

GOVERNMENT OF BRAZIL OPENS MAJOR INVESTIGATION INTO ALLEGED WRONGDOING OF BRAZILIAN-AMERICAN MOTHER WHO ABDUCTED SON

Almost three years later, Nicolas Brann of Texas still far from being returned home to his father and extended family

Washington, D.C. – The Federal Prosecution Service, an independent branch of the Brazilian government responsible for ensuring compliance with Brazilian law, has opened two separate proceedings against Marcelle Guimarães, who abducted her son Nicolas (Nico) Brann to Brazil in July 2013. The first is a civil proceeding (PP nº 1.14.000.000470/2016-06) investigating Ms. Guimarães's failure to inform a Brazil State Court that she shared joint custody of her son with Nico's father, Dr. Christopher Brann of Houston, Texas, under a Texas State Court order. The second is a criminal proceeding (police inquiry - IPL nº 384/2016) into alleged fraud relates to different versions of the same purported document Ms. Guimarães and her lawyers presented to the Brazil State Court and Brazil Federal Court.

“This case is totally outrageous and beyond the pale,” said Jared Genser, international counsel to Dr. Brann. “There is irrefutable evidence in this case that Ms. Guimarães and members of her family premeditated Nico's abduction. All ten independent experts have said Dr. Brann is an excellent father. The US and Brazil governments both agree he must be sent home to Texas. Yet almost three years into this nightmare, the abductor continues to profit from her wrongdoing, denying Dr. Brann's access to his son more than 99 percent of the time. By opening its investigations, the Brazil Federal Prosecution Service has signaled that brazen actions like this may actually have consequences. But despite the hardship, Dr. Brann still wants nothing more than his son to be returned to Texas into the joint custody his ex-wife and him as originally ordered by the Texas Court.”

Since Nico's abduction in 2013, Dr. Brann has been fighting relentlessly have his son returned to Texas. In November 2015, Dr. Brann went public with his struggle at the National Press Club in Washington D.C., where he was joined by U.S. Assistant Secretary of State Michele Thoren Bond. The case garnered widespread media coverage in the U.S. and in Brazil, including on CBS This Morning and in the Washington Post.

Nico was abducted on July 1, 2013 when Ms. Guimarães took him to Brazil. At the time, both parents shared custody of Nico, as established in an order of joint custody from the District Court of Harris County, Texas in January 2013. But unbeknownst to Dr. Brann, Ms. Guimarães took multiple steps in preparation of Nico's abduction in the months leading up to their travel. On April 8, Ms. Guimarães enrolled Nico in school at Escola Nova Nossa Infância, which is owned by her mother. On May 13, Ms. Guimarães accepted a job offer to work at that school beginning on July 1 – the very day of her arrival in Brazil. All of these arrangements were made prior to May 20, 2013, when through her lawyer, Ms. Guimarães approved and filed with the Texas Court a Travel Agreement, which stated that she could travel to Brazil “for the above specified period” of “July 2, 2013 and returning flight on July 20, 2013.” The job offer and school enrollment were presented to the Brazil State Court to demonstrate Ms. Guimarães was well settled in Brazil with her son.

The civil investigation concerns Ms. Guimarães's misrepresentations to the Brazil State Court that enabled her to obtain sole custody of Nico improperly. In her application filed on July 10, 2013, she failed to disclose that Dr. Brann had joint custody of Nico, that joint custody had been ordered by a

Texas State Court, and she failed to provide a copy of that court order to the Brazil State Court. In an ex parte court order, the Brazil State Court awarded Ms. Guimarães sole custody of Nico, accepting her unchallenged claims that Dr. Brann had abandoned his son. The criminal investigation relates to forged documents that were submitted to Brazil Federal Court by Ms. Guimarães's lawyers, Rui Celso Reali Fragoso and Marcela de Deo Fragoso, in an apparent attempt cover-up the clear evidence of the premeditated abduction. After Dr. Brann learned that Nico had been abducted, he immediately filed an application to the Brazil Federal Court under the Hague Convention on the Civil Aspects of International Child Abduction, an international jurisdictional treaty which determines the country in which questions of child custody should be determined. In response, Ms. Guimarães and her lawyers knowingly submitted to the Brazil Federal Court a different version of the school enrollment form than they had filed in the State Court. The new version showed Nico had been enrolled in the family school on July 10, 2013, after Nico had arrived in Brazil, whereas the original version filed in the ex parte Brazil State Court case showed he had been enrolled on April 8, 2013, well before Ms. Guimarães swore to the Texas Court she would return by July 20, 2013.

The U.S. State Department, the Brazilian Central Authority (the entity responsible to Brazil's compliance with the Hague Convention) and the Brazil Office of the Attorney General independently agreed that Nico was taken unlawfully to Brazil. Even the Brazil Federal Judge in the case concurred that Ms. Guimarães "illicitly removed the minor to Brazil," though she improperly denied Nico's return to the US in a decision on July 15, 2015. Incredibly, her only justification for denying Nico's return was a mid-level appellate court ruling in the high-profile case regarding the abduction of Sean Goldman – which was later overruled by Brazil's Supreme Court. Brazil Federal Judge Arali Duarte appeared totally oblivious to the fact Sean had been returned back to his father David Goldman in New Jersey more than five years earlier. Judge Arali also noted that Ms. Guimarães father, Carlos Guimarães, who is President of commodities trading firm ED&F Man Brasil, "support[ed] his daughter in the illicit transference of the minor . . . he himself bought and altered the air tickets, in order to create an illusion that she would be back to the USA." The altered tickets were purchased by Mr. Guimarães's assistant at his company. ED&F Man, the Brasil subsidiary's parent, has failed to respond to queries asking if its executives have license to use company resources to facilitate the abduction of minors in violation of court orders across international borders.

Despite this important development, the case continues to languish on appeal in Brazil and it may take years before the Supreme Court decides to order Nico's return to Texas. Brazilian Counsel to Dr. Brann, Sergio Botinha, states that Brazil still has a tough time in implementing the Hague Convention correctly. In some cases, the long duration of the lawsuit necessary for the return is used as an argument by judges to deny the child return. This is non-sense. The lack of respect to the Convention creates huge insecurity for international families with ties to Brazil. In some cases, foreign judges are denying the Brazilian parent the permission for vacation trips with their children to our country, out of fear that if the parent and child do not return voluntarily, the courts would not correctly apply the Hague convention. It is a problem for Brazilian children, created by Brazilian Tribunals. The law should be respected for everyone's benefit." In the meantime, in his most formative years, Nico is not only being denied having a relationship with his loving father but is being intentionally alienated from him.

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