CARLTON FIELDS

6 Defenses to International Child Abduction

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A parent who moves with a child from the child's home country to another country, or retains the child in the other country, may face accusations that the move or retention is wrongful. The parent who stays behind may assert the parent who moved or kept the child from the home country committed wrongful child abduction in violation of international law. The parent will face a fact-intensive, international litigation in which the parent must prove legal justification for wrongful removal or retention of the child. This article gives and overview of the defenses the travelling parent may assert. The Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980 T.I.A.S. No. 11,670 ("Hague Abduction Convention") establishes legal rights and procedures for the prompt return of children who have been wrongfully removed or retained. The International Child Abduction Remedies Act ("ICARA") is the statute in the United States that implements the Hague Abduction Convention. 42 U.S.C. §§ 11601 - 11611. Under ICARA, a person may petition a court authorized to exercise jurisdiction in the country where a child is located for the return of the child to his or her habitual residence in another signatory country, so the underlying, substantive time-sharing (custody) dispute can be determined in the correct jurisdiction. See 42 U.S.C. § 11603; Hague Abduction Convention, art. 3(a), T.I.A.S. No. 11,670, at 4. The inquiry by a Court in a return action under ICARA "is limited to the merits of the abduction claim and not the merits of the underlying custody battle." *Pielage v. McConnell,* 516 F.3d 1282, 1286 (11th Cir.2008) (quoting *Ruiz v. Tenorio,* 392 F.3d 1247, 1250 (11th Cir.2004)). *See also Hamprecht v. Hamprecht*, 2012 WL 1890857, Case No. 2:12–cv–125–FtM–29DNF (M.D. Fla. 2012). A petitioner establishes the elements of wrongful removal or retention under ICARA by demonstrating by a preponderance of the evidence that: (1) the habitual residence of the child immediately before the date of the allegedly wrongful removal or retention was in the country to which return is sought; (2) the removal or retention breached the petitioner's custody rights under the law of the child's habitual residence; (3) the petitioner was exercising or would have been exercising custody rights of the child at the time of the child's removal or retention; and (4) the child has not reached age 16. *See Lops v. Lops*, 140 F.3d 927, 936 (11th Cir.1998); *Hamprecht v. Hamprecht*, 2012 WL 1890857, Case No. 2:12–cv–125–FtM–29DNF (M.D. Fla. 2012). Under the Hague Abduction Convention and ICARA, when a child has been wrongfully removed from the child's home nation-state or "habitual residence," the court must order the child to be returned to the habitual residence, unless the party removing the child can establish

