Updated Supplemental Entries to the 1980 Hague Convention Guide

in order of section supplemented

Hon. James D. Garbolino

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III The Case in Chief for the Return of a Child

III.E.3.a.ii Custody Rights Established by Patria Potestas (p. 51)

Rodriguez v. Noriega, 732 F. Supp. 3d 990 (D. Minn. 2024). Mother relocated from Culiacán with the parties' child, without permission or notice to the child's father. The court held that according to the laws of Sinaloa, father had custody rights (patria potestas) entitling him to pursue the child's return. The court granted father's ex parte application for an order restraining mother from removing the child from Minnesota pending return proceedings. 732 F. Supp. 3d at 996–97.

III.E.3.b Custody Rights Awarded by Judicial or Administrative Decision (p. 53)

Livingstone v. Livingstone, Nos. 22-1308 & 22-1343, 2023 WL 8524922 (10th Cir. Dec. 8, 2023). After an argument with father, mother left with the children, secured the assistance of the U.S. Embassy in Australia, and relocated to the United States. Mother secured two protective orders: a temporary order that restrained father from approaching mother and children where she or they lived, worked, or frequented, except for purposes of contact with the children pursuant to a written agreement between the parties or by order of the Australian authorities, and an extended order substantially identical to the first order, effective for five years. The extended order also prohibited father from locating, attempting to locate, or arranging for someone to locate mother and the children. Father made no attempts to contest the restraining orders or provide testimony about the effects of the orders on child custody. The Tenth Circuit ruled that father failed to carry his burden to establish enforceable custody rights. His failure to take meaningful steps to exercise his rights was deemed insufficient to show that those rights had been exercised.

III.F.3.d Scope of Factors (p. 75)

Baz v. Patterson, 100 F.4th 854 (7th Cir. 2024), *cert. denied*, 145 S. Ct. 1049 (2025). Mother sought permission from an Illinois court to relocate with the parties' child to Germany. The court granted mother's request. As part of that judgment, the parties stipulated that (1) the child's habitual residence was in Illinois, (2) neither party acquiesced to the permanent removal of the child to any other country except the United States, and (3) the Illinois court retained continuing jurisdiction to modify the order. When father refused to return the child after a 2023 visit in the United States, the parties entered into an agreement before German courts that allowed for a modified visitation plan for father. That agreement confirmed that the 2022 agreement continued in effect. After mother refused father's visitation with the child for his summer 2023 visit, father

took the child from Germany and returned with him to the United States. Mother then filed her request for return of the child to Germany.

The district court in Illinois granted mother's petition, and ordered the child returned to Germany. A divided circuit court affirmed the district court's decision ordering the child returned.

The court rejected father's argument that the district court erred in failing to enforce the parties' agreement that the United States conclusively established the child's residence. The Seventh Circuit conceded that a parental stipulation to a child's future habitual residence may be an important factor to consider under *Monasky*'s[1] totality-of-the-circumstances test, but it is not a conclusive factor. The court reasoned that such a stipulation cannot bind third parties (e.g., guardian ad litem) or the district judge.[2] Additionally, an expression of parental intent cannot circumvent the perspective of the child and other circumstances that may bear on the child's best interests. 100 F.4th 854, 868.

Nisbet v. Bridger, 124 F.4th 577 (9th Cir. 2024). Father petitioned for the return of his children, ages three and five, from the United States to Scotland. The parents had lived together in Edinburgh since 2012. Father's parents refused to allow the couple to live with them in Jersey. Pursuant to her previous indications, mother stated that if she was unable to live in Jersey, that she would return to the United States. Father's parents relented and allowed the couple to live on Jersey on a temporary basis. While living in Jersey, father attempted suicide on two occasions, ultimately resulting in him being bedridden for at least seven months. After his recovery allowed him to attend to his own needs, mother moved from Jersey to Scotland. In August 2019, father killed his mother by stabbing her. He was convicted of manslaughter and was sentenced to indefinite psychiatric confinement in England. Mother remained in Scotland to have her second child, due to the lack of insurance in the United States, and due to the need for her to remain available for husband's pending criminal case. The parties' second child was born during the Covid-19 pandemic, resulting in closure of the borders, so mother and both children remained in Edinburgh. Eventually father signed documentation for the elder child's U.S. passport, knowing of mother's intention to remove the children to the United States.

