

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

MOHAMAD ALHULAIBI

Appellant,

vs.

AHED SAID SENJAB

Respondent.

Supreme Court No.: 82114

Supreme Court No.: 82121

Electronically Filed  
Jun 22 2021 11:43 p.m.  
District Court No.: D-20-607093-D  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT MOHAMAD  
ALHULAIBI'S FAST TRACK  
STATEMENT**

**1. Name of party filing this fast track statement:**

Mohamad Alhulaibi ("Mohamad")

**2. & 3. Name, law firm, address, and telephone number of attorney submitting this fast track response:**

David Markman, Esq.  
MARKMAN LAW  
4484 S. Pecos Rd. #130  
Las Vegas, NV 89121  
702-843-5899

**4. Judicial district, county, and district court docket number of lower court proceedings:**

Eighth Judicial District Court, Family Division, Clark County

District Court Case Number: D-20-606093-D

**5. Name of Judge issuing judgment or order appealed from:**

Honorable T. Arthur Ritchie, Jr.

**6. Length of trial or evidentiary hearing:**

No trial or evidentiary hearing was held.

**7. Written Order or Judgment appealed from:**

Order Denying Relief was filed on October 13, 2020

**8. Date that written notice of the appealed written judgment or order's entry was served:**

The notice of Entry of Order was entered and served on October 14, 2020

**9. If the time for filing the notice of appeal was tolled by the timely filing of a motion listed in NRAP 4(a)(4).**

N/A

**10. Date notice of appeal was filed:**

The Notice of Appeal was Filed on November 12, 2020

**11. Specify the statute, rule governing the time limit for filing the notice of appeal: NRAP 4(a)**

**12. Specify the statute, rule or other authority, which grants this court jurisdiction to review the judgment or order appealed from: NRAP 3A(b)(3) and NRAP 3A(b)(8)**

**13. Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of which you are aware, which raise the same issues raised in this appeal:**

None. This matter is clustered with Senjab v. Alhulaibi, Case No.: 81515.

**14. Proceedings raising same issues. If you are aware of any other appeal or original proceeding presently pending before this court, which raise the same legal issue(s) you intend to raise in this appeal, list the case name(s) and docket number(s) of those proceedings:**

Not aware of any such proceedings.

**5. Procedural history. Briefly describe the procedural history of the case (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):**

On June 17<sup>th</sup>, 2020, the District Court granted Mohamad's Motion to Dismiss the divorce action for lack of subject matter jurisdiction, this issue is currently on appeal in No. 81515. On June 29<sup>th</sup>, 2020, Mohamad filed a petition/motion for an order requiring production of the minor, a warrant for the pick-up, an order preventing abduction, and a return order for the minor child to his home country. On July 1, 2020, Ahed Senjab ("Ahed"), filed an opposition and a countermotion. Then on July 15, 2020 Mohamad an opposition to Ahed's countermotion. Thereafter, on July 17, 2020, Ahed filed a supplement to her opposition and countermotion. Finally,

on July 28, 2020, Mohamad filed a reply in support of his petition for production of the minor and a Motion to Strike Ahed's supplement as untimely and prejudicial.

On August 4, 2020, the Honorable T. Arthur Ritchie heard the Petition for Production of the Minor Child and for the Return Order of the Minor Child to his Home State filed in D-20-606093-D along with the custodial matters remaining from the Motion to Dissolve filed in T-20-203688-T. At the hearing the Petition for the Return Order was denied. The Court did modify the custodial schedule to give Mohamad additional time with the minor child and to revise the Court order to include joint physical custody of the Minor. The Court also issued an order preventing the Minor Child from leaving the State of Nevada. The Order related to the Petition filed in D-20-606093-D was ultimately filed on October 13, 2020 in T-20-203688-T.

On January 25, 2021, Respondent Ahed filed a Motion to Extend the Protection Order. The Motion was heard on February 12, 2021 concurrently with an evidentiary hearing regarding alleged abuse of the minor child in which both parties are accusing the other of abuse of the Minor Child. The Commissioner denied Ahed's Motion allowing the Protection Order to expire by its own terms on February 14, 2021. The Commissioner had left in place the custody orders and the order preventing the Minor Child from leaving the State of Nevada as the evidentiary

hearing was continued. Thereafter, Ahed objected to the Commissioner's decision and further briefing commenced on the objection.

On March 26, 2021, this Honorable Court set oral arguments in 81515, which is a case now clustered with the instant case. On March 30, 2021, the parties reached a stipulation in which the parties would withdraw the pending objections, cross motions, vacate the evidentiary hearing, while also making it clear that neither party was giving up any rights as to their arguments on appeal or subjecting themselves to the subject matter jurisdiction of the District Court. That the stipulation was intended to be temporary and to allow the parties to conserve resources as oral arguments had been set in 81515. Further, that part of the consideration for the stipulation was that the Pandemic was ongoing in the United States and worse abroad.