at least one of six narrow affirmative defenses. *See Furnes v. Reeves*, 362 F.3d 702, 712 (11th Cir.2004). *First Defense: The Non-travelling Parent Was Not Exercising Custody Rights* The first defense a travelling parent may raise is that the person having care of the child was not exercising rights of custody at the time of the removal or retention of the child. A custody ruling from a court from the child's habitual residence may establish a right of custody. *See Sanchez v. Suasti*, 39 Fla. L. Weekly D1127a (Fla. 3d DCA May 28, 2014) (Brazilian court's ruling a father had a right to prohibit mother from changing children's country of residence establish rights of custody under the Hague Convention). What if there is no such order? The Hague Abduction Convention does not define "exercise" of rights of custody, but courts have found that, absent a ruling from a court in the country of habitual residence, a court should liberally find "exercise" when a parent keeps or seeks to keep any regular contact with the child. *See In re Leslie,* 377 F.Supp.2d 1232,1243 (S.D. Fla. 2005) ("exercise" is liberally interpreted); *In re Ahumada Cabrera*, 323 F.Supp.2d 1303, 1312 (S.D. Fla.2004); *Mendez Lynch v. Mendez Lynch*, 220 F.Supp.2d 1347, 1359 (M.D. Fla. 2002) (father exercised rights by supporting the children and visiting regularly, deciding about school and attending to his daughter's medical needs); *Sealed Appellant v. Sealed Appellee*, 394 F.3d 338, 343-44 (5th Cir. 2004) (father who visited the children 5 times a year and paid child support had exercised custody rights); *Friedrich v. Friedrich*, 78 F.3d 1060, 1066 (6th Cir. 1996) (any attempt to maintain a somewhat regular relationship with the child should constitute "exercise" of rights of custody and, once a court finds that the parent left behind exercised custody rights in any manner, "it should stop – completely avoiding the question of whether the parent exercised the custody rights well or badly."); *Hirst v. Tiberghien*, 947 F.Supp. 578, 594 (D. SC 2013) (mother had physical custody of children and had been solely responsible for their care following father's relocation to the U.S. and prior to the children's travel to the U.S.); *Fernandez v. Somaru*, 2012 WL 3553779 *9 (M.D. Fla. 2012) (there was no evidence of any acts by mother that constituted clear and unequivocal abandonment of the child); *Garcia v. Varona*, 806 F.Supp.2d 1299, 1317 (N.D. GA 2011) (father sought to be a continual presence and influence in the life of the children until the day of their wrongful removal); *Giampaolo v. Erneta*, 390 F.Supp.2d 1269 (N.D. Ga. 2004) (father exercised rights of custody by regular involvement with the child's school). While courts applying the Hague Abduction Convention do not consider the merits of parents' underlying custody claims – the goal is to determine whether the child has been wrongfully abducted and, if so, return the child (*see ICARA, 42 U.S.C. § 11601(b)(4))* – proof of a parent's involvement in the child's life or lack of exercise of custody rights is important, in both Hague Abduction Convention cases and, on the merits, in contested time-sharing and relocation cases under Florida law. Under Florida's relocation statute, one factor courts consider in making determinations about whether to permit or deny relocation is, "the nature, quality, extent of involvement, and duration of the child's relationship with the parent or other person proposing to relocate with the child and with the nonrelocating parent, other persons, siblings, half-siblings, and other significant persons in the child's life." Section 61.13001(7), Florida Statutes (2013). In Hague Abduction Convention cases brought in Florida for the return of a child to the child's habitual residence, the defending parent may draw guidance about proof of the non-travelling parent's failure to exercise contact with a child from cases discussing the nature, quality and extent of parental

involvement or "abandonment" of the child. See, e.g., *Valqui v. Rodriguez*, 75 So. 3d 751, 752 (Fla. 3d DCA 2011); *Muller v. Muller*, 964 So. 2d 732, 735 (Fla. 3d DCA 2007) *Second Defense: The Non-travelling Parent Consented to or Acquiesced to the Move* Under Article 13(a) of the Hague Abduction Convention, a court is not bound to order the return of a child if the respondent demonstrates by a preponderance of the evidence that the person having care of the child gave prior consent to the removal or retention or subsequently acquiesced in the removal or retention. Proof of consent or acquiescence by a parent to a child's residing in the foreign country rebuts a claim for wrongful removal or retention. *See Friedrich v. Friedrich*, 78 F.3d 1060, 1070 (6th Cir. 1996) (proving acquiescence requires a showing of a formal act or statement, such as testimony or a written renunciation of rights, or a consistent attitude of acquiescence over a significant period). The conduct of a person having care of a child prior to the child's removal or retention is the relevant conduct to consider in connection with the defense of consent; the person's conduct subsequent to removal or retention is the relevant conduct to consider with the defense of acquiescence. *See Hamprecht v. Hamprecht*, 2012 WL 1890857, Case No. 2:12–cv–125–FtM–29DNF (M.D. Fla. 2012) (finding no acquiescence to child's remaining indefinitely in Florida, where father pursued custody in Germany and ICARA petition in Florida, where the mother was wrongfully retaining child); *Fernandez v. Somaru*, 2012 WL 3553779 *12, No. 2:12-cv-262-FtM-29DNF (M.D. Fla. 2012). Delay in asserting a parent's rights can amount to acquiescence in the child's removal or retention. *Cf. Garcia v. Angarita*, 440 F.Supp.2d 1364, 1378 (S.D.Fla.2006) (any delay by a father, who agreed to allow his children to travel to the United States for a brief visit, in notifying the mother he objected to the children's relocation to the United States did not constitute acquiescence, because the mother never sought his agreement and he never said or did anything that evidenced he acquiesced to relocation; she perpetrated relocation through deception; and he took action to secure the return of the children); *In re Leslie*, 377 F.Supp.2d 1232 (S.D.Fla.2005) (a father did not acquiesce in the removal of his son from Belize to the United States, to live with the child's mother and her husband, to preclude return of the son to Belize; there was conflicting evidence about whether the mother notified the father of the move, and he aggressively pursued return of the son, both in Belize and the United States). *See also In re Ahumada Cabrera*, 323 F.Supp.2d 1303, 1313 (S.D.Fla.2004) (a mother's retention of a child in the United States only became wrongful when the child's father learned of her true intention not to return, even though the father earlier knew the mother and child were not returning on the date they were originally supposed to return and he had agreed to let the child finish the school year; the father tried to obtain assistance in Argentina through the Central Authority in obtaining return of the child, rebutting the defense he acquiesced to the child's removal); *Mendez Lynch v. Mendez Lynch*, 220 F.Supp.2d 1347, 1364-65 (M.D. Fla. 2002) (a father was exercising his custody rights over the minor children when their mother removed them from Argentina, even though he was separated from the mother and on a 19-day trip to India when the mother fled; the father had remained in regular contact with the children and paid the family bills); *Rodriguez v. Sieler*, 2012 WL 5430369 *6 (D. Mont. 2012) (father removed children from Mexico while mother was sleeping and concealed his plan; her later efforts to negotiate a settlement about the children's care and custody could not be construed as acquiescence in his continued wrongful retention of the children) *Third Defense: The*

