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[Child Removed From Country Without Parent's Consent May Be Ordered Returned](#)

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The United States Supreme Court ruled that an order prohibiting the removal of a child from a country without the non-custodial parent's consent is enforceable under an international child abduction treaty,

In [Abbott v. Abbott](#), the father and the mother divorced in Chile. The Chilean court granted the mother custody of their son while allowing the father only visitation rights. At the mother's request, the Chilean court issued a *ne exeat* order prohibiting either parent from removing the child from Chile without the agreement of both parents. Unable to find work in Chile, and without the father's consent, the mother left Chile with their son and returned to the United States. The father found the mother and child in Texas and moved to enforce the *ne exeat* order.

Justice Anthony Kennedy, writing for the majority, said the *ne exeat* clause in a Chilean court order conferred a "right of custody" on the noncustodial father within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction. Since the clause conferred a right of custody, wrote Kennedy, the father may seek to enforce the treaty's remedy — a petition to return the child, in this case to Chile.

In reaching its decision, the Court emphasized that the father's *ne exeat* right conferred upon him shared authority to "determine the child's place of residence," which falls within the scope of a parent's "right of custody" under the Convention. Accordingly, the father's *ne exeat* right was enforceable pursuant to Hague Convention procedures.

As pointed out in the [SCOTUSblog](#), the underlying policy for the Court's decision, enforcing the return remedy is that the return remedy serves the Convention's end of ensuring that

THE LAW OFFICES OF DANIEL E. CLEMENT
420 LEXINGTON AVENUE, SUITE 2320
NEW YORK, NEW YORK 10170
(212) 683-9551
DCLEMENT@CLEMENTLAW.COM

custody disputes are resolved in the courts of a child's habitual residence. A contrary ruling might actually encourage child abduction for the purposes of forum shopping.

The Court did not order the return of the child and remanded the case for further consideration. In doing so, the Court noted that there are treaty exceptions to the return remedy. For example, one exception to return arises where there is a grave risk of physical or psychological harm to the child; another involves the child's age and maturity to object to return.