

# Commentary: District Court Cases

**Marquez v. Castillo, 72 F. Supp. 3d 1280 (M.D. Fla. 2014)**

## Other District Court Cases

**Cunningham v. Cunningham,**  
237 F. Supp. 3d 1246 (M.D. Fla. 2017)

## Provisional Remedies

### Facts

Father requested provisional orders based upon his petition for the return of his three-year-old child to Mexico. Father, a Mexican citizen, married mother, a Cuban citizen. They moved to Mexico and established a home there in December 2012, where they lived until October 2013, when mother disappeared with the child. After concealing her location, she was finally located in Tampa, Florida.

### Discussion

The court's authority for issuance of a provisional order exists under ICARA, 42 U.S.C. 11604(a) that authorizes a court to "take or cause to be taken measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the child's further removal or concealment before the final disposition of the petition." An applicant for the provisional orders must show that

1. There is a substantial likelihood that the moving party will prevail on the merits;
2. The moving party will suffer irreparable injury if the injunction is not granted;
3. The threatened injury to the moving party outweighs the threatened harm the proposed injunction may cause the opposing party; and
4. The injunction, if issued, would not be adverse to the public interest.

On the basis of the evidence on father's amended petition for return, the court issued the following provisional orders:

- The U.S. marshal was directed to
  - serve respondent and
  - seize and impound any and all travel documents for the mother and the child (passports, birth certificates, travel visas, green cards, social security cards or similar documents that might be used to obtain duplicate passports).
- In the alternative, mother was to appear with the above documents.
- Mother was restrained from removal, or allowing the removal of the minor child from the jurisdiction of the Middle District of Florida pending final hearing.
- The final evidentiary hearing was set.
- Father was permitted to appear by live video feed.

In addition, the following notice was given to mother regarding legal representation:

**4. RESPONDENT HAS A RIGHT TO BE REPRESENTED BY AN ATTORNEY AT THIS HEARING, AND ALL PROCEEDINGS RELATED TO THIS MATTER. THE COURT STRONGLY ENCOURAGES RESPONDENT TO RETAIN AN ATTORNEY.** IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT BAY AREA LEGAL SERVICES, 829 W. DR. MARTIN LUTHER KING BOULEVARD, 2ND FLOOR, TAMPA, FLORIDA, 33603-3336, TELEPHONE NUMBER, 813-232-1343, TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT THE HILLSBOROUGH COUNTY BAR ASSOCIATION REFERRAL SERVICE AT 813-221-7780 FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.