

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of ZRSL)	
)	
SADYA YAKOV YEHUDAH LIBEROW,)	Case No. 23-cv-3200 (DLI) (SJB)
)	
Petitioner,)	
)	
v.)	ANSWER TO PETITION
)	FOR RETURN OF THE
)	CHILD TO PETITIONER
)	
CHAYA MUSHKA ALTHAUS,)	
)	
Respondent.)	
)	

Respondent, Chaya Mushka Althaus, through her undersigned attorneys, Covington & Burling LLP, responds to the Petition for Return of the Child to Petitioner as follows:

1. Respondent denies the allegations in Paragraph 1 of the Petition, except admits that Respondent is the mother of ZRSL, Petitioner is the father of ZRSL, ZRSL is six (6) years old, and ZRSL was brought from Australia to the Eastern District of New York.

Respondent states that the allegations that ZRSL was wrongfully removed and retained by Respondent without Petitioner’s consent or acquiescence constitute a legal conclusion and argument to which no response is necessary or appropriate. To the extent a response is required, Respondent denies the allegations in Paragraph 1 of the Petition.

2. Respondent states that the allegations in Paragraph 2 of the Petition concerning the Convention on the Civil Aspects of International Child Abduction (the “Hague Convention”) and International Child Abduction Remedies Act (“ICARA”) constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent admits that Petitioner purports to assert claims for relief under the Hague

Convention and the ICARA, denies knowledge as to the remaining allegations in Paragraph 2 of the Petition and respectively refers the Court to the documents referenced for their contents and context.

3. Respondent states that the allegations in Paragraph 3 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 3 of the Petition and respectively refers the Court to the document referenced for its contents and context.

4. Respondent states that the allegations in Paragraph 4 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 4 of the Petition and respectively refers the Court to the document cited for its contents and context.

5. Respondent states that the allegations in Paragraph 5 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 5 of the Petition and respectively refers the Court to the document cited for its contents and context.

6. Respondent admits that Petitioner purports to seek relief under the Hague Convention, but Respondent states that Petitioner's request should be denied.

7. Respondent states that the allegations in Paragraph 7 of the Petition constitute a legal conclusion to which no response is necessary or appropriate.

8. Respondent states that the allegations in Paragraph 8 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent admits that ZRSL and Respondent reside in Brooklyn in the Eastern District of New York and that ZRSL is under the age of sixteen (16), but denies the remaining allegations in Paragraph 8 of the Petition.

9. Respondent admits that Petitioner was born in 1994 in Australia and that Petitioner has lived most of his life there. Respondent denies knowledge and information sufficient to form a belief as to the remaining allegations in Paragraph 9 of the Petition.

10. Respondent admits that she was born in 1996 in Australia and holds dual citizenship in Australia and the United States, but denies the allegations in Paragraph 10 of the Petition that an abduction occurred and that Respondent has resided her entire life in Australia.

11. Respondent admits that the Parties were married on August 25, 2015, but denies the allegations in Paragraph 11 of the Petition that the Parties were residing together, and states that the Parties separated several times during the marriage including for the last and final time on or around May 31, 2020.

12. Respondent admits that ZRSL was born in Australia in 2016, ZRSL is the only living child the Parties share, and ZRSL lived in Australia until moving to the United States, but Respondent denies the allegations in Paragraph 12 of the Petition that there was a wrongful removal and retention.

13. Respondent denies the allegations in Paragraph 13 of the Petition, except admits that ZRSL attended kindergarten and primary school in Australia, Petitioner's parents run a synagogue in Melbourne as well as other community-based programs, and that Respondent and

ZRSL were once active members of the Jewish community in Melbourne, Australia until Respondent and ZRSL moved to Sydney in May 2020.

14. Respondent denies the allegations in Paragraph 14 of the Petition, except admits that in or around May 2020 Respondent and ZRSL moved from Melbourne to Sydney, Australia, where her family resided.

15. Respondent admits the allegations in Paragraph 15 of the Petition and states that the Parties separated several times prior to their final separation on or around May 31, 2020.

16. Respondent states that the allegations in Paragraph 16 of the Petition constitute a legal conclusion and argument to which no response is necessary or appropriate. To the extent a response is required, Respondent denies the allegations in Paragraph 16 of the Petition, except admits the existence of an order from the Federal Circuit Court of Australia at Sydney and respectively refers the Court to the document cited for its contents and context.

17. Respondent states that the allegations in Paragraph 17 of the Petition constitute a legal conclusion and argument to which no response is necessary or appropriate. To the extent a response is required, Respondent admits that ZRSL lived with Respondent in Australia, Respondent had primary care of ZRSL, and an order from the Federal Circuit Court of Australia at Sydney permitted two (2) evening visits per week and an additional weekly dinner visit by Petitioner conditioned upon him successfully passing a drug test, but Respondent denies that Petitioner actually visited ZRSL with this frequency, that Petitioner took care of ZRSL more frequently than the arrangement provided, and that Petitioner exercised parental rights or that ZRSL was wrongfully removed and retained.

18. Respondent admits the allegations in Paragraph 18 of the Petition that she traveled outside of Australia and asked Petitioner to care for ZRSL, and that Petitioner provided some care for ZRSL in her absence, but states that Petitioner was not the exclusive nor primary caregiver of ZRSL during these trips.

19. Respondent admits the allegations in Paragraph 19 of the Petition.

20. Respondent admits the allegations in Paragraph 20 of the Petition.

21. Respondent denies the allegations in Paragraph 21 of the Petition, except admits that Respondent told Petitioner on the phone that she and ZRSL were in the United States on a last-minute trip. Respondent also denies knowledge and information sufficient to form a belief as to the allegation about what Petitioner purportedly discovered.

