IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Julian Elijah Dean, Plaintiff, v. Jueneville Shawnteke Dean, Defendant.	)	C/A No. 0:24-3306-PJG **ORDER**

Plaintiff/Petitioner Julian Elijah Dean, a resident of Mexico, filed this action pursuant to the Hague Convention on Civil Aspects of International Child Abduction against his wife, Defendant/Respondent Jueneville Shawnteke Dean, who formerly resided in Mexico before relocating to the United States with the parties' two minor children. Mrs. Dean and the two minors currently live in Rock Hill, South Carolina. All four members of the family are United States citizens. Through the instant petition, Mr. Dean seeks return of the children to Mexico under the Hague Convention.

This matter is before the court pursuant to 28 U.S.C. § 636(c) and Local Civil Rule 73.02(B)(1) (D.S.C.) with the consent of the parties for final adjudication.[1] Currently pending is Plaintiff's motion for summary judgment or, in the alternative, motion in limine to bar Respondent's affirmative arguments and defenses. (ECF No. 51.) The defendant responded in

[1] Once this matter was assigned to the undersigned, the court gave this matter expedited consideration as is suggested by the Hague Convention. See Hague Convention, art. 11 (contemplating a six-week time-frame to complete proceedings brought under the act). However, cognizant of the gravity of this matter, the court ensured thorough review of the case prior to issuing this decision.

opposition. (ECF No. 53.) For the following reasons, the court grants in part the motion for summary judgment.

BACKGROUND

On November 12, 2024, the parties filed the following joint stipulations, which bind the court. See Christian Legal Soc. Chapter of the Univ. of Cal., Hastings Coll. of the L. v. Martinez, 561 U.S. 661, 677 (2010) ("[Factual stipulations are] binding and conclusive . . ., and the facts stated are not subject to subsequent variation.") (quoting 83 C.J.S., Stipulations § 93 (2000)) (alterations in original).

> 1. The Petitioner, Julian Elijah Dean ("Petitioner"), born June 24, 1979, is a United States citizen.
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> 2. The Respondent, Jueneville Shawnteke Dean ("Respondent"), born December 30, 1982, is a United States citizen and a South Carolina citizen.
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> 3. Petitioner and Respondent (the "parties") are the parents of two (2) minor children, namely, J.V.D., born November 16, 2017; and J.E.D., born July 2, 2019.
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> 4. The minor children are United States citizens and have temporary residence permits from Mexico.
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> 5. Both parties are listed on the minor children's birth certificates.
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> 6. The parties moved from the United States to Mexico in December of 2019, obtained temporary residence permits, and began to raise the minor children there.
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> . . . .
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> 8. Both parties lived in Mexico from December 2019, originally in a shared home but in separate homes after September 2022. Respondent continued to live in Mexico until she removed the children from Mexico on or around April 15, 2024. Petitioner continues to reside in Mexico today.
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> . . . .
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> 10. The Respondent was employed full-time in the country of Mexico as a recruiter for Anubis, LLC until February 2024, when she was terminated. She was unemployed when she removed the minor children from Mexico in April 2024.

11. On or around April 15, 2024, Respondent removed the minor children from Mexico and retained them in the United States without the knowledge or consent of Petitioner.

12. At the time Respondent removed the minor children from Mexico on or around April 15, 2024, the minor children's habitual residence was Mexico.

13. Because the minor children's habitual residence at the time they were removed to the United States was Mexico, Petitioner's custodial rights will be defined by Mexican law, Convention Art. 3(a).

14. Petitioner had custodial rights over the parties' minor children pursuant to Mexican law at the time of their removal therefrom on or around April 15, 2024.

15. Petitioner was at least minimally exercising his custodial rights over the minor children at the time of Respondent's removal of the minor children from Mexico on or around April 15, 2024.

. . . .

17. Petitioner did not consent nor acquiesce to the children's removal from Mexico nor to their continued retention in the United States.

18. While Petitioner disputes and objects to the legal merits of the following, nothing in the foregoing stipulations prejudices Respondent's ability to argue, if permitted, that

(a) the removal and retention of the children was and is a product of necessity, and/or

(b) Petitioner's failure to financially support his family precludes a finding of wrongful removal and/or

(c) Respondent had de facto primary physical custody of the children after the parties' separation in 2022 and/or

(d) Mexican courts cannot or will not adjudicate custody issues here where Respondent and/or the children have only temporary residence permits.

