

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

ROQUE JACINTO FERNANDEZ *
Hato Pintado *
Calle George Westerman *
Casa #32 *
Panama City, Panama, *

Petitioner,

Civil Case No.:

v.

CHRISTY NICOLE BAILEY *
501 Knights Run Avenue *
Apartment 2320 *
Tampa, Florida 33602 *

Respondent.

* * * * *

**VERIFIED PETITION FOR RETURN OF CHILDREN
TO PANAMA AND FOR ISSUANCE OF SHOW CAUSE ORDER**

The Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980; International Child Abduction Remedies Act, 22 U.S.C. 9001 *et seq.*

INTRODUCTION

1. This Verified Petition for return of Children to Panama and Issuance of Show Cause Order is filed as a result of the wrongful removal and retention of the parties' twin eight-year-old sons (the "Children") in the United States from Panama. The Children are the sons of Petitioner, Roque Jacinto Fernandez (the "Petitioner" or

“Father”), and the Respondent, Christy Nicole Bailey (the “Respondent” or “Mother”), a/k/a Christina Elaine Dailey and Christina Nicole Bailey.

2. On March 20, 2013, the Respondent retrieved the Children from school in the middle of a school day without prior notice to Petitioner and then set out to conceal their location from the Petitioner and eventually remove the Children from Panama—their birthplace and homeland—to the United States. The Father has not seen or spoken to his boys, the Children, since the Mother abducted them. The Father has only recently been able to locate them in this District through information from the U.S. State Department.

3. This is the second time that the Respondent has improperly removed the Children from Panama to the United States. Respondent was ordered to return the Children to Panama in September 2010. A United States District Court ordered the return of the Children to Panama in the case of *Fernandez v. Bailey*, Case No. 1:10-cv-00084, United States District Court for the Eastern District of Missouri. A copy of the previous order of international return is attached as “Exhibit A” (hereinafter, “2010 Return Order”).¹

4. The current petition, like the 2010 Return Order, is pursuant to The Convention on the Civil Aspects of International Child Abduction, done at the Hague on October 25, 1980² (hereinafter the “Hague Convention” or “Convention”) and the

¹ In compliance with Federal Rule of Civil Procedure 5.2(a), only the initials of the Children are included in this Petition, and their names have been redacted from all exhibits. Also, only the Children’s year of birth is disclosed. The month and date of birth have been redacted from all exhibits.

² T.I.A.S. No. 11,670 at 1, 22514 U.N.T.S. at 98, *reprinted in* 51 Fed. Reg. 10,493 (1986) text available at:

International Child Abduction Remedies Act³ (hereinafter “ICARA”). The Convention came into effect in the United States of America on July 1, 1988, and was ratified between the United States of America and Panama on June 1, 1994.

5. The objectives 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. *See* Convention, art. 1.

JURISDICTION

6. This Court has jurisdiction under ICARA § 9003 because this case involves the wrongful retention of children under the age of sixteen in the United States from their habitual residence of Panama, and, to the best of Petitioner’s knowledge and belief, the children are currently located within the jurisdiction of this Court in Tampa, Florida.

FACTS

7. The parties have twin children, CRFB and RJFB, who were born in Panama. The Children are 8 years old and are Panamanian Citizens.

8. Petitioner is the natural father of the Children and his name appears on their birth certificates.

<https://www.hcch.net/en/instruments/conventions/specialised-sections/child-abduction>
(last accessed August 15, 2016).

³ 22 U.S.C. 9001 *et seq.* (2001).

9. Petitioner is a Panamanian Citizen, currently residing at Hato Pintado, Calle George Westerman, Casa 32, Panama City, Panama.

10. Respondent is the mother of the Children and is a citizen of the United States.

11. Petitioner and Respondent are not married. They were engaged to be married in the past, but they are no longer in a relationship.

12. Immediately before the removal by Respondent, the Children were habitual residents of Panama within the meaning of Article Three of the Convention.

13. At the time of removal by Respondent, Petitioner was actually exercising custody over the Children within the meaning of Articles Three and Five of the Convention.

