locks on Apartment 11A had been changed. However, for the reasons that follow, I disagree and hold that the wrongful retention occurred earlier. It specifically occurred no later than March 6, 2021.

According to the Second Circuit, the act of, quote, retention, end quote, for purposes of the Convention is a singular and not a continuing act. That comes from Marks

ex rel. SM against Hochhauser, H-O-C-H-H-A-U-S-E-R, 876 F.3d 416, Second Circuit, 2017.

In cases like the one before me, when the -- this is a quote from a Southern District case. When the petitioner initially consented to an indefinite stay or the parties did not discuss a specific date for return, courts generally find that a retention becomes wrongful on the date the petitioner refused to agree to an extension of the child's stay in the new location. And that case is Taveras against Morales, 22 F. Supp. 3d 219 at page 231, Southern District, 2014, which was affirmed under the name Taveras ex rel. L.A.H. against Morales, 604 F. App'x 55, Second Circuit, 2015.

The Circuit has not decided whether a wrongful retention requires a clear and unequivocal communication by the petitioner that he or she does not consent to the child's continued retention. That also comes from the Taveras case, 604 F. App'x at 56. Accordingly, whether and when a wrongful retention occurs is a very fact specific inquiry. For example, in Hoffman against Sender, 716 F.3d 282, which is a Second Circuit case from 2013, the Circuit agreed that a wrongful retention occurred, quote, when the respondent had the petitioner served with divorce papers, end quote. Although the petitioner initially consented to the children's removal, that removal became wrongful once the respondent sought to prevent the petitioner from exercising his custody rights, end quote.

Indeed, the facts of Hoffman are somewhat similar to this case. The parties in Hoffman were an orthodox Jewish couple originally resident in Montreal. The respondent traveled to New York with the children after the birth of her youngest child so that her family could help her care for the child. And in that case, like in this one, the petitioner asserted the trip was intended to be temporary and that the intent was for the children to return to Montreal, but the respondent claimed the visit to New York was the first step in the family's permanent relocation to the United States. While in New York, the parties' marital relationship broke down, and the respondent eventually served divorce papers on the petitioner. That's all from the Hoffman case. However, unlike here, the respondent in Hoffman hid her intention to remain with the children in New York permanently until she served divorce papers on the petitioner.

In this case, the case in front of me, there is ample evidence to conclude that Kohn's divorce papers constituted wrongful retention, but the divorce action was not the first time Kohn said she intended to remain in New York permanently with or without Stein. In fact, based on the facts in this case, it is clear a wrongful retention occurred even earlier than the divorce filing.

In the Marks against Hochhauser case that I mentioned earlier, the Second Circuit found a wrongful retention occurred when the respondent informed the petitioner that she and the children would not be returning to the home country after they had traveled to

the United States for what the parties originally agreed was a three-week vacation. Similarly, in a Southern District case called Lomanto against Agbelusi, A-G-B-E-L-U-S-I, which is 2023 Westlaw 4118124, Southern District, June 22, 2023, the court concluded the wrongful retention occurred when the respondent informed the petitioner that she and the children were not coming back to the home country.

In Lomanto, after the respondent told the petitioner they weren't coming back, petitioner left respondent voice mails expressing his anger and confusion at this decision and filed a police report reporting the children missing in the home country to put on the record that he was not given -- that he had not given his consent for his children to stay in the United States.

The petitioner, however, argued a wrongful retention had not yet occurred on this date because he continued to speak with the respondent about putting the children in school in New York and making plans for the children to visit him in Spain. The petitioner argued this demonstrated he only feared the respondent would not return the children and did not know that the children would not be returning at that time.

However, the Lomanto court rejected the petitioner's arguments and concluded that the respondent wrongfully retained the children when she told the petitioner she and the children would remain in New York because at that time the petitioner knew that the respondent did not

intend to return his children to Spain and articulated that he did not consent to their non-return.

Likewise, in this -- in the present case, on March 5, 2021, Stein stated in writing that he did not agree to the children remaining in Monsey indefinitely and wanted to restore their location to Montreal as soon as possible, to which Kohn responded on March 6 that the parties were not on the same page because Kohn did not, quote, want to be in Montreal, end quote. Again Petitioner Exhibit 10 and Respondent's Exhibit VVVV.

Moreover, in documents filed in the divorce case, Stein attested that by March 2021 Kohn had made it clear that she was not returning to Montreal. That's Respondent's Exhibit ZZ at RESP-853, and it's also in the trial transcript at page 350.

