

In a Trial Victory, Winston Secures Return of Child & Sets Precedent Under the Hague Convention in International Abduction Case

SEPTEMBER 4, 2020

On August 26, 2020, Winston & Strawn won a petition for the return of our client's child whose only daughter was wrongfully removed from her home in Venezuela and brought to the United States. The cross-office Winston team was comprised of Associates M. Imad Khan, Yarden Kakon, and former Associate Rachel Busch. Invaluable support and assistance were provided to the team by Foreign Legal Advisor Rodolfo Herrera-Moro, Paralegals Kimberly Lewis and Nita Moore, as well as Sabrina Sotelo, Kayla Lowery, and Maureen Courtney.

In July 2018, the child's mother abducted her from Venezuela and brought her to Houston, Texas, at which time she refused to return with the child as ordered by the Venezuelan courts. Winston's client, Mr. Adrian Rodriguez Zaoral, filed an international application pursuant to the Hague Convention for the return of his daughter with the Venezuelan Central Authority. Winston became involved with this case when it was referred to us by the United States Department of State, responsible for the Hague Convention's implementation in the United States.

In May 2020, Winston filed this case with the Southern District of Texas and, within a day, secured a temporary restraining order barring the respondent and child from fleeing the jurisdiction, ordering respondent to turn over their passports to the Court, and allowing Mr. Zaoral access to his daughter so that he could speak with her without any impediments for the first time in over a year and a half. Winston also succeeded in obtaining a preliminary injunction mandating that the terms of the temporary restraining order would continue until a decision on the merits was made.

Judge Sim Lake found for Winston's client on every issue presented to the Court, and ordered the immediate return of the child to her father. Due to COVID-19 travel restrictions, Winston is working with the United States Department of State, the Venezuelan Ministry of Foreign Affairs, and the Venezuelan Embassy and Consulate in Washington, D.C. and Houston, respectively, to repatriate and ensure the safe return of the child to her father in Venezuela.

"For me, it has been an honor to be represented by you," said Mr. Zaoral. "I know the arduous effort and the hours of dedication that you have given to my case, I value that very much. There is no money, no thanks or words that pay for the excellent work you have done. I want to congratulate you from the depths of my being and my heart, simply [THANK YOU], and be assured that you have literally saved my daughter's future."

Precedents Under the Hague Convention

Winston made a precedential argument relating to the key well-settled defense under the Hague Convention, which would have permitted the child's mother to keep her in Houston on the basis that the child had already settled in the

United States. This defense becomes applicable only after one year has elapsed from the child's wrongful removal. Winston argued that the well-settled defense does not apply because Mr. Zaoral timely filed his Hague Convention application with the U.S. Central Authority.

Applying principles of international law as implemented in U.S. law, Winston explained that the Hague Convention provides an option to an applicant to file either with a judicial authority or an administrative authority, and furthermore that although the term "administrative authority" is not defined in the Convention, its ordinary meaning in the context of the Convention refers to central authorities responsible for implementing the Convention. Therefore, Mr. Zaoral's application with the United States Department of State stopped the one-year clock so as to prevent the application of the well-settled defense. Judge Lake adopted Winston's argument and found that the well-settled defense was not available in this case.

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