14. The Mother has previously abducted the Children from Panama and brought them to the United States. At that time, the Father sought return of the Children under the Hague Convention and he prevailed. The United States District Court ordered the return of the Children to Panama in the 2010 Return Order. In the 2010 Return Order, the district court found that Respondent had wrongfully removed the Children from their habitual residence of Panama without Petitioner's knowledge or consent and moved them to Missouri. *See id.* at 3. The Court further found that the Father had rights of custody within the meaning of the Convention with respect to the Children under Panamanian law. *Id.* The Court overruled all of the defenses to return raised by the Mother and ordered that the Children be returned to Panama. *Id.* at 5.

15. The Children were ultimately returned to Panama in accordance with the 2010 Return Order. Petitioner then continued to exercise his rights of custody under Panamanian law.

16. There is an existing order from the Special Court for Children and Adolescents of the First Judicial Circuit of Panama entered July 6, 2012, that provides the Petitioner with visitation rights with respect to the Children. A copy of such order, Order No. 1340-12 JPNA-PRO, is attached as "Exhibit B."

17. Currently pending is a judicial proceeding filed by Petitioner for a Custody and Upbringing Process and Visitation Regime in the First Children and Adolescence Court of Panama City, First Judicial Circuit of Panama.

18. On March 20, 2013, Respondent took the Children from their school, Rincon Infantil Montessori, without notice or authorization by Petitioner. Petitioner has not seen the Children since that day despite efforts to locate them.

19. Petitioner is once again seeking the return of the Children because Respondent has wrongfully removed them from Panama for a second time.

20. Respondent has hidden the Children's location from Petitioner, causing Petitioner difficulty in locating them.

21. On February 25, 2015, Petitioner learned that the Children had been removed from Panama through the Tocumen International Airport. This information was obtained through a migration inquiry request from Petitioner's attorney in Panama. The Department of Migration reported that the Children were removed to the United States from Panama on February 2, 2014.

22. Respondent removed the Children from Panama to the United States without Petitioner's consent.

23. The Children should not have been able to leave Panama because an exit restriction preventing the Mother from removing the Children from the country had been placed on the Children as a result of the Respondent's previous international abduction of the Children.⁴ The exit restriction is shown in Letter No. 111-13, dated January 30, 2013, directed to the National Director of Migration from the Office of the Public Ministry, Attorney General of the Nation, Center of Attention to Victims. The exit restriction was a protective measure in the criminal proceeding relating to the earlier abduction of the Children by Respondent. A copy of Letter No. 111-13, and an official translation, is attached as "Exhibit C."

24. Two days after receiving information that the Children were removed to the United States, on February 27, 2015, Petitioner submitted an Application Under the Hague Convention on the Civil Aspect of International Child Abduction to the United States State Department. A copy of the application is attached as "Exhibit D."

25. On March 2, 2015, Petitioner filed complaint with the Republic of Panama Ministries Center for the Receipt of Complaints relating to the abduction and seeking the Children's return. A copy of Petitioner's Complaint, including an official translation, is attached as "Exhibit E."

26. The delay in bringing this petition was a result of the Mother's concealment of the Children's location from the Father. The Mother has used aliases,

⁴ The exit restriction placed on the Children is separate and apart from the so-called *ne exeat* right of custody for purposes of the Convention that is described *infra*.

including Christina Elaine Dailey and Christina Nicole Bailey. The Mother's efforts to evade detection prevented the U.S. State Department (and thus Petitioner) from locating the Children's whereabouts. And even then, the Mother continued to relocate around the State of Florida. The U.S. Department of State attempted to contact the Mother and sent letters to her on multiple occasions informing her of the Father's application under the Hague Convention and requesting that she respond. But she never responded to them. Instead, she continued to move around the state of Florida. For example, on July 6, 2015, the U.S. Department of State sent the Mother a letter at a location in St. Petersburg, Florida. Then, on July 21, 2015, the U.S. Department of State sent the Mother a letter at a location in Quincy, Florida. Then on December 10, 2015, the U.S. Department of State sent the Mother a letter at a location in Tallahassee, Florida. The letters are attached as "Composite Exhibit F." Again, the Mother did not respond to any of the letters.

27. The latest information provided to the Petitioner from the U.S. Department of State indicates that the Mother and the Children are residing at 501 Knights Run Avenue, Apartment 2320, Tampa, Florida, 33602-5948. The presence of the Children at that location has been verified by an investigator retained by the undersigned counsel.

