

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA

Johnny Teixeira Jardim v. Barbara Yailyn Perez Paez

Jardim v. Perez Paez · No. 25-cv-24087-BLOOM/Elfenbein · Decided January 7, 2026

SUMMARY

The United States District Court for the Southern District of Florida denied Respondent’s Emergency Motion to Alter or Amend Judgment and request for a stay in a Hague Convention petition seeking the return of children to Venezuela. The court held that newly submitted affidavits and a psychological report could have been presented during the evidentiary hearing, and that prior counsel’s litigation decisions and concession did not warrant relief under Federal Rules of Civil Procedure 59(e) or 60(b).

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
WRITING FOR THE COURT	Beth Bloom
JURISDICTION	United States District Court for the Southern District of Florida
DECIDED	January 7, 2026
DOCKET	25-cv-24087-BLOOM/Elfenbein
DISPOSITION	denied
PROCEDURAL POSTURE	Respondent moved under Federal Rules of Civil Procedure 59(e) and 60(b) to alter or amend, or obtain relief from, the prior order requiring the return of the children to Venezuela and sought a stay of that return order. The district court denied the motion.
STANDARD OF REVIEW	A Rule 59(e) motion requires newly discovered evidence or a manifest error of law or fact and may not be used to relitigate matters or present evidence that could have been presented before judgment. Relief under Rule 60(b)(6) requires extraordinary circumstances and is committed to the district court’s sound discretion. A stay of a Hague Convention return order is evaluated under the four traditional stay factors, including a strong showing of likely success on the merits.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- motion for reconsideration
- family law procedure
- child custody
- civil procedure
- remedies

PRACTICE AREAS

family law

civil procedure

international child abduction

motions for reconsideration

remedies

QUESTIONS PRESENTED

1. Whether Respondent was entitled to reconsideration under Rule 59(e) based on affidavits and a psychological report that were known or available before the evidentiary hearing.
2. Whether attorney decisions to concede an affirmative defense and not present additional evidence constituted a basis for relief under Rule 60(b)(1) or Rule 60(b)(6).
3. Whether Respondent was entitled to a stay of the Hague Convention return order under the four traditional stay factors.

HOLDINGS

1. Evidence that was known or available before judgment, and arguments or evidence that could have been presented before judgment, do not provide a basis for relief under Rule 59(e).
2. Claims based on attorney error must be brought under the more specific Rule 60(b)(1), not under Rule 60(b)(6)'s residual equitable provision.
3. A party's counsel's deliberate decision to concede an affirmative defense and not present particular evidence is a strategic or tactical choice, not excusable neglect warranting relief under Rule 60(b)(1).
4. Respondent was not entitled to a stay because she failed to make a strong showing of likely success on the merits.

KEY QUOTATIONS

"Relief is proper under Rule 59(e) only if the party presents newly discovered evidence or demonstrates a manifest error of law or fact." (at 2)

"Therefore, the decisions by Respondent's former counsel not to enter certain evidence and to concede the third affirmative defense do not qualify as a basis for relief under Rule 60(b)(1)." (at 5)

FACTUAL BACKGROUND

The Court previously found, and Respondent conceded, that Petitioner established by a preponderance of the evidence that Respondent wrongfully retained the minor children in the United States. Respondent failed to establish the consent or acquiescence, settled-child, and mature-child defenses, and conceded that she had not established the grave-risk defense. After retaining new counsel, Respondent submitted affidavits, a psychological report, and arguments that former counsel should have presented additional evidence at the evidentiary hearing.

PROCEDURAL HISTORY

After an evidentiary hearing, the Court granted Petitioner's Verified Petition for Return of Children to Venezuela under the Hague Convention and ordered the children returned by January 5, 2026. Respondent's first emergency motion to reopen the hearing and stay the order was denied, although the return order was temporarily stayed because the FAA had banned commercial flights over Venezuela. After the ban was lifted,

Respondent filed the present emergency motion attaching affidavits and a psychological report and arguing that former counsel had failed to present evidence supporting affirmative defenses. The Court denied reconsideration and the requested stay.

