

District Court, Boulder County, Colorado 1777 6 <sup>th</sup> Street Boulder, CO 80302	DATE FILED: February 8, 2018 9:44 AM
In re Parental Responsibilities concerning: Melany Alessandra Navarro-Palacios, a Minor Child  <b>Petitioner: Juana Isabel Navarro Guardado</b> <b>and</b> <b>Respondent: Elmer Palacio Zamora</b>	<p style="text-align: center;">▲ <b>COURT USE ONLY</b> ▲</p>
Attorney for Petitioner:  Cole J. Woodward Brownstein Hyatt Farber Schreck, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202  Phone Number:(303) 223-1100      E-mail: cwoodward@bhfs.com FAX Number:(303) 223-1111      Atty. Reg. #50199	Case Number:  Division                      Courtroom
<b>PETITION FOR ALLOCATION OF PARENTAL RESPONSIBILITIES</b>	

This Petition seeks allocation of parental responsibilities including decision-making responsibilities and parenting time for the minor child(ren), establishment of a child support order, and any other orders necessary to effectuate the best interests of the children pursuant to §14-10-123, C.R.S. and states:

**1. Information about Petitioner:**

Check if in Military

Full Legal Name: Juana Isabel Navarro Guardado

Date of Birth: June 24, 1991

Current Mailing Address: 1414 Stuart Street Apt. #5

City: Longmont State: CO Zip Code: 80501

Home Phone #: (720) 526-1559

Email Address: N/A Cell Phone #: N/A

**Petitioner has the following relationship with the minor child(ren):**

child(ren)'s mother

child(ren)'s father

non-parent, and the child(ren) is/are not in the physical custody of one of the parents

non-parent, who has had physical custody of the child(ren) for 182 days or more, and the physical custody did not end more than 182 days before the filing of this action

other (please specify): \_\_\_\_\_

**2. Information about Co-Petitioner/Respondent:**

Check if in Military

Full Legal Name: Elmer Palacio Zamora

Date of Birth: August 8, 1989

Current Mailing Address: Unknown; last known location was in Chalatenango, El Salvador Apt. # \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Home Phone #: Unknown

Email Address: N/A Cell Phone #: N/A

**Co-Petitioner/Respondent has the following relationship with the minor child(ren):**

- child(ren)'s mother
- child(ren)'s father
- non-parent, and the child(ren) is/are not in the physical custody of one of the parents
- non-parent, who has had physical custody of the child(ren) for 182 days or more, and the physical custody did not end more than 182 days before the filing of this action
- other (please specify): \_\_\_\_\_

**3. The minor child(ren) is/are:**

Full Name of Child	Present Address	Sex	Date of Birth
Melany Alessandra Navarro-Palacios	1414 Stuart Street, Apt. #5 Longmont, CO 80501	F	June 30, 2014

4. The child(ren) listed above have lived in Colorado for a minimum of six months prior to the filing of this Petition or since birth if under six months of age?  No  Yes If **No**, please state the name of child, name of person child lived with and the month, date and year when each child most recently moved to Colorado.

Full Name of Child	Name of Person Child Lived with	State Moved From	Month	Day	Year

5. I/We understand that a request by either party for genetic testing shall not prejudice the requesting party in the allocation of parental responsibilities.
6. **Each party has a continuing duty to inform the Court of any proceeding(s) in this or any other state that could affect the current proceeding.**
7. **I/We understand that the Court may review any case involving the children, Petitioner, Co-Petitioner/ Respondent and other parties named in this Petition that have been filed in any Court.**
8. I/We have participated in the following proceeding(s) regarding the child(ren) as a party or a witness, or in any other capacity concerning issues of custody/allocation of decision-making, or visitation/parenting time with the child(ren). Identify name of court, case number, state, date and type of proceeding.

