

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
NEWARK DIVISION**

In the Matter of C.G.	)	
	)	
Emeric Gerval,	)	
	)	
Petitioner,	)	
	)	Case No. _____
v.	)	
	)	
Niurka Gonzalez,	)	
	)	
Respondent.	)	
	)	

**VERIFIED PETITION FOR RETURN OF THE CHILD TO FRANCE PURSUANT TO  
THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD  
ABDUCTION AND THE INTERNATIONAL CHILD ABDUCTION REMEDIES ACT (22  
USC 9001, ET SEQ.)**

**I. Preamble**

1. This Petition is brought by Emeric Gerval (“Emeric” or “Petitioner”), to secure the return of his two year-old daughter C.G. (the “Child”), who was, without Petitioner’s consent or acquiescence, wrongfully retained in the United States by the Child’s mother, Respondent Niurka Gonzalez (the “Respondent”).
  
2. This petition is filed pursuant to The Convention on the Civil Aspects of International Child Abduction, done at the Hague on October 25, 1980<sup>1</sup> (hereinafter the “Hague Convention” or “Convention”) and the International Child Abduction Remedies Act (hereinafter "ICARA") 22 U.S.C. § 9001. The Convention came into effect in the United States of America on July 1, 1988 and was also ratified between the United States of America and France on July 1,

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1988. A copy of the Hague Convention and ICARA are annexed here as **Exhibit A** and **B**, respectively. The objects of the Convention are as follows: (1) to secure the immediate return of children wrongfully removed or wrongfully retained in any Contracting State; and (2) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in other Contracting States. Convention, art. 1.

3. The Convention applies to cases in which one parent wrongfully removes and retains his or her child, who is under the age of sixteen (16) years, from the child's "habitual residence" in breach of the other parent's custodial rights, which were being exercised at the time of the wrongful retention of the child. Hague Convention, Art. 3.
4. Petitioner respectfully requests that pursuant to Articles 1(a) and 12 of the Convention, this Court order that the child be returned to France, the child's habitual residence.

## **II. Jurisdiction and Venue**

5. This Court has jurisdiction pursuant to 22 U.S.C. § 9003(a) (jurisdiction under the Hague Convention) and 28 U.S.C. § 1331 (federal question jurisdiction).
6. Venue is proper pursuant to 22 U.S.C. § 9003 and 28 U.S.C. § 1391(b) because, upon information and belief, the Child and Respondent are residing at 10 Harbor Terrace, Apt. 5D, Perth Amboy, NJ 08861 in the District of New Jersey; and because this case involves the wrongful retention of a child under the age of sixteen from her habitual residence of France to the United States of America.

### **III. History of the Case and Status of Petitioner and Child**

7. The Petitioner and the Respondent are the parents of the Child. They were never married but had a civil union on December 31, 2014 in France.
8. The Child was born in France on March 26, 2015. A copy of the child's birth certificate is annexed hereto as **Exhibit C**.
9. In or around August 2015, Respondent traveled to the United States with the Child in order to complete her studies and then to return to France. Petitioner provided consent to travel for six (6) months in order for Respondent to complete her studies and return to France. Respondent signed a document, on August 13, 2015, stating that she and the Child would travel to the United States for a period of 6 months beginning on August 15, 2015. A copy of the signed statement is annexed hereto as **Exhibit D**.
10. On August 13, 2015, the parties jointly signed a travel consent form, stating that the parties were the lawful custodial parents of C.G. and that Respondent would be permitted to travel to the United States from August 15, 2015 to January 31, 2016. A copy of the travel consent form is annexed hereto as **Exhibit E**.
11. While in the United States, Respondent informed Petitioner that she required one additional semester to complete her studies and would return in July 2016 instead. Petitioner consented to the return of the Child to France in July 2016.
12. On February 26, 2016, one-way tickets were purchased for both Respondent and the Child to return to France on July 19, 2016. A copy of the tickets is annexed hereto as **Exhibit G**.
13. Petitioner traveled to the United States in or around July 2016 in order to travel back to France with Respondent and the Child. Respondent then informed Petitioner she had

cancelled the tickets to return to France and no longer wanted to return. She assured Petitioner that he would be able to receive custody of the child in France after he expressed a desire for C.G. to attend school in France.

14. The Child is now two (2) years old. The Convention applies to cases where a child under the age of sixteen (16) years has been removed from his or her habitual residence in breach of rights of custody of a petitioner, which the petitioner had been exercising at the time of the wrongful removal or wrongful retention of the child.
15. The parties shared an intent for the Child to reside in France upon the completion of Respondent's course of studies. Respondent wrongfully retained the minor child from France on July 19, 2016 and has wrongfully retained the minor child in a foreign jurisdiction since that time.
16. At the time of the retention of the Child from France, the Petitioner had and continues to have rights of custody under French law in terms such that the retention of the Child from France is in violation of French law and is a wrongful retention within the meaning of Articles 3 and 5 of the Convention.
17. At the time of the Respondent's wrongful retention of the Child, the Petitioner was actually exercising custody rights within the meaning of Articles 3 and 5 of the Convention, in that he is the father of the Child and had exercised custody rights over the Child since she was born.
18. Furthermore, the Child was habitually resident in France within the meaning of Article 3 of the Convention.
19. The Child was born on March 26, 2015 and will be sixteen (16) years of age on March 26, 2031.