Child of Sufficient Age and Maturity Objects to Being Returned A court is not bound to order the return of a child if the respondent demonstrates by a preponderance of the evidence that the child objects to being returned and has attained an age and maturity at which it is appropriate to consider the child's views. See Article 13 of the Hague Abduction Convention. There is no age at which a child is deemed sufficiently mature for the child's views to be considered. *Tsai-Yi Yang v. Fu-Chiang Tsui,* 499 F.3d 259, 279 (3d Cir. 2007). Each case is fact intensive. *See Escobar v. Flores*, 183 Cal. App. 4th 737, 750-51, 107 Cal.Rptr.3d 596, 606-07 (Cal.App.3 Dist. 2010) (affirming trial court's refusal to return to Chile a 9-year old child, who was communicative, was under no undue influence, and demonstrated sufficient age and maturity to consider his objection to being returned to Chile)*; Lopez v. Alcala*, 547 F.Supp.2d 1255, 1259 (M.D.Fla.2008) (one child, age 7, had not reached an age and maturity; the other, age 10, had, but her wishes were ambivalent); *Mendez Lynch v. Mendez Lynch*, 220 F.Supp.2d 1347, 1362 (M.D.Fla.2002) (a 9-year-old child had reached an age of maturity such that his views should be considered); *In re D.D.*, 440 F.Supp.2d 1283, 1297 (M.D. Fla. 2006) (a 6-year-old child had not reached an age and maturity to make it appropriate to take her views into account); *Application of Blondin v. Dubois,* 78 F. Supp. 2d 283, 296 (S.D.N.Y. 2000) *aff'd sub nom. Blondin v. Dubois,* 238 F.3d 153 (2d Cir. 2001) (a daughter's objecting to being return to an abusive father was "a remarkably mature eight-year-old, probably in no small part due to the very adult proceedings and issues that she has been confronted with over the past two years."). In Florida, one time-sharing factor courts consider is, "the reasonable preference of the child, if the court deems the child to be of sufficient *intelligence*, understanding, and experience to express a preference." Section 61.13(3)(i), Florida Statutes (2013). Likewise, in determinations about whether to permit a parent to relocate with a child, courts applying Florida's relocation statute must evaluate among many factors, "the child's preference, taking into consideration the age and maturity of the child." Section 61.13001(7)(d), Florida Statutes (2013). *Fourth Defense: The Child is Well-Settled in the New Environment* The child must be returned unless it is demonstrated that the child is now "well-settled" in the new environment. Hague Abduction Convention, Article 12. A court is not bound to order the return of a child if the defending parent demonstrates by a preponderance of the evidence that (a) the proceedings were commenced more than one year after the wrongful removal or retention, and (b) the child is now settled in the new environment. *See Wigley v. Hares*, 82 So. 3d 932, 941-42 (Fla. 4th DCA 2011) (the child had not become "settled" in his environment); *In re Ahumada Cabrera*, 323 F.Supp.2d 1303, 1314 (S.D.Fla.2004) (child wanted to remain in the United States and appeared to be happy and doing well, but was not settled in her new environment, where mother was allegedly wrongfully retaining child, had changed the child's schools and residences approximately 5 times in the 2½ years she had been in the United States, and any stability she might have enjoyed was undermined by mother's uncertain immigration status); *Mendez Lynch v. Mendez Lynch*, 220 F.Supp.2d 1347, 1363 (M.D. Fla. 2002) (children removed from Argentina were not well settled in Florida because they had lived in 7 locations during their 18 months in the United States and had been treated for stress). The *Wigley* court looked to the U.S. State Department for interpretation of what "settled" means: The Convention does not provide a definition of the term "settled." However, the U.S. State Department has declared that "nothing less than substantial