DISPOSITION

denied

CASES CITED

- Dingman v. Cart Shield USA, LLC, No. 12-cv-20088, 2013 WL 2034984, at *2 (S.D. Fla. May 14, 2013)
- Region 8 Forest Serv. Timber Purchasers Council v. Alcock, 993 F.2d 800, 806 n. 5 (11th Cir. 1993)
- Marques v. JP Morgan Chase, N.A., 805 F. App'x 668, 670-671 (11th Cir. 2020)
- Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007)
- Michael Linet, Inc. v. Village of Wellington, Fla., 408 F.3d 757, 763 (11th Cir. 2005)
- Cano v. Baker, 435 F.3d 1337, 1342 (11th Cir. 2006)
- Toole v. Baxter Healthcare Corp., 235 F.3d 1307, 1317 (11th Cir. 2000)
- Chafin v. Chafin, 568 U.S. 165, 179 (2013)
- Nken v. Holder, 556 U.S. 418, 434 (2009)
- Atmos Nation, LLC v. All Rise Recs., Inc., No. 16-60032-CIV, 2017 WL 3635111, at *3 (S.D. Fla. June 14, 2017)
- S.E.C. v. Simmons, 241 F. App'x 660, 663 (11th Cir. 2007)
- Solaroll Shade & Shutter Corp. v. Bio-Energy Systems, Inc., 803 F.2d 1130, 1133 (11th Cir. 1986)
- Jacobs v. Elec. Data Sys. Corp., 240 F.R.D. 595, 601 (M.D. Ala. 2007)
- Haynes v. Cain, 298 F.3d 375, 381 (5th Cir. 2002)

OPINION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA Case No. 25-cv-24087-BLOOM/Elfenbein JOHNNY TEIXEIRA JARDIM, Petitioner, v. BARBARA YAILYN PEREZ PAEZ, Respondent. _____/ SECOND ORDER DENYING RECONSIDERATION THIS CAUSE is before the Court upon Respondent's Emergency Motion to Alter or Amend Judgment ("Motion"), ECF No. [59], filed on January 6, 2026.

The Court has considered the Motion, the record, the applicable law, and is otherwise fully advised. For the reasons that follow, the Motion is denied. I. BACKGROUND On December 22, 2025, following an evidentiary hearing, the Court entered an Order granting Petitioner's Verified Petition for Return of Children to Venezuela ("Order"). ECF No. [50].

In the Order, the Court found — and Respondent conceded — that by a preponderance of the evidence, Petitioner established a prima facie case that Respondent wrongfully retained the minor

children in the United States. Id. at 6.

The Court also found that Respondent failed to satisfy her burden for the consent/acquiescence, settled child, and mature child affirmative defenses. Id. at 7-14. Although, Respondent initially pled in her Answer to the Petition that the children would be at grave risk of harm if returned to Venezuela, see ECF No. [15] at 8, Respondent conceded after the evidentiary hearing that she had not met her burden of proof on that affirmative defense.

ECF No. [50] at 6 n.2 (“Respondent concedes in her Proposed Findings of Fact and Conclusions of Law that her “third Affirmative Defense has not been established under law.” ECF No. [49] ¶ 63. She acknowledged in her proposed findings of fact that “there is not clear and convincing evidence that the parties’ children would themselves be at ‘grave risk of harm’ if forced to return to Venezuela.” Id. ¶ 57).

In its Order, The Court required that the minor children be returned to Venezuela no later than January 5, 2026. ECF No. [50] at 13. On December 30, 2025, Respondent filed her first Emergency Motion, requesting that the Court “reopen the final hearing in this case and stay its Order until the evidence underpinning the Third Affirmative defense can be elicited on the record.” ECF No. [52] at 2.

Respondent stated that since the evidence to be presented on the grave risk of harm affirmative defense “is impacted by the Fourth Affirmative defense (the mature child exception), additional testimony on this issue should be permitted as well.” Id. Following expedited briefing from Petitioner, who opposed the request, the Court denied the first Emergency Motion and opined that “[b]ecause Respondent has presented no legal basis upon which the Court may reconsider its prior Order and hold a new evidentiary hearing, she has not ‘made a strong showing that [s]he is likely to succeed on the merits[.]’” ECF No. [58] at 6 (quoting *Chafin v. Chafin*, 568 U.S. 165, 179 (2013)).

Therefore, on January 3, 2026, the Court held that Respondent’s “request for reconsideration and a stay of the Court’s Order returning the children to Venezuela must be denied.” Id. However, circumstances in Venezuela changed that day.

The Court noted that, on the morning of January 3, 2026, “the Federal Aviation Administration banned United States commercial flights over Venezuela due to ‘ongoing military activity.’” Id. (quoting Jennifer Jacobs, et al., *U.S. Launches Military Strikes on Venezuela, Trump Says Maduro Captured and Flown Out of The Country*, CBS News (Jan. 3, 2026 at 3:34 a.m.), <https://www.cbsnews.com/live-updates/venezuela-us-military-strikes-maduro-trump/>).

Accordingly, the Court stayed its Order Granting Petition, ECF No. [50], regarding the return of the children to Venezuela by January 5, 2026, pending the rescission of the FAA’s ban on United States commercial aircrafts operating in Venezuelan airspace. ECF No. [58] at 7.