**Although not pertaining directly to issues of custody/allocation of decision-making, or visitation/parenting time, Melany and Juana are seeking to obtain Special Immigrant Juvenile Status ("SIJS") for Melany. Once this court issues its final orders in this APR matter, a Petition for SIJS and Lawful Permanent Residency will be filed with U.S. Citizenship and Immigration Services. The SIJS process and proceedings will be explained in more detail in Petitioner's Motion Requesting Additional Findings Establishing Minor's Eligibility for Special Immigrant Juvenile Status.**

9. I/We know of the following proceeding(s) that could affect the current proceeding including, but not limited to proceedings for Dissolution of Marriage or Civil Union, Legal Separation (Marriage or Civil Union), enforcement of Court orders, domestic violence or domestic abuse, protection/restraining orders, termination of parental rights, and adoptions. Identify name of court, case number, state, date and type of proceeding.  
N/A

Name of Court	Case Number	State	Date of Proceeding	Type of Proceeding


10. The following people are not parties in this matter but have physical custody of the child(ren) or claim rights of parental responsibilities with the child(ren). Identify name and address of those persons. **N/A**

Name of Person	Address (City/State & Zip Code)

11. The best interests of the child(ren) would be served by allocating parental responsibilities to the Petitioner(s) as follows and for the following reasons:

Please see Attachment A to this petition.

**12. Required Notice of Human Services Involvement.**

The parents or dependent child(ren) listed on this Petition has/have received within the last five years, or is/are currently receiving benefits or public assistance from the state Department of Human Services or the County Department of Social Services.  **No**     **Yes** If your answer was **Yes**, complete the following:

Name of Person Receiving Benefit	Name of County and State	Case Number	Month/Year

**13. Required Notice of Prior Protection/Restraining Orders.**

Have any Temporary or Permanent Protection/Restraining Orders to prevent domestic abuse or any Criminal Mandatory Protection/Restraining (MRO) Orders or Emergency Protection Orders been issued against either party by any Court within two years prior to the filing of this Petition?

**No**     **Yes** If your answer was **Yes**, complete the following:

The Protection/Restraining Order was  Temporary  Permanent  MRO and issued against

\_\_\_\_\_ in a  Municipal Court  County Court  District Court in the County of \_\_\_\_\_, State of \_\_\_\_\_, in case number \_\_\_\_\_ on \_\_\_\_\_ (date).

What was the subject matter of the Protection/Restraining Order or Emergency Protection Order?

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**14. Notice of Existing Case with Child Support Enforcement (CSE)**

The parents have filed a case with CSE?  **No**     **Yes** If **Yes**, identify the case number: \_\_\_\_\_

**Notice:** Colorado Revised Statutes §14-10-123, provides that upon the filing of a Petition for Allocation of Parental Responsibilities by the Petitioner and Co-Petitioner, or upon personal service of the Petition and Summons on the Respondent, or upon waiver and acceptance of service by the Respondent, an automatic temporary injunction shall be in effect against **both parties** until the Final Order is entered, or the Petition is

dismissed, or until further Order of the Court. Either party may apply to the Court for further temporary orders, an expanded automatic temporary injunction, or modification or revocation under §14-10-125, C.R.S.

1. **Both parties are enjoined from molesting or disturbing the peace of the other party; and**
2. **Both parties are restrained from removing the minor child(ren) from the state without the consent of all parties or an Order of the Court modifying the injunction; and**
3. **Both parties are restrained, without at least 14 days advance notification and the written consent of all other parties or an Order of the Court, from cancelling, modifying, terminating, or allowing to lapse for nonpayment of premiums, any policy of health insurance or life insurance that provides coverage to the minor child(ren) as a beneficiary of a policy.**

Petitioner and Co-Petitioner, if any, acknowledge that he or she has received a copy of, has read, and understands the terms of the automatic temporary injunction set forth in this Petition.

**I/We seek an order granting the allocation of parental responsibilities, the establishment of child support, and any other orders necessary to effectuate the best interests of the child(ren).**

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form. (Checking this box requires you to remove JDF number and copyright at the bottom of the form.)