19. While Petitioner disputes and objects to the legal merits of the following, nothing in the foregoing stipulations prejudices Respondent's ability to argue, if permitted, that it is legally impossible for the children to have had a "habitual residence" in Mexico within the meaning of the Convention and/or that their removal was "wrongful" under the Convention where the children:

(a) had only temporary residence permits and/or

(b) were removed to the children's country of citizenship.

(Joint Stipulations, ECF No. 46.)

DISCUSSION

A. Summary Judgment

With certain exceptions not applicable here,[2] the Federal Rules of Civil Procedure apply in "all civil actions and proceedings in the United States district courts . . . ." Fed. R. Civ. P. 1. Courts have specifically recognized that summary judgment procedures can be appropriate for resolution of Hague Convention cases. See, e.g., Menechem v. Frydman-Menachem, 240 F. Supp. 2d 437, 443 (D. Md. 2003).

Under Rule 56, summary judgment is appropriate only if the moving party "shows that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party may support or refute that a material fact is not disputed by "citing to particular parts of materials in the record" or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). Rule 56 mandates entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

In deciding whether there is a genuine issue of material fact, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). However, "[o]nly

[2] Rule 1 cross references Rule 81, but Rule 81's exceptions do not include Hague Convention proceedings. See also 28 U.S.C. § 1331 (conferring original jurisdiction on federal district courts of "all civil actions arising under . . . the treaties of the United States").

disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Id. at 248.

The moving party has the burden of proving that summary judgment is appropriate. Once the moving party makes this showing, however, the opposing party may not rest upon mere allegations or denials, but rather must, by affidavits or other means permitted by the Rule, set forth specific facts showing that there is a genuine issue for trial. See Fed. R. Civ. P. 56(c), (e); Celotex Corp., 477 U.S. at 322.

B. Hague Convention

Under the Hague Convention, "if a court finds that a child was wrongfully removed from the child's country of habitual residence, the court ordinarily must order the child's return." Golan v. Saada, 596 U.S. 666, 669 (2022). "[R]eturn is merely 'a "provisional" remedy that fixes the forum for custody proceedings.' " Id. at 671 (quoting Monasky v. Taglieri, 589 U.S. 68, 72 (2020)). But the treaty contains some exceptions. Pertinent here, the court need not order the child's return if "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." Hague Convention, art. 13(b). Upon such a finding, a court has discretion to determine whether to deny return. Golan, 596 U.S. at 669.

"The interpretation of a treaty, like the interpretation of a statute, begins with its text." Id. at 676 (quoting Abbott v. Abbott, 560 U.S. 1, 10 (2010)). Relevant here, Article 3 of the Hague Convention states:

> The removal or 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.

Hague Convention, art. 3. In a Hague Convention case, "the [c]ourt's inquiry is solely confined to rights under the Convention. Thus, the [c]ourt's role is limited to the following: whether there has been a wrongful removal, the existence and exercise of custody rights at the time of the removal, and the applicability of any Hague Convention defenses." Davis v. Lake, 647 F. Supp. 3d 482, 490 (W.D. Va. 2022) (quotation marks and citations omitted).

The United States implements its obligations under the Hague Convention through the International Child Abduction Remedies Act, 22 U.S.C. § 9001, et seq., ("ICARA"). To prevail on a claim under the Act, a petitioner must show by a preponderance of the evidence that a child was wrongfully removed or retained within the meaning of the Convention. 22 U.S.C. § 9003(e). Thus, a petitioner must first show that a child was removed from his or her *habitual residence*. See Hague Convention, art. 3(a). As the United States Court of Appeals for the Fourth Circuit has observed,

> [t]he Hague Convention does not define "habitual residence." However, in ascertaining how to make this determination, we are guided by the precedent of our sister circuits in concluding that "there is no real distinction between ordinary residence and habitual residence." Friedrich[v. Friedrich], 983 F.2d [1396,] 1401 [(6th Cir. 1993) ("Friedrich I")] (citing In re Bates, No. CA 122.89, High Court of Justice, Family Div'n Ct. Royal Court of Justice, United Kingdom (1989)); accord Rydder v. Rydder, 49 F.3d 369, 373 (8th Cir. 1995). As the Sixth Circuit explained: "A person can have only one habitual residence. On its face, habitual residence pertains to customary residence prior to the removal. The court must look back in time, not forward." Friedrich I, 983 F.2d at 1401. This is a fact-specific inquiry that should be made on a case-by-case basis. See id. (citing Bates). Moreover, of potential import in this action, a parent cannot create a new habitual residence by

> wrongfully removing and sequestering a child. See Diorinou v. Mezitis, 237 F.3d 133 141-42 (2d Cir. 2001) (citations omitted).

