

12-820 LOZANO V. ALVAREZ

DECISION BELOW: 697 F.3d 41

LOWER COURT CASE NUMBER: 11-2224

QUESTION PRESENTED:

The primary purpose of The Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention" or the "Convention") is to protect children from international abduction by returning an abducted child to the nation of habitual residence for adjudication of custody rights under that nation's laws. To further that purpose, Article 12 of the Convention mandates that an abducted child *must* be returned if the left-behind parent's petition for the child's return is filed within one year of the abduction. In doing so, the Convention deters international child abductions by removing the benefit an abducting parent would otherwise obtain or perceive under the laws of the nation to which he or she has abducted the child. If the left-behind parent is unable, or otherwise fails, to determine the situs of the child and meet this one-year filing deadline, the court must still order the return of the child unless the abducting parent demonstrates one of four affirmative defenses, including that the child is "settled" in her new environment.

The circuit courts of appeal are split over whether equitable tolling may apply to the one-year period. While the Fifth, Ninth, and Eleventh Circuits all hold the one-year period may be equitably tolled, the Second Circuit held in this case that the one-year period is not subject to equitable tolling and the settled defense is still available even where, as here, the abducting parent conceals the location of the child. The Second Circuit also held the fact that the child and abducting parent lack legal immigration status is not dispositive on the issue of whether a child is settled under Article 12, but, rather, is merely one of several factors to consider. The questions presented are:

1. Whether a district court considering a petition under the Hague Convention for the return of an abducted child may equitably toll the running of the one-year filing period when the abducting parent has concealed the whereabouts of the child from the left-behind parent.

2. Whether an abducted child can be "settled" in the United States, within the meaning of Article 12, where it is undisputed that both the abducting parent and the child are residing illegally in the United States, and the abducting parent presents no evidence of a legitimate pending application or basis under existing law for seeking a change in their immigration status.

LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 6/24/2013