*[Verification and Acknowledgement on following page]*

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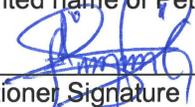
**VERIFICATION AND ACKNOWLEDGEMENT**

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on the 12 day of 01, 2018, at Danver, CO.  
(date) (month) (year) (city or other location, and state OR country)

Juana Isabel Navarro Guardado  
(printed name of Petitioner)

\_\_\_\_\_  
(printed name of Co-Petitioner)

  
Petitioner Signature

\_\_\_\_\_  
Co-Petitioner Signature

## **Attachment A to Petition for Allocation for Parental Responsibilities**

### **Petitioner's Request for Full Custody, Parenting Time & Decision-Making Authority**

Petitioner submits this Attachment A to its Petition for Allocation of Parental Responsibilities and hereby requests that the court: (1) grant Petitioner full custody and parenting time; and (2) grant the Petitioner decision-making authority and responsibilities.<sup>1</sup>

#### **I. Factual Background**

Petitioner experienced physical and sexual abuse at the hands of Respondent in Chalatenango, El Salvador before Petitioner and daughter Melany fled to the United States. Petitioner met Respondent in 2013 and became pregnant with Melany shortly thereafter. Respondent started beating Petitioner during her pregnancy with Melany. Respondent first beat Petitioner when Petitioner refused to drink alcohol during her pregnancy. When Petitioner told Respondent that her pregnancy made sex painful and uncomfortable for her, Respondent sexually assaulted her. Respondent sexually assaulted Petitioner on multiple occasions during her pregnancy. Respondent frequently beat Petitioner with his fists, both while Respondent was drunk and while Respondent was sober. Respondent also hit Petitioner when Petitioner asked Respondent to stop seeing other women.

After Melany was born in June of 2014, Respondent's abuse became more intense and more frequent. Respondent would become violent with Petitioner two to three times a week. Respondent habitually hit Petitioner on parts of her body that were covered by clothing so that when Petitioner went outside the bruises left by the beatings would not be visible. Respondent became particularly violent on the night of February 14, 2016. This incident is particularly memorable to Petitioner because it occurred on St. Valentine's Day and vendors were selling holiday food in the town square. After Petitioner finished work she took Melany to the town square to eat and enjoy themselves. When Petitioner and Melany arrived home Respondent, who was angry that Petitioner was out of the house and did not come directly home from work, became particularly hostile and violent. Respondent repeatedly hit Petitioner in front of Melany, who was crying while watching the abuse.

Petitioner tried to end her relationship with Respondent in January 2015, six months after Melany was born. Petitioner moved herself and Melany out of the house they shared with Respondent. However, Respondent continued to stalk and threaten Petitioner. On one notable occasion, Petitioner was sitting on the front steps of her home with Melany when Respondent drove up in a car and told Petitioner to "enjoy [her] last days with [her] daughter" and that soon her "smile would turn into tears" and there was "nobody to defend [her]." Petitioner found it particularly difficult to protect herself and Melany from Respondent because Respondent works as a mechanic and has access to many different types of cars. Respondent purposely drove a different car when he came to wait outside for Petitioner to emerge from her home and/or office so that Respondent could stalk and intimidate Petitioner and Melany without drawing attention.

Petitioner took Respondent's threats extremely seriously because Petitioner knew Respondent was involved in local gangs. The "Numero Dieciocho" and "MS-13" gangs are particularly active in Chalatenango. Petitioner did not ask questions about Respondent's gang affiliations, given that it is dangerous in El Salvador to know such information. Nevertheless, Petitioner saw Respondent associate and socialize with community members with known gang affiliations on numerous occasions.

As a consequence of Respondent's violent and abusive behavior, threats, probable gang affiliations, Petitioner is extremely fearful of returning to El Salvador. Petitioner is certain that, if Melany and Petitioner were to return to El Salvador, Respondent would find them both and follow through on his threats to take Melany from Petitioner and physically harm Petitioner.

