

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION

Diego Ivan Garduno Pina v. Erika Carbajal Chavez

No. 25 CV 10337 (N.D. Ill. Mar. 6 2026) (N.D. Ill. 2026) · No. No. 25 CV 10337; 1:25-cv-10337 · Decided
March 6, 2026

SUMMARY

The United States District Court for the Northern District of Illinois considers a petition under the Hague Convention and ICARA seeking the return of two children to Mexico. Although the parties agreed that the children were wrongfully removed, the court denied the petition after finding that the respondent established by clear and convincing evidence a grave risk that returning the children would expose them to physical or psychological harm or place them in an intolerable situation.

CASE DETAILS

COURT	United States District Court for the Northern District of Illinois, Eastern Division
WRITING FOR THE COURT	Georgia N. Alexakis
JURISDICTION	United States District Court for the Northern District of Illinois, Eastern Division
DECIDED	March 6, 2026
DOCKET	No. 25 CV 10337; 1:25-cv-10337
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner sought the return of two children to Mexico under the Hague Convention and ICARA. Following expedited discovery and a three-day bench trial, the district court denied the petition based on the grave-risk exception.
STANDARD OF REVIEW	The court acted as the finder of fact in a bench trial and assessed witness credibility under Federal Rule of Civil Procedure 52(a). Respondent bore the burden of proving the grave-risk exception by clear and convincing evidence.
PRECEDENTIAL VALUE	unpublished; nonprecedential district court decision
PARTIES	Diego Ivan Garduno Pina v. Erika Carbajal Chavez

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QUESTIONS PRESENTED

1. Whether respondent proved by clear and convincing evidence that returning the children to Mexico would expose them to a grave risk of physical or psychological harm or otherwise place them in an intolerable situation under the Hague Convention and ICARA.
2. Whether the court's findings of repeated domestic violence against respondent, abuse of the children, and likely continuation of that conduct established a grave risk despite the absence of police reports, medical records, or photographs.
3. Whether proposed undertakings, including no-contact or supervised-visitation conditions, could adequately mitigate the grave risk.

HOLDINGS

1. Respondent established by clear and convincing evidence that returning the children to Mexico would expose them to a grave risk of physical or psychological harm.
2. Repeated, severe physical and psychological abuse of the children's mother in the children's presence independently established a grave risk of psychological harm.
3. The children faced a grave risk of physical harm because petitioner's abuse of them was regular rather than rare or isolated and was likely to continue after return.
4. The court would not order return subject to the proposed undertakings because the suggestions lacked sufficient detail and could not adequately assure the children's safety where the prior status quo was abusive.

KEY QUOTATIONS

"The Court concludes that respondent has established by clear and convincing evidence that there is a grave risk that returning Minor A and Minor B to Mexico would expose them to physical or psychological harm or otherwise place them in an intolerable situation." (Conclusion; III)

"A grave risk of psychological harm is a sufficient basis, standing alone, to deny the petition for the return of the children." (III)

"The Court concludes there is such a propensity here, and "[t]he gravity of a risk involves not only the probability of harm, but also the magnitude of the harm if the probability materializes." (III)

FACTUAL BACKGROUND

The parties, both Mexican citizens, are the biological parents of two children who lived in Mexico from birth until respondent removed them to the United States in September 2024 without petitioner's consent. The parties

agreed that the removal was wrongful and that Mexico was the children’s habitual residence. After hearing conflicting testimony, the court credited respondent’s and Minor A’s accounts that petitioner repeatedly physically and psychologically abused respondent and the children, often while drinking, and that the children witnessed abuse of their mother. The court found that the abuse was likely to continue if the children returned to Mexico and that proposed undertakings were insufficient to mitigate the risk.

PROCEDURAL HISTORY

The parties stipulated that the children were wrongfully removed from Mexico, that Mexico was their place of habitual residence, and that petitioner was exercising custody rights at the time of removal. The court conducted expedited discovery, appointed a guardian ad litem to interview Minor A, and held a bench trial in December 2025 and January 2026. After making findings of fact and conclusions of law under Federal Rule of Civil Procedure 52(a), the court denied the return petition and directed entry of judgment for respondent.

DISPOSITION

dismissed

CASES CITED

- Hernandez v. Cardoso, 844 F.3d 692, 694 (7th Cir. 2016)
- Ho v. Ho, No. 20 C 6681-*2 (N.D. Ill. July 12, 2021)
- RBG Plastic, LLC v. Webstaurant Store, No. 1:18-CV-05192, 2020 WL 7027601, at *4 (N.D. Ill. Nov. 30, 2020)
- Hulsh v. Hulsh, No. 19 C 7298 (N.D. Ill. July 21, 2020)
- Khan v. Fatima, 680 F.3d 781, 785-87 (7th Cir. 2012)
- Van De Sande v. Van De Sande, 431 F.3d 567, 570-72 (7th Cir. 2005)
- Norinder v. Fuentes, 657 F.3d 526, 533-34 (7th Cir. 2011)
- Ortiz v. Martinez, 789 F.3d 722, 723 (7th Cir. 2015)
- Moreno v. Escamilla, No. 23 CV 15736, *8 (N.D. Ill. Nov. 12, 2024)
- Guerrero v. Oliveros, 119 F. Supp. 3d 894, 913 (N.D. Ill. 2015)
- Estrada v. Salas-Perez, No. 12 C 1016-*11 (N.D. Ill. Sept. 28, 2012)
- Altamiranda Vale v. Avila, 538 F.3d 581, 587 (7th Cir. 2008)
- Lopez v. Alcala, 547 F. Supp. 2d 1255, 1262 (M.D. Fla. 2008)
- Di Giuseppe v. Di Giuseppe, No. 07-CV-15240, 2008 WL 1743079, at *6 (E.D. Mich. Apr. 11, 2008)
- Habrzyk v. Habrzyk, 775 F. Supp. 2d 1054, 1070 (N.D. Ill. 2011)
- Uzoh v. Uzoh, No. 11-CV-09124, 2012 WL 1565345, at *6 (N.D. Ill. May 2, 2012)
- Souratgar v. Lee, 720 F.3d 96, 104 (2d Cir. 2013)
- Feder v. Evans-Feder, 63 F.3d 217, 226 (3d Cir. 1995)
- Danaipour v. McLarey, 286 F.3d 1, 25 (1st Cir. 2002)

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