

*Rodriguez v. Yanez*

The nightly news and incessant political rhetoric bring us stories, issues and disputes over U.S.-Mexico border crossings. Here is a Hague Convention child abduction case from the Eastern District of Texas, Fifth Circuit, involving a cross-border child custody dispute.

Parents and child live in Mexico. Mother brings 11 year old girl across the border to Texas using six-month entry cards, but remains there after the six-month mark. Father initiates a Hague Convention case in the U.S. District Court in Texas seeking return of the child to Mexico. A Guardian *ad Litem* was appointed for the child. The wrongful removal and the fact that Mexico was the habitual residence of the child were established by Father. The only disputes in the case were sufficient proof by mother of two affirmative defenses: (1) That father was not exercising custody rights at the time of removal or retention, and (2) that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of the child's views.

The District Court denied father's petition on the ground that he was not "exercising" his custody rights at the time of removal. This was reversed, as the Fifth Circuit opinion explained that "exercise" of custody rights is to be interpreted broadly and, upon *de novo* review, found that father was doing so at the time of removal. The District Court also denied father's petition based on the child's *in camera* objections to being returned to Mexico. The opinion contains a lengthy analysis of the age and maturity exception, its pros and cons and nuances, and finds that even with the *in camera* interview, the child's expressions are not a matter of "magic words or talismanic language." That portion of the lower court's order was vacated and the case remanded for the District Court to engage in a new colloquy with the child in accordance with the guidelines of the Fifth Circuit opinion and enter more detailed findings regarding its eventual conclusion.

Here is the majesty of an independent judiciary at work. Not political rhetoric. No building of walls. No asylum sanctuary. No automatic deportation. No railing against foreigners crossing our border. Just a well-crafted judicial opinion balancing rights in a difficult situation. Chalk one up for the goodness of our system of justice.

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