In addition to Respondent's violence, threats, and abuse towards Petitioner and Melany, and his likely gang affiliations, Respondent also used the local courts to try to take Melany away from Petitioner. Respondent filed a petition for custody of Melany with the Family Court in Chalatenango, and falsely accused Petitioner of being

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<sup>1</sup> Petitioner also plans to submit a Motion Requesting Findings Establishing Minor Child's Eligibility for Special Immigrant Juvenile Status in conjunction with her Petition for Allocation of Parental Responsibilities, which such motion will ask the Court to enter certain special findings of fact necessary to establish that Melany is eligible to receive Special Immigrant Juvenile Status pursuant to 8 C.F.R. § 204.11(d)(2) and 8 U.S.C. § 1101(a)(27)(J).

emotionally unstable and an alcoholic. Petitioner did not have the financial resources to hire a lawyer to defend herself in court. Petitioner attended an initial hearing where the case was remanded for more factual findings. However, doubting the integrity of the El Salvadorian justice system and in continued fear of Elmer, Juana fled El Salvador with Melany before the case was fully adjudicated.

## **II. Procedural Background**

Petitioner is requesting that the court allocate to Petitioner full custody of Melany and parenting time, and decision-making authority and responsibilities. Petitioner also intends to petition the United States Citizenship and Immigration Services (“USCIS”) for Special Immigrant Juvenile Status (“SIJS”), on Melany’s behalf as will be described in Petitioner’s Motion Requesting Additional Findings Establishing Minor Child’s Eligibility for Special Immigrant Juvenile Status.

As discussed below, Petitioner respectfully requests that the court grant Petitioner full custody and parenting time, and decision-making authority and responsibilities because, among other reasons, it is in Melany’s best interests to remain in the United States with Petitioner, rather than return to El Salvador to live, and be cared for by, Respondent.

## **III. Jurisdiction**

First and foremost, the court has jurisdiction to allocate parental responsibilities.

In Colorado, district courts have jurisdiction to allocate parental responsibilities. See C.R.S. § 14-10-123(1). Custody determinations, which provide for legal or physical custody of a child, are part of such allocations of parental responsibilities. See also C.R.S. 14-13-102(3) and (4) (defining “child-custody determination” and “child-custody proceeding”). Under the Uniform Child-Custody Jurisdiction and Enforcement Act (“UCCJEA”), as adopted by Colorado’s General Assembly, a Colorado district court has jurisdiction to make an initial child-custody determination if Colorado is the home state of the child on the date of commencement of the proceeding. C.R.S. § 14-13-201(1)(a). “Home state” means the state in which a child lived with a parent for [approximately six months] immediately before the commencement of a child-custody proceeding.” C.R.S. § 14-13-102(7)(a).

Here, the court has jurisdiction over the allocation of parental responsibilities because it is a district court, which generally has jurisdiction to allocate parental responsibilities, and Colorado is Melany’s home state, given that Melany has lived with Petitioner in Colorado since June 2016, which is more than six months before the commencement of these proceedings.

## **IV. It is not in Melany’s best interests to return to El Salvador to live with Respondent. Rather, it is in Melany’s best interests to remain in the United States with Petitioner, and to give Petitioner full custody and parenting time, and decision-making authority and responsibilities.**

The Colorado General Assembly has declared that, when a court determines matters related to parental responsibility, a child has the right to: (1) have such determinations based upon the best interests of the child; (2) be emotionally, mentally, and physically safe when in the care of either parent; and (3) reside in and visit in homes that are free of domestic violence and child abuse or neglect. C.R.S. § 14-10-123.4. All of these rights are subsumed in, and related to, the best interests of the child standard, which directs a court to “determine the allocation of parental responsibilities, including parenting time and decision-making responsibilities, in accordance with the best interests of the child giving paramount consideration to the child’s safety and the physical, mental, and emotional conditions and needs of the child.” C.R.S. § 14-10-124(1.5).

Here, it is not in Melany’s best interests to return to El Salvador and live with Respondent. Rather, it is in Melany’s best interests to remain in the United States with Petitioner, and to give Petitioner full custody and parenting time, and decision-making authority and responsibilities.

### **A. Domestic Violence**

Under the best interests of the child standard, when a claim of domestic violence has been made to the court, the court shall first consider whether it finds, by a preponderance of the evidence, that a party “has committed an act of domestic violence, has engaged in a pattern of domestic violence, or has a history of domestic violence.” C.R.S. § 14-10-124(4)(a)(II). Domestic violence is defined as “an act of violence or a threatened act of violence

upon a person with whom the actor is or has been involved in an intimate relationship, and may include any act or threatened act against a person...when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.” C.R.S. § 14-10-124(1.3)(a). A finding by the court that a party has committed domestic violence informs and influences the court’s analysis under the best interests of the child standard.

