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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Bogdan Radu,

10 Petitioner,

11 v.

12 Persephone Johnson Shon,

13 Respondent.
14

No. CV-20-00246-TUC-RM

ORDER

15 In an Order filed on September 17, 2020, this Court granted Petitioner Bogdan
16 Radu's Petition for Return of Children to Germany pursuant to the Hague Convention on
17 the Civil Aspects of International Child Abduction ("Hague Convention"), and ordered
18 that minor children O.S.R. and M.S.R. be returned to Germany in the custody of
19 Respondent Persephone Shon until a custody determination can be made by a German
20 court of competent jurisdiction. (Doc. 26.) Respondent filed an appeal of the Court's
21 Order in the Ninth Circuit Court of Appeals. (Doc. 36.) Briefing and calendaring of the
22 appeal has been expedited. See Radu v. Shon, No. 20-17022 (9th Cir. Nov. 6, 2020).

23 Pending before the Court is Respondent Persephone Johnson Shon's Motion to
24 Stay Return Order Pending Appeal. (Doc. 40.)¹ Respondent asks that the Court's
25 September 17, 2020 Order be stayed pending resolution of her appeal, arguing that she
26 has shown a likelihood of success on the merits of the appeal, that she and the minor
27 children will suffer irreparable injury absent a stay, that there will be no substantial injury

28 ¹ Also pending is Petitioner Bogdan Radu's Motion for Attorney's Fees and Costs (Doc. 30), which will be resolved separately.

1 to Petitioner by the issuance of a short stay until the expedited appeal is concluded, and
2 that the public interest will be served by issuance of a stay. (Id. at 7-12.) The Court
3 issued a temporary stay pending its resolution of the Motion. (Doc. 41.) Thereafter,
4 Petitioner filed a Response in opposition (Doc. 42), and Respondent filed a Reply (Doc.
5 43). Petitioner argues that there is no legal or factual basis for Respondent’s appeal of
6 this Court’s September 17, 2020 Order, that Respondent’s wrongful actions should not be
7 further prolonged, that Respondent made no good-faith effort to comply with the Court’s
8 Order, and that Respondent requested a stay of the Order after the deadline for making
9 travel arrangements for the return of the children had expired. (Doc. 42 at 4-5.)
10 Petitioner argues that, if the Court does grant a stay, it should order Respondent to post a
11 bond to cover an attorney’s fee award, his reasonably anticipated costs on appeal, and the
12 cost of securing the children’s return. (Id. at 5.) In Reply, Respondent argues that a bond
13 is not permitted under Article 22 of the Hague Convention. (Doc. 43.)

14 In considering whether to stay a return order in a Hague Convention case, courts
15 consider the traditional stay factors: “(1) whether the stay applicant has made a strong
16 showing that [s]he is likely to succeed on the merits; (2) whether the applicant will be
17 irreparably inured absent a stay; (3) whether issuance of the stay will substantially injure
18 the other parties interested in the proceeding; and (4) where the public interest lies.”
19 *Chafin v. Chafin*, 586 U.S. 165, 179 (2013). With respect to the first factor,
20 Respondent’s Motion to Stay raises concerns regarding the logistics of returning O.S.R.
21 and M.S.R. to Germany, given the COVID-19 pandemic and the lapse of Respondent’s
22 German resident permit. (Doc. 40 at 3-4 n. 2-3.) However, the Court’s September 17,
23 2020 Order invited the parties to request a further hearing concerning the logistics of the
24 children’s return, and Respondent failed to do so. Respondent also did not request
25 reconsideration of the Court’s September 17, 2020 Order on the basis of any of her
26 factual concerns regarding the logistics of the children’s return. Furthermore,
27 Respondent filed her Motion to Stay after expiration of the Court’s deadline for making
28 travel arrangements for the children’s return, she has not explained her delay, and she has

1 not shown that she made any good-faith efforts to comply with the Court’s Order before
2 requesting a stay.

3 Despite these concerns, the Court finds that Respondent has sufficiently shown a
4 likelihood of success on the merits of her appeal. See *Leiva-Perez v. Holder*, 640 F.3d
5 962, 966-68 (9th Cir. 2011) (per curiam) (“to justify a stay,” a litigant “need not
6 demonstrate that it is more likely than not that [she] will win on the merits” but instead
7 need show only that “she has a substantial case for relief on the merits”). The Court’s
8 September 17, 2020 Order found a grave risk of psychological harm under Article 13(b)
9 of the Hague Convention but concluded that the risk could be avoided by requiring that
10 O.S.R. and M.S.R. be returned to Germany in Respondent’s custody. Case law offers
11 only minimal guidance regarding how to properly craft remedies allowing for a child’s
12 return under the Hague Convention while avoiding a grave risk of harm under Article
13 13(b). Given the scant case law, the Court finds that the first factor—the likelihood of
14 Respondent’s success on the merits of her appeal—weighs in favor of a stay.

15 The second factor also weighs in favor of a stay, given the potential harm to
16 Respondent and the children of being required to return to Germany while the expedited
17 appeal is pending. With respect to the fourth factor, the public interest favors the prompt
18 return of wrongfully removed children, but it also favors safeguarding the well-being of
19 children. Although O.S.R. and M.S.R. were wrongfully removed from Germany, they
20 are currently in a safe, stable living situation in Tucson, Arizona; their return to Germany
21 during the pendency of Respondent’s appeal would disrupt that living situation and
22 interrupt their school year. See *Chafin*, 568 U.S. at 178 (“shuttling children back and
23 forth . . . across international borders may be detrimental to those children.”)
24 Accordingly, the Court finds that the fourth factor weighs in favor of a stay. In
25 considering the third factor, the Court does not take lightly the injury to Petitioner of
26 further delay in seeing his children; however, that injury does not outweigh the other
27 factors in light of the fact that Respondent’s appeal has been expedited. The Court will
28 grant Respondent’s Motion to Stay.


1 The Court rejects Petitioner’s request that Respondent be ordered to post a bond.
2 Article 22 of the Hague Convention states: “No security, bond or deposit, however
3 described, shall be required to guarantee the payment of costs and expenses in the judicial
4 or administrative proceedings falling within the scope of this Convention.” Courts have
5 recognized that Article 22 prohibits imposition of bonds to secure the payment of costs
6 and expenses, including attorney’s fees, in Hague Convention cases. See, e.g., Patrick v.
7 Rivera-Lopez, 708 F.3d 15, 23 (1st Cir. 2013); Souratgar v. Fair, No. 12 CIV.
8 7797(PKC), 2013 WL 705923, at *1 (S.D.N.Y. Feb. 22, 2013).

9 Accordingly,

10 **IT IS ORDERED** that Respondent’s Motion to Stay Return Order Pending
11 Appeal (Doc. 40) is **granted**. The Court’s September 17, 2020 Order (Doc. 26) is **stayed**
12 pending resolution of Respondent’s appeal.

13 Dated this 16th day of November, 2020.

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Honorable Rosemary Márquez
United States District Judge