

# Commentary: Appellate Court Cases

**Sanchez v. R.G.L., 761 F.3d 495 (5th Cir. 2014)**

## Other Fifth Circuit Cases

**Berezowsky v. Ojeda,**  
765 F.3d 456 (5th Cir. 2014)

**Salazar v. Maimon,**  
750 F.3d 514 (5th Cir. 2014)

**Larbie v. Larbie,**  
690 F.3d 295 (5th Cir. 2012)

**Sealed Appellant v. Sealed Appellee,**  
394 F.3d 338 (5th Cir. 2004)

**England v. England,**  
234 F.3d 268 (5th Cir. 2000)

## Unaccompanied Alien Children | Standing to Appeal

### Facts

This case involves three Mexican children who lived all of their lives in Mexico. In June 2012, the children's aunt and uncle wrongfully removed the children from their home, in Ciudad Juarez, Chihuahua, across the border into El Paso, Texas. At the time of their removal, the children lived with their mother and her boyfriend. After repeated requests for the children's return, the children's aunt took them to the border in El Paso. As the children were walking on the Bridge of the Americas, they turned them-

selves in to officials of the Department of Homeland Security and requested to remain in the United States because of their fear that their mother's boyfriend was a gang member involved in drug abuse, trafficking, and child abuse. The children were ultimately transferred to the Office of Refugee Resettlement (ORR), which in turn placed the children with Baptist Children's Services, which in turn transferred the children to a foster home in San Antonio. Because of their status as "unaccompanied alien children" the children were appointed counsel. Their attorney applied for relief from removal including a request for asylum.

Mother filed a petition for return of the children pursuant to the 1980 Hague Convention, naming the children's aunt and uncle and Baptist Children's Services as respondents, but not naming ORR. At the trial, the children's aunt and uncle did not participate, and Baptist Children's Services took no position whether the children should be returned, but argued that ORR was the proper party-respondent. The children's asylum attorney participated, and requested that the court allow the children to intervene or be represented by a guardian ad litem. In response to the district court's inquiries to ORR, ORR took no position on the court's jurisdiction under the circumstances, or whether the children would be subject to a grave risk if returned to Mexico. ORR requested the court to hold the case in abeyance pending the outcome of the children's request for asylum.

The district court granted the petition for return, denying the children's request for a guardian ad litem or intervention on their own behalf, but the court stayed the order of return pending appeal. Subsequently, the children's request for asylum was granted pursuant to 8 U.S.C. § 1158.

On an interim appeal, the Fifth Circuit ruled that the U.S. government should be joined pursuant to FRCP Rule 19. In its final opinion, the circuit court vacated the district court's return order and remanded the case for further proceedings.

## Discussion

**Standing.** The Fifth Circuit determined that the children had standing to appeal, based upon the test enunciated in *SEC v. Forex Asset Mgmt. LLC*, where the court asked (1) “whether the non-party actually participated in the proceedings below”; (2) whether “the equities weigh in favor of hearing the appeal”; and (3) whether “the non-party has a personal stake in the outcome.”<sup>1</sup> The court noted that aside from the children's immigration attorney, no person or organization responded meaningfully to mother's petition in order to advance defenses that could defeat the petition for return, noting that the case itself placed the children's well-being at stake.<sup>2</sup>

**Jurisdiction and Proper Party-Defendants.** The children challenged the jurisdiction of the court to entertain a return application because no proper party-respondent had been named. They argued that ORR was the only legal entity with guardianship powers over the children. The court disagreed, finding that identification of and service upon the director of Baptist Children's Services was sufficient to make the director a proper party-respondent. Moreover, the failure to name the government did not create a jurisdictional defect, because the director of Baptist Children's Services was in a position to oversee the return of the children if ordered, and the court's return order had the potential to redress the claimed injury.

Notwithstanding the foregoing, the Fifth Circuit concluded that joinder of the government was required in this case because (1) it had been the temporary legal guardian of the children, (2) the placement status of the children was uncertain (the court was informed that Catholic Charities may take over placement of the children), and (3) an order directed solely to Baptist Children's Services was potentially unenforceable, all of which made the government's joinder necessary.

**Intervention of the Children on Their Own Behalf.** The court found that the children were entitled to formal legal representation: their fundamental interests were at stake and no respondent made an effort to represent those interests. On remand, the district court was directed to appoint a guardian ad litem. The children were denied status as actual parties to the Hague Convention proceeding. The court reasoned that although the children's asylum rights were relevant to the children's defenses in the Hague Convention proceedings, the existence of those rights did not confer additional rights entitling the children to intervene as parties in those proceedings.<sup>3</sup>

**Effect of Grant of Asylum.** Does the asylum order trump an order of return? The children argued that the grant of asylum should prevail and cannot be superseded by an order of return in the Hague case. The court found to the contrary.

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1. 242 F.3d 325, 329 (5th Cir. 2001).

2. *Id.* at 502–503.

3. *Id.* at 508.

The children were granted asylum pursuant to 8 U.S.C. §§ 1158, 1229a, and 1232. Asylum under those statutes is based upon a “well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” A grant on this basis is binding upon the Attorney General and the Secretary of Homeland Security, but there is no authority to suggest that such a grant prohibits the return of children by a court order.

The Fifth Circuit did, however, determine that the grant of asylum was relevant to the question whether any of the Convention defenses applied, given the overlap between the grounds for asylum and Article 13(b)’s “grave risk” and Article 20’s “human rights” exceptions.

The case was remanded to the district court to consider the evidence from the asylum proceedings before determining whether to enforce the previously issued order for return of the children.