**6. Statement of facts. Briefly set forth the facts material to the issues on appeal only if dissatisfied with the statement set forth in the fast track statement (provide citations for every assertion of fact to the appendix, if any, or to the rough draft transcript):**

Mohamad and Plaintiff are both citizens of Syria.<sup>1</sup> Mohamad and Plaintiff have one son together, Ryan Mohamad Alhulaibi ("Minor Child"), born on February 16, 2019, in Saudi Arabia.<sup>2</sup> The Minor is not a citizen of the United States.<sup>3</sup>

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<sup>1</sup> AA000014

<sup>2</sup> Id.

<sup>3</sup> Id.

Minor child was in the U.S. on an F2 Visa.<sup>4</sup> Since Ahed's VISA was finally approved, Mohamad purchased roundtrip tickets for the entire family to go to Nevada so they could be together for his final semester.<sup>5</sup> The roundtrip tickets for Mohammad, Ahed, and the Minor Child had them land in Las Vegas on January 13, 2020, with everyone to return to Saudi Arabia on or about June 18, 2020.<sup>6</sup> On March 24, 2020, Ahed filed a complaint for divorce.

Mohamad believes that Ahed is using the Minor and the allegations of domestic violence to further her agenda to live in the United States.<sup>7</sup> Mohamad believes that the Minor has become a pawn in Ahed's end game of obtaining legal residency.<sup>8</sup> Ahed comes from a wealthy family, attended private school growing up, completed the majority of her requirements for an undergraduate degree, and has significant amounts of jewelry and gold with her parents in Saudi Arabia.<sup>9</sup>

On June 17, 2020, the District Court ordered the divorce action dismissed pursuant to the Court's lack of Subject Matter Jurisdiction. After, the district court ordered the divorce dismissed, Ahed deprived Mohamad from seeing the Minor.<sup>10</sup>

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<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> IAA000060-63

<sup>7</sup> AA000338 ln 21 – AA000339 ln 4, AA000358-362, AA000427 ln 13-17.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> AA000417 ln 14-16, AA000496 ln 4-12, AA000503 ln 7-15

Mohamad had no way to contact Ahed regarding the well-being and safety of the minor.

June 19, 2020, at approximately 1:30pm is the first time Mohamad became aware he would not be getting the minor on his scheduled custodial time which was approximately an hour and half before he was supposed to pick up the minor.<sup>11</sup> Mohamad only became aware that Ahed was not bringing the Minor after his attorney received an email stating that Ahed would not be bringing the minor to the scheduled exchange.<sup>12</sup>

On June 26<sup>th</sup>, 2020, Mohamad's counsel was again informed that Ahed would not be bringing the Minor to the court ordered custodial exchange.<sup>13</sup> After which, Mohamad filed the motion that is the subject of this appeal. The crux of the motion/petition was two-fold. The first issue was that the minor be produced or that a warrant issue for the Minor as Ahed had secreted the Minor away from Mohamad, this issue is now largely moot, as the Minor child has been produced and the parties have been exchanging custodial time, but a warrant to pick up the child will become important if this Honorable Court issues a return order. The second issue in the motion/petition is the return of the Minor to his home state/habitual country, this

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<sup>11</sup> AA000257 ln 21; AA000280-284.

<sup>12</sup> Id.

<sup>13</sup> Id.

issue is still justiciable and highly important to Mohamad as the Minor is currently the only thing keeping him in the U.S.

Mohamad did not get his custodial time with the Minor until after August 4, 2020, when the district court ordered that Ahd exchange the Minor as pursuant to the temporary custodial order in T-20-203688-T. Prior to the August 4<sup>th</sup> hearing Mohamad had the Minor from Friday at 3pm until Monday at 10:00am, after the hearing Mohamad was awarded custodial time with the Minor from Thursday at 6pm until Sunday at 5pm.<sup>14</sup> While Ahd has previously initiated a child protective service case against Mohamad, the investigator found the allegations unsubstantiated.<sup>15</sup>

Mohamad retained his counsel through the Nevada Bar's Lawyer Referral Service Modest Means Program, which means that he qualified for reduced fee legal services based on his financial situation and that he is not to be charged more than seventy-five dollars per hour for legal services.<sup>16</sup>

**7. Issues on appeal. State concisely your response to the principal issue(s) in this appeal:**

a. Whether a minor that lived in Nevada with nonimmigrant alien parents for significantly less than six months can make Nevada his home state?

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<sup>14</sup> AA000503 Ln 11-15

<sup>15</sup> IAA000072

<sup>16</sup> AA000052

b. Whether the minor child should be returned to his home country/habitual residence to have child custody decided there?

