

ENGLAND AND WALES / JUDGMENT

C v D

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- ----- Between : C

- and - D Applicant Respondent

- -----

- ----- Mark Jarman KC and Mani Singh Basi (instructed by Dawson Cornwell LLP) for the applicant Michael Edwards and Charlotte Baker (instructed by Hunters Law) for the respondent Hearing dates: 11 and 12 November 2025

- ----- Approved Judgment This judgment was handed down by circulation to the parties' representatives by e-mail on 17 November 2025. Mr Justin Warshaw KC: MR JUSTIN WARSHAW KC

1. This is an application brought under the Child Abduction and Custody Act 1985, which incorporates the 1980 Hague Convention on the Civil aspects of International Child Abduction, for the summary return to the USA of X, who was born in 2018, and is 7 years old, and her brother, H, who was born in 2021, and is 4 years old. The application has been brought by the children's father, [F]. He was represented at this hearing by Mr Mark Jarman KC and Mr Mani Singh Basi. The respondent to the application is the children's mother, [M]. She was represented by Mr Michael Edwards and Ms Charlotte Baker. I am very grateful to all four counsel for their very helpful oral and written submissions.
2. Given the nature of the defence raised by M, I did not hear any oral evidence from the parties but they had submitted written statements. I had four statements from F dated 7 August 2025, 13 August 2025, 19 September 2025 and 25 October 2025 and I had three statements from M dated 6 August 2025, 2 September 2025 and 25 October 2025. I also had a statement made on F's behalf by his solicitor dated 14 July 2025. In addition, I had a CAFCASS report dated 17 October 2025, which addressed the wishes and feelings of the

children and which, as I will explain, had become largely redundant by the date of the hearing. I had a joint expert report from Ms Ribet, an attorney practising in California, dated 9 October 2025, which addressed protective measures. She also provided a response to further questions on 6 November 2025. I had a joint expert report from Dr Van Velsen dated 5 October 2025, which addressed M's mental health. Dr Van Velsen gave oral evidence before me and was cross examined by both parties. The core bundle ran to 666 pages and the supplemental bundle to a further 98 pages.

3. There is no dispute in this case that the children were wrongfully removed by M from the USA, where they were habitually resident, and brought to England by M on 9 June 2025, in breach of F's rights of custody. However, M defends the application for their return, relying on Article 13(b).

Background

4. F is 55. He was born in England. He moved to the USA in 1991. He has dual British and US citizenship. M is 41. She was born in Jamaica but raised in England. She also has dual British and US citizenship. She travelled to the USA in 2015. In October or November of that year, the parties met in California and started to date. After a few weeks, M travelled to Central America. F travelled to meet her there. M returned to LA in Spring 2016 and the parties began to cohabit. They married in 2017 in California. They have lived in California, throughout their relationship. 5. It was F's fourth marriage and M's first. F had three children with his third wife. In 2016, there was a custody dispute between F and his third wife. M has produced a police report relating to an allegation of violence made by that wife against F and a text message dated 2017 from one of his children, outlining F's abuse of his third wife. M explains that a court refused an application made by that wife for a restraining order against F. F denies the abuse allegations made by his third wife and points to the court's refusal to grant a restraining injunction as corroboration of his denial.
6. M recounts at length in her statement F's history of violence towards other people. She says that F told her amongst other things:
 - a. He had his 'mob boss' intimidate his first wife.
 - b. His father was a famous bank robber and he had grown up in his shadow.
 - c. His mother was violent and abusive and harboured criminals.
 - d. He had left the UK because he had been involved in a string of crimes from financial fraud to attempted murder.
 - e. He had been involved in squatting, robbery and credit card fraud.
 - f. He had been hired to 'hurt' people by his 'mob boss'.

7. M produced emails sent to her by F from 2018, 2019 and 2020 in which F gives accounts of violent incidents. F says that he and M were considering writing a novel together and these emails are fictional and he produces an email which describes the content as fictional. He also points to his police records in the USA and the UK which appear to reveal nothing more than convictions for two minor offences before the magistrates for which he was fined.
8. More relevant to this application are allegations made by M of a long history of coercive and controlling behaviour and domestic abuse. Among the allegations of coercive and controlling behaviour are the following:
 - a. F would read M's (hidden) journal and leave romantic messages in it.
 - b. F expected to have access to M's phone and email accounts.
 - c. F moved M's chats with male contacts to the archive section of her WhatsApp account.
 - d. F blocked the accounts of M's previous boyfriends on her Instagram account.
 - e. F became angry when he discovered that M had texted an ex-boyfriend whom she had contacted for help in tracking down a missing cousin.
 - f. F required M to put a post on Facebook announcing their marriage and her pregnancy.
 - g. F had complete control over and access to M's medical records.
 - h. F tried to stop M from breastfeeding H after he was nine months old.
 - i. F refused to buy food and essentials for the children, if he was not sexually satisfied.
 - j. F refused to keep his guns in a safe despite M's requests that he do so.
 - k. F controlled M's interactions with others and would investigate any men with whom she spoke.
 - l. F discouraged M from working.
 - m. F belittled the work M undertook on a project involving production of a documentary.
 - n. F inserted himself inappropriately into another project in which M was involved.
 - o. F had control of family finances and M received a small allowance.
 - p. F was angry with M when she loaned a small amount of money, which she had saved from her small allowance, to a friend.
 - q. F deducted funds from M's allowance when she used the credit card he had provided for unauthorised spending.
 - r. On an occasion when M bought two dresses for herself, F accused her of stealing money from him.
 - s. F kept all M's official documents in a locked safe.