And, importantly, both parties agree Kohn would not live separately from the children, meaning Stein understood Kohn would keep the children with her wherever she was living. That was testified to in the trial transcript at page 380, 485, and 708. Accordingly, a wrongful retention of the children occurred on March 6, 2021, because Kohn's decision to retain the kids in Monsey on that date was in breach of Stein's custody right to determine where the children would live, and at that time Stein was aware of Kohn's intention to retain them, and he had made a written demand that they return.

Now, turning to the question of habitual residence. The Hague Convention itself does not provide any definition of "habitually resident." So says the Second Circuit in Gitter against Gitter, 396 F.3d 124, Second Circuit, 2005. However, the Supreme Court recently held that a child's habitual residence depends on the totality of the circumstances specific to the case and that an actual agreement between the parents is not necessary to establish a child's habitual residence. That comes from Monasky against Taglieri, 140 S. Ct. 719, a 2020 case. Instead, according to the Supreme Court, a child's habitual residence is shown by some degree of integration by the child in the social and family environment in a place where her residence there is more than transitory. As I said, from the Monasky case.

And a mere physical presence in a country is not a dispositive indicator of habitual residence. Instead, facts indicating that the parents have made their home in a particular place can enable a trier of fact to determine whether a child's residence in that place has the quality of being habitual. For older children capable of acclimating to their surroundings, facts indicating acclimatization will be highly relevant, but for those too young or otherwise unable to acclimate and who would depend on their parents as caregivers, the intentions and circumstances of the caregiving parents are relevant considerations. However -- so says the Supreme Court -- no single fact is dispositive across all cases.

Here the parties dispute whether the children's habitual residence as of the date of wrongful retention was in Canada or the United States. According to Stein, who has the burden to establish habitual residence, the children have always been habitually resident in Canada because their presence in Monsey was intended to be transitory, and the children have continued to visit Canada to maintain their familial and community contacts there. But according to Kohn, the children's habitual residence changed to Monsey in January of 2021 because at that point they had been living in Monsey continuously for five months. They were already integrated into a close-knit community. The Court, however, does not need to resolve this dispute because even assuming Stein has met his burden to show by a preponderance of the evidence that the children were habitually resident in Canada immediately prior to the wrongful retention in March of 2021, Kohn has met her burden to show by a preponderance of the evidence that Stein commenced this proceeding more than one year after the date of such wrongful retention and that the children are settled in Monsey.

So turning now to the so-called one-year and settled defense. Article 12 of the Convention allows but does not require a court to refuse to order the repatriation of a child on the sole ground that the child is settled in its new environment if more than one year has elapsed between the abduction and the petition for return. And that's a quote from the Lozano case, 697 F.3d at 51, a

Second Circuit case. In Lozano, which -- as I mentioned earlier, the case in which the Second Circuit was affirmed by the Supreme Court. The Circuit analyzed the history and purpose of the one-year and settled defense. I'm referring to a report prepared by Elisa Pérez-Vera, the official Hague Conference reporter for the Convention, which is considered the, quote, official history and commentary on the Convention and an authoritative source for interpreting the Convention's provisions, end quote. It's a quote from Lozano, 697 F.3d at 52, Note 11.

The Circuit discussed how the Convention's drafters recognized the need for narrow exceptions to the requirement to return children under the Convention. For example, the one-year and settled defense reflects the Convention's drafters' recognition that there could come a point at which a child would become so settled in a new environment that repatriation might not be in its best interest, end quote. Again, from the Lozano case.

However, the drafters limited this exception such that a central authority cannot even consider the child's interest in remaining in the country to which he has been abducted until after a year has elapsed.

The Circuit further noted that the Pérez-Vera report acknowledges that the one-year period set forth in Article 12 is somewhere arbitrary. However, the drafters of the Convention saw value in agreeing to a single time limit of one year because the difficulties encountered in any attempt to state this test of integration of the child as an

objective rule resulted in a time limit being fixed, and a one-year period proved to be the least bad answer to the concerns which were voiced in this regard.

Accordingly, I first consider whether one year elapsed between the date of wrongful retention and the commencement of these proceedings, and if it has, I will consider whether the children are now settled in Monsey, New York. As I already stated, under ICARA the filing of a petition with a District court in the United States commences proceedings under Article 12 of the Hague Convention. That's Section 9003(f)(3) of ICARA. Thus by the plain language of ICARA, any requests or filings made in the home country to have the child returned do not constitute commencement of proceedings for purposes of the one-year and settled period. That proposition comes from In re R.V.B., 29 F. Supp. 3d 243, Eastern District of New York, 2014.