**8. Legal argument, including authorities:**

**Introduction**

This case and the requested return order are about affording Mohamad the liberty to leave Nevada with the Minor Child.<sup>17</sup> This is about a Minor Child who less than two and a half months before the divorce action commenced had never been in the United States. This is about the enforcing the UCCJEA's stated purpose which is the speedy resolution of jurisdictional challenges. This is about a father that came here to further his education only to be stuck in limbo for over a year while he goes through the legal process that is meant to expedite jurisdictional decision. This case is about not upsetting public policy and making it a place where people from non-Hague countries can still travel with their family. This case likely sets the precedent on whether parents from non-Hague countries will have to worry about their child returning home after the child sets foot in Nevada or the United States in general. If this Honorable Court decides that a return order will not issue based on the parties' temporary relationship with Nevada, it opens the floodgates for countless

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<sup>17</sup> Case T-20-203688-T has an order that the Minor Child may not be removed from Nevada.

child custody jurisdictional lawsuits from persons that are temporarily in the State of Nevada but reside in non-Hague countries.

Either party to this appeal could be removed from the United States and would have no ability to come back to modify their custody order. This is about not making a father choose between being able to provide for his child and not seeing his child. A parent's immigration status and its derivative effects can be used as a factor in determining custody.<sup>18</sup> Ahed's immigration status and violation of said status could cause her to be detained by Immigration and Customs Enforcement which would likely subject the Minor to being put into a detention center until they were repatriated or granted residency.

Settling the forum for adjudication of a dispute over a child's custody, of course, does not dispose of the merits of the controversy over custody.<sup>19</sup> An absurd result would follow if a person was forced to defend a child custody case by temporarily living in the United States, especially when the party seeking custody has violated lawful and temporary custody orders throughout the pendency of her time in the United States.<sup>20</sup>

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<sup>18</sup> Rico v. Rodriguez, 121 Nev. 695, 701, 120 P.3d 812, 816 (2005).

<sup>19</sup> Monasky v. Taglieri, 140 S.Ct. 719, 729 (2020).

<sup>20</sup> AA000417 ln 14-16, AA000496 ln 4-12, AA000503 ln 7-15

This Court has made it clear that it will prohibit district courts from invoking subject matter jurisdiction when it would upset nationwide public policy.<sup>21</sup>

**The District Court Could Have Assumed Jurisdiction over the Motion/Petition to Produce the Minor Child and Order the Minor Child's Return to his Home Country**

This Court has held “when an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, [but] the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal's merits.”<sup>22</sup>

Here, the District Court in its Order found that the issues were not collateral to the appeal but the return order is likely collateral as it would not effect the merits of the appeal as the appeal was limited to whether or not the District Court had subject matter jurisdiction to hear the divorce case and did not involve any orders regarding the return of the minor child to his home state. A return order does not render an appeal moot; there is a live dispute between the parties over where their child will be raised, and there is a possibility of effectual relief for the prevailing

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<sup>21</sup> See Friedman v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark, 127 Nev. 842, 854, 264 P.3d 1161, 1169 (2011).

<sup>22</sup> Mack–Manley v. Manley, 122 Nev. 849, 855, 138 P.3d at 529–30. See NRAP 3A(b)(8); See also Gumm v. Mainor, 118 Nev. 912, 59 P.2d 1220 (2002) (a special order after final judgment is one that affects the rights of a party arising from the final judgment).

parent. Chafin, 568 U.S. at 180. “[i]f losing parents were effectively guaranteed a stay, it seems likely that more would appeal, a scenario that would undermine the goal of prompt return and the best interests of children who should in fact be returned.” Chafin, 568 U.S. 165, 179, 133 S.Ct. 1017, 1027. In order to further the goal of the prompt return of the Minor Child the District Court likely could have heard the Petition as it would not have affected the appeal and would have resulted in a special order after the final judgment that affects the rights of a party arising from the final judgment.

### UCCJEA<sup>23</sup>

Settling the forum for adjudication of a dispute over a child's custody, of course, does not dispose of the merits of the controversy over custody.<sup>24</sup> “[A] parent cannot create a new habitual residence by wrongfully removing and sequestering a child.”<sup>25</sup> The lower Court discussed Custody and that Nevada could not be the Home State of the Minor as the parties had only recently moved from another

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<sup>23</sup> Mohamad is aware that the Hague convention is not available in this matter but as in Ogawa the Court can issue return orders in substantial compliance with Hague case law authority and can look to case law interpreting the Hague to determine how to deal with an international custody dispute (Even when a country is not a party to the Hague convention, the court can properly order the return of a minor child.) *See* Ogawa v. Ogawa, 125 Nev. 660, 670–71, 221 P.3d 699, 706 (2009). Further, the Hague Convention was the foundation for the UCCJEA. In re Marriage of O.T. & Abdou El Alaoui Lamdaghri, No. E058911, 2018 WL 6242412, at \*19 (Cal. Ct. App. Nov. 29, 2018), reh'g denied (Dec. 20, 2018)

<sup>24</sup> Monasky v. Taglieri, 140 S.Ct. 719, 729 (2020).