- t. F sent emails relating to medical care in M's voice although they were written by him.
- u. F had the login details to M's medical insurance.
- v. F made M see a doctor in 2024, when she suggested she might leave him, because he believed she was peri-menopausal and had a problem with her hormones.
- w. F monitored M using the security cameras at the family home.
- 9. Among the allegations of domestic abuse and abusive behaviour are the following:
 - a. F berated M for not having enough sex with him during her first pregnancy at a time when she was bedridden with hyperemesis gravidarum and required her to lie in a certain way when he masturbated.
 - b. After X's birth, F would barge past M using his body to shove her out of the way. She says she suffered severe injuries on two occasions; when F drove away when she only had one foot in the car; and, on another occasion, when F drove over her foot. c. In 2018, exactly six weeks after the birth of X M says that F insisted that they had sex. It was very painful for her and F stopped when she asked him to stop. It was about a week later, she says, that F first raped her. She says that he raped again before requiring her to attend a doctor to see why she was finding sex so painful.
 - d. She says that F continued to badger her for sex and clearly felt that X was getting in the way of them having sex.
 - e. She says that for the first 18 months of X's life, F forced her to have sex with him without her consent on several occasions.
 - f. M says that, while their sexual relationship became more acceptable after that period, things relapsed after the birth of H's and F began to rape her regularly again. She also recounts sexual assaults during this period around the house. g. In December 2024, F was furious when M refused to have sex with him on holiday.
- 10. F vehemently denies all the allegations made against him. He acknowledges an intimacy issue between the parties and that his sex drive was greater than M's. He says the parties were very much in love and he recounts pleasurable sexual liaisons as recently as March and May 2025. He accepts that M had concerns about his ownership of firearms but says that they have always been secured appropriately. As to the allegations of coercive control he points out that:
 - a. He paid her \$25,000 when she told him she needed an emergency fund.
 - b. He did not control her expenditure on her credit card. c. In 2021, H made her an additional account holder of his current account.
 - d. She was on the pay roll of his company and received a regular salary.

11. M says that she had no plans to remove the children to the UK but that, on the night of 8/9 June 2025, F woke M in the middle of the night, when she was sleeping in the children's room to avoid having sex with F, demanding that she move to their bedroom. He told her to shower which she took to mean that he intended to force her to have sex with him. She refused and returned to the children's room. She says that her refusal felt new and frightening. She was fearful of F's reaction and stayed awake in terror and crying. She says that in the morning F told her that he was going to send his son, [J], back to Texas so that he "doesn't have to be traumatised by what's to come". She took this to be a threat to her life and decided to escape to England.
12. F says that both he and M had shared dreams of eventually living in Jamaica but that more recently M had been very worried about living in the USA in the current political climate. He suggests that it was her desire to leave America and to live in Jamaica which made her remove the children. He says that it was his suggestion that they needed to wait which caused her to leave. He says that the trip to England was merely a temporary stop on the way to Jamaica. In support he produces evidence that M applied to obtain a new Jamaican passport two days before leaving. He also suggests that she wanted to leave California because a 50/50 custody arrangement would have been imposed which would have prevented her moving to Jamaica. He says that there was nothing sinister in what he said about J going to Texas, which was a planned visit in the summer vacation by J to his mother.
13. Those are the background facts, most are hotly disputed. I turn now to the proceedings. The proceedings
14. On 7 July 2025, F filed for divorce in the LA Superior Court. The following day he made an application for an emergency child custody order. That application was dismissed by the judge. M suggests that this application is itself demonstrative of controlling behaviour. I do not agree with that, but I do accept that it suggests it is likely that there will be contested custody proceedings in LA, if the children return. I also accept it is likely that there will be contested child arrangement proceedings here, if the children remain. On 8 July 2025, F reported M to the police in England for child abduction.
15. On 9 July 2025, F applied to ICACU for the summary return of the children. On 14 July 2025 proceedings were issued in the High Court for that purpose. The matter came before Harrison J on 15 July 2025, who made location orders and listed a return date on 30 July 2025. On 22 July 2025, F applied to serve M by email and telephone (I think because the international movement check had revealed that M was still in the UK and the Tipstaff had been unable to locate M). That order was made by Judd J on 23 July 2025. The order was served and M complied with her obligation to disclose her address.
16. On 30 July 2025, the matter came before Ms K Gollop KC sitting as a deputy High Court Judge. At the hearing M confirmed that she was running an Article 13(b) defence and a child objections defence. The deputy judge directed the parties to serve statements on schooling proposals pending the final hearing, F to serve a schedule of protective measures, M to serve