Miller v. Miller, 240 F.3d 392, 400 (4th Cir. 2001). As quoted above, to establish a *prima facie* case, a petitioner must also show that the removal was *wrongful*—that is, that it breached the petitioner's custody rights under the law of the home state and that the petitioner had been exercising those rights at the time of removal. Hague Convention, art. 3.

Once a petitioner establishes a *prima facie* case of wrongful removal, the respondent, to defeat the claim, must show by clear and convincing evidence that an exception in article 13b or 20 of the Convention applies. 22 U.S.C. § 9003(e)(2)(A). Those exceptions include: (1) there was a grave risk that the children's return to the petitioner would expose them to physical or psychological harm or otherwise place them in an intolerable situation, Hague Convention, art. 13b, or (2) the return of the children would not be permitted by the fundamental principles of the United States "relating to the protection of human rights and fundamental freedoms," Hague Convention, art. 20. Alternatively, a respondent may show by a preponderance of the evidence that any other exception in article 12 or 13 of the Convention applies. 22 U.S.C. § 9003(e)(2)(B). Those exceptions include: (1) the action was not commenced within one year of the abduction, and the children were now well-settled in their new environment, Hague Convention, art. 12, or (2) that the petitioner "was not actually exercising the custody rights at the time of removal . . . or had consented to or subsequently acquiesced in the removal," Hague Convention, art. 13a. If the court determines a child was wrongfully removed or retained from the child's habitual residence, the court must order the child to be returned to the habitual residence unless the respondent can establish an affirmative defense. See Miller, 240 F.3d at 398 (stating that once the petitioner establishes that removal of the children was wrongful, the children are required to be returned unless the respondent established one of four available defenses); see also 22 U.S.C. § 9003(e)(2).

In support of its motion, the petitioner argues, and the court agrees, that the joint stipulations filed by the parties establish a *prima facie* case. See Bader v. Kramer, 484 F.3d 666, 668 (4th Cir. 2007) (discussing the *prima facie* case under the Hague Convention) (citing Humphrey v. Humphrey, 434 F.3d 243, 246 (4th Cir.2006)); (Joint Stipulations ¶¶ 12, 15, 17, ECF No. 46 at 2). Thus, to avoid summary judgment, Mrs. Dean must forecast evidence showing that one of the listed exceptions in the treaty applies.

The only affirmative defense listed in the Hague Convention that the respondent comes close to asserting is the one found in Article 13(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 respondent casts her defense as one of "necessity," contending that after the petitioner fired her from the family business and the lease on the marital home expired, she was not capable of financially supporting herself and the children.[3] (Jueneville Dean Decl. ¶¶ 14-16, ECF No. 53-1 at 2.) Thus, her argument goes, there is a grave risk that the children's return to Mexico would place them in an intolerable situation—that is, homelessness and poverty.

[3] Apparently in recognition of the limited inquiry before this court, counsel for the respondent abandons the defense raised in Mrs. Dean's *pro se* answer that staying in the United States with her is in the best interests of the children. As case law recognizes, that inquiry is reserved for the appropriate court to decide divorce and custody issues between the parties. Golan v. Saada, 596 U.S. 666, 670 (2022) ("The Convention's 'core premise' is that 'the interests of children . . . in matters relating to their custody' are best served when custody decisions are made in the child's country of 'habitual residence.' ") (quoting Monasky v. Taglieri, 589 U.S. 68, 72 (2020); McManus v. McManus, 354 F. Supp. 2d 62, 69 (D. Mass. 2005) (holding that the issue of a child's best interest "and other issues underlying the custody dispute are presumptively to be adjudicated in the place of the child's habitual residence"); see also 22 U.S.C. § 9001(b)(4) ("The Convention and [ICARA] empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims."); Davis v. Lake, 647 F. Supp. 3d 482, 490 (W.D. Va. 2022) ("[T]his Court's inquiry is not what is in the best interests of the child.") (quotation marks and citations omitted).

But the respondent has not forecast clear and convincing evidence that such would be the case. First, her affidavit does not reasonably support that conclusion. Although she avers that after the petitioner moved out, he "stopped contributing to the rent for the marital apartment and my food," (id. ¶ 12), nowhere does her affidavit state or even imply that the petitioner's past refusal to financially support Mrs. Dean extended to the children. Notably, while she avers that she did not have health insurance for the children in Mexico, she further states that "when [she] had to take them to the doctor there, [she] had to ask [the petitioner] for money to pay the doctor." (Id. ¶ 23.) No evidence indicates that the petitioner did not actually provide the money for the children's doctor's visits. And no evidence suggests a grave risk that he would fail to house and feed the minor children if they were ordered returned to Mexico.