<sup>25</sup> Miller v. Miller, 240 F.3d 392, 400 (4th Cir. 2001)

country. In the May 20, 2020, hearing prior to supplemental briefing the court was very clear: “you cannot move here from another country, live here for six weeks and establish custody jurisdiction in Nevada this way.”<sup>26</sup> The facts regarding the Minor’s arrival in Nevada are uncontested.<sup>27</sup> The lower Court while not addressing child custody in its order was clear at both hearings, Nevada is not the child’s home state “...your client was here for two months. The child is – home state is not Nevada.” June 16, 2020 hearing.<sup>28</sup>

Home state is defined in Nevada as:

**NRS 125A.085 “Home state” defined.** “Home state” means:

1. The state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months, including any temporary absence from the state, immediately before the commencement of a child custody proceeding.

A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying NRS 125A.005 to NRS 125A.395, inclusive. Kar v. Kar, 132 Nev. 636, 639 (2016); *citing* NRS 125A.225(1). NRS 125A.305(1)(c) permits a court to exercise jurisdiction when other states that would have jurisdiction under paragraphs (a) or (b) have declined to do so “on the ground that a court of this State is the more appropriate forum to determine the custody of

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<sup>26</sup> AA000516, Ln 8-10.

<sup>27</sup> AA000557-558

<sup>28</sup> AA000568 ln 15-17.

the child pursuant to NRS 125A.365 or 125A.375.” This does not apply here because no state other than Nevada had the opportunity to decline jurisdiction. Id. at 642.

Therefore, under NRS 125A.085 and as interpreted by Kar, Saudi Arabia is the Home State of the Minor child. The Minor child was in Nevada for less than two and a half months prior to the commencement of the underlying divorce action. Before that the Minor child lived his whole life in Saudi Arabia including the six months prior to the commencement of the underlying divorce action except for the less than two-and-a-half-month temporary absence in Nevada. Saudi Arabia has not declined to exercise jurisdiction. Nor is Nevada the more appropriate forum as none of the parties are citizens of the United States. Moreover, Mohamad would have left Nevada with the minor child if he were legally allowed to do so but Mohamad has been prevented from leaving Nevada with the Minor by the district court’s orders.

“Temporary absences do not interrupt the six-month pre-complaint residency period necessary to establish home state jurisdiction”. Ogawa v. Ogawa, 125 Nev. 660, 662, 221 P.3d 699, 700 (2009). “[A]nother aspect of the home state analysis, necessarily requires consideration of the parents’ intentions, as well as other factors relating to the circumstances of the child’s or family’s departure from the state where they had been residing.” In re Aiden L., 16 Cal. App. 5th 508, 518, 224 Cal. Rptr. 3d 400, 408 (2017).

The parties were only supposed to be in the United States temporarily so that Mohamad could finish his graduate degree. In fact, the very conditions of the F1 student Visa and the dependent F2 Visas makes the parties stay in the United States temporary in nature as they are non-immigrant visas that require the parties to maintain “a residence in a foreign country which he has no intention of abandoning... and who seeks to enter the United States temporarily.”<sup>29</sup>

Furthermore, Courts have even held that when an entire family was temporarily absent from the state it did not deprive the Home State from having jurisdiction.<sup>30</sup> In Sarpe, the entire family left Florida for Turkey for 5 months and 29 days, the father was the only person to return before 6 months expired, the father did not file a petition for two months after returning, the Court still held that the move to Turkey “was not intended to be a permanent move, characterizing the children's stay in Turkey...as a temporary absence.” Id.

It is uncontested that the Minor came to Nevada on January 13, 2020, while Mohamad was concluding his studies at UNLV. The Minor lived in Nevada for two months and eleven days prior to the commencement of the divorce action. There is no doubt Saudi Arabia remains the Minor’s Home State.

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<sup>29</sup> Elkins v. Moreno 435 U.S. 647, 665 (1978)

<sup>30</sup> Sarpe v. Eflanli, 65 So. 3d 1080, 1081 (Fla. Dist. Ct. App. 2011)

Importantly, “a parent cannot create a new habitual residence by wrongfully removing and sequestering a child.”<sup>31</sup> The UCCJEA was created to eliminate exploitable loop-holes and forum shopping.<sup>32</sup>

If persons were allowed to temporarily live in Nevada and keep the minor child in the state until a sufficient amount of time lapsed or the other parent came to the state to live while looking for the Minor it would create numerous new and exploitable loopholes in the UCCJEA especially as the term “live” is extremely malleable.

The loopholes would likely be exploited by any party that wanted Nevada to decide custody even if they in fact created the conditions for all parties remaining in Nevada. An example would be if a family came here temporarily for business and rented a house for thirty days, they could subject themselves to having Nevada decide their child custody despite the fact they never gave up their permanent residence. Since all family members were present and currently “living” in Nevada. Further, the time frame could actually be even shorter as the parties wouldn’t even have to give up their residence or domicile in their home state. This line of reasoning

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<sup>31</sup> Chambers v. Russell, No. 1:20CV498, 2020 WL 5044036, at \*4 (M.D.N.C. Aug. 26, 2020) *citing* Miller v. Miller, 240 F.3d 392, 400 (4th Cir. 2001).