Here, Petitioner’s testimony establishes, by a preponderance of the evidence, that Respondent has committed domestic violence, has engaged in a pattern of domestic violence, and has a history of domestic violence. Respondent and Petitioner were engaged in an intimate relationship because they were an unmarried couple and are both parents of the same child. See C.R.S. § 14-10-124(1.3)(b) (defining an intimate relationship as “a relationship between...unmarried couples, or persons who are both parents of the same child...”). Respondent hitting Petitioner constitutes an act of violence, and Respondent’s threats for Petitioner to “enjoy [her] last days with [Melany],” that soon her “smile would turn to tears,” and warning that there is “nobody to defend [her],” constitute threatened acts of violence. Such threats were also used by Respondent as a method of coercion, control, punishment, intimidation, and revenge against Petitioner, given that the threats were part of a pattern of abuse that was often inflicted after Petitioner disobeyed Respondent or asserted her own independence, such as refusing to drink or engage in sex while pregnant, attending the holiday market after work with Melany instead of coming straight home, and moving out of the house she shared with Respondent.

Therefore, Petitioner has proved by a preponderance of the evidence that Respondent has committed domestic violence. This finding should inform and influence the court’s analysis of the best interests of the child standard.

#### B. Parenting Time

The first parental responsibility the court must allocate is parenting time. In determining the best interests of the child for purposes of parenting time, the court shall consider all relevant factors including, but not limited to: (1) the wishes of the child’s parents; (2) the interaction and interrelationship of the child with her parents; (3) the child’s adjustment to her home, school, and community; (4) the mental and physical health of all individuals involved; (5) the ability of the parties to encourage the sharing of love, affection, and contact between the child and the other party; except that, if the court determines that a party is acting to protect the child from witnessing domestic violence or from being a victim of domestic violence, the party’s protective actions shall not be considered with respect to this factor; (6) the physical proximity of the parties to each other as this relates to the practical considerations of parenting time; and (7) the ability of each party to place the needs of the child ahead of his or her own needs. C.R.S. § 14-10-124(1.5)(a). While the court is not to consider conduct of a party that does not affect that party’s relationship to the child, see C.R.S. § 14-10-124(2), “evidence of abuse,” even if such abuse is not directed solely at the child, “is probative of the overall home environment and the interaction of the parties with their children, issues that lie at the core of any parental responsibility or parenting time proceeding,” In re Marriage of McCaulley-Elfert, 70 P.3d 590, 592 (Colo. App. 2003). Therefore, the court must consider the aforementioned factors “in light of any finding of...domestic violence,” and “shall consider, as the primary concern, the safety and well-being of the child and the abused party.” C.R.S. § 14-10-124(4)(b) and (d). Further, “[i]f a party is absent or leaves home because of an act or threatened act of domestic violence committed by the other party, such absence or leaving shall not be a factor in determining the best interests of the child.” C.R.S. § 14-10-124(4)(c).

Here, these factors weigh heavily in favor of granting Petitioner full custody and parenting time. Respondent’s violent, abusive, and threatening behavior indicate that the safety and well-being of Melany and Petitioner would be severely compromised if Melany and Petitioner were compelled to interact with Respondent on a regular basis. Such behavior also indicates that Respondent may be unable to maintain a healthy relationship with Petitioner and Melany in the future.

Respondent’s abuse and violence, while generally directed at Petitioner and not Melany, indicate that Respondent is unwilling and unable to place the needs of Melany ahead of his own desire to exert absolute control over Petitioner. Such behavior is probative of the unstable, dangerous, violent, and abusive home environment Melany would face if Petitioner were denied full custody of Melany and parenting time. Respondent’s abuse of Petitioner in front of Melany, which greatly upset Melany and caused her to cry, also indicates that Respondent has no regard for his child’s well-being and is likely to become violent towards Melany in the future. Petitioner attempted to build a loving family with Respondent and cultivate a relationship between Respondent and Melany. Respondent’s abusive and violent behavior compelled Petitioner and Melany to flee to the United States. These

facts indicate that Respondent is unwilling and unable to encourage love, affection, and contact between and among Melany and her parents.

