

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PRECEDENTIAL VALUE	unpublished district court order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)