<sup>32</sup> In re Guardianship of K.B., 172 N.H. 646, 649–50 (2019).

would upset nationwide public policy and create the very forum shopping the UCCJEA was created to prevent.

### **RETURN ORDER**

Mohamad is requesting a return order or injunction that requires the Minor to be returned to Saudi Arabia. Mohamad cannot file a petition with the Hague Convention as Saudi Arabia is not a party to the Hague Convention. An injunction is a writ or order requiring a person to refrain from a particular act.<sup>33</sup> It may be granted by the court in which the action is brought, or by a judge thereof, and when made by a judge it may be enforced as an order of the court.<sup>34</sup> A petition for the return of a minor child under Nevada State law operates similar to an injunction as it requests an order be issued that requires a person to perform certain acts i.e produce the minor child and return him to his Home State.

In *Robles I*, *ex parte* emergency relief was granted to prevent irreparable harm where: (1) the respondent already had abducted the child from the familial home in Mexico and smuggled the child into the United States; (2) the respondent faced the risk of apprehension in the United States; and (3) there was the possibility if the child was not removed from the respondent's custody that the respondent would further

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<sup>33</sup> The Law Dictionary Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.

<sup>34</sup> Id.

secret the child and herself.<sup>35</sup> In Robles, the Court consolidated the hearing for a preliminary injunction motion with a hearing on the merits of the case pursuant to FRCP 65(a)(2).

At the time the underlying Petition was filed Ahd had secreted the Minor Child away in violation of the custodial orders and had retained the Minor child from his home state with Mohamad having no way to communicate with Ahd, no way to communicate with the Minor, or know way for Mohamad to even know about the wellbeing or whereabouts of the minor child. Mohamad has concerns that if this Honorable Court issues a return order that Ahd would again conceal the Minor's whereabouts as she has no known ties to Las Vegas or Nevada. Therefore, Mohamad would request a warrant for the pickup of the Minor child along with the return order because if the Minor's whereabouts are concealed, Mohamad will face irreparable harm and will have a difficult time ever locating his son again.

A child wrongfully removed from her country of "habitual residence" ordinarily must be returned to that country.<sup>36</sup> The Convention ordinarily requires the **prompt** return of a child wrongfully removed or **retained** away from the country in which she habitually resides(*emphasis added*).<sup>37</sup>

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<sup>35</sup> Robles I, 2004 WL 1895125, at \*3.

<sup>36</sup> Monasky v. Taglieri, 140 S. Ct. 719 (2020).

<sup>37</sup> Monasky v. Taglieri, 140 S. Ct. 719, 723 (2020); *citing* Art. 12, Treaty Doc., at 9 (cross-referencing Art. 3, *id.*, at 7); *see also* Chafin v. Chafin, 568 U.S. 165, 180,

The UCCJEA does not require a full evidentiary hearing; rather it aims for the speedy resolution of jurisdictional challenges.<sup>38</sup> “Following the example set in Monasky, we do not remand for the district court to reconsider because to do so would ‘**consume time when swift resolution is the Convention's objective,**’ and there is no indication that ‘**the District Court would appraise the facts differently on remand.**’”<sup>39</sup>

Here, the District Court based on the undisputed record of when the parties arrived, and the parties Visa Conditions has already indicated at both the hearing held on the Motion to Dismiss and the supplemental briefing hearing that the Court would find Nevada was **not** the Minor’s Home State. There is nothing in the appeal that would likely lead the District Court to appraise the facts differently on remand.

Thus, this Honorable Court should issue a return order or a substantially similar order so that Mohamad can return to Saudi Arabia with the minor child. The Supreme Court of the United States has indicated that the Hague Convention “is based on the principle that the best interests of the child are well served when

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133 S. Ct. 1017, 1028, 185 L. Ed. 2d 1 (2013) (The Hague Convention mandates the prompt return of children to their countries of habitual residence.)

<sup>38</sup> Chaker v. Adcock, 464 P.3d 412 (Nev. App. 2020); *citing* In re Yaman(sic), 105 A.3d 600, 613-14 (N.H. 2014).

