

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

LYNNE HALES CHAFIN)
99 Clayhouse Road)
Stepps)
Glasgow)
G33 6AG)
Scotland)
United Kingdom)

Petitioner,)

v.)

Case No: _____

JEFFREY LEE CHAFIN)
217 Horseshoe Bend North)
Madison, Alabama 35758)

Respondent.)

**VERIFIED PETITION FOR RETURN OF CHILD
TO SCOTLAND AND 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, 42 U.S.C. 11601 et seq.

INTRODUCTION

1. As a result of the recent illegal and wrongful international retention by the Respondent, Jeffrey Lee Chafin (the "Father") of the parties' minor child in the United States from the proper custody and habitual residence jurisdiction of Scotland, wrongfully begun on May 10, 2010, this Verified Petition is brought pursuant to The Convention on the Civil Aspects of International Child Abduction, done at the Hague on October 25, 1980¹ (hereinafter the "Hague Convention" or "Convention") and the International Child Abduction Remedies Act²

¹ 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: http://www.hcch.net/index_en.php?act=conventions.pdf&cid=24 (last accessed April 18, 2011).

(hereinafter “ICARA”). The Convention came into effect in the United States of America on July 1, 1988 and was also ratified between the United States of America and Scotland on July 1, 1988.³

2. The objects 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. Convention, art. 1.

JURISDICTION

3. This Court has jurisdiction under ICARA § 11603 because this case involves the retention of a child under the age of sixteen in the United States from his habitual residence of Scotland, and the child is currently located within the jurisdiction of this Court in Madison, Alabama.

FACTS

4. The Petitioner, Lynne Hales Chafin (the “Mother”) and the Father were married on March 11, 2006 in Scotland.

5. The Mother is a citizen of the United Kingdom.

6. The Mother and Father are the parents of E.E.C. born in 2007 (the “child”) in Germany. Copies of the child’s birth certificate and consular report of birth abroad are attached hereto and incorporated herein collectively as **Exhibit A**.

7. In September 2007, the Mother and child permanently relocated to Scotland with the Father’s consent.

² 42 U.S.C. 11601 *et seq.* (2001).

³ See, Hague Abduction Convention Country List, text available at: http://travel.state.gov/family/abduction/hague_issues/hague_issues_1487.html, (last accessed April 18, 2011).

8. The Father did not relocate to Scotland with the Mother and child as a result of his employment. In September 2007, the Father was first transferred to the Middle East, and ultimately relocated to Madison, Alabama.

9. The Mother and child have resided in Scotland since September 2007.

10. The child was enrolled and scheduled to begin nursery school in Scotland in April 2010. The child's place at the nursery school and at the primary school division of the same school remain open and available for the child when she returns home.

11. The child has her home and her nursery school, family and friends in Scotland and was fully involved and integrated in all aspects of daily life and cultural life in Scotland.

12. In February 2010, the Mother and Father agreed that the Mother and child would travel to Alabama to visit the Father.

13. The Mother and child travelled from Scotland to Alabama on February 14, 2010.

14. The parties agreed that the Mother and child would visit with the Father in Alabama until April 2010, when the Mother and child would return to Scotland in time for the child to start nursery school as planned.

15. The Mother entered the United States on February 14, 2010 on the Visa Waiver Program, which allowed the Mother to remain in the United States for up to ninety (90) days.

16. While the Mother and child were visiting with the Father in Alabama, the Mother and Father discussed the possibility of reconciling their relationship.

17. Because the parties were discussing the possibility of reconciling their relationship, the Mother agreed to extend her own and the child's visit with the Father in Alabama until mid-May, 2010 -- May 14, 2010 at the latest -- because the Mother's permission to remain in the United States expired on that date.

18. As of May 9, 2010, the parties had not been successful in reconciling their relationship. The Mother therefore began to make arrangements for airline tickets for herself and the child to return to their home in Scotland on or before May 14, 2010 so that the mother would not overstay her visitor visa permission to remain in the United States.

19. On May 10, 2010, while the Mother was still in Alabama organizing her and the child's return to Scotland, she was served with divorce and custody pleadings that the Father had improperly filed in state court in Alabama.

20. The judge in the state court divorce and custody case first ordered that the child temporarily remain in Alabama.

21. On May 14, 2010, the parties attended an emergency hearing in the Alabama state court and the restriction on the child's travel was lifted.

