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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Mauricio Fernandez Margain,

No. CV-13-01162-TUC-RCC

10 Petitioner,

ORDER

11 v.

12 Elsa Lourdes Ruiz-Bours,

13 Respondent.
14

15 Pending before the Court is Respondent Elsa Ruiz-Bours' Ex Parte Motion/Request
16 for Clarifying Order (Doc. 40) and Petitioner Mauricio Margain's Motion to Strike (Doc.
17 42). Respondent filed a response to the Motion to Strike, but no other filings have been
18 entered. The Court will deny Ruiz-Bours' motion because any opinion by the Court would
19 be advisory. However, the Court sees no need to strike the motion from the record.

20 ***Procedural History***

21 On January 22, 2014, after a three-day bench trial, this Court denied Margain's
22 Petition for Return of Minor Child (Doc. 1), which asked the Court to order the return of
23 Margain and Ruiz-Bours' child to Margain in Mexico. (Doc. 28.) The Court found that as
24 a matter of law, the child had not been unlawfully removed by Ruiz-Bours to the United
25 States in violation of the Hague Convention because the child was a habitual resident of
26 the United States. *Id.* at 7-10. Furthermore, the Court determined returning the child to
27 Mexico was not warranted under the Hague Convention because Margain had not brought
28 his claim in District Court until over one year after the child's removal and the child was

1 well settled in the United States. *Id.* at 11-12. The Court stated, “the child will not be
2 returned to Mexico. The child remains in the custody of Respondent *until such time as*
3 *custody of the child is determined by a court of competent jurisdiction.” Id.* at 13 (emphasis
4 added). The Court dismissed this case with prejudice. *Id.* at 13. Margain appealed the
5 Court’s determination, but the Ninth Circuit affirmed the Court’s decision in a
6 memorandum opinion on March 3, 2015. (Doc. 39-1.)

7 ***Instant Motions***

8 Ruiz-Bours filed the instant Motion for Clarification alleging that Margain had
9 subsequently filed for custody in the 2nd Family Law Court in Tijuana, Baja California,
10 Mexico (“Tijuana Court”). (Doc. 40 at 2, ¶3.) The Tijuana Court granted him custody in
11 September 2014. *Id.* at ¶4. Ruiz-Bours alleges that Margain also filed for custody in Pima
12 County Superior Court (“State Court”) but was denied. *Id.* at ¶¶5-6. She claims Margain
13 removed the child to Mexico in violation of the State Court’s order. *Id.* at 2, ¶¶7-8.
14 However, the Tijuana Court’s order was subsequently reversed by the Supreme Court of
15 Justice of the Nation of Mexico (“Supreme Court of Mexico”), with an order to return the
16 child to Ruiz-Bours on August 22, 2018. *Id.* at 3, ¶¶10-11. Margain asked the Pima County
17 Court to enter an order stating it had no jurisdiction over the custody determination. *Id.* at
18 3 ¶13; 6. Ruiz-Bours is fearful that if the State Court ultimately rules that it does not have
19 jurisdiction, Margain will not only have violated both the Supreme Court of Mexico’s order
20 as well as the Order of this Court but he will be able to further prevent Ruiz-Bours from
21 seeing her child. *Id.* at 4, ¶14-15. Ruiz-Bours asks this Court to issue an order clarifying
22 that the child is a habitual resident of the United States and directing the return of her child.
23 *Id.* at 12, ¶¶1-2.

24 Margain argues that the Court should strike Ruiz-Bours’ Motion for Clarification
25 because this case has been dismissed and no further filings are permitted, but he does not
26 address or respond to Ruiz-Bours’ allegations. (Doc. 42.) The Court finds that Margain’s
27 argument does not make striking the motion necessary.

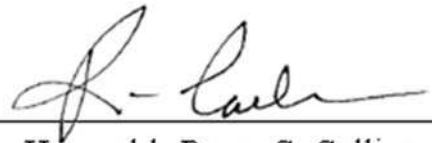
28 Nonetheless, the Court will deny the Motion for Clarification. The Court affirms

1 that its January 22, 2014 Order states that the child was a habitual resident of the United
2 States for the purposes of the Petition for Return of Minor Child. (Doc. 28 at 9-10.)
3 However, the Court did not rule on any further custody matters. In fact, this Court ordered
4 that Ruiz-Bours maintain custody of the child “until such time as custody of the child is
5 determined by a court of competent jurisdiction.” *Id.* at 13. Ruiz-Bours concedes that
6 custody has been decided in the Tijuana Court and overturned in the Supreme Court of
7 Mexico, and the State Court is currently determining whether it has jurisdiction to enforce
8 custody. The Court’s Order does not extend to these proceedings. “[A] federal court has
9 neither the power to render advisory opinions nor to decide questions that cannot affect the
10 rights of litigants in the case before them.” *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)
11 (quotation marks and citations omitted). Any opinion in this case about the effect of this
12 Court’s determination of “habitual residence” on proceedings either in Mexico or in the
13 State Court would be advisory, and so the Court has no jurisdiction to enter such an order.

14 Therefore, IT IS ORDERED both motions are DENIED. (Docs. 40, 42.)

15 Dated this 17th day of April, 2019.

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Honorable Raner C. Collins
Senior United States District Judge