20. At the time immediately before the wrongful retention of the Child from France, the child habitually resided in France within the meaning of Article 3 of the Convention.

21. Petitioner does not know of any person or institution not a party to the proceedings who has physical custody of the child or claims to have rights of parental responsibilities or legal custody or physical custody of, or visitation or parenting time with the child.

#### **IV. Wrongful Removal and Retention of Child by Respondent: Claim for Relief Under the Hague Convention**

22. A removal or retention of a child is wrongful under Article 3 of the Hague Convention if: (a) the removal or retention is in breach of custody rights attributed to a person, institution, or 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 the removal or retention, those custody rights were actually exercised, or would have been exercised, but for the removal or retention of the child. See Hague Convention, Arts. 3 and 5.

23. “Custody rights” under the Hague Convention are defined to include “rights relating to the care of the person of the child, and in particular, the right to determine the child’s place of residence.” See Hague Convention, Art. 5(a).

24. The child’s country of “habitual residence”, as defined in Article 3 of the Hague Convention, is France, which is where the child habitually resided prior to her wrongful retention in the United States.

25. Petitioner has a right of custody of the child within the meaning of Articles 3 and 5 of the Convention as he is the biological father of the Child. The parties signed a document acknowledging both Petitioner and Respondent as the legal custodians of the Child. Further, French Civil Code Article 372 states that “the father and the mother share the parental

authority” and Article 373-2 states that “the separation of the parents does not have any impact on the rules of devolution of the parental authority.” Therefore, Petitioner has custody rights pursuant to the Convention.

26. Following abduction by the Respondent from France to the United States, the Child is currently being illegally held in custody, confinement and/or restraint by the Respondent in the State of New Jersey, Middlesex County.

27. Upon information and belief, Respondent is keeping the Child at 10 Harbor Terrace, Apt. 5D, Perth Amboy, NJ 08861

28. The Child is now two (2) years old. The Hague Convention applies to children under sixteen (16) years of age and thus applies to this child. Petitioner has never consented or acquiesced to Respondent’s wrongful retention of the child.

#### **V. Provisional Remedies**

29. An *ex-parte* motion under the Hague Convention for entry of a TRO has been filed alongside this petition.

30. Pending further hearing in this Court, it is requested that this Court issue an immediate order prohibiting the removal of the child from the jurisdiction of this Court and taking into safe-keeping all of the child’s travel documents.

31. This injunctive relief is vitally necessary on an *ex parte* basis to prevent irreparable harm to Petitioner. Specifically, under 22 U.S.C. §9001(a) of ICARA, a district court is empowered take appropriate measures “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.” This is such a case.

32. Unless this Court takes immediate action to bring the Respondent and the child before the Court, irreparable harm will occur to the well-being of the child in that the child is being wrongfully retained in New Jersey. Given the Respondent's risk of flight, provisional orders are necessary to prevent will further abduction of the child.

33. The Respondent poses a substantial risk of flight for the following reasons: Respondent was born in the Dominican Republic and has family there.

#### **VI. Attorney's Fees and Costs**

34. To date, Petitioner has incurred attorneys' fees and costs as a result of the wrongful removal of the Child by Respondent.

35. Petitioner respectfully requests that this Court award her all costs and fees, including transportation costs, incurred to date as required by 22 U.S.C. § 9007.

36. Petitioner will submit a copy of all expenditures as soon as practicable and possible and will amend these costs, from time to time, according to proof and in light of further expenditure required because of this wrongful removal and retention.

#### **VII. Notice of Hearing**

37. Pursuant to 22 U.S.C. § 9003(c), Respondent will be given notice of any hearing pursuant to the New Jersey Rules of Civil Procedure.

#### **VIII. Relief Requested**

**WHEREFORE**, it is respectfully requested that the following relief be granted:

- a. An order directing that the child shall be returned to her Habitual Residence of France, pursuant to Article 12 of the Convention.
- b. Enter an immediate *ex-parte* temporary restraining order prohibiting the removal of the child from the jurisdiction of this Court pending a hearing on the merits of the Verified Petition, and further providing that no person acting in concert or participating with

Respondent shall take any action to remove the child from the jurisdiction of this Court pending a determination on the merits of this case;

- c. Issue an immediate order that Respondent surrender any and all of her passports and all of the passports of the child.
- d. Issue an order directing Respondent to pay Petitioner for all costs and fees incurred to date by reason of the child's wrongful removal and retention pursuant to 22 U.S.C. § 9007;
- e. any such further relief as justice and its cause may require.

Dated: November \_\_\_\_, 2017  
Newark, New Jersey

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**VERIFICATION**

I, Emeric Gerval, solemnly declare and affirm under the penalty of perjury under the laws of the United States of America, that I am the petitioner in the within action and have read the foregoing Petition and know the contents of the foregoing Petition are true and correct, to the best of my knowledge, except as to those matters alleged upon information and belief.

Dated: November \_\_\_\_, 2017

\_\_\_\_\_  
Emeric Gerval