

# Commentary: Appellate Court Cases

**Margain v. Ruiz-Bours, 592 F. App'x 619 (9th Cir. 2015) (unpublished opinion)**

## Other Ninth Circuit Cases

***In re A.L.C.*,**

607 Fed. App'x 658 (9th Cir. 2015)

***E.R.S.C. v. Carlwig (in re A.L.C.)*,**

607 Fed. App'x 658 (9th Cir. 2015)

***Murphy v. Sloan*,**

764 F.3d 1144 (9th Cir. 2014)

***Valenzuela v. Michel*,**

736 F.3d 1173 (9th Cir. 2013)

***Cuellar v. Joyce (Cuellar II)*,**

603 F.3d 1142 (9th Cir. 2010)

***Cuellar v. Joyce (Cuellar I)*,**

596 F.3d 505 (9th Cir. 2010)

***Asvesta v. Petroutsas*,**

580 F.3d 1000 (9th Cir. 2009)

***In re B. Del C.S.B.*,**

559 F.3d 999 (9th Cir. 2009)

***Papakosmas v. Papakosmas*,**

483 F.3d 617 (9th Cir. 2007)

***Von Kennel Gaudin v. Remis (Gaudin III)*,**

415 F.3d 1028 (9th Cir. 2005)

***Holder v. Holder (Holder II)*,**

392 F.3d 1009 (9th Cir. 2004)

***Von Kennel Gaudin v. Remis (Gaudin II)*,**

379 F.3d 631 (9th Cir. 2004)

***Holder v. Holder (Holder I)*,**

305 F.3d 854 (9th Cir. 2002)

***Von Kennel Gaudin v. Remis (Gaudin I)*,**

282 F.3d 1178 (9th Cir. 2002)

***Gonzalez-Caballero v. Mena*,**

251 F.3d 789 (9th Cir. 2001)

***Mozes v. Mozes*,**

239 F.3d 1067 (9th Cir. 2001)

***Shalit v. Coppe*,**

182 F.3d 1124 (9th Cir. 1999)

## Acclimatization and Settlement | Equitable Tolling

This case deals with the 1980 Hague Convention's Article 12 defense: if the child has become settled in his or her new environment and the petition for return of the child is filed more than one year from the date of the wrongful removal or retention, the court may deny the return of the child.

### Facts

The district court found that the petition for return of a five-year-old child was filed more than one year after the child had been removed from Mexico to the United States. The district court also found that father was not diligent in locating the child in Tucson, Arizona. Mother's psychological expert testified that the child had a normal emotional status, was well acclimated to her home and community, had friends with whom she was "very involved," and liked her teacher.

### Discussion

When the case came before the Ninth Circuit, father attempted to assert the principle of equitable tolling of the Article 12 one-year period, asserting that mother actively concealed the child's removal from Mexico. The court summarily rejected this argument based on the Supreme Court's holding in *Lozano v. Montoya Alvarez*<sup>1</sup> that the equitable defense of tolling is not available in cases that fall under the 1980 Hague Convention.

The Ninth Circuit also found there was sufficient evidence to support the district court's determination that the child was now settled in her new environment.

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1. 134 S. Ct. 1224 (2014).