22. Even though there was no longer any travel restriction with respect to the child on May 14, 2010, the Mother and child could not return home to Scotland because the Father had and still has possession of the child's United States and United Kingdom passports and refused and continues to refuse to return them to the Mother.

23. The Father is therefore wrongly retaining the child in the United States.

24. The Mother did not know how to return the child to Scotland without either of the child's passports, so the Mother remained in the United States beyond her 90-day entry permission under the visa waiver program, and planned to remain in the United States until she could work out how or find someone to help her return the child to Scotland.

25. The Mother did not have any financial resources in the United States to retain counsel to help her have the child returned to Scotland.

26. The Mother was detained on December 30, 2010 because she had overstayed her 90-day entry permission under the visa waiver program. She was held in a detention facility until February 28, 2011, when she was finally returned to Scotland.

27. Immediately upon being released from detention and returned to Scotland, the Mother was able to reach out to family, friends and the government of the United Kingdom to assist her in finding *pro bono publico* counsel to seek the child's return.

28. The Mother was not able to find *pro bono publico* counsel in Alabama who would be willing and able to assist her in this complex and highly technical international child abduction matter. Through the Hague Convention Central Authorities in the United Kingdom, the Mother was able to reach undersigned counsel who specialize in Hague Convention cases and who agreed to represent her on a *pro bono* basis.

29. The Mother therefore retained undersigned counsel and began preparing her Application for Return of the child with the assistance of the Scottish Government. A copy of said application, along with all attachments, is attached hereto and incorporated herein as **Exhibit B**.

30. Also after retaining undersigned counsel, in response to the Father's improperly filed divorce and custody case in the Alabama state court, the Mother intends to file an Motion to Stay State Court Proceedings and Notice of Wrongful Retention under Article 16 of the Hague Convention to stay the Alabama state court custody proceedings during the pendency of the proceedings in this Court. The mother will supplement this Petition with a copy of the Motion to Stay State Court Proceedings and Notice of Wrongful Retention when it is filed in the Alabama state court.

COUNT I – WRONGFUL RETENTION

31. The Mother restates and realleges the allegations contained in Paragraphs 1 through 30 as if fully set forth herein.

32. 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 removal or wrongful retention of the child.

33. The minor child in this matter is under the age of 16.

34. The habitual residence of the minor child is Scotland. The child was fully a part of the Mother's family nucleus in Scotland, had numerous family and friends there, and was fully involved in all aspects of daily family life and cultural life in Scotland.

35. At the time of the Father's wrongful retention of the child in the United States from Scotland, the Mother had and continues to have rights of custody under Scots law in terms of The Children (Scotland) Act 1995 and The Family Law (Scotland) Act 2006. A copy of the relevant portions of said statutes are attached hereto and incorporated herein collectively as **Exhibit C**.

36. At the time of the Father's wrongful retention of the child, the Mother was actually exercising her custody rights within the meaning of Articles Three and Five of the Convention, in that she is the Mother of the child and has exercised custody rights over her in Scotland by caring for the child and fully participating in the child's life since the child's birth.

37. The Father has refused and continues to refuse to return the child from the United States to Scotland and has refused and continues to refuse to return the child's United States and United Kingdom passports to the Mother so that the child can return home to Scotland.

38. The Mother has requested the return of the child to Scotland by filing an Application for Return with the Scottish Central Authority. *See Exhibit B*.

39. The Application for Return has been transmitted to the United States Department of State, the Central Authority of the United States of America under the Convention.

40. The Mother has never acquiesced or consented to the retention of the child in the United States from Scotland.

41. The Mother has promptly taken all legal steps available to her to seek the return of the child to Scotland.

42. The child is currently physically located within the Northern District of Alabama, Northeast Division with the Father at his home located at 217 Horseshoe Bend North, Madison, Alabama 35758.

PROVISIONAL AND EMERGENCY REMEDIES⁴

43. Pursuant to ICARA § 11604, 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 11604. In this case, the State law referred to is that of Alabama. In Alabama, the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) is the source for statutory law governing, *inter alia*, the resolution of both domestic and international child custody disputes and is codified as Code of Ala. § 30-3B-101 *et seq.* Alabama law addresses the appearance of the parties and the children in such cases in §30-3B-210(a) 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 child in that the provisions of 42 U.S.C. §11604 can be met.

⁴ 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 § 11604.