an answer to the application and a statement, F to serve a statement in reply and CAFCASS to be appointed to report on child objections. In addition, the judge listed a hearing to consider the school issue, a directions hearing to consider part 25 evidence and a final hearing for three days commencing on 10 November 2025.

17. The school issue was heard by Trowell J on 19 August 2025. He gave M permission to enrol the children in a local school. That application was resisted by F. M says his resistance is an example of his controlling behaviour. I certainly find it odd that he resisted the children being schooled during the interim period prior to the final hearing.
18. On 4 September 2025, the matter came back before Harrison J for directions. He acceded to M's application for the joint instruction of Dr Van Velsen to report on M's mental health and for Ms Ribet to report on the enforceability of protective measures. He listed a PTR before me on 22 October 2025 on the basis that the three-day final hearing was to be allocated to me.
19. At the PTR and in light of the CAFCASS report which concluded that X did not have sufficient maturity to appreciate the lifelong consequences of decisions made by the court, M withdrew her defence based on child objections. As a result, I reduced the time estimate from three to two days. I also gave permission for M to adduce a further updating statement and for F to have permission to answer it. I also made an order for special measures so as to provide M with a separate conference room and a screen in court. I made these measures because F had explained he was intending to attend court personally. It was suggested by M that his attendance demonstrated his controlling nature. I do not accept that. Nor do I accept F's criticism of M for running and then withdrawing a defence of child objections. She was entitled to run the defence and her withdrawal of it was entirely appropriate.
20. That is a brief outline of the proceedings prior to final hearing. I will now turn to the parties' current situations. The parties' current situations
21. M and the children are living in England with a relative, who is either her aunt or a cousin of her mother. The children are attending a local primary school, pursuant to the order made by Trowell J. M says that she has wide support network here as she is from a large family and many members of her family live in England. She contrasts this position with California. F disputes this and says that M has a wide support network in California. He points to members of her family who live there. M explained through counsel that she had only seen those family members a handful of times over the years she had lived in the USA. F also produced photographs of M with friends in California. They do little to inform me about support network.
22. M has very limited means. She has exhausted most of the funds to which she had access in meeting her legal costs here (she attended two hearings without legal aid), her medical costs relating to treatment by her psychiatrist, Dr Braithwaite and general living expenses. She has about £1,300 in the bank. She has no other capital resources. She has no current earned income and given her mental health is unlikely to have an earned income in the immediate

future. Her only income is universal credit. F suggests that M could access funds from a US pension fund (IRA) containing \$7,000 and from a charity bank account which is about \$20,000 in credit. M explains the difficulties in withdrawing from the former and in the inappropriateness of drawing from the latter. I accept her assertions on this topic. If I am wrong, she would only have access to \$27,000.

23. M recounts the mental health challenges she is facing and the weight loss she has suffered. F suggests that she has always been underweight. I'm not quite sure why he says this. It is plain that M has always been underweight but it is equally plain from the medical evidence that she has suffered dangerous weight loss since arriving in the UK. M is very fearful that a return to the USA would lead to some type of mental breakdown, which would impair her ability to provide proper care for the children.
24. F remains living in the family home with his son, J by his third wife. He works in real estate and says he has sold next to nothing over the last four years. I do not have a full picture of his finances but in his LA divorce petition he has declared joint debts of \$948,000 and assets of \$230,000.
25. I turn now to M's mental health. M's mental health
26. Dr Van Velsen is a consultant psychiatrist. She was jointly instructed by both parties. Her report is dated 5 October 2025. She had access to all relevant papers in the case, some medical records for M, including a clinical summary dated 12 August 2025 from Ms P, a psychotherapist, who had twelve sessions with M from May to August 2024, and a report dated 22 August 2025 from Dr Braithwaite, M's treating consultant psychiatrist.
27. On 6 November 2025, M applied to adduce a further updating report from Dr Braithwaite dated 5 November 2025. Dr Braithwaite had conducted two further meetings with M and had viewed her GP records. F objected to adduction of the report on the basis that it was too late and that it was not expert evidence. F is quite right that this report is not expert evidence but Dr Braithwaite's first report was a significant feature of Dr Van Velsen's enquiry. I was told that Dr Van Velsen had been provided with both parties' recent updating statements which post-dated her report and it seemed to me that, if Dr Van Velsen had been permitted to see that updating material, she should also see this updating report. I admitted the report into evidence on the basis that Dr Van Velsen would have the opportunity to read it before entering the witness box. I accept F's submission that this is not expert evidence. The expert evidence on this topic is limited to Dr Van Velsen's written report and her oral evidence.
28. I will turn to the non-expert medical evidence which informs Dr Van Velsen's report. Ms P, a psychotherapist, who had twelve therapy sessions with M from May to August 2024 provided a letter dated 12 August 2025. She described M as presenting with depressive and anxiety symptoms including insomnia, weight loss, fatigue, feeling emotionally "numb", worry, and bouts of sadness. She stated that M divulged feelings of frustration and exhaustion regarding conversations and negotiations with F about their sex life and that M stated that throughout their marriage, F pressured her to have sex and used their sexual relations as a way to