Father's petition for return of the children was filed on June 12, 2023 (just under one year from the date that mother removed the children to Oregon). The district court found that Scotland was not the children's habitual residence and denied father's petition.

The Ninth Circuit affirmed (with dissent by Bybee, J), relying principally on the Supreme Court's decision in *Monasky v. Taglieri*, 589 U.S. 68 (2020). The decision focused upon factors that showed that the children had not acquired a habitual residence in Scotland—failure to

1. Monasky v. Taglieri, 589 U.S. 68 (2020).
2. *Baz*, 100 F.4th at 868 (citing United States v. Barnes, 602 F.3d 790, 796 (7th Cir. 2010) (citing Analytical Eng'g, Inc. v. Baldwin Filters, Inc., 425 F.3d 443 (7th Cir. 2005)); 83 C.J.S. Stipulations § 53 (2024), 73 Am. Jur. 2d Stipulations § 8 (2024)).

acclimatize, especially due to their youth, lack of contact with persons and places in Scotland, lack of meaningful relationship with their father, the intentions of the parents, mother's tenuous immigration status in the U.K., and mother's intent to relocate.

III.F.6 No Habitual Residence (p. 82)

Alzu v. Huff, 165 F.4th 1073, 1077 (8th Cir. 2026). A party petitioning for the return of a child must prove that the country of return is the child's habitual residence. If a court determines that the petitioner fails to prove that the country qualifies as the child's habitual residence, it is not necessary for the court to determine that another place is the child's habitual residence. "The Convention does not require a district court to determine where a child habitually resides . . . [but] *whether* the child habitually resides in the location that the petitioner claims." (citing to *Pope v. Lunday*, 835 F. App'x 968, 971 (10th Cir. 2020) (italics in original).

Nisbet v. Bridger, 124 F.4th 577 (9th Cir. 2024) (see discussion *supra* p. 2). The Ninth Circuit focused upon *Monasky*'s[3] "totality of circumstances" standard for determining habitual residence, giving weight to the district court's factual and legal determinations, finding no clear error in the district court's finding that the children had not established a habitual residence in any location.

> While a finding of no habitual residence is rare and should be disfavored, it is not a clear error to render such a finding if the totality of the circumstances of a particular case so warrants. . . . We agree that a finding of no habitual residence should not be made lightly, but we do not see a clear error in finding no habitual residence in the unusual circumstances of this case.

Nisbet, 124 F.4th at 587–88 (internal citations omitted).

IV Exceptions to Return

IV.A.2 Article 18: Discretion to Order Return (p. 101)

Rodrigues v. Silveira, 141 F.4th 355 (1st Cir. 2025). The First Circuit reversed the trial court's finding that a child was not settled in his new environment, and in a de novo review found that the child was settled. The case was remanded to the district court to determine whether the child should be returned to Brazil pursuant to the court's authority under Article 18. The court noted:

3. 589 U.S. 68.

> [T]he district court retains its "equitable jurisdiction" to decide whether to order A.R.'s return. . . . So, we remand for the district court to decide whether, in the exercise of that equitable discretion, returning A.R. to Brazil is warranted despite his status as "now settled." In conducting that narrow task, the district court "may 'consider [Silveira's] misconduct, [if any,] together with any other relevant circumstances, such as whether return would not be harmful or disruptive even though [A.R.] has become settled.' "

Rodrigues, 141 F.4th at 366 (internal citations omitted).

IV.B.1 First Prong: Failure to Commence Proceedings Within One Year (p. 109)

Urquieta v. Bowe, 120 F.4th 335 (2d Cir. 2024). Mother and father shared legal custody of the parties' child, and mother had sole physical custody of the child. Mother granted travel authorization to allow the child to visit with father in New York City for the 2022–2023 holiday period. The child's visit was authorized until January 8, 2023. Father refused to return the child at the end of the scheduled visit, but instead enrolled the child in school in New York, and sought sole custody of the child. Mother did not deliberately extend the time for the child's return, but delayed until more than a year since the child's retention in New York because she felt that she lacked the practical ability to control father's decisions, and that father would likely not return the child at the end of any extension.