Here, Stein filed a petition in this court on December 19, 2022, and as I previously discussed, the children were wrongfully retained in the United States on March 6, 2021, which is more than one year before December 19, 2022. Even if I had concluded that October 4, 2021, when Kohn filed for divorce, was the date of wrongful retention, that date is also more than one year before December 19, 2022. Accordingly, more than one year passed between the wrongful retention and the filing of the petition, and I must consider whether Kohn has demonstrated by a preponderance of the evidence that the children are settled in their new environment. I conclude that she has.

To establish that a child is settled, a respondent must show by a preponderance of the evidence that the child has significant emotional and physical connections demonstrating security, stability, and permanence in its new environment. That's a quote from the Lazano case, 697 F.3d 56.

As delineated by the Second Circuit, quote, factors that courts consider should generally include, one, the age of the child; two, the stability of the child's residence in the new environment; three, whether the child attends school or day-care consistently; four, whether the child attends church or participates in other community or extracurricular school activities regularly; five, the respondent's employment and financial stability; six, whether the child has friends and relatives in the new area; and, seven, the immigration status of the child and the respondent. Again, that's all from Lazano, 697 F.3d at 57. Consideration of these factors weighs strongly in favor of finding that the children are now settled in their new environment and were so settled as of the time the incident petition was filed in December of 2022.

Age of the children. The children are seven, five, and three years old at the present time. At this point the two older children have lived in Monsey for at least half their lives, and the youngest has lived in Monsey nearly her entire life. Although the youngest is perhaps young enough that moving back to Canada might not disrupt her life, that is certainly not true for the two older children, who are old enough to have formed meaningful

attachments to their new environment. In fact, because JS arrived here when he was four and ZS when she was two, most, if not all, of their memories are likely of Monsey, not Montreal.

That comes from Mohácsi, M-O-H-Á-C-S-I, against Rippa, 346 F. Supp. 3d 295, an Eastern District 2018 case involving a four-year-old child who was settled. And, also, Taveras against Morales, 22 F. Supp. 3d 219, a Southern District case from 2014. That involved an eight-year-old child who was settled, and that was affirmed at 604 F. App'x 55, Second Circuit, 2015. Accordingly, the ages of the children weigh strongly in favor of finding the children are now settled and were settled at the time the petition was filed in December of 2022.

As far as the stability of the children's residence is concerned, quote, in considering the stability of the children's residence, courts consider the number of homes they have lived in, the permanency of their residence, and the strength of their community and family ties, end quote. That comes from Lomanto against Agbelusi, 2023 Westlaw 4118124. Here the children have lived in the same apartment complex in Monsey with Kohn and her family, including the children's maternal grandfather, great-grandmother, aunts, and several of the children's cousins. Although they moved apartments once in February of 2022, this move was within the same apartment complex and was into a larger three-bedroom apartment more appropriate for a family with three children. Thus the children's continued residence in the

same apartment complex with these strong family ties weighs strongly in favor of finding that the children are settled both now and at the time the petition was filed.

Regarding consistent school or day-care, the children have consistently been enrolled in day-care or schools since they arrived in Monsey in August of 2020. Moreover, the children all attended the same day-care, and once they were eligible for school, they have attended the same school. Therefore, this factor also weighs strongly in favor of finding the children settled both now and at the time the petition was filed.

Regarding attendance of religious and other community activities, Kohn credibly testified the children attend synagogue regularly with Kohn and her extended family and that the eldest child, ZS, has a singing part in the prayers. The record also supports that the children play with friends and cousins in Monsey and that ZS attended dance classes. Accordingly, this factor weighs strongly in favor of finding the children settled.

Regarding the stability of respondent's employment, Kohn is an interior designer but has not maintained consistent employment since relocating to Monsey. That being said, I've already discussed the very stable environment in which the children have lived since they arrived in Monsey and the strong family support that Kohn enjoys. Therefore, notwithstanding Kohn's inconsistent employment, this does not weigh against finding the children settled.

Regarding friends and relatives in the new area, as I've already discussed, the children are surrounded by Kohn's extended family in the apartment complex, and Kohn credibly testified the children have made friends in Monsey. Although it is true that the children also had strong family connections in Montreal, the question before the Court is not whether they were settled before they were taken to New York but rather whether they have built sufficient bonds in New York such as uprooting them again would be disruptive. That comes from Lomanto against Agbelusi, 2023 Westlaw 4118124. Accordingly, the children have strong connections with family and friends in New York, which weighs strongly in favor of finding them settled.