22. Respondent admits the allegations in Paragraph 22 of the Petition.

23. Respondent denies the allegations in Paragraph 23 of the Petition, except admits that Petitioner traveled to New York City and visited ZRSL in late May 2022 in Brooklyn, where Respondent and ZRSL reside.

24. Respondent admits that in June 2022, Respondent did not plan to return to Australia, but denies knowledge and information sufficient to form a belief as to the remaining allegations in Paragraph 24 of the Petition.

25. Respondent denies the allegations in Paragraph 25 of the Petition.

26. Respondent states that the allegations in Paragraph 26 of the Petition constitute a legal conclusion and argument to which no response is necessary or appropriate. To the extent a response is required, Respondent denies the allegations in Paragraph 26 of the Petition.

27. Respondent states that the allegations in Paragraph 27 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent refers the Court to the document cited for its contents and context.

28. Respondent states that the allegations in Paragraph 28 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent admits that ZRSL lived in Australia prior to moving to the United States, denies the remaining allegations in Paragraph 28 of the Petition, and refers the Court to the document cited for its contents and context.

29. Respondent states that the allegations in Paragraph 29 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent denies the allegations in Paragraph 29 of the Petition and refers the Court to the document cited for its contents and context.

30. Respondent states that the allegations in Paragraph 30 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent refers the Court to the document cited for its contents and context.

31. Respondent states that the allegations in Paragraph 31 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent refers the Court to the document cited for its contents and context.

32. Respondent states that the allegations in Paragraph 32 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent denies the allegations in Paragraph 32 of the Petition.

33. Respondent states that the allegations in Paragraph 33 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent denies the allegations in Paragraph 33 of the Petition.

34. Respondent states that the allegations in Paragraph 34 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent admits the existence of an order from the Federal Circuit Court of Australia at Sydney and respectively refers the Court to the document cited for its contents and context.

35. Respondent states that the allegations in Paragraph 35 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 35 of the Petition.

36. Respondent states that the allegations in Paragraph 36 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent denies the allegations in Paragraph 36 of the Petition, except admits that Petitioner is the father of ZRSL.

37. Respondent states that the allegations in Paragraph 37 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent admits that ZRSL was born in 2016, is now six (6) years old, will become sixteen (16) years old in 2032, and lived in Australia prior to moving to the United

States, but denies the remaining allegations in Paragraph 37 of the Petition and respectively refers the Court to the document cited for its contents and context.

38. Respondent denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 38 of the Petition. To the extent a response is necessary, Respondent states that she holds all rights, responsibility, and custody over ZRSL.

39. Respondent denies the allegations in Paragraph 39 of the Petition.

40. Respondent states that the allegations in Paragraph 40 of the Petition constitute a legal conclusion to which no response is necessary or appropriate, and respectively refers the Court to the document cited for its contents and context.

41. Respondent denies that Petitioner is entitled to any of the relief requested in Paragraph 41 of the Petition.

42. Respondent denies the allegations in Paragraph 42 of the Petition.

43. Respondent states that the allegations in Paragraph 43 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent denies knowledge and information sufficient to form a belief as to the allegations in Paragraph 43 of the Petition.

44. Respondent denies that Petitioner is entitled to any of the relief requested in Paragraph 44 of the Petition.

45. Respondent denies that Petitioner is entitled to any of the relief requested in Paragraph 45 of the Petition.

46. Respondent states that the allegations in Paragraph 46 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent denies knowledge and information sufficient to form a belief as

to attorney's fees and costs incurred by Petitioner, if any, and denies the remaining allegations in Paragraph 46 of the Petition.

47. Respondent denies that Petitioner is entitled to any of the relief requested in Paragraph 47 of the Petition.

48. Respondent states that the allegations in Paragraph 48 of the Petition constitute a legal conclusion to which no response is necessary or appropriate. To the extent a response is required, Respondent denies the allegations in Paragraph 48 of the Petition.

49. Respondent states that the allegations in Paragraph 49 of the Petition constitute a legal conclusion to which no response is necessary or appropriate.

All of Petitioner's requests for relief should be denied.

AFFIRMATIVE DEFENSE

The Petition should be denied because Petitioner consented to ZRSL moving to the United States with Respondent, and thus there was no wrongful removal.

Even if a wrongful removal were shown to have occurred in this instance, the relief sought in the Petition should not be granted on the basis of Article 13 of the Hague Convention. There is a grave risk that ZRSL's return to Australia would expose her to physical, psychological, and/or neurological harm, and/or otherwise place her in an intolerable situation. Additionally, ZRSL is well-settled in the United States and removing her now poses a grave risk to her wellbeing. Finally, at the time Respondent and ZRSL left Australia, Petitioner was not exercising custody rights.

WHEREFORE, Respondent respectfully requests that Petitioner's Petition be denied in its entirety and for other and further relief as is just and proper.

Dated: New York, New York
July 17, 2023

COVINGTON & BURLING LLP

/s/ Lelia A. Ledain

Lelia A. Ledain
C. William Phillips
Tyler Jankauskas

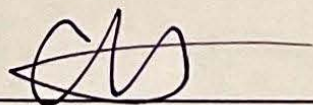
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Attorneys for Respondent Chaya Mushka Althaus

VERIFICATION

I declare under penalty of perjury, pursuant to the laws of the United States of America, that the foregoing statement is true and correct to the best of my knowledge.

Dated: New York, New York
July 17, 2023



Chaya Mushka Althaus