manipulate M. She said that M expressed extreme disappointment, discontent, and resentment in her marriage. She diagnosed Adjustment Disorder with Mixed Anxiety and Depressed Mood.

29. Dr Braithwaite's report dated 22 August 2025 described M as presenting on 29 July 2025 with symptoms of panic attacks, nightmares and intrusive thoughts. M described daily anxiety, very low mood, fatigue, poor concentration, lack of interest and diminished sleep and appetite with loss of weight (6-8lbs) and early morning awakening. Dr Braithwaite diagnosed M with PTSD and a severe depressive episode. She prescribed psychotropic medication. At a review on 12 August 2025, M presented with worsening symptoms and ongoing trauma symptoms. Dr Braithwaite gave a guarded prognosis for full recovery. In her second report dated 5 November 2025, Dr Braithwaite commented on two further meetings with M on 7 October 2025 and 5 November 2025. At the first review, the psychiatrist noted a visible loss of weight. M explained that her GP had told her to stop taking the psychotropic medication until she regained weight. Dr Braithwaite concurred with this. On 5 November 2025, Dr Braithwaite records that M continued to report panic attacks and low mood. This treating psychiatrist's diagnosis and prognosis remained as before.
30. I record the content of the material from Ms P and Dr Braithwaite because it is part of the framework of the picture of M's mental health. It adds some corroboration to M's own written descriptions of her mental health. She expresses concerns about the deterioration of her mental health if she were to return to the USA and the significance for the children of any such deterioration in the mental health of their primary carer. F himself raised issues about M's mental health in his letter to the LA family court saying "M has struggled with severe emotional and mental instability for over a year, including erratic behaviour requiring psychological intervention". None of this material is expert evidence and I remind myself that Dr Van Velsen gives the only expert evidence about M's mental health.
31. Dr Van Velsen's report is dated 5 October 2025. In it she explains that M considers that she first suffered from depression at age 16, when there was a possibility her mother would go to prison and she would have to look after her brother, take care of the home and be unable attend university. M told Dr Van Velsen that a friend told her she needed therapy when she was 21 but she only attended one session. She explained that she suffered a panic attack when pregnant with H and that this was the first of many. She explained that in 2024 she felt physically and mentally unwell. She saw a psychiatrist who prescribed antidepressants, but she says F told her not take them. She had sessions with a psychotherapist, Ms P, who was the first person to whom she spoke about the problems in her marriage.
32. M explained that she had met privately with Dr Braithwaite who prescribed Escitalopram and this had taken the edge off her panic. She reported that when she had arrived in the UK she could not sleep and could not eat. She had lost weight. M described her ongoing feelings of anxiety. She described flashbacks and memories and fear of what could happen. She said she had flashbacks every day. She has had suicidal ideation but not currently. She said she could not even think about going back to the USA. M explained that she believed her

problems were rooted in her childhood. She lived with an aunt for a period during her childhood and described this an extremely miserable time. She then lived with her mother but she was very strict and violent. She described extremely cruel punishments meted out to her and her brother by her mother. She went into detail with Dr Van Velsen about her relationship with F. Those details largely mirrored her written evidence on the topic.