28. Petitioner brings this suit with a sense of urgency to obtain relief before the Mother attempts to move again.

29. The undersigned counsel has agreed to represent Petitioner on a pro bono basis in this matter.

COUNT I – WRONGFUL REMOVAL

30. The Father restates and re-alleges the allegations contained in Paragraphs 1 through 28 as if fully set forth herein.

31. The Convention applies to cases where a child under the age of sixteen (16) years has been removed or retained 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 retention of the child, or would have been exercising but for the wrongful retention.

32. The minor Children in this matter are under the age of 16.

33. The habitual residence of the minor Children is Panama since their birth, where the Children were fully involved in all aspects of daily family life and cultural life, with the exception of Respondent's wrongful removal of the Children from Panama in 2009.

34. At the time of the Mother's wrongful retention of the Children from Panama to the United States, the Father had and continues to have rights of custody with respect to the Children under Panamanian law pursuant to "The Immigration Authorities," Title II, of Decree Law No. 3, Article 40, which includes a *ne exeat* right that falls within the meaning of "right of custody" under Article 49 of the Hague Convention. *See Abbot v. Abbott*, 560 U.S. 1 (2010) (holding that a parent's *ne exeat* right—in this case: the right to prevent a child to leave the country—is a "right to custody" under the Hague Convention on the Civil Aspects of International Child Abduction).

35. At the time of the Mother's wrongful removal of the Children, the Father was actually exercising his rights of custody within the meaning of Articles Three and Five of the Convention in that he is the father of the Children and has exercised parental responsibility rights in Panama since the Children's birth and he did not authorize their removal from Panama.

36. The Mother's retention and hiding of the Children in the United States is in violation of the Father's rights of custody under Panamanian law.

37. The Father has never consented to or acquiesced in the retention of the Children in the United States from Panama.

38. The Father has promptly taken all legal steps available to him to seek the return of the Children to Panama.

39. The present location of the Children is within the Middle District of Florida, in Tampa, Florida.

PROVISIONAL AND EMERGENCY REMEDIES⁵

40. Pursuant to ICARA § 9004, in a proceeding for the return of a child, "[n]o court exercising jurisdiction . . . may . . . order a child removed from a person having physical control of the Child unless the applicable requirements of State law are satisfied." ICARA § 9004. In this case, the State law referred to is that of Florida. In Florida, the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") is

⁵ This Court, "[i]n furtherance of the objectives of . . . the Convention . . . may 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 further removal or concealment before the final disposition of the petition." ICARA § 9004.

the source for state statutory law governing, among other things, the resolution of both domestic and international child custody disputes and is codified as Fla. Stat. § 61.501 *et seq.* Florida law addresses the appearance of the parties and the Child in such cases in § 61.523 of the UCCJEA. That section authorizes this Court to order the appearance of the Child and custodian or custodians *together*. This Court therefore has the authority to issue a show cause order, ordering the appearance of the Respondent and Children in that the provisions of 42 U.S.C. § 9004 are met.

41. The Father further requests that this Court issue along with the Show Cause Order an Order prohibiting the removal of the Children from the jurisdiction of this Court during the pendency of the proceedings in this Court, an Order taking into safe-keeping all of the Children's travel documents, and an Order setting an expedited hearing on the Verified Petition for Return of the Children to Panama.

UCCJEA DECLARATION

42. The details regarding the minor children that are required to be provided under the UCCJEA are as follows:

- Up until February 20, 2013, the Children resided with Petitioner at Hato Pintado, Calle George Westerman, Casa 32, Panama City, Panama.
- Documents obtained from the Panama Department of Migration indicate that the Children left Panama on February 2, 2014, through the Tocumen International Airport to Tampa, Florida, United States of America. Petitioner is unaware of where the Children were located before that date.

- The United States Department of State has provided Petitioner with information that the most recent location for the Children is 501 Knights Run Avenue, Apartment 2320, Tampa, Florida, 33602-5948.
- The Father commenced paternity and custody proceedings on February 7, 2013 by filing a claim with the First Children and Adolescence Court of Panama City, First Judicial Circuit of Panama. The case is still currently pending.
- As part of the pending custody proceedings, Petitioner has been granted visitation rights with the Children. A copy of the orders granting visitation rights is attached as “Composite Exhibit G.” The visitation rights were in effect at the time of the removal.
- The Father does not know of any person or institution not a party to the proceedings who has physical custody of the Children or claims to have rights of parental responsibility or legal custody or physical custody of, or visitation or parenting time with, the Children.