Moreover, the risks courts have typically confronted when assessing this defense have involved more than dire financial straits. See, e.g., Hague International Child Abduction Convention: Text and Legal Analysis, 51 Fed. Reg. at 10,510 (" '[I]ntolerable situation' was not intended to encompass return to a home where money is in short supply.") And courts applying the "grave risk" defense acknowledge that it is a narrow one. Miller, 240 F.3d at 402. As a court in this circuit has explained:

> Importantly, "[a]lthough there is no clear definition of what constitutes 'grave risk,' the respondent 'must show that the risk to the child is grave, not merely serious.' " [Luis Ischiu v. Gomez Garcia, 274 F. Supp. 3d 339, 350 (D. Md. 2017)] (quoting Friedrich[v. Friedrich], 78 F.3d [1060,] 1068 [(6th Cir. 1996)]. "The potential harm to the child must be severe, and the '[t]he level of risk and danger required to trigger this exception has consistently been held to be very high.' " Souratgar v. Lee, 720 F.3d 96, 103 (2d Cir. 2013) (alteration in original) (quoting Norden-Powers v. Beveridge, 125 F. Supp. 2d 634, 640 (E.D.N.Y. 2000)). "The risk must be more than the trauma associated with uprooting and moving the child back to the country of habitual residence." Luis Ischiu, 274 F. Supp. 3d at 350 (citing Friedrich, 78 F.3d at 1068). The exception "typically applies to situations involving sexual abuse, significant physical and verbal abuse of the child, or domestic abuse of a spouse in the presence of the child." Kovacic v. Harris, 328 F. Supp. 3d 508, 520 (D. Md. 2018) (citing Luis Ischiu, 274 F. Supp. 3d at 350). "It does not apply

> to allegations of 'poor parenting'; it is not the court's role to 'determine whether one parent would be better than the other, or whether the environment offered by Respondent is superior to the environment offered by Petitioner.' " Id. (quoting Hirst v. Tiberghien, 947 F. Supp. 2d 578, 596 (D.S.C. 2013)); see also Alcala v. Hernandez, 826 F.3d 161, 171 (4th Cir. 2016) (stressing that the role of courts adjudicating Hague Convention petitions is not to use a "best interests of the child" standard because wrongful removal cases are not custody disputes); 22 U.S.C. § 9001(b)(4) ("The Convention and [ICARA] empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims.").

Hart v. Anderson, 425 F. Supp. 3d 545, 570 (D. Md. 2019); see also Friedrich v. Friedrich, 78 F.3d 1060, 1069 (6th Cir. 1996) ("Friedrich II") (applying the "grave risk" defense "when return of the child puts the child in imminent danger *prior* to the resolution of the custody dispute—*e.g.*, returning the child to a zone of war, famine, or disease" and, "in cases of serious abuse or neglect, or extraordinary emotional dependence, when the court in the country of habitual residence, for whatever reason, may be incapable or unwilling to give the child adequate protection"). Nothing in this record forecasts harm like what the children in those cases faced if returned.

In Krefter v. Wills, 623 F. Supp. 2d 125 (D. Mass. 2009), the respondent advanced the same argument Mrs. Dean presents here. There, the court found that the affirmative defense was not met where the respondent maintained that she was unable to support herself and the child while living in the country of habitual residence, and there was little prospect of her successfully doing so if she were to return with the child. Id. at 136. The court in Krefter observed that the shortage of money was not on its own sufficient to show a grave risk of an intolerable situation. Id. at 136-37 (citations omitted); see also Friedrich II, 78 F.3d at 1068-69 (explaining that "[t]he person opposing the child's return must show that the risk to the child is grave, not merely serious" and that a "review of deliberations on the Convention reveals that 'intolerable situation' was not intended to encompass return to a home where money is in short supply, or where educational or other opportunities are more limited than in the requested State"). Noting that the test for "grave

risk of harm" is stringent and the bar a high one, the Krefter court found that the respondent had failed to meet the "exceedingly high" standard. Krefter, 623 F. Supp. 2d at 137. So too has Mrs. Dean.