evidence of the child's significant connections to the new country is intended to suffice to meet the respondent's burden of proof." *Public Notice 957, Text & Legal Analysis of Hague International Child Abduction Convention*, 51 Fed.Reg. 10494, 10509 (U.S. State Dep't Mar. 26, 1986). Factors to analyze when considering a "settled environment" defense include:

1. The child's age;
2. The stability and duration of the child's residence in the new environment;
3. Whether the child attends school or day care consistently or inconsistently;
4. Whether the child has friends and relatives in the new area or does not;
5. The child's participation in community or extracurricular school activities, such as team sports, youth groups, or school clubs; and
6. The respondent's employment and financial stability. In some circumstances, we will also consider the immigration status of the child and the respondent. In general, this consideration will be relevant only if there is an immediate, concrete threat of deportation.

See Wigley (citing *In re B. Del C.S.B.*, 559 F.3d 999, 1009 (9th Cir.2008)). *See also Lozano v. Alvarez*, 697 F.3d 41, 56 (2d Cir. 2012); *Litigating International Child Abduction Cases Under the Hague Convention*, National Center for Missing & Exploited Children, Training Manual (2012) at p. 46 n. 187. Cases that have found the "settled environment" defense applied include cases in which the removed or retained children had lived in a stable place while in the U.S., attended the same school, and formed relationships in the U.S. *See, e.g., Tavaras v. Morales*, Case No. No. 13 Civ. 7743 (RA) (SD NY May 16, 2014) (father showed 8-year old daughter had been in the U.S. 15 months, was doing well in public school, had close friends in New York, lived in a stable household with her father and grandmother, frequently visited other family members in Manhattan, and stated she would rather live in New York with her father rather than in Spain with her mother); *Esquivelzeta v. Sohn*, Case No. B235003 (Cal. Ct. of Appeal, 2d App. Dist, 8th Div. 2013) (children were settled in Los Angeles, had lived in a stable home, had continuity at school for a year, excelled in school, and had activities and friends at school and in the neighborhood); *In re Lozano,* 809 F.Supp.2d 197, 230, 234 (S.D.N.Y.2011) (5-year-old child had become close to family members she had been living with in NY for 16 months, was in a stable school environment, had friends, and was participating in activities) *aff'd Lozano v. Montoya Alvarez,* 134 S. Ct. 1224, 1236, 188 L.Ed. 2d. 200 (2014) (affirming order denying repatriation to the United Kingdom and rejecting the doctrine of equitable tolling of the 1-year period within which to bring a wrongful retention petition); *Castillo v. Castillo,* 597 F.Supp.2d 432, 440-441 (D.Del. 2009) (11-year old child had 1 residence and 1 school since arriving in the United States when she was 9, received attendance awards, had improved grades, fluency in English, and had many friends at school); *Silvestri v. Oliva,* 403 F.Supp.2d 378, 388 (D.N.J. 2005) (children had lived in the same town in NJ for 2½ years, attended the same school system, were doing well in school, were fluent in English, and had relationships with friends at school). *Tavaras v. Morales*, Case No. No. 13