The parties were ordered to confer “regarding the feasibility of returning the children to Venezuela and notify the Court of the results of the conferral 72 hours after the FAA has lifted the ban.” *Id.* As Respondent notes, the ban was lifted the morning of January 4, 2026. ECF No. [59] at 2; Sophia Vento, *Flights Resume After FAA Restricts Caribbean Airspace Following Venezuelan Strikes*, *The Hill* (January 4, 2026 at 8:31 a.m), <https://thehill.com/policy/transportation/5671740-caribbean-flights-resume-venezuela-strikes/>.

The parties were ordered to file a notice with the Court following their conferral regarding the feasibility of returning the children to Venezuela on or before January 7, 2026. See ECF No. [58] at 7. Respondent filed the instant Motion, “ask[ing] the Court to Stay its Order Denying Reconsideration (ECF No. 58) of its earlier Order (ECF No. 52) ordering that Respondent’s children be returned to Venezuela after a hearing was held on this Hague Petition.” ECF No. [59] at 1.

In the Motion, Respondent asks the Court to “review the attached affidavits of Respondent and her witnesses... as well as the attached psychological report[.]” ECF No. [59] at 3. Respondent argues that the affidavits “clearly support Respondent’s rendition of facts which indicated that prior counsel¹ for Respondent was presented with ample, in fact, overwhelming evidence that if presented at the hearing would have raised a significant basis for the success of the third and fourth affirmative defenses raised in his pleadings.” *Id.* Respondent states that her prior counsel “should not have stipulated that the evidence... did not support his third ¹ Respondent’s prior counsel represented her throughout the evidentiary hearing.

See ECF No. [11]. Respondent retained new counsel following the Court’s Order Granting Petition. ECF No. [51]. Respondent’s new counsel filed the previous Emergency Motion and the instant Motion. See ECF Nos. [52]; [59]. affirmative defense. Rather he should have presented the evidence set forth in the attached affidavits as supportive of his third and fourth affirmative defenses.” *Id.* II.

LEGAL STANDARD A. Motion for Reconsideration “While the Federal Rules of Civil Procedure do not expressly provide for a motion for reconsideration, such a motion can be treated as either a Motion to Alter or Amend Judgment under Rule 59(e) or a Motion for Relief from Judgment under Rule 60(b).” *Dingman v. Cart Shield USA, LLC*, No. 12-cv-20088, 2013 WL 2034984, at *2 (S.D.

Fla. May 14, 2013) (citing *Region 8 Forest Serv. Timber Purchasers Council v. Alcock*, 993 F.2d 800, 806 n. 5 (11th Cir. 1993)). Federal Rule of Civil Procedure 59(e) permits a party to file a motion to alter or amend a judgment “no later than 28 days after the entry of the judgment.” Fed. R. Civ. P. 59(e). “Relief is proper under Rule 59(e) only if the party presents newly discovered evidence or demonstrates a manifest error of law or fact.” *Marques v. JP Morgan Chase, N.A.*, 805 F. App’x 668, 670 (11th Cir.

2020) (citing *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007)). “[A] Rule 59(e) motion [cannot be used] to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.” *Arthur*, 500 F.3d at 1343 (quoting *Michael Linet, Inc. v. Village of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005)).

Under Federal Rule of Civil Procedure 60(b), “courts may relieve a party from a judgment or order on several grounds, including (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment is no longer in effect; and (6) ‘any other reason that justifies relief.’” *Marques*, 805 F. App’x at 671 (quoting Fed.

R. Civ. P. 60(b)). For a Rule 60(b) motion for relief from judgment to be successful under the catchall provision — Rule 60(b)(6) — the movant “must demonstrate ‘that the circumstances are sufficiently extraordinary to warrant relief. Even then, whether to grant the requested relief is... a matter for the district court’s sound discretion.’” *Cano v. Baker*, 435 F.3d 1337, 1342 (11th Cir.

2006) (quoting *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307, 1317 (11th Cir. 2000)). B. Motion to Stay The Supreme Court has instructed courts to “apply the four traditional stay factors in considering whether to stay a return order” under the Hague Convention and ICARA: “‘(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.’” *Chafin*, 568 U.S. at 179 (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)).

III. DISCUSSION In support of reconsideration, Respondent argues that the affidavits attached to the Motion constitute “newly discovered evidence” under Rule 59(e) and are “extraordinary in nature” under Rule 60(b)(6). ECF No. [59] at 2. Respondent does not cite any caselaw to support her argument that affidavits from individuals² who were both known and available to Respondent qualify as “newly discovered” evidence under Rule 59(e) or 60(b)(2).