Finally, as to immigration status, Kohn is U.S. citizen, and at least the two older children have U.S. passports. Thus the risk that anyone is going to be deported is nonexistent, and this factor weighs strongly in favor of finding the children settled. Accordingly, I find and conclude that Kohn has met her burden to show that the children are now well-settled in their environment in Monsey, New York, and were well-settled there even as of the date the petition was filed in December of 2022.

Because Stein commenced these proceeds more than one year after the date of wrongful retention, the children's return to Canada is not required under Article 12 of the Hague Convention, and I decline to exercise my discretion to order them returned notwithstanding that they are now settled in the United States. And this is

because it would clearly be against the children's best interest to order that they be returned to Canada for the same reasons I've just discussed, specifically that most, if not all, of their memories are of Monsey. They have a stable residence in Monsey. They have consistently attended school or day-care in Monsey. They regularly participate in the religious and other community and family activities in Monsey. They benefit from the strong family support enjoyed by Kohn, and they have established strong connections with family and friends in Monsey, and they and Kohn are not at risk of deportation. Because I find that Kohn has established the one-year and settled defense, I do not address Kohn's other affirmative defenses, namely whether Stein consented to or acquiesced in the children's relocation to the United States. The petition is denied. The children shall not be returned to Canada pursuant to the Hague Convention.

I need to add something though, and I'm going to do that now. And it doesn't bear on my decision today, but it's worth -- it's important that I say it. I am actually quite sympathetic to Mr. Stein's situation. I want to make that crystal clear, and it is so unfortunate that he's been uprooted from his home, his extended family, and the vision that he had for raising his children and creating a life with his family in Montreal. However, Mr. Stein failed to exercise his right to seek return of the children within one year of the earliest or even the latest date of wrongful retention. I'm not being critical of him for doing that. I think he was trying to figure it out and work it out in --

here in Rockland County. The bottom line is that he did not seek the return of the children within one year of the date of wrongful retention.

It is true that the one-year period that the Convention framer selected to include in the treaty is somewhat arbitrary, but it is the line they chose to protect children from being forcibly removed from a place in which they become settled, and it is overwhelmingly clear that the three children are well-settled in Monsey and were well-settled even as of the day the petition was filed.

Now, for the avoidance of any doubt, let me be clear that I am not making any sort of custody determination as between Mr. Stein and Ms. Kohn. I find only that the children shall not be returned to Canada by my order, and, therefore, I leave it entirely up to the state judicial system to determine the appropriate custody and divorce arrangements.

I will enter a short order denying the petition and directing the clerk to close this case, and I wish the very best for you, Mr. Stein, and for you, Ms. Kohn, and for your children. And I hope there's some peace for your family in all of this. Okay. That's my ruling --

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 22-cv-10683-VB
Dkt. 46-3

Raphael Stein
Petitioner-Appellant

v.

Adeena Kohn
Respondent-Appellee

FILED: September 30, 2023

JOINT STIPULATION OF FACTS AND LAW

1. Petitioner was born in Canada in 1990 and is a dual citizen of Canada and the United States.

2. Respondent was born in Canada in 1990 and is a dual citizen of Canada and the United States.

3. Petitioner and Respondent were raised in Canada.

4. Petitioner and Respondent were legally married on September 23, 2011, in Canada.

5. From 2011 to 2016, Petitioner and Respondent lived at 2767 Chemin Bedford, Montreal, Quebec in Canada.

6. From July 1, 2017, to June 30, 2021, the Petitioner leased an apartment at 2502 Ekers, Montreal, Quebec in Canada.

7. Petitioner and Respondent have three children: J.S.S., Z.N.S., and A.Z.S.

8. J.S.S. was born in 2016 in Canada.

9. Z.N.S. was born in 2018 in Canada.

10. A.Z.S. was born in 2020 in Canada.

11. On December 19, 2022, the date on which the Petition was filed, Petitioner and Respondent's three children were 6, 4, and 2 years old.

12. On March 12, 2020, the government of Quebec began implementing restrictions to curtail the spread of COVID-19.

13. Between March 12, 2020 to October 1, 2022, Quebec and the Canadian government implemented a variety of COVID-19 restrictions that included imposing a curfew, travel restrictions together with explicit quarantine and masking requirements, with some limited exceptions which includes persons seeking essential medical treatment outside of Canada.

14. Since April 2020, Petitioner and Respondent have been sharing a minivan that has a Canadian license plate and a current motor vehicle registration in Canada registered solely in the Petitioner's name.