33. Dr Van Velsen's diagnosis was of a depressive episode without psychotic symptoms. With reference to the Diagnostic and Statistical Manual of Mental Disorders, DSM-5, she diagnosed this episode as a major depressive disorder of moderate severity. She also diagnosed an anxiety disorder. She posited that these diagnoses mirrored those made by Dr Braithwaite save in one respect. Dr Braithwaite diagnosed PTSD. She could not agree with that diagnosis because such a diagnosis must be linked to a precipitating trauma and without findings of fact about the domestic abuse such a diagnosis is not possible. In the absence of findings, she says the symptoms displayed by M would reflect symptoms of depression and anxiety. As I understand it, there is no real difference between Dr Barithwaite's and Dr Van Velsen's diagnoses save a technical point relating to what, in lawyer speak, might be described as causation.
34. Dr Van Velsen says that M's disorder and symptoms have significantly impacted on her ability to function at full capacity. However, she does accept that M is currently able to look after the children appropriately and that she is resilient. In answer to the written question, 'what impact would a return to the USA have on the mother's mental health and ability to parent the children?', Dr Van Velsen said:
250. In my opinion M's mental health is fragile and there is considerable concern described by her psychiatrist and GP. Her weight continues to fall which is a marker for increasing severity.
251. In my opinion, whatever the finding of facts, if M's were to return to the United States in the near future, this could have a significantly adverse impact on her mental health and her ability to parent the children. There is not only her fear of abuse, but her sense of isolation and a lack of a support network.
35. Dr Van Velsen was cross examined by Mr Jarman and by Mr Edwards. The parties have provided me with an agreed note of her evidence. A number of significant points arose in the oral evidence. These are as follows:
 - a. She was asked if she was familiar with patients exaggerating assessments and giving false assessments and whether there was anything in her assessment which might lead to that conclusion about M. She answered: No, but I think that her view of her experience in LA was particularly negative and that might have been contributed to by her mental state. Whether or not at times she exaggerated that to an extent, but I didn't have the feeling of being told a story.

- b. She was asked about what else she relied on in addition to objective markers such as weight loss, low mood and anxiety. She answered: Presentation in the room. Low mood and anxiety – I could see them and weight loss. She went on to say in response to a question about the picture painted in Dr Braithwaite's updating report: Extremely worrying picture. You have to bear in mind maybe her natural weight is that she was thin – you need to think about it. c. In answer to a question about the consequence of return to the USA, she said: And: And: And: My concern is that if she were to return in her current mental state, that she will go back and won't be able to keep it together and may break down into more severe episode which could be harmful for her and those around her. There will be a deterioration. I can't say for definite but there would be a worsening in those symptoms and it will impact her negatively. I feel that there will be deterioration how that affects functioning I can't predict but it would impact on her negatively. I would be concerned that her ability to care for children would be reduced, but on the other hand father would be there as well, so tricky balance to disentangle. d. In answer to my question about the likelihood of deterioration, she said; It is hard to give a precise number, I prefer the balance of probabilities, more than 50% likely that there could be a deterioration.
36. So the core of Dr Van Velsen's evidence is that it is more likely than not that a return to the USA will lead to a deterioration in M's mental health which is likely to impact on her ability to care for the children. Of course, I must consider that evidence in the context of the legal framework, other relevant factors in the case and the protective measures offered by F.
37. That then is the medical evidence relating to M's mental health. I turn now to the law. The law
38. Article 1 of the 1980 Hague Convention sets out the aim of the Convention: "To protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access". Accordingly, the Convention has, as its stated objective the "...prompt return of children wrongfully removed to or retained in any Contracting State".
39. The recitals to the 1980 Hague Convention demonstrate its underlying philosophy – that "...the wrongful removal or retention of a child is prejudicial to the child's welfare". As such, "...save for the limited exceptions provided for in the Convention, it will be in the best interests of the child to return to the State of habitual residence" (1980 Child Abduction Convention – Guide to Good Practice – Part VI, Art 13(1)(b) at §14). Further, and in relation to the underlying philosophy of the Convention: "...as a rule, the courts of the child's State of habitual residence are best placed to determine the merits of a custody dispute (which typically involves a comprehensive "best interests" assessment) as, inter alia, they generally will have fuller and easier access to the information and evidence relevant to the making of such determinations. Therefore, the return of the wrongfully removed or retained child to his or her State of habitual residence not only restores the status quo ante, but it allows for the resolution of any issues related to the custody of, or access to, the child, including the

possible relocation of the child to another State, by the court that is best placed to assess effectively the child's best interests" (1980 Child Abduction Convention – Guide to Good Practice – Part VI, Art 13(1)(b) at §15).