<sup>39</sup> Smith v. Smith, No. 19-11310, 2020 WL 5742023, at \*4 (5th Cir. Sept. 25, 2020) *citing* Monasky, 140 S. Ct. at 731; *see also* Farr v. Kendrick, No. 19-16297, 2020 WL 4877531, at \*2 (9th Cir. Aug. 20, 2020).

decisions regarding custody rights are made in the country of habitual residence.”<sup>40</sup><sup>41</sup>

When a Court does not order the prompt return of a child, the child loses precious months in which the child could have been readjusting to life in his country of habitual residence.<sup>42</sup>

The Minor has already lost precious months since this action was instituted in which he could be readjusting to life in his Home State. The minor has had to live in between a shelter and an apartment during the ongoing pandemic and was the subject of at least two Covid-19 scares. The Minor is a little over two years old now and is barely entering his formidable toddler years in which he will really begin learning to speak. Delaying his return to his Home State will only serve to prevent the process of readjustment that is so critical. Especially, since he is currently being shuffled between a shelter and an apartment.

This Court has previously “decline[d] to adopt a bright-line rule prohibiting out-of-country visitation by a parent whose country has not adopted

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<sup>40</sup> Mohamad is aware the Hague convention is not available here but as in Ogawa this Court can issue a return orders by interpreting Hague case law to determine how to deal with an international custody dispute *See* Ogawa v. Ogawa, 125 Nev. 660, 670–71, 221 P.3d 699, 706 (2009).

<sup>41</sup> Cook v. Arimitsu, No. A19-1235, 2020 WL 1983223, at \*3 (Minn. Ct. App. Apr. 27, 2020); *citing* Abbott v. Abbott, 560 U.S. 1, 20, 130 S. Ct. 1983, 1995 (2010); *see also* Monasky, 140 S. Ct. at 723 (recognizing that the “core premise” of the Hague Convention is that the children’s best interests are generally “best served when custody decisions are made in the child’s country of habitual residence”).

<sup>42</sup> *See* Chafin 568 U.S. at 178.

the Hague Convention or executed an extradition treaty with the United States” and that was when the minor’s Home State was actually Nevada.<sup>43</sup> Based on this Court’s precedent, the Minor should not be barred from returning to his non-Hague Home State of Saudi Arabia. This Honorable Court should issue a return order as was done by the United States Supreme Court in *Monasky* and the various Federal Circuit Courts that have since interpreted *Monasky* since it was decided in 2020 so the minor can be promptly returned to his Home State.

#### **SAUDI ARABIA CAN BE CONSIDERED A STATE<sup>44</sup>**

Saudi Arabia can be considered a state under the UCCJEA. Saudi Arabia has significant ties and full diplomatic relations with the United States, Saudi Arabia is the second leading source of imported oil to the United States.<sup>45</sup> The UCCJEA “mandates that any foreign nation must be treated as if it were a state within the

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<sup>43</sup> *Davis v. Ewalefo*, 131 Nev. 445, 454, 352 P.3d 1139, 1145 (2015); *see also Long v. Ardestani*, 241 Wis.2d 498, 624 N.W.2d 405, 417 (Wis.Ct.App.2001) (finding no cases that “even hint” at a rule that provides, “as a matter of law that a parent ... may not take a child to a country that is not a signatory to the Hague Convention if the other parent objects”).

<sup>44</sup> This issue was first briefed in *Ahed’s* Supplemental briefing filed on July 17, 2020, two days after *Mohamad* had filed his opposition to *Ahed’s* countermotion and four days after the time to oppose the Motion had run pursuant to EDCR 2.2(e). *Mohamad* first addressed the fact the *Ahed’s* countermotion was devoid of actual reference to Saudi Law and only used “common knowledge” in his July 13, 2020, opposition to countermotion. AA339 ln 12-21. *Mohamad* then filed a motion to strike the fugitive document with his reply on July 28, 2020, as new issues should not be allowed to be raised in supplemental briefings. See AA421-422.

<sup>45</sup> AA000364-366

United States for purposes of jurisdiction and inter-court cooperative mechanisms. The UCCJEA is not a reciprocal act. There is no requirement that the foreign country enact a UCCJEA equivalent.”<sup>46</sup> The UCCJEA is intended to eliminate competition between courts in matters of child custody, with **jurisdictional priority conferred to a child’s home state**.<sup>47</sup> The UCCJEA does not provide exceptions for foreign countries that have no diplomatic jurisdiction with the United States to be deemed anything but a State, nor should a Court read that exception into the Statute.<sup>48</sup> **That a foreign jurisdiction's law is different or strikes us as outdated is not an indication that it violates fundamental principles of human rights, and, therefore, that is not the test under the UCCJEA.**<sup>49</sup>

Courts interpreting the UCCJEA’s Escape clause (commonly known as the human rights exception) routinely look to Article 20 of the Hague convention for assistance in interpreting the clause. People In Interest of A.B-A., 2019 COA 125, ¶

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<sup>46</sup> S.B. v. W.A., 38 Misc. 3d 780, 809, 959 N.Y.S.2d 802 (Sup. Ct. 2012), aff’d sub nom. Badawi v. Wael Mounir Alesawy, 135 A.D.3d 792, 24 N.Y.S.3d 683.

<sup>47</sup> Id.

<sup>48</sup> People In Interest of A.B-A., 2019 COA 125, ¶ 45, 451 P.3d 1278, 1287.