Mother filed her petition for return of the child on February 23, 2024. The district court found that mother had established a prima facie case for return, but denied return because father established that the child was well-settled in New York, and the child was sufficiently mature to establish that he objected to return to Chile. The trial court also held that the date of unlawful retention occurred on January 8, 2023, and that because mother's petition was filed more than a year thereafter, that father's Article 12 defense of delay was available.

The Second Circuit recognized that a left-behind parent can consent to an extension of time for a child's stay, thus extending the commencement date for a wrongful retention.[4] The Second Circuit affirmed the district court's conclusion that a left-behind parent "can extend authorization for a child to remain outside the country of habitual residence *after* an initial instance of wrongful retention. This extension would postpone the date of wrongful retention for determining whether the well-settled defense is available." (italics in original). But in the instant case the mother's actions acceding to the child's retention did not amount to a consent to extend the date for the child's return, thus allowing father's well-settled defense to prevail. Urquieta, 120 F.4th at 338.

[4] *Urquieta*, 120 F.4th at 337 (citing Taveras v. Morales, 22 F. Supp. 3d 219, 232 (S.D.N.Y. 2014)).

da Costa v. de Lima, 94 F.4th 174 (1st Cir. 2024). After the parties' separation and entry of a Brazilian decree addressing the parties' custody rights, mother relocated with the child to Massachusetts without any notice to the father. After a year passed without being able to locate the child and mother, father initiated a request through the Brazilian Ministry of Justice, and later filed an action in federal court. The district court denied father's petition for return, finding that the child was well settled.[5]

The First Circuit addressed the question whether facts concerning the child's settlement that occurred after the filing of the petition for return can be admitted into evidence to demonstrate settlement. The court determined that the admission of such evidence is within the discretion of the trial court based upon issues of credibility and weight. The First Circuit found that the trial court had made its decision without clear error or an abuse of discretion in refusing to order the child returned to Brazil. Affirmed.

IV.B.3 Second Prong: Child Settled in New Environment (p. 111)

Rodrigues v. Silveira, 141 F.4th 355 (1st Cir. 2025) (see discussion *supra* p. 3). Father's petition for return of his child from Massachusetts to Brazil was filed two years after the child's wrongful removal. The district court granted father's petition for return, finding that the child was not settled in the United States. A review of the district court's decision to return a child to Brazil focused on the evaluation of the factors that were considered relevant to the well-settled defense.[6] The First Circuit conducted a de novo review and reversed the district court's finding that the child was not well-settled, and remanded for further proceedings. The appellate court found that the facts of the case, and the record as a whole, compelled the conclusion that the child was "now settled."

The court noted, "A 'now settled' child, however, need not have a perfect or flawless life; we ask only if the constellation of facts shows a child with 'significant connections demonstrating a secure, stable, and permanent life in his or her new environment.'" 141 F.4th at 366 (citing *Alcala v. Hernandez*, 826 F.3d 161, 170 (4th Cir. 2016)).

In *Cuenca v. Rojas*, 99 F.4th 1344 (11th Cir. 2024), a five-year-old child's mother removed him from Venezuela and relocated to Florida without the father's knowledge. Father's petition for return to Venezuela was filed twenty months after the child's removal. Despite the mother and child's undocumented status, the district court found that the child was settled in his new environment. The child lived in Florida in the same home, attended the same elementary school, earned good

5. *See* da Costa v. de Lima, No. 22-10543, 2023 WL 4049378, at *1 (D. Mass. June 6, 2023).

6. The First Circuit's references to the factors affecting the child's settlement come from the court's own precedent in *da Costa*, 94 F.4th at 179, that are nearly identical to the *Lozano* factors (697 F.3d at 56).

grades, learned to speak and read English, participated in swimming and karate lessons, and earned school awards for academics, character, helpfulness, citizenship, and perfect attendance. Mother applied for asylum for both herself and the child.