40. In this case M relies on the exception or defence provided for in Article 13(b) which provides as follows: [...] The judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –
 - (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.
41. The legal principles which underpin this defence are well-established. The seminal cases providing guidance on the operation of Article 13(b) are the Supreme Court decisions in *Re E (Children)(Abduction: Custody Appeal)* [2011] UKSC 27 and *Re S (A Child)* [2012] 2 AC 257. The burden of proof is on the parent relying on the defence. The risk must be grave, that is the risk must have reached such a level of seriousness as to be characterised as such. Grave characterises the risk not the harm, but of course there is an interrelationship such that a low level risk of really serious harm may still be properly characterised as grave whilst the virtual certainty of tolerable harm may still not reach the necessary threshold. There is no gloss or complication to be applied to physical or psychological harm. However, intolerable is a strong adjective that in this context means a situation which the particular child in these particular circumstances should not be expected to tolerate and it includes physical or psychological abuse or neglect and exposure to the harmful effects of witnessing the physical or psychological abuse of a parent. As oral evidence is highly unusual in such cases and fact finding therefore not possible, I am mandated to take allegations at their highest, although there may be circumstances in which I can take a view about any such allegations, only so long as I can confidently discount the allegations. F suggests that I can confidently discount the allegations made by M against him.
42. I am not bound to adopt the *Re E* process of reasoning in respect of allegations of harm “if the evidence before the Court enables [the judge] confidently to discount the possibility that the allegations give rise to an Article 13(b) risk” (see Black LJ at paragraph 53 of *Re K (1980 Hague Convention: Lithuania)* [2015] EWCA Civ 720).
43. An Article 13(b) defence, which raises questions of domestic abuse, must be considered in accordance with the current understanding of the impact of domestic abuse on children through the lens of FPR PD12J and the Domestic Violence Act 2021. There is no rule that cases involving allegations of domestic abuse and/or coercive and controlling behaviour do or do not satisfy the requirements of Art 13(b). If, on the proper application of the law, the court concludes that the threshold in Art 13(b) is met and that there are not sufficient protective measures to meet the grave risk identified, the court can, subject to its remaining discretion, refuse to make a return order (see *MacDonald J in H v O & Ors (Article 13(b) and Domestic Abuse)* [2025] EWCH 114 (Fam)).