Indeed, a motion for reconsideration under Rule 59(e) cannot be used to “raise argument or present evidence that could have been raised prior to the entry of judgment.” *Arthur*, 500 F.3d at 1343 2 The affidavits are from Jesus Roberto Soler, who states he has a “close family relationship” with Respondent, ECF No. [59] at 8, Genesis Perez, Respondent’s sister, *id.* at 14, Diego Saenz, who “serve[d] as a translator” for Respondent, *id.* at 19, and Maria Cristina Vega, the mother of Respondent’s brother-in-law.

Id. at 21. Respondent also attaches a psychological report from Laura Parodi, LMFT at Azzurra Health Care Center. *Id.* at 25. (quoting *Michael Linet*, 408 F.3d at 763). Similarly, Respondent has not provided any reason as to why a medical professional or guardian ad litem could not have evaluated M.J.T.P. and presented their findings to the Court during the evidentiary hearing.

See ECF No. [50] at 12 (stating that nearly all the courts that have found children as young as eight to be sufficiently mature for the court to consider the child's view "had the opportunity to hear from the child directly or from a medical professional or guardian ad litem who spoke with the child and then presented their findings to the court"). Respondent argues that "prior counsel for Respondent was presented with ample, in fact, overwhelming evidence that if presented at the hearing would have raised a significant basis for the success of the third and fourth affirmative defenses raised in his pleadings." ECF No. [59] at 3.

Therefore, Respondent argues, her prior counsel "should not have stipulated that the evidence therefore did not support his third affirmative defense. Rather he should have presented the evidence set forth in the attached affidavits as supportive of his third and fourth affirmative defenses." *Id.* To the extent the basis for the Rule 60(b) Motion is attorney error, such an argument "must be made under Rule 60(b)(1)." *Atmos Nation, LLC v. All Rise Recs., Inc.*, No. 16-60032-CIV, 2017 WL 3635111, at *3 (S.D.

Fla. June 14, 2017). The Eleventh Circuit has "held that claims of attorney error must be made under the more specific Rule 60(b)(1), rather than under the 'residual equitable authority' contained in Rule 60(b)(6)." *S.E.C. v. Simmons*, 241 F. App'x 660, 663 (11th Cir. 2007) (citing *Solaroll Shade & Shutter Corp. v. Bio-Energy Systems, Inc.*, 803 F.2d 1130, 1133 (11th Cir.

1986)). Under Rule 60(b)(1), the Court may relieve a party from a final judgment or order in light of "mistake, inadvertence, surprise, or excusable neglect[.]" Fed. R. Civ. P. 60(b)(1). However, "[w]hen a party expressly states that she is abandoning a claim, this is not 'excusable neglect' under Rule 60(b)(1), which is designed to relieve parties from missed deadlines, computer glitches, and similar oversights." *Jacobs v. Elec.*

Data Sys. Corp., 240 F.R.D. 595, 601 (M.D. Ala. 2007). Additionally, "[d]ecisions to concede certain parts of a case in order to focus on others, or not to pursue every possible claim cognizable under the law, are examples of strategic or tactical choices well within the scope of the attorney's authority, decisions that bind the client." *Id.* (citing *Haynes v. Cain*, 298 F.3d 375, 381 (5th Cir.

2002)). Therefore, the decisions by Respondent's former counsel not to enter certain evidence and to concede the third affirmative defense do not qualify as a basis for relief under Rule 60(b)(1). Because Respondent has presented no legal basis upon which the Court may reconsider its prior Order and hold a new evidentiary hearing, she has not "made a strong showing that [s]he is likely to succeed on the merits[.]" *Chafin*, 586 U.S. at 179 (quoting *Nken*, 556 U.S. at 434).

Therefore, her request for reconsideration and a stay of the Court's Order requiring returning the children to Venezuela is denied. To the extent Respondent states that her "attempt to purchase new tickets for the children's return to Venezuela" has been "a difficult task since commercial aviation into Venezuela has resulted in many flight delays" in light of the FAA's ban on commercial

aviation, ECF No. [59] at 2-3, the Court stated in its previous Order that the parties “shall confer regarding the feasibility of returning the children to Venezuela and notify the Court of the results of the conferral 72 hours after the FAA has lifted the ban.” ECF No. [58] at 7.

This notice must be filed on or before January 7, 2026. See ECF No. [58] at 7. IV. CONCLUSION
Accordingly, it is ORDERED AND ADJUDGED as follows: 1. Respondent’s Emergency Motion to Alter or Amend Judgment, ECF No. [59], is DENIED. Case No. 25-cv-24087-BLOOM/Elfenbein DONE AND ORDERED in Chambers at Miami, Florida on January 7, 2026.
BETH BLOOM UNITED STATES DISTRICT JUDGE Copies to: Counsel of Record