44. The Mother further requests that this Court issue along with the Show Cause Order an Order requiring contact between the child and his Mother when she travels to this Court for the evidentiary hearing, prohibiting the removal of the child from the jurisdiction of this Court during the pendency of the proceedings in this Court, an Order taking into safe-keeping all of the child's travel documents and thereafter an Order setting an expedited hearing on the Verified Petition for Return of Child to Northern Ireland.⁵

UCCJEA DECLARATION

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

- The present location of the child is 217 Horseshoe Bend North, Madison, Alabama 35758. From September 2007 until May 14, 2010 the child resided with the Mother at 99 Clayhouse Road, Stepps, Glasgow, G33 6AG, Scotland, United Kingdom.
- The Mother does not have information of any custody proceeding concerning the child pending in any other court of this or any other State, other than the information provided in this Petition.
- The Mother does not know of any person or institution not a party to the proceedings who has physical custody of the child or claims to have rights of parental responsibility or legal custody or physical custody of, or visitation or parenting time with, the child.

NOTICE OF HEARING

46. Pursuant to ICARA § 11603(c), the Father will be given notice of any hearings in accordance with §§30-3B-108 and 205 of the UCCJEA.⁶

⁵ A Hague Convention Petition may also be treated as an application for a Writ of Habeas Corpus itself. *Zajaczkowski v. Zajaczkowska*, 932 F. Supp. 128, 132 (D.Md. 1996) (“[T]he Court will treat the [Convention] petition as an application for a writ of habeas corpus . . . pursuant to 28 U.S.C.A. § 2243”).

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 § 11603(c).

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

47. The Mother has incurred substantial expenses as a result of the wrongful retention of the child by the Father. The Mother will submit a copy of all expenditures as soon as practicable and possible and will amend these costs, from time to time, according to proof and in light of further expenditure required because of this wrongful retention.

48. The Mother respectfully requests that this Court award all legal costs and fees incurred to date as required by ICARA § 11607, reserving jurisdiction over further expenses.

RELIEF REQUESTED

49. **WHEREFORE**, Petitioner, Lynne Hales Chafin, respectfully requests the following relief:

- a. That this Court issue an Order directing the prompt return of the child to her habitual residence of Scotland in accordance with Petitioner's rights of custody under the laws of Scotland; and
- b. That this Court issue a Show Cause Order prohibiting the removal of the child from the jurisdiction of this Court and the taking into safe-keeping the child's passports and travel documents; and
- c. That this Court issue a Show Cause Order forthwith commanding the Respondent to appear with the child in this Court to show cause why the child has been kept from her Mother and why the child should not be returned to Scotland forthwith (Proposed Show Cause Order attached hereto as **Exhibit D**); 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 child 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 providing for regular telephone and Skype video contact between the Mother and child during the pendency of these expedited and summary proceedings and in-person access when the Mother travels to Alabama for the evidentiary hearing; and
- f. That this Court issue an Order directing the Respondent to pay the Petitioner's reasonable legal costs, fees and expenses; and
- g. That this Court grant any such further relief as justice and the Petitioner's cause may require.

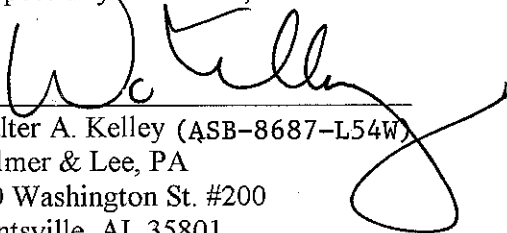
VERIFICATION

I, Lynne Hales Chafin, do solemnly declare and affirm under the penalties of perjury under the laws of the United States of America that the factual averments in the foregoing Verified Petition are true and correct to the best of my knowledge and belief.


Lynne Hales Chafin

Dated: April 29, 2011

Respectfully Submitted,


Walter A. Kelley (ASB-8687-L54W)
Wilmer & Lee, PA
100 Washington St. #200
Huntsville, AL 35801
(256) 382-7182
wkelly@WilmerLee.com
Attorney for Petitioner

/s/Stephen J. Cullen

Stephen J. Cullen, Esquire

Pro hac vice pending

Kelly A. Powers, Esquire

Pro hac vice pending

Miles & Stockbridge P.C.

10 Light Street

Suite 800

Baltimore, Maryland 21202

(410) 385-3629

(410) 385-3709 (fax)

scullen@milesstockbridge.com

kpowers@milesstockbridge.com

Attorneys for Petitioner