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44. In cases involving the potential for a psychiatric/psychological collapse, in *Re S (Abduction: Rights of Custody)* [2012] UKSC 10, Lord Wilson said this: “The critical question is what will happen if, with the mother, the child is returned. If the court concludes that, on return, the mother will suffer such anxieties that their effect on her mental health will create a situation that is intolerable for the child, then the child should not be returned. It matters not whether the mother's anxieties will be reasonable or unreasonable. The extent to which there will, objectively, be good cause for the mother to be anxious on return will nevertheless be relevant to the court's assessment of the mother's mental state if the child is returned.”
45. When addressing risk, I must consider the “nature, detail and substance” of the allegations made by M in order to determine the maximum level of risk to the children. That will involve “reasoned and reasonable assumptions” about the level of risk (*Re A-M (A Child : 1980 Hague Convention)* [2021] EWCA Civ 998 at [§32]). I need to examine, in concrete terms, what will actually face these children on return to the USA (see *Re GP* [2017] EWCA Civ 1677).
46. When considering protective measures, I must remember Molyan LJ’s words in *Re T (Abduction: Protective Measures: Agreement to Return)* [2023] EWCA Civ 1415 at §50: “Protective Measures need to be what they say they are, namely, protective. To be protective, they need to be effective”. Application of the law to this case The Article 13(b) threshold
47. The allegations made by M against F of domestic abuse and coercive and controlling behaviour which I have recounted above in a very attenuated form are of the highest order. F suggests that I am able confidently to discount those allegations. He says that the allegations are not corroborated, have been raised for the very first time within these proceedings and that in certain respects he can disprove them by reference to factors such as his giving M \$25,000 and putting her on the pay role of his company, which he says disproves allegations of financial control. He also says that he has a clean record sheet. These may be powerful points but I must evaluate them against the following:
- a. M did disclose significant issues of concern to her psychotherapist, Ms P, in 2024, albeit in less severe terms.
 - b. One of F’s daughters wrote text in 2017 describing him as manipulative and abusive. F responded telling her she was cut out of her inheritance.
 - c. F’s previous wife made allegations of domestic abuse against him albeit they were seemingly not entertained by the judge in California. There is also a police report.
 - d. M’s medical insurance was linked to F’s email account.
 - e. M was prescribed Lexapro for her depressed and anxious moods.
 - f. Texts between F and M’s relatives trying to get them to reveal her whereabouts.
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- g. An email dated 26 July 2025 in which F threatened M with contempt applications and costs orders.
48. I am not able confidently to discount the allegations that M has made against H. They may be false or they may be true. It is not my role to decide who is telling the truth. Having decided that I cannot discount them, I must approach this case on the basis that I take them at their highest. As I have said these are of the very highest order of allegations of this nature. Allegations such as this have a very real impact on children.
49. The evidence about M's mental health is very clear. She is currently able to function and provide the children with a proper level of care. If she returns to the USA, it is more likely than not that she will suffer a deterioration in her mental health, which is likely to exacerbate her symptoms which are low mood, tearfulness, some hopelessness, poor sleep, weight loss, nightmare and previous suicidal ideation. In oral evidence, Dr Van Velsen described the consequence of moving from the current diagnosis of moderate severity to the next level which would be 'severe' episode. She said in such a case the patient might be hospitalised or unable to communicate. I understood this to mean that this might happen to M. Mr Jarman, however, submitted that the evidence was of general nature and not specific to M's possible deterioration. Whether I am right or Mr Jarman is right, Dr Van Velsen was very clear in her written and oral evidence that a deterioration would lead to an impairment in M's ability to care for the children.
50. So, what are the risks to the children of a return to the USA? I will consider these before I turn to protective measures. The risks appear to me to be as follows:
- a. M will not be able to afford appropriate housing for her and the children as she has no access to funds and is in the immediate future unlikely to be able to earn enough to meet her own and the children's needs.
 - b. F may behave inappropriately and may harass M, which would add to her mental health challenges.
 - c. M will not be able to afford to litigate in California to obtain the safeguards she and the children need given the allegations made by F. Were she to act in person it is likely to add to her mental health challenges.
 - d. F is likely to bring custody proceedings in California. M will not be able to afford representation and will have to represent herself. This likely to add to her mental health challenges
 - e. M's mental health is more likely than not to be impaired to a degree that she is not able to care for the children appropriately. f. In those circumstances and prior to any enquiry into the allegations, it would inappropriate for F to have care of the children given the nature and seriousness of the allegations made against him.
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51. The central risk relates to deterioration in M's mental health and F's unsuitability to take over as primary carer (pending investigation of the allegations). There can be no doubt in my mind that a return of these children would expose them to psychological harm or otherwise place them in an intolerable situation. Dr Van Velsen says it is more likely than not that the deterioration in M's mental health would eventuate on a return to the USA. In such circumstances it seems to me that the risk of these children's primary carer being put in a position where she cannot meet their needs and the attendant risk that they might be cared for by F can only be described as grave. This means that, subject to the question of protective measures, I must find that the Article 13(b) threshold is met.
52. I turn now to the protective measures offered by F. Protective measures
53. F offers the following protective measures, which I have rearranged and subdivided into three categories: Related to harassment etc
- a. Not to attend at the airport or instruct/encourage any other person to do so, on the day the children and M arrive in California.
 - b. Without prejudice to any acceptance of the allegations made by M within these proceedings, not to harass, molest, pester, use or threaten to use violence against M whether myself or by instructing or encouraging any other person to do so.
 - c. Without prejudice to any acceptance of the allegations made by M within these proceedings, not to communicate with M directly except via OFW in relation to the children's welfare and logistics in respect of education, health and any other welfare matters. Related to legal proceedings
 - d. Not to institute or voluntarily support any proceedings, whether criminal or civil, against M in relation to the children's wrongful removal from California
 - e. To provide evidence that the application for custody was denied by the Court in California pending the return of the children.
 - f. Not to make any applications to the family court in California without notice to M.
 - g. Not to seek to separate the children from M, pending the first inter partes hearing at the relevant family court in California save for contact as agreed and provided by the Court in England and Wales in the interim. Related to finances
 - h. To pay M and the children's direct flights one way from London to California for the purpose of effecting the summary return of the children to California
 - i. To pay W \$4,500 per month for 6 months (or until she finds employment – whichever comes first) - Money to be spent on housing and living expenses, can be held by solicitor and distributed monthly

- j. F will not claim the funds that he made available to M, to allow her to use the funds for the purpose of accommodation on the children's return to California. These are:
 - i. \$27,000 in her first IRA; ii. \$7,000 in her second IRA; iii. £8,000 in her NS&I Premium Bonds; and iv. €3,000 in her UK bank account
 - k. To continue a health care plan which covers everything from general health and emergencies to mental health issues and which includes the children
 - l. To provide his 2015 car for her sole use, including the insurance
54. I have a joint expert report dated 9 October 2025 from Ms Ribet, a Californian attorney, and her answers to further questions dated 6 November 2025.
55. I will deal first with harassment provisions. Ms Ribet explains that neither undertakings given to nor orders issued by this court are automatically enforceable in California. She says that there is a possibility that a California court might recognize an English order. It appears to be purely discretionary as to whether or not a California court would recognise such an order. To make such orders enforceable she says an application would have to be made to court. The court in California does not accept undertakings and will only make orders based on explicit or implicit findings that the abuse alleged has occurred. She opines that the act of stipulation to a domestic violence restraining order may constitute an agreement by both parties that the allegations made in support of the application are true. She says the court probably cannot accept stipulations to issue orders while simultaneously treating the factual basis as unestablished.
56. Ms Ribet says applying for a DVRO on an agreed basis would costs \$5-7,000. It is noteworthy that despite this evidence, F made neither an offer to pay for this process nor did he suggest any admissions he would be prepared to make in order for this process to be effective. Without this, the undertakings offered appear to be merely pieces of paper. Mr Jarman submitted in an email sent after oral submissions had been made that:
- a. A temporary DVRO could be made and that Ms Ribet should be tasked with further research on this point.
 - b. An English order can be recognised under comity (in fact Ms Ribet said this was a possibility).
 - c. It was not appropriate for F to make admissions on advice of English lawyers in respect of a California stipulation.
57. I don't think Mr Jarman is right and I am somewhat perplexed that F has not taken steps to ensure the enforceability of his suggested protective measures but nonetheless I shall approach this issue on the basis that I can make orders which would be recognised in California.
58. I turn now to the measures in respect of legal proceedings. The first measure relates to the civil or criminal proceedings in relation to the abduction of the children by M. F made a police report in California about the abduction. It appears that no action has been taken.

