

# Commentary: Appellate Court Cases

## Avendano v. Balza, 985 F.3d 8 (1st Cir. 2021)

### Other First Circuit Cases

**Da Silva v. De Aredes**,  
953 F.3d 67 (1st Cir. 2020)

**Mendez v. May**,  
778 F.3d 337 (1st Cir. 2015)

**Mauvais v. Herisse**,  
772 F.3d 6 (1st Cir. 2014)

**Sánchez-Londoño v. González**,  
752 F.3d 533 (1st Cir. 2014)

**Neergaard-Colon v. Neergaard**,  
752 F.3d 526 (1st Cir. 2014)

**Darin v. Olivero-Huffman**,  
746 F.3d 1 (1st Cir. 2014)

**Yaman v. Yaman**,  
730 F.3d 1 (1st Cir. 2013)

**Patrick v. Rivera-Lopez**,  
708 F.3d 15 (1st Cir. 2013)

**Felder v. Wetzel**,  
696 F.3d 92 (1st Cir. 2012)

**Charalambous v. Charalambous**,  
627 F.3d 462 (1st Cir. 2010)

**Nicolson v. Pappalardo**,  
605 F.3d 100 (1st Cir. 2010)

**Kufner v. Kufner**,  
519 F.3d 33 (1st Cir. 2008)

**Rigby v. Damant**,  
486 F.3d 692 (1st Cir. 2007)

**Danaipour v. McLarey (Danaipour II)**,  
386 F.3d 289 (1st Cir. 2004)

**Whallon v. Lynn**,  
356 F.3d 138 (1st Cir. 2004)

**Danaipour v. McLarey (Danaipour I)**,  
286 F.3d 1 (1st Cir. 2002)

### Child's Objection to Return

In this case, the First Circuit reviewed whether a mature child's objection to return was sufficient for the district court to deny the mother's request for his return to Venezuela.

### Holding

The First Circuit ruled that the district court did not err in finding that the child was of a sufficient age and maturity to justify sustaining his objection to return.

### Facts<sup>1</sup>

The parents had joint custody of their son under a Venezuelan court order, but the father had to obtain an order from a Venezuelan court to enforce the child's visits in 2016 and 2018. While the child was with his father in Massachusetts for his annual visit in 2018, the boy became a U.S. citizen. As a result, he had to forfeit his green card and obtain a U.S. passport to travel internationally. The mother insisted that the child could get a passport at the U.S. embassy in Caracas.<sup>2</sup> When the time came for the child to return to Venezuela, he told his mother that he wished to stay in the United States. Because of the passport problems, if the child returned to Venezuela, he may not be able to come back to the United States. The father refused to send the child back without a passport to reenter the United States. The mother petitioned for the child's return.

The father raised a defense based on the child's objection to return under Article 13. At trial, the court took testimony from the mother's witnesses, the child's guardian ad litem, and a psychologist.

1. The facts are supplemented with those taken from the district court's decision in *Avendano v. Balza*, 442 F. Supp. 3d 417 (D. Mass. 2020).

2. The U.S. embassy in Caracas has since closed.

**Other First Circuit Cases (cont'd.)**

**Walsh v. Walsh,**  
221 F.3d 204 (1st Cir. 2000)

**Toren v. Toren,**  
191 F.3d 23 (1st Cir. 1999)

**Zuker v. Andrews,**  
181 F.3d 81 (1st Cir. 1999)

The district court also interviewed the child in the offices of the guardian ad litem. An expert testified at trial that Venezuela was “a failed state in the midst of a humanitarian crisis, including a corrupt government, a food shortage, an ineffective judicial system, the failure of public utilities, and a high rate of violence.”<sup>3</sup>

The district court noted that the Department of State issued a Level 4 travel advisory warning against travel to Venezuela<sup>4</sup> and in a recent separate case,<sup>5</sup> the First Circuit found that conditions in Venezuela were problematic enough to support an asylum claim.

The district court noted that a child’s desire not to return to his habitual residence is insufficient reason alone to refuse return. But in this case, the court found that the child was mature and his objections were based on a “realistic understanding” of the socio-economic and political conditions in Venezuela.<sup>6</sup> The district court denied the mother’s application for return.<sup>7</sup>

## Discussion

Affirming the district court decision, the First Circuit rejected the mother’s argument that the maturity of the child should be determined based on the maturity of the child at the time he was initially retained in the United States. The First Circuit deferred to the trial court’s findings regarding the child’s maturity as well as its finding that the child was not unduly influenced by the father.

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3. *Avendano*, 442 F. Supp. 3d at 426. *But see* *Ajami v. Solano*, No. 3:19-cv-00161, 2020 U.S. Dist. LEXIS 34927, at \*65 (M.D. Tenn. Feb. 28, 2020) (court found no grave risk or intolerable situation created either by Venezuela’s court system or the general living conditions and ordered children returned).

4. *Avendano*, 442 F. Supp. 3d at 427.

5. *Id.* at 431 (citing *Cabas v. Barr*, 928 F.3d 177, 182 (1st Cir. 2019)).

6. *Id.* at 430.

7. The mother appealed to the First Circuit on March 9, 2020.