NOTICE OF HEARING

43. Pursuant to ICARA § 9003(c), the Mother will be given notice of any hearings in accordance with §§30-3B-108 and 205 of the UCCJEA.⁶

ATTORNEYS’ FEES AND COSTS INCLUDING TRANSPORTATION EXPENSES PURSUANT TO CONVENTION ARTICLE 26 AND ICARA § 11607

44. The Father has incurred substantial expenses as a result of the wrongful retention of the Children by the Mother.

⁶ The Convention itself does not specify any specific notice requirements. ICARA provides that notice be given in accordance with the applicable law governing notice in interstate child custody proceedings. ICARA § 9003(c).

45. The Father respectfully requests that this Court award all legal costs, fees, and other expenses the Father has and will incur to effect the Child's return as required by ICARA § 9007.

RELIEF REQUESTED

WHEREFORE, Petitioner, Roque Jacinto Fernandez, respectfully requests the following relief:

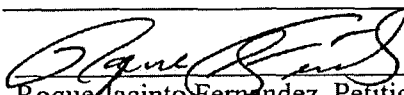
- a. That this Court issue a Show Cause Order commanding the Respondent to appear with the Children in this Court to show cause why the Children should not be returned to Panama forthwith for the Panamanian courts to make any and all custody determinations; and
- b. That this Court issue a Show Cause Order prohibiting the removal of the Children from the jurisdiction of this Court pending the resolution of this Petition and taking into safe-keeping the Children's passports and travel documents; and
- c. That this Court's Show Cause Order include a provision requiring the United States Marshal Service to serve the Show Cause Order and all pleadings and papers filed in this case on the Respondent at 501 Knights Run Avenue, Apartment 2320, Tampa, Florida, 33602-5948; and
- d. That if the Respondent fails to appear pursuant to this Court's Show Cause Order, that this Court issue an Order directing that the name of the Children be entered into the national police computer system (N.C.I.C.)

missing persons section and that an arrest warrant be issued for the Respondent; and


- e. That this Court issue an Order directing the prompt return of the Children to their habitual residence of Panama for the Panamanian courts to make any and all custody determinations; and
- f. That this Court issue an Order directing the Respondent to pay the Petitioner's reasonable legal costs, fees and expenses of effectuating the Children's return to Panama; and
- g. That this Court grant any such further relief as justice and the Petitioner's cause may require.

VERIFICATION PURSUANT TO 28 USC § 1746(1)

I, Roque Jacinto Fernandez, verify under penalty of perjury under the laws of the United States of America that the factual averments in the foregoing Verified Petition are true and correct. Executed on [date] _____



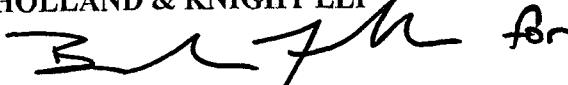
 Roque Jacinto Fernandez, Petitioner



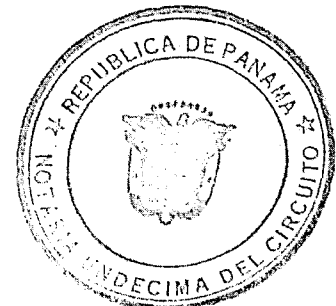


Respectfully Submitted,

HOLLAND & KNIGHT LLP




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Yo, Leda, MEISSA DEL C. SOSSA UDICIANI, Notaria Publica Undecima del Circuito de Panama, con cédula de identidad personal No. B-499-305

CERTIFICÓ:
 Que Roque Jacinto Fernandez
 M. P. No. 8-250-87c
 a quienes comparecieron, fueron debidamente identificados en mi presencia y en la de los testigos que se acompañan, y que sus declaraciones son verdaderas.

PAQUANA
 23 ABO 2016

Testigo

 Testigo

Yo, Leda, MEISSA DEL C. SOSSA UDICIANI, Notaria Publica Undecima del Circuito de Panama, con cédula de identidad personal No. B-499-305

and
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