The Eleventh Circuit affirmed the trial court's finding that the child was settled in his new environment. In doing so, the appellate court determined that the standard for determining "settlement" questions involved a mixed question of law and fact. The legal test is for a court to employ a "case-specific totality-of-the-circumstances" analysis, and is subject to de novo review.[7] Using that standard, the court evaluates the facts of the case to determine whether the child is settled. The trial court's decision on the facts is subject to a "clear error" standard.[8]

Following precedents in other circuits, the Eleventh Circuit held that the immigration status of a child is one factor that must be evaluated within the context of the child's specific individual circumstances.[9] Without speculating on the possible results of the mother's asylum application, the court noted that despite living in Florida for two years, she was authorized to remain in the United States during the pendency of her application and had not yet had her first scheduled asylum hearing.

The Eleventh Circuit also declined to order the child returned pursuant to Article 18 of the Convention (discretion to order child's return, even if deemed to be settled), finding a lack of equitable considerations that outweighed the child's interest in settlement.[10]

IV.B.3.c Standard of Review of Well-Settled Defense—Circuit Split Recognized (new)

Guevara v. Castro, 155 F.4th 353 (5th Cir. 2025), *cert. denied*, 608 U.S. ---, 2026 WL 1052333 (Apr. 20, 2026). Father and mother are the unmarried parents of the child, born in Venezuela in 2018. After the couple separated in 2019, father was granted custody rights. In August 2021, father moved to Spain for work and continued supporting the child financially while maintaining regular contact. In November 2021, mother removed the child from Venezuela without father's consent, crossed into the United States, and settled in Texas. She and the child applied for asylum, but still remained without lawful permanent residence status. Father filed a Hague Convention petition in 2023. The district court found wrongful removal but denied return, concluding the child was well-settled in Texas pursuant to the terms of the Article 12 defense.

7. Cuenca v. Rojas, 99 F.4th at 1350.
8. *Id.*
9. *da Costa*, 94 F.4th at 179–80; *Lozano I*, 697 F.3d at 57; Alcala v. Hernandez, 826 F.3d 161, 171 (4th Cir. 2016); Hernandez v. Garcia Peña, 820 F.3d 782, 787–88 (5th Cir. 2016); *In re* B. Del C.S.B., 559 F.3d 999, 1009–14 (9th Cir. 2009); *Cuenca*, 99 F.4th at 1351–52.
10. *Cuenca*, 99 F.4th at 1352–53.

The Fifth Circuit reversed and remanded with instructions to order the child's return to Venezuela. The court reaffirmed that it reviewed the ultimate well-settled legal conclusion de novo (reviewing factual findings only for clear error), and held that the balance of all seven well-settled factors weighed against Castro. (See *Lozano I*, 697 F.3d at 56.) The court found that the immigration status of mother and the child "weighs heavily" against the finding that the child was well-settled. The court emphasized that immigration status should be analyzed concretely, not in the abstract, and that pending asylum claims with no evident likelihood of success created real uncertainty about the family's future in the United States.

Mother applied for but was denied certiorari in *Castro v. Guevara*, No. 25-666, 608 U.S. ---, 2026 WL 1052333 (Apr. 20, 2026).

In denying certiorari, the court noted that the delay inherent in fully adjudicating the issue would likely be prejudicial to the interests of the child involved because the passage of time would alter the dynamics of the question whether the child was "well-settled" given her current age. *Castro*, 2026 WL 1052333 at *2. Justice Sotomayor highlighted the split among circuit courts regarding the standard of review to be applied to questions whether a child is well-settled. The Fifth Circuit's opinion that the question is subject to de novo review is joined by the Fourth Circuit (*Alcala v. Hernandez*, 826 F.3d 161, 171 n.7 (4th Cir. 2016)), the Ninth Circuit (*In re B. Del C.S.B.*, 559 F.3d 999, 1008 (9th Cir. 2009)), and the Second Circuit (*Lomanto v. Agbelusi*, No. 23-993, 2024 WL 3342415, at *2 (2d Cir. July 9, 2024)). Two other circuits treat the question as involving review for clear error: the First Circuit (*da Costa v. de Lima*, 94 F.4th 174, 181 (1st Cir. 2024)) and the Eleventh Circuit (*Cuenca v. Rojas*, 99 F.4th 1344, 1350 (11th Cir. 2024)).