<sup>49</sup> Matter of Yaman, 167 N.H. 82, 105 A.3d 600, 611 (2014); See Coulibaly v. Stevance, 85 N.E.3d 911, 917 (Ind. Ct. App. 2017) See D. Marianne Blair, International Application of the UCCJEA: Scrutinizing the Escape Clause, 38 Fam. L. Q. 547, 565 (2004)(“...that the provision not become the basis for magnifying every difference between the U.S. legal system and that of a foreign nation to virtually stymie effective application of the UCCJEA in international cases.”)

29, 451 P.3d 1278, 1285. The Article 20 defense is to be “restrictively interpreted and applied.” *Id. citing U.S. State Dep't, Hague International Child Abduction Convention: Text and Legal Analysis, Pub. Notice, 51 Fed. Reg. 10,494, 10,510 (Mar. 26, 1986)*. The defense is to be invoked only on ‘the rare occasion that return of a child would utterly shock the conscience of the court or offend all notions of due process.’ *Id.* It “is not to be used ... as a vehicle for litigating custody on the merits or for passing judgment on the political system of the country from which the child was removed.” *Id.*

The Article 20 defense has yet to be used by a federal court to deny a petition for repatriation. *Souratgar v. Lee*, 720 F.3d 96, 108–09 (2d Cir. 2013). *Citing Fed. Jud. Ctr., The 1980 Hague Convention on the Civil Aspects of International Child Abduction: A Guide for Judges* 85 (2012). “In urging the Article 20 exception in this case, Lee insists broadly that Syariah Courts are incompatible with the principles “relating to the protection of human rights and fundamental freedoms” of this country. **While this general assertion might find sympathy among some in this country as a political statement, we decline to make this categorical ruling as a legal matter.**” *Id. (emphasis added)*.

In *Coulibaly*, the court had to make a decision regarding Mali as a Home State the court followed the intent of the UCCJEA and opined “it clear that our scrutiny is limited to Mali's child custody law and not on other aspects of its legal system,

including the law (or absence of law) concerning [Female Genital Mutilation].”<sup>50</sup> Coulibaly also discussed parental preference stating “custodial preferences are not foreign to American jurisprudence. Indeed, gender-based custody preferences were the norm in the United States in the not-so-distant past.”<sup>51</sup>

“Jurisdictional issue is limited to determining whether another forum is available with jurisdiction which will determine the child custody issue in accord with minimum due process and award custody on the basis of the best interests of the child. Collateral matters relating to the culture, mores, customs, religion, or social practices in that other forum are not only irrelevant to the question of jurisdiction but also such cultural comparisons have no place in the ultimate custody award.”<sup>52</sup>

The UCCJEA was created to eliminate forum shopping. Saudi Arabia is the proper jurisdiction and is available to decide the custody matters in accord with the UCCJEA requirements of due process and make the award based on the best interest of the child. While it is anticipated that Ahed will attempt to make a categorical statement that countries with Sharia Courts cannot be considered a Minor’s home state. No Appellate Court or federal court has actually reached that decision. In fact,

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<sup>50</sup> Coulibaly v. Stevance, 85 N.E.3d 911, 920–21 (Ind. Ct. App. 2017).

<sup>51</sup> Id.

<sup>52</sup> State ex rel. Rashid v. Drumm, 824 S.W.2d 497, 505 (Mo. Ct. App. 1992).

as discussed above most courts have found the complete opposite. Therefore, this Court should hold that Saudi Arabia can be a state as considered by the UCCJEA and order the return of the Minor to his Home State/Habitual Residence of Saudi Arabia.

It is also anticipated that Ahed will cite to a case from New Jersey - Ali v. Ali, for the proposition that the “the law of the Sharia court was arbitrary and capricious” but fail to discuss that New Jersey was the home state of the minor not Gaza, the party attempting to enforce the Sharia Court order failed to provide a copy of the Gaza decree, and that there was a lack of notice to the other party.<sup>53</sup> Additionally, the sentence cited from Ali while sounding very drastic was talking about the specific Sharia court and not Sharia Courts in general.

After the Ali v. Ali decision, the New Jersey Supreme Court decided Ivaldi. In Ivaldi the New Jersey Supreme Court held “We trust, however, that the Moroccan court will consider the child's best interests in fashioning a custody order. In that regard, the Hague Convention on Jurisdiction seeks to assure that the best interests of the child is the primary consideration in all international disputes involving children...We trust further that the Moroccan court will consider the parties' separation agreement, including its provision calling for the application of New

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<sup>53</sup> Ali v. Ali, 279 N.J. Super. 154, 167, 652 A.2d 253, 259 (Ch. Div. 1994).