Civ. 7743 (RA) (SD NY May 16, 2014) (respondent father established the "now settled" defense by showing 8-year old was doing well in Manhattan public school, lived with her father and grandmother, frequently visited other family members in Manhattan, and stated she would rather live in New York with her father rather than in Spain with her mother). Cases that have found the "settled environment" defense not to apply did so when children had lived in various places and attended multiple schools since being brought to the U.S. *See Wigley v. Hares*, 82 So. 3d at 942 (10-year old son had not become settled in his environment because, although he lived in the same home for 4 years, he had not attended school or been properly home schooled, had not participated in activities, had limited access to friends and family members, and his mother was an undocumented illegal alien and unemployed); *Filipczak v. Filipczak (In re Filipczak)*, 838 F.Supp.2d 174, 181 (S.D.N.Y. 2011) (children were three and four years old and lived in a domestic violence shelter in Chicago, then in Manhattan, and then with the mother's fiancé in Connecticut and had attended multiple schools). Some courts consider immigration status in the "settled environment" analysis, even if deportation is not imminent. *See In re Koc*, 181 F.Supp.2d 136, 154 (E.D.N.Y.2001); *see also Lopez v. Alcala*, 547 F.Supp.2d 1255, 1260 (M.D.Fla.2008) (finding that the children's "residence in this country is not stable because neither [the abducting parent] nor the children have legal alien status and, as such, are subject to deportation at anytime"); *Giampaolo v. Erneta*, 390 F.Supp.2d 1269, 1282-1283 (N.D.Ga. 2004) (although 11-year old child had regularly attended school, participated in activities, and made friends in the U.S., she had lived in 3 homes, attended 3 schools, the mother and child were illegally in the U.S., and they would be living with the mother's husband, a convicted felon under the Georgia Family Violence Act). A court may also consider the active measures the person who removed the child has undertaken to conceal the child's whereabouts, and the prospect that the abducting parent could be prosecuted for violations of law based on the concealment. *Lops v. Lops*, 140 F.3d 927, 946 (11th Cir.1998); *Wigley v. Hares*, 82 So. 3d 932, 941-42 (Fla. 4th DCA 2011). In 2014, the United States Supreme Court resolved a split among Federal Circuit Courts regarding whether the 1 year period in Article 12, after which the defending parent may assert the "well-settled" defense, is subject to equitable tolling because of that parent's conduct in concealing the child's whereabouts. *Compare Yaman v. Yaman*, 2013 WL 4827587 (1st Cir. (N.Y.) 2013) and *Lozano v. Alvarez*, 697 F.3d 41, 51 (2d Cir. 2012), with *Furnes v. Reeves*, 362 F.3d 702, 723-24 (11th Cir. 2004) and *Duarte v. Bardales*, 526 F.3d 563, 570 (9th Cir. 2008) The Supreme Court held the 1-year period is not subject to equitable tolling. *Lozano v. Montoya Alvarez,* 134 S. Ct. 1224, 1239, 188 L.Ed. 2d. 200 (2014) (parent's inequitable conduct would weigh heavily in favor of returning a child even if she became settled). *Fifth Defense: There is Grave Risk of Physical or Psychological Harm if the Child is Returned* A court is not bound to order the return of a child if the respondent demonstrates by clear and convincing evidence there is a grave risk that the child's return would "expose the child to physical or psychological harm or otherwise place the child in an intolerable situation." Article 13(b) of the Hague Abduction Convention. Detailed country-by-country information on procedures if a child has been moved to another country is available at U.S. Department of State website. In April 2014, the U.S. Department of State Office of Children's Issues submitted to Congress a Compliance Report on compliance by treaty members, identifying the