IV.E.1.b What Is Not a Grave Risk? (p. 134)

Galaviz v. Reyes, 95 F.4th 246 (5th Cir. 2024). Mother petitioned for the return of their two special-needs children to Mexico after father took the children to El Paso, Texas, and refused to return them. Father's 13(b) defense was supported by his contentions that the children needed dental care, both were behind on their vaccinations, their daughter needed hearing aids, and their son need eyeglasses. Additionally, father alleged the children were given unsuitable child care and had poor hygiene. There was evidence that at some times the children were unsupervised, but also that their siblings would take care of them. The district court found that the foregoing conditions established a grave risk defense, and denied mother's petition for return.

The Fifth Circuit reversed, reasoning that father's allegations of neglect and abuse did not demonstrate the grave risk that Article 13 envisions. Rather, the allegations went to the question whether mother was a worthy custodian—a matter that went to the question of which parent should have custody. Following the reasoning of *Cuellar v. Joyce*, the court observed that

> [Father], however, presented no evidence that these hygiene issues or the older daughters' supervision of the children would expose the children to a grave risk or intolerable situation. If a child's standard of living provided clear and convincing

> evidence of a grave risk of harm, "parents in more developed countries would have unchecked power to abduct children from countries with a lower standard of living." This is precisely the reason the Ninth Circuit concluded poor living conditions—such as "no indoor running water," using "a nearby creek and outhouse for waste disposal," and "no climate control, no refrigeration, and very little furniture"—"c[ame] *nowhere close* to establishing a grave risk of harm." In this same vein, "the State Department took care to emphasize that grave risk doesn't 'encompass . . . a home where money is in short supply, or where educational or other opportunities are more limited.'"

Galaviz, 95 F.4th at 258, quoting *Cuellar v. Joyce*, 596 F.3d 505, 509 (9th Cir. 2010) (emphasis in original). The Fifth Circuit ordered the case remanded for the entry of an order that the chidren be retured to Mexico.

Salame v. Tescari, 29 F.4th 763 (6th Cir. 2022). Mother removed the parties' two children from Venezuela in 2018. Father filed a timely petition for return of the two children, and the parties' stipulation recognized that father had established a prima facie case for return. The case was tried on mother's affirmative defense of grave risk due to father's verbal and physical abuse, that Venezuela was a zone of war and famine, and that the Venezuela court system was unable to adjudicate the parties' custody dispute. Additionally, mother claimed that a grant of asylum for her and the children precluded jurisdiction to grant a return order.

Relying on its previous decision in *Simcox*,[11] the court found that mother established only one incident of relatively minor abuse that did not amount to the type of grave risk that formed a basis for finding an Article 13(b) defense. The Sixth Circuit also drew a distinction between "physical or psychological harm" and an "intolerable situation," finding that the latter involved a situation that "cannot be borne or endured" or "fails some minimum standard of acceptability."[12] The court reviewed the claims of the parties regarding whether Venezuela was a zone of war or endemic civil unrest, and found that despite some difficult conditions, that if the children were returned, father could "could provide the children with shelter, food, and medication." *Salame*, 29 F.4th at 770.

Mother further argued that an intolerable situation existed because the Venezuelan courts were corrupt and biased in favor of father because of his political connections. Mother failed to prove that the Venezuelan judiciary was tainted to a degree that precluded mother's ability to receive a fair adjudication. The court affirmed the district court's finding that the conditions in Venezuela would not subject the children to an intolerable situation if they were returned. The district court found that mother failed to carry her burden of proving a grave risk or intolerable situation, and ordered the children returned to Venezuela. The Sixth Circuit affirmed.