Petitioner has dedicated herself to providing the best life possible for Melany. Accordingly, she wishes for Melany to remain in her care. Melany and Petitioner share a close, bond, tested and strengthened by the adversity they have faced together. Petitioner is a hard-working, caring, and dedicated mother, with a strong and supportive network of friends in Longmont. Melany has adjusted very well to her new home with Petitioner in the United States, and expects to start kindergarten in the next year. Furthermore, Petitioner and Respondent live in different countries and regions of the world and, therefore, it is impractical to expect Petitioner and Respondent to share parenting time.

Considering the foregoing, it is in Melany's best interests to remain in the United States with Petitioner, and to give Petitioner full custody and parenting time.

### C. Decision-Making Authority & Responsibilities

The second parental responsibility the court must allocate is decision-making authority and responsibilities. In determining the best interests of the child for purposes of allocating decision-making responsibilities, the court shall consider, in addition to the factors discussed above in relation to parenting time, all relevant factors including, but not limited to: (1) credible evidence of the ability of the parties to cooperate and to make decisions jointly; (2) whether the past pattern of involvement of the parties with the child reflects a system of values, time commitment, and mutual support that would indicate an ability as mutual decision makers to provide a positive and nourishing relationship with the child; and (3) whether an allocation of mutual decision-making responsibility on any one or a number of issues will promote more frequent or continuing contact between the child and each of the parties. C.R.S. § 14-10-124(1.5)(b). Further, "if the court finds by a preponderance of the evidence that one of the parties has committed domestic violence[,] [i]t shall not be in the best interests of the child to allocate mutual decision-making responsibility over the objection of the other party [ ], unless the court finds that there is credible evidence of the ability of the parties to make decisions cooperatively in the best interest of the child in a manner that is safe for the abused party and the child." C.R.S. § 14-10-124(4)(a)(II)(A).

Here, the factors discussed above in relation to parenting time also indicate that Petitioner should be allocated decision-making authority and responsibilities. First, Respondent's abusive and violent behavior, which greatly upset Melany, indicates a lack of rational judgment and concern for Melany's well-being, which are characteristics relevant to making decisions that will impact a child's well-being. Second, Respondent's behavior indicates that his irrational and violent obsession with stalking, controlling, and abusing Petitioner would likely influence his decision-making with respect to Melany. For example, Respondent's false accusations regarding Petitioner's fitness as a mother and threats to take Melany away from Petitioner indicate that Respondent has a desire to alienate Melany from Petitioner using any means necessary, regardless of whether such alienation is in the best interests of Melany. Third, Respondent is living in El Salvador and therefore has little involvement in Melany's day-to-day life, nor does he possess knowledge of what decisions will benefit Melany while she grows up in the United States. Fourth, Respondent's past behavior indicates that he is unable and unwilling to cooperate with Petitioner and is wholly disinterested in nourishing a positive relationship with Melany and Petitioner. Finally, allocating decision-making responsibility to Respondent would provide Respondent an opportunity to damage Melany's relationship with Petitioner and create distance between Melany and her mother which, considering Respondent's threats to take Melany away from Petitioner is exactly what Respondent would like an opportunity to accomplish.

Therefore, considering Respondent's domestic violence, and the lack of credible evidence of the ability of Respondent to make decisions cooperatively with Petitioner in the best interests of Melany and in a manner that is safe for Petitioner and Melany, it is not in Melany's best interests to allocate mutual decision-making responsibility over the objection of Petitioner. Consequently, it is not in Melany's best interests to return to El Salvador, her country of origin, and live with Respondent. Rather, it is in Melany's best interests to remain in the United States with Petitioner, and to give Petitioner full custody and parenting time, and decision-making authority and responsibilities.