In sum, to prevail, Mrs. Dean must show by clear and convincing evidence both that the risk level is "grave" and the harm itself to the children is either physical, psychological, or otherwise intolerable. See Kufner v. Kufner, 480 F. Supp. 2d 491, 509 (D.R.I. 2007) ("There are three types of harm that inescapably fall within the "grave risk" exception: physical harm; psychological harm; and intolerable situations."); see also Friedrich II, 78 F.3d at 1068 ("Only evidence directly establishing the existence of a grave risk that would expose the child to physical or emotional harm or otherwise place the child in an *intolerable* situation is material to the court's determination.") (quoting Public Notice 957, 51 FR 10494, 10510 (Mar. 26, 1986)). She has not provided evidence or authority supporting a reasonable conclusion that the children would face a grave risk of an intolerable situation in Mexico based on her own economic circumstances.

The respondent's remaining arguments in opposition to the petitioner's motion for summary judgment fare no better. First, contrary to her position, federal jurisdiction over this case is not defeated by the domestic relations exception. (Resp't's Mem. Opp'n Summ J. at 2-4, ECF No. 53 at 2-4) (relying on caselaw indicating that the domestic relations of a husband and a wife and a parent and a child are matters reserved to the state courts but citing no legal support for her position that the court lacks jurisdiction to consider the petitioner's claim under the treaty and ICARA). Nor is abstention from jurisdiction appropriate here in light of the very narrow inquiry set before the court under the Hague Convention.

> In adopting the Hague Convention, the signatory nations sought "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." Hague Convention,

> pmbl., T.I.A.S. No. 11,670, at 2, 19 I.L.M. at 1501. That is, the primary purpose of the Hague Convention is "to preserve the status quo and to deter parents from crossing international boundaries in search of a more sympathetic court." Friedrich v. Friedrich, 983 F.2d 1396, 1400 (6th Cir. 1993) ("Friedrich I"). Consequently, the scope of a court's inquiry under the Hague Convention is limited to the merits of the abduction claim. See 42 U.S.C. § 11601(b)(4). As the district court correctly recognized in this action, "The merits of any underlying custody case are *not* at issue." District Court Order, at 3 (emphasis added); see also Shalit v. Coppe, 182 F.3d 1124, 1128 (9th Cir. 1999); Friedrich v. Friedrich, 78 F.3d 1060, 1063-64 (6th Cir. 1996) ("Friedrich II").

Miller v. Miller, 240 F.3d 392, 398 (4th Cir. 2001). Finally, with respect to the respondent's arguments based on the fact that all the parties are citizens of the United States, courts have recognized that the Hague Convention contemplates orders of return of children to signatory countries even if citizenship there is lacking. See, e.g., In re B. Del C.S.B., 559 F.3d 999, 1010 (9th Cir. 2009) (discussing the term "settled" under Article 12 and acknowledging that the circuit has previously held that "unlawful immigration status does not preclude a finding that a child is a 'habitual resident' of a country within the meaning of Article 3") (citing Mozes v. Mozes, 239 F.3d 1067, 1082 n.45 (9th Cir. 2001)); see also id. at 1011 ("By acknowledging that an undocumented child may be habitually resident within the meaning of Article 3, then, we have already accepted the principle that a child may remain in a place in which he lacks legal status for the duration of custody proceedings because of his close ties to that country.").

ORDER

The parties' stipulations establish a *prima facie* case of wrongful removal and the respondent has failed to forecast evidence sufficient to permit a reasonable finding that an affirmative defense should preclude an order of return. It is therefore

ORDERED that the petitioner's motion for summary judgment is **GRANTED IN PART**.[4]

IT IS SO ORDERED.

December 13, 2024
Columbia, South Carolina

Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

[4] The court previously directed the parties to submit proposed language for an order directing the terms upon which the minor children will be returned to Mexico, including appropriate undertakings or ameliorative measures, reasonable timeframes, and logistics regarding their return. (See Minute Entry, ECF No. 56.) The court notes that "undertakings," like ameliorative measures, are promises "by the petitioning parent 'to alleviate specific dangers that might otherwise justify denial of the return petition.' " Kufner, 480 F. Supp. 2d at 513 n.32; see also id. at 513-14 and Krefter, 623 F. Supp. 2d 137-38 (both discussing "undertakings" as a type of safeguard courts may impose to help ensure that a potential risk of harm does not materialize and that allow courts to preserve a child's safety while the courts of that country have the opportunity to determine custody of the children within the physical boundaries of their jurisdiction). Although the respondent failed to carry her burden to show a *grave* risk of the *type* of harm contemplated by the treaty, the court may still consider ordering the petitioner to undertake certain actions to mitigate any lesser harm to the children pending actions by the appropriate court concerning custody. See Krefter, 623 F. Supp. 2d at 136-38; see also Golan, 596 U.S. at 682 (holding that ameliorative measures are not *required* to be considered when assessing a "grave risk" defense but acknowledging that courts have discretion to consider them).