11. Simcox v. Simcox, 511 F.3d 594 (6th Cir. 2007).
12. Citing Pliego v. Hayes, 843 F.3d 226, 233 (6th Cir. 2016).

IV.E.1.d Corroboration (new)

Silva v. Dos Santos, 68 F.4th 1247 (11th Cir. 2023). Father petitioned for the return of the parties' child to Brazil. Mother defended on the grounds of "grave risk." Mother testified to numerous instances of father's abuse of her, at times in the presence of the child. Although father denied mother's allegations, the district court found father's testimony "not very credible at all." The district court granted father's petition finding mother failed to prove that return of the child would subject her to grave risk. The district court noted that mother was the only person to testify as to father's abuse, that she failed to provide independent corroboration of her version of the facts, lacking documentation of her physical injuries or police reports. The Eleventh Circuit reversed, finding that the uncorroborated testimony of one person, if otherwise credible, was sufficient to establish a prima facie case. The circuit court ruled that the testimony of a single witness can be sufficient to satisfy a party's burden of a fact by clear and convincing evidence. *Silva*, 68 F.4th at 1255. Additionally, the court ruled that given the fact that a witness's lack of credibility on a point may serve as corroborating evidence, the contrary is also true.

IV.E.2 Child Abuse (p.138)

Rodriguez v. Molina, 96 F.4th 1079 (8th Cir. 2024). Mother petitioned for return of the parties' child to Honduras. Father's defense consisted of instances where mother had struck the child, sometimes leaving bruises and red marks. The district court found that the likelihood of future abuse was "possible," but did not amount to an immediate and substantial risk of harm. Relying on the district court's credibility determinations that were not clearly erroneous, the Eighth Circuit affirmed the district court's decision to order the child returned to Honduras. 96 F.4th at 1084.

IV.E.4 Zone of War (p. 153)

In *Tereshchenko v. Karimi*, 102 F.4th 111 (2d Cir. 2024), the Second Circuit found that the proposed return of the parties' two children to the Ukraine created a grave risk of harm under Article 13(b), reversing the district court's order denying the defense. The parents divorced in 2019 and were participating in Ukraine custody proceedings at the time of the outbreak of hostilities in February 2022.

With father's permission, the mother immediately sought to remove the parties' two children from the Ukraine to the father's alternate residence in Dubai. But instead of arranging for the children's transport to father's Dubai residence, the mother surreptitiously traveled with the children to Poland, the Netherlands, Spain, and finally to the United States. In the meantime, the

father relocated to France. He was able to find the mother and children in New York, and he filed his petition for return in March 2023.

In proceedings before the district court, the mother contended that returning the children to Ukraine would involve a grave risk of harm under Article 13(b). (She also challenged the court's subject-matter jurisdiction and argued that the children were settled under Article 12, but these were denied by the district court, and the district court's rulings on these matters were affirmed on appeal.) The father indicated to the court that if the children were returned to him, and if required by the district court, he would move with the children to Western Ukraine, which was then outside the zone of combat or danger. The district court noted that the grave-risk defense must be "particular to the child, not just a general undesirable condition," and accordingly found that the mother had not established a grave risk under Article 13(b). *Tereshchenko v. Karimi*, No. 23CV2006 (DLC), 2024 WL 80427, at *6 (S.D.N.Y. Jan. 8, 2024), *aff'd in part and remanded*, 102 F.4th 111.

The district court ordered the children returned to their father in France. The Second Circuit reversed the district court's order of return and found that circumstances in the Ukraine posed a grave risk to the children should they be ordered returned to that country. This appears to be the first court of appeals ruling upholding the grave-risk defense based on a petition to return a child to a zone of war. The appellate court's conclusion was supported by Russian bombings in Western Ukraine, missile attacks to Lviv, and the parties' agreement that "everywhere" in the Ukraine was dangerous. *Tereshchenko*, 102 F.4th at 130. Additionally, there was little evidence before the district court about the conditions that the children would face if returned to their father in their home in Lviv.

