

**FILED**

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U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**COLLEEN SILVERMAN,**

Petitioner-Appellee,

v.

**RICHARD SILVERMAN,**

Respondent-Appellant,

**and**

**NICHOLAS SILVERMAN, by and  
through his guardian ad litem, Maria  
Silverman; JON SILVERMAN, by and  
through his guardian ad litem, Maria  
Silverman,**

Real-party-in-interest-  
Appellants.

No. 16-55221

D.C. No.

3:15-cv-02108-AJB-BLM

**MEMORANDUM\***

Appeal from the United States District Court  
for the Southern District of California  
Anthony J. Battaglia, District Judge, Presiding

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Submitted November 17, 2017\*\*  
Pasadena, California

Before: **KOZINSKI and IKUTA**, Circuit Judges, **and GETTLEMAN**,<sup>\*\*\*</sup>  
District Judge.

Respondents “cannot, merely by injecting a federal question into an action that asserts what is plainly a state-law claim, transform the action into one arising under federal law.” Caterpillar Inc. v. Williams, 482 U.S. 386, 399 (1987).

Respondents justified their removal from state to federal court by claiming that the Hague Convention on the Civil Aspects of International Child Abduction applies.

But “[t]he Convention shall cease to apply when the child attains the age of 16 years.” Hague Convention on the Civil Aspects of International Child Abduction art. 4, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89. Because Jon was 16 at the time of removal, respondents lacked an objectively reasonable basis for removal. Respondents’ argument that the Hague Convention establishes the rule that minors older than 15 may not be returned to a foreign country is meritless.

And their further argument that this alleged rule preempts state law does not give rise to federal question jurisdiction, because it is merely a defense to state law

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\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Robert W. Gettleman, United States District Judge for the Northern District of Illinois, sitting by designation.

claims. See Opera Plaza Residential Parcel Homeowners Ass'n v. Hoang, 376 F.3d 831, 839 (9th Cir. 2004). The district court didn't abuse its discretion in granting petitioner's request for attorney's fees under 28 U.S.C. § 1447(c). See Martin v. Franklin Capital Corp., 546 U.S. 132, 136 (2005).

**AFFIRMED.**