15. On August 14, 2020, Respondent was discharged from the Jewish General Hospital in Canada.

16. On August 16, 2020, Petitioner, Respondent, and their three children arrived in the United States.

17. Petitioner accompanied Respondent to the following psychiatric appointments with Dr. Richard Price: December 16 and 23, 2020; January 13, 2021; February 3, 17, and 24, 2021; and March 17, 2021.

18. Prior to August 16, 2020, Petitioner, Respondent, and their three children were habitual residents of Canada.

19. Prior to August 16, 2020, under Canadian law, Petitioner and Respondent had rights of custody over their three children.

20. Prior to August 16, 2020, under Canadian law, Petitioner and Respondent were exercising their rights of custody over their three children.

21. From August 16, 2020 to November 2021, the parties stayed together with their children in the apartment located in 11A Edison Court, Monsey, New York.

22. On October 7, 2020, on behalf of Respondent, Rivka Kohn, Respondent's mother, requested a consultation with attorney James J. Sexton.

23. On October 16, 2020, Rivka Kohn, Respondent's mother, had a consultation with attorney James J. Sexton.

24. Since August 16, 2020, Petitioner and his three children were present in Canada during the following dates: i. May 14, 2021 to May 23, 2021, wherein the Respondent traveled with the Petitioner and the Children to Canada. ii. July 30, 2021 to August 1, 2021, wherein the Respondent and Petitioner traveled together with the children; iii. August 24, 2021 to August 29, 2021; iv. September 23, 2022 to September 27, 2022, pursuant to Court Order permitting travel to Canada; v. October 13, 2022 to October 19, 2022, pursuant to Court Order, pursuant to Court Order permitting Petitioner's parenting time with the Children; vi. April 10, 2023 to April 16, 2023, pursuant to Court Order permitting Petitioner's parenting time with the Children; vii. June 22, 2023 to June 26, 2023, pursuant to Court Order permitting Petitioner's parenting time with the Children; and viii. August 17, 2023 to August 23, 2023, pursuant to Court Order permitting Petitioner's parenting time with the Children.

25. A divorce action was commenced on October 4, 2021, in the Supreme Court, Rockland County, which is

currently pending (hereinafter referred to as the "Divorce Action").

26. The Petitioner appeared in the Divorce Action and requested a parenting schedule.

27. In November 2021, the Petitioner purchased in Canada a sedan that has a Canadian license plate. The sedan has a current motor vehicle registration in Canada registered solely in the Petitioner's name, and the parties have been sharing the vehicle in New York since April 2022, pursuant to the New York Supreme Court directives.

28. The Petitioner began working for OKG Tech, LLC, a company based in Monsey New York, on April 4, 2022, and that employment ended on October 27, 2022.

29. On August 17, 2022, an Order was entered directing that the Petitioner pay interim spousal support and child support in connection with the Divorce Action.

30. The Petition seeking a return of the children was filed by the Petitioner on December 19, 2022.

31. Petitioner and the parties' three children traveled to Canada from September 27, 2023 through October 4, 2023.

32. Both Canada and the United States are signatories to the Hague Convention, which has been in force during the entire period from August 16, 2020 through the present.

APPENDIX F

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION
(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.

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 -

a) to discover the whereabouts of a child who has been wrongfully removed or retained;
b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
d) to exchange, where desirable, information relating to the social background of the child;
e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;
g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
h) to provide such administrative arrangements as may

be necessary and appropriate to secure the safe return of the child;

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

CHAPTER III - RETURN OF CHILDREN

Article 8

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

The application shall contain -

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

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

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

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

The application may be accompanied or supplemented by -

e) an authenticated copy of any relevant decision or agreement;
f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
g) any other relevant document.

Article 9

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

Article 10

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

Article 11

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

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own

initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

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

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

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

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

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

Article 14

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

Article 15

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

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be

returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

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

Article 18

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

Article 19

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

Article 20

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

CHAPTER IV - RIGHTS OF ACCESS

Article 21

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

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

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

CHAPTER V - GENERAL PROVISIONS

Article 22

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

Article 23

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

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

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

Article 26

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

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

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

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

Article 27

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

Article 28

A Central Authority may require that the application be accompanied by a written 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 Central

Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

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

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

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

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

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

Article 34

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

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

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

CHAPTER VI - FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry

shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

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

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force -

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

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

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

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

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

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy

shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

APPENDIX G

22 U.S.C. § 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 wellbeing.

(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.)

* * *