The Second Circuit remanded the case to the district court to amend its order of return of the children to their father in France to reflect provisions that (1) the order directing the children's return to the father in France was temporary in nature as required for the children's safety; (2) the father would make the children available for Ukrainian custody proceedings as required by the Ukrainian courts; and (3) the parties would abide by the final custody determination of the Ukrainian courts. *Tereshchenko*, 102 F.4th at 135. (See discussion of the third-country return issue in section V.E., Returns to Countries Other Than the Habitual Residence.)

IV.F Violations of Human Rights and Fundamental Freedoms (p. 154)

Galaviz v. Reyes, 95 F.4th 246 (5th Cir. 2024) (see discussion *supra* p. 7). Father contended that mother's conduct amounted to a human rights violation (Article 20) because the children's mother could not attend school with her children as required by the rules of the school that served her special needs children, therefore denying children's right to an education. Additionally, father also argued that the children were subject to a grave risk (Article 13(b)) because of abuse and neglect of the children. The district court granted father's petition, finding that denial of an

education shocked the conscience of the court and that the allegations of physical and psychological harm were sufficiently proved.

The Fifth Circuit reviewed the history and context of the adoption of Article 20 in the Hague Convention. The court ruled that a finding of fact to support an Article 20 violation are to be reviewed for clear error, and that the appellate standard rendered the decision subject to a de novo review. *Galaviz*, 95 F.4th at 254. The court also noted the Article was to be "restrictively interpreted and applied" and not be used as a vehicle for determining custody issues, or "passing judgment on the political system of the country from which the child was removed."[13] Here, father's argument focused on the actions or omissions of the children's mother, not on the laws or policies of Mexico. Father's Article 20 case did not depend on policies of the United States that would prohibit return. As such, the district court's reliance on Article 20 was founded on matters that were best suited for a custody determination, and not upon a policy violation that is required by the Article.[14] Reversed.

IV.G.4 Generalized Desires Versus Particularized Reasons (p. 164)

Dubikovskyy v. Goun, 54 F.4th 1042 (8th Cir. 2022). Father filed a petition for the return of his twelve-year-old daughter to Switzerland. The child was removed from Switzerland by her mother in violation of a Swiss custody agreement. The district court denied father's petition on the basis of the mature child's objection. The court of appeals reversed.

Unbeknownst to father, mother had accepted a faculty position at the University of Missouri, and had purchased a home in Columbia, Missouri. Father learned of the relocation of the child after she was already in the United States. A Swiss court found mother's actions violated the parties' custody agreement, and granted father sole custody of the child. The order of the Swiss trial court was upheld on appeal. Father's Hague Convention case followed.

At trial, the court interviewed the child in the presence of counsel for each party. The court then appointed an expert to examine the child and submit a report to the court. The report found that the child had maturity beyond the typical, with sufficient intelligence and maturity to process and understand her situation and decisions about where to live. After receipt of that report, the trial court then re-interviewed the child in camera outside the presence of counsel. The district court found that the child's desire not to return to Switzerland was not the product of undue influence.

The Eighth Circuit focused upon the Hague Convention's requirement of an objection versus a preference or generalized desire to remain in the country where the child was relocated. The child's responses to the court's questions were too vague to amount to a particularized objection, and as such it was error for the district court to have deemed the child's position to amount to a

[13] Convention Text and Legal Analysis, 51 Fed. Reg. 10,510.

[14] *Galaviz*, 95 F.4th at 254.

particularized objection. The court reversed, directing the trial court to grant the petition for return. *Dubikovskyy*, 54 F.4th at 1049–50.

IV.H.3 Fugitive Disentitlement (p. 175)

Paris v. Brown, 154 F.4th 663 (9th Cir. 2025). Father (a French-U.S. citizen) and mother, a U.S. citizen, were parents of twin children with dual French-U.S. citizenship. Mother relocated from France to Oregon with the children in July 2022 and filed a custody petition in an Oregon state court. Father concurrently filed a custody action in France. The Oregon court issued a restraining order barring father from removing the children from Oregon. Father later obtained an order from a French court granting the parties' joint custody of the children and authorizing father to return the children to France. Father then removed the children to France in violation of the Oregon restraining order. The Oregon court found father in contempt, issued a warrant for his arrest, and granted mother sole custody of the children. Mother then traveled to France, obtained the children, and returned with them to Oregon. Father petitioned the U.S. district court under the Hague Convention for the children's return to France. Mother moved to dismiss the action under the fugitive disentitlement doctrine, which the district court granted, finding that father's history of noncompliance justified dismissal.

