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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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ABBOTT *v.* ABBOTT

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 08–645. Argued January 12, 2010—Decided May 17, 2010

After the Abbotts, a married couple, moved to Chile and separated, the Chilean courts granted respondent wife daily care and control of their minor son, A. J. A., while awarding petitioner husband visitation rights. Mr. Abbott also had a *ne exeat* right to consent before Ms. Abbott could take A. J. A. out of the country under Chile Minors Law 16,618 (Minors Law 16,618), art. 49. When Ms. Abbott brought A. J. A. to Texas without permission from Mr. Abbott or the Chilean family court, Mr. Abbott filed this suit in the Federal District Court, seeking an order requiring his son's return to Chile under the Hague Convention on the Civil Aspects of International Child Abduction (Convention) and the implementing statute, the International Child Abduction Remedies Act (ICARA), 42 U. S. C. §11601 *et seq*. Among its provisions, the Convention seeks "to secure the prompt return of children wrongfully removed or retained in any Contracting State," Art. 1; provides that such "removal or retention . . . is to be considered wrongful where" "it is in breach of rights of custody attributed to a person . . . under the law of the State in which the child was [theretofore] habitually resident," Art. 3*(a),* and where "those rights [had been] actually exercised . . . or would have been so exercised but for the removal or retention," Art. 3*(b);* and defines "rights of custody" to "include . . . the right to determine the child's place of residence," Art. 