Jersey law. Our goal is to further the purposes of the Act and of the Hague Convention on Jurisdiction by avoiding jurisdictional competition while simultaneously discouraging parents from unilaterally removing their children to obtain a more favorable forum.”<sup>54</sup> The Court went on to discuss why it ultimately declined to assume jurisdiction “If the Family Part dismisses this action, the dismissal will not preclude a New Jersey court from subsequently reviewing the enforceability of the Moroccan custody decree. For example, if the Moroccan court denies the father procedural due process or refuses to consider Lina's best interests, the Family Part may then refuse to enforce the Moroccan decree. Id.

Here, there is nothing in the record that would show that Saudi Arabia would not provide due process to all parties involved or make a decision based on the best interest of the child.<sup>55</sup> Instead it is anticipated that Ahed will make categorical statements that no Minor should ever be returned to his Home State if he is from a non-Hague country.

Lastly, it is anticipated the Ahed will discuss a district court case order issued on February 21, 2021 from a county in Washington that has a total of 75,000 residents to be used as precedent for the fact that Saudi Arabia cannot be considered

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<sup>54</sup> Ivaldi v. Ivaldi, 147 N.J. 190, 206–07, 685 A.2d 1319, 1327–28 (1996).

<sup>55</sup> Please see AA000442-449 a declaration by Hany Youssef Abdul-Ati Al Saadawy, regarding the current law in Saudi Arabia on divorce an child custody.

a state for purposes of the UCCJEA despite no appellate court or federal court ever holding that any country could not be considered a home state or habitual residence.

In Alhaidari v. Alhaidari, Chelan No. 20-3-00028-04, the court determined that it would not enforce a custody order that was previously made in Saudi Arabia. The court in that case appears to have made numerous legal errors, that were so acknowledged by the prevailing party in an interview she did with insider, in which she said "[t]he judgment is incredibly brave, but it's incredibly vulnerable on appeal."<sup>56</sup> Some of the errors in the order appear to stem from the questions posed by the court such as “What are the fundamental principles of human rights” and the court’s statement that in adopting the UCCJEA, Washington could not have intended to adopt laws of another country.

Additionally, there are numerous things to distinguish the instant case from Alhaidari, such as but not limited to, one parent and the minor child being citizens of the United States along with an order that was entered in that case based on a default that ordered Saudi Arabia not to be considered a state for purposes of the UCCJEA.

Importantly, though in Alhaidari the court in that case found there was a lack of codified child custody laws and therefore the court had to look at the specific facts

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<sup>56</sup> See interview given by the prevailing party Bethany Viera; <https://www.insider.com/bethany-vierra-american-trapped-saudi-arabia-escape-2021-4>

of that particular case to make a ruling. The instant case does not have any specific facts in which Saudi Arabia violated or even came close to violating any due process as it relates to child custody, in fact the only actual evidence ever admitted is the declaration that shows the best interests of the child standard is used to determine custody. Moreover, the relevant timeframe in Alhaidari appears to be from 2017 to 2019 which predates significant reforms that have been undertaken in Saudi Arabia and involves a party that appeared to be antagonizing the Saudi Arabian court throughout the proceedings. According to the World Bank, Saudi Arabia was one of the top reformers in 2020 for women's rights in the world.<sup>57</sup> Based on the fact that Saudi Arabia has instituted significant reforms, the only expert declaration on Saudi law demonstrates that Saudi Arabia uses due process and makes custody determinations with the minor's best interests in mind, and neither party is a citizen of the United States, this Honorable Court should issue a return order of the Minor child to Saudi Arabia.

## **CONCLUSION**

This Court should issue an order pursuant to the United States Supreme Court's decision in Monasky and issue a return order for the Minor to his Home State of Saudi Arabia, as remanding to the District Court would consume time when

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<sup>57</sup>

<https://openknowledge.worldbank.org/bitstream/handle/10986/32639/9781464815324.pdf>

swift resolution is the UCCJEA's objective, and there is no indication the District Court would appraise the facts differently on remand.

DATED this 22<sup>nd</sup> day of June, 2021.

Respectfully submitted by:

**MARKMAN LAW**

**/s/ DAVID MARKMAN**

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## VERIFICATION

1. I hereby certify that this fast track response complies with the formatting requirements of [NRAP 32\(a\)\(4\)](#), the typeface requirements of [NRAP 32\(a\)\(5\)](#) and the type style requirements of [NRAP 32\(a\)\(6\)](#) because:

This fast track response has been prepared in a proportionally spaced typeface using Microsoft Word in font size 14 and type style Time New Roman

2. I further certify that this fast track response complies with the page- or type-volume limitations of [NRAP 3C\(h\)\(2\)](#) because it is:

Proportionately spaced, has a typeface of 14 points or more, and contains 6,707 words.

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3. Finally, I recognize that pursuant to [NRAP 3C](#) I am responsible for filing a timely fast track response and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information and belief.

Dated this 22<sup>nd</sup> day of June, 2021

Respectfully submitted by:

**MARKMAN LAW**

**/s/ DAVID MARKMAN**

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