The Ninth Circuit reversed and remanded, holding that application of the fugitive disentitlement doctrine was an abuse of discretion. While father was in contempt of the Oregon state court, all parties knew exactly where he was located, and his absence posed no impediment to enforcing an adverse judgment on the Hague Convention petition (the children were already in Oregon). His absence had not caused the federal district court—which was not the court whose authority he flouted—to expend resources tracking him down, nor had it delayed the federal proceedings. The doctrine's rationale (preventing unenforceable judgments, deterring flight, preserving judicial dignity) were not implicated. Father also had not abandoned his claim. The court emphasized that disentitlement is an exceptionally harsh sanction especially disfavored in civil cases and must be applied only when necessary.

IV.I.2 Asylum and Grave Risk (p. 179)

Salame v. Tescari, 29 F.4th 763 (6th Cir. 2022) (see discussion *supra* p. 8). Mother also alleged that since she and the children had received a grant of asylum, the grant superseded the district court's order. She argued that the district court's order of return usurped the authority of the executive branch. The Sixth Circuit found the argument without merit, referencing *Sanchez v. R.G.L.*, 761 F.3d 495 (5th Cir. 2014). The court noted the disparity in burdens of proof for asylum (preponderance of the evidence) and grave risk or intolerable situation (clear and convincing). The asylum grant did not diminish the responsibility of the district court to assess an Article 13 defense.

VI Procedural Issues

VI.G.2.a Visits Pending Appeal (new)

Aubert v. Poast, 166 F.4th 654, 656–57 (7th Cir. 2026). A district court retains jurisdiction pending an appeal of the petition for return to make orders regarding visitation with the children. In *Aubert*, the Seventh Circuit found that Federal Rule of Civil Procedure 62(d) granted the district the ability to manage equitable relief to secure an opposing party's rights while an appeal is pending on the merits of the underlying case. Additionally, pursuant to ICARA (specifically, 22 U.S.C. § 9004), courts have the authority to implement provisional remedies to protect the well-being of children involved.

VI.I.1 Authority for Awards (p. 249)

Mata-Cabello v. Thula, 67 F.4th 5 (1st Cir. 2023). Father filed a petition in the Puerto Rico District Court for the return of the parties' children to Colombia. Before this filing, the parties litigated divorce and custody issues in the Puerto Rico Commonwealth Court of First Instance. Both parties included requests for Hague Convention relief within their Commonwealth court cases. Father obtained a dismissal of mother's Commonwealth action based upon lack of residency. Mother's appeal of the dismissal of her Commonwealth case was granted, reversing the dismissal of the entirety of mother's case. Neither parties' Hague Convention claims had been ruled upon the Commonwealth case. Given the information updating mother's case in the Commonwealth case, the U.S. district court dismissed father's Hague Convention action with prejudice on the grounds of abstention.

Mother moved the district court for an award of her attorney fees and costs for translation of documents. Mother's request for an award of attorney fees was based upon Fed. R. Civ. P 54; she claimed that the district court should award her fees by exercising its inherent authority and that respondent acted in "bad faith" because his Hague Convention action was precluded on grounds of abstention. The First Circuit found that the district court had sufficient grounds to deny mother's request for fees because respondent-husband had grounds to file a Hague action, owing to the fact that his Hague action that was filed in the Puerto Rican Court of First Instance was not ruled upon by that court at the time father filed his federal court Hague action. Similarly, the court denied mother's request for translation based on *Taniguchi v. Kan Pacific Saipan, Ltd.*, 566 U.S. 560 (2012), holding that document translation costs described under 28 U.S.C. § 1920(6) "may not be taxed as costs against a non-prevailing party." *Mata-Cabello v. Thula*, No. 20-1687, 2021 WL 3040959, at *2 (D.P.R. June 8, 2021).