Department's concerns about fulfillment of their obligations under the Hague Abduction Convention to return children. The report illustrates the assertions that may be raised by parties or by judicial or governmental authorities called upon to assist with return of children. Although such statistics may assist in establishing the "grave risk of harm" defense, a parent need not prove that the child's country of habitual residence is unable or unwilling to protect the child from the grave risk of harm that would accompany the child's return. The trial court found a mother proved the defense of grave risk of harm in denying a father's petition to return the child to St. Kitts, in *Wigley v. Hares*, 82 So. 3d 932, 941-42 (Fla. 4th DCA 2011). The Fourth District Court of Appeal determined that testimony the child would be upset and would be psychologically harmed by returning him would not meet the grave harm test. But the mother's testimony about threats and abuse by the child's father provided clear and convincing evidence that return would place the child at risk of grave harm. *See also Acosta v. Acosta,* 725 F. 3d 868, 876 (8th Cir. 2013) (affirming district court's finding that suicidal and abusive father, his sustained, uncontrolled rage, and his inability to cope with the prospect of losing custody would expose them to a grave risk of harm if they returned to Peru). On the other hand, in *Lopez v. Alcala*, 547 F.Supp.2d 1255 (M.D.Fla.2008), clear and convincing evidence did not establish such a grave risk that two children would be harmed, if returned to their father in Mexico. Likewise, in *In re D.D.*, 440 F.Supp.2d 1283, 1298-99 (M.D. Fla. 2006), there was no credible evidence the father had ever physically or psychologically harmed the child and the child's living conditions in France did not evidence intolerable conditions. In *Mendez Lynch v. Mendez Lynch*, 220 F. Supp. 2d 1347, 1364-65 (M.D. Fla. 2002), children were ordered to be returned to Argentina, despite testimony by a professor of political science and international studies that Argentina was in a state of economic and civil disorder, posing a risk of harm to the children if they were returned. *Sixth Defense: Fundamental Principles Relating to the Protection of Human Rights and Fundamental Freedoms Do Not Permit Return of the Child* Under Article 20 of the Hague Abduction Convention, a court is not bound to order the return of a child if the travelling parent demonstrates, by clear and convincing evidence, that return of the child would not be permitted by fundamental principles of the country of habitual residence relating to the protection of human rights and fundamental freedoms. The defense is directed to concerns about harms arising from returning a child to a country when "human rights concerns, most likely defined within the parameters of other international agreements, would prohibit return." *Aldinger v. Segler,* 263 F.Supp.2d 284, 290 (D.P.R.2003). The defense is rarely invoked and apparently has not been successfully asserted in the United States. Fed. Jud. Ctr., *The 1980 Hague Convention on the Civil Aspects of International Child Abduction: A Guide for Judges* 85 n. 32 (2012); *Souratgar v. Fair*, 720 F. 3d 96, 108-09 (2d Cir. 2013) (denying Article 20 defense, noting it has yet to be used by a federal court to deny a petition for repatriation); *Walker v. Kitt*, 900 F. Supp. 2d 849, 863-64 (N.D. Ill. 2012) (mother utterly failed to provide clear and convincing evidence that return of child to Israel would "shock the conscience.") "To refuse to return a child for anything less than gross violations of human rights would seriously cripple the purpose and effectivity of the Convention." *Id.* *See also Castro v. Martinez,* 872 F. Supp. 2d 546, 557 (W.D. Tex. 2012) (declining to apply the exception where the respondent alleged that corruption in Mexico would prevent a fair determination of child custody upon the child's return); *Aly v. Aden*, 2013 WL 593420 (D.Minn. 2013)

(the same allegations the court found to be insufficient to establish the grave risk of harm defense could not establish the "fundamental humanitarian rights" defense). *See also* Weiner, Merle H., *Strengthening Article 20*, 38 U.S.F.L. Rev. 701 n. 71 (2004). In Sourtgar, the United States Second Circuit Court of appeals rejected a mother's broad assertion that a country's (Singapore) Syariah courts (which, she claimed would inevitably grant custody to the child's father) are incompatible with principles, "relating to the protection of human rights and fundamental freedoms" of the United States. *Souratgar v. Fair*, 720 F. 3d 96, 108-09 (2d Cir. 2013). Despite political sympathies the mother's general assertions might engender, the court declined to rule categorically that the mere presence of a Syariah Court in a foreign state, whose accession to the Convention the United States has recognized, *per se* violates all notions of due process. Souratgar, 720 F. 3d at 108. The court affirmed the grant of the father's petition for his son's repatriation to Singapore. *Id.* at 109. Decisions from other countries under Article 20 are likewise rare. In one such case, recognizing the defense, a Spanish Court denied a father's petition for return of a child to Israel from Spain. The child and mother were Spanish citizens. The court found that return would be contrary to principles of Spanish law concerning protecting human rights and basic liberties. Following the parties' divorce and mother's taking the child to Spain, the father applied for and an Israeli court granted him sole custody upon a finding that the mother was 'Moredet," a status under Jewish law meaning she was a 'rebellious wife.' The Spanish court determined this finding would cause the absolute negation of the mother's parental rights and status in the Israeli community and declined to return the child. *In Re S.*, Auto de 21 abril de 1997, Audiencia Provincial Barcelona, Sección 1a. *See also Carrascosa v. McGuire*, 520 F.3d 249, 261-63 n.28 (3d Cir.2008) (criticizing a Spanish court's using Article 20 to justify denial of repatriation and its construing an agreement not to take child out of the United States without both parents' consent as violating fundamental rights under the Spanish Constitution for citizens to travel and choose their place of residence).

Conclusion

Proving claims in international child abduction cases under the Hague Abduction Convention requires analysis and careful development of all evidence and testimony that may support or defeat defenses to claims of wrongful abduction or retention. This article provides a useful framework for such analysis of the defenses the accused may raise.

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