However, F cannot prevent the authorities from investigating M or prosecuting her. Ms Ribet suggests that this outcome is unlikely where an undertaking such as this has been proffered. Ms Ribet suggests that M could rely on defences relating to abuse. However, M refers me to the penal code which suggests that the time limits for raising such a defence have passed. On balance, I think it is safe to assume that M will not face criminal sanction in respect of the abduction.

59. It is tolerably plain from the ambit of the other measures proposed in respect of legal proceedings that F intends, as is his right, to bring custody proceedings in California. Ms Ribet says that the costs of such proceedings amount to tens of thousands of dollars for both parties. M will not be entitled to legal aid. I am very concerned about the impact of M having to represent herself in contested custody litigation with F against whom she has raised very serious concerns. It seems to me that such an outcome is likely to exacerbate her mental health problems. This was confirmed by Dr Van Velsen, who said “if she has to engage in legal proceedings divorce, custody, child maintenance these are all additional stressors”. I note in this context that it is likely that M will be able to access legal aid in proceedings in this jurisdiction.
60. As to the financial measures, the offer to pay for M’s and the children’s flights to the USA and to provide a car are plainly sensible. F proposes to pay M \$4,500 per month. He has suggested that she and the children should live in Airbnb lodgings at a cost of about £2,900 per month or \$3,828 per month. This would leave \$672 per month. I do not think it realistic that M and the children should or could live on \$672 per month. Nor do I think it appropriate for them to be living in short-term letting without any security of tenure. M says that in any event the properties F has suggested are unsuitable and too far from the children’s schools (this is disputed by F). No account appears to have been taken by F of the fact that M has used her modest savings on legal and medical costs here and has only £1,300 left nor of the fact that M does not have any real prospect of employment while suffering from her current mental health problems.
61. Ms Ribet has suggested that the time frame for filing evidence for a claim for spousal or child support would take 4.5 – 6 months and then a hearing would be set. The conditions, under which M and the children will live under these proposals, will obtain for many months. The legal costs of any such proceedings would be beyond M’s means and, as I have said, I am very concerned about the impact of M representing herself on her mental health.
62. The final element of the package offered by F is the family health insurance which he says would cover the costs of M’s therapeutic needs including doctors, psychiatrists and psychotherapists. It would appear that the policy would cover such costs. Mr Jarman cross examined Dr Van Velsen about M’s resilience. She agreed with Mr Jarman that M had ‘clear factors of resilience’. She plainly took this into account when she reached her conclusions. She also plainly had in mind that M would be able to access appropriate medical help on return to the USA. Regardless of M’s resilience and regardless of access to appropriate medical care, Dr Van Velsen was of the view that it was more likely than not that M’s mental

health would deteriorate on a return.

63. Can the package of protective measures offered by F ameliorate the grave risk that the return would expose these children to physical or psychological harm or otherwise place the child in an intolerable situation? In my view, the answer is clearly no. Whilst I have made the assumption that the measures offered in respect of harassment would protect M and the children from that particular potential problem, the exposure of M to litigation as a litigant in person and its likely impact on her mental health is an insurmountable problem. The lack of proper housing and financial provision for her and the children is another. If I am wrong about these problems, I remain of the view that the protective measures do nothing to ameliorate the grave risk that M's mental health will deteriorate on return to the USA and that will harm the children.
64. I have found the threshold of Article 13(b) crossed. I have decided that the protective measures do not ameliorate the grave risk of harm to these children. Nonetheless, Article 13(b) confers on me a discretion not to order a return. I remind myself that the Supreme Court has stated that it is impossible to conceive of circumstances in which, once such a risk, which cannot be ameliorated, is found to exist, it would be a legitimate exercise of the discretion nevertheless to order the child's return (see Lord Wilson at para 5 in *In re S (A Child) (Abduction: Rights of Custody)* [2010] UKSC 10). It is clear to me that in the circumstances of this case I must dismiss F's application.
65. That is my judgment. 21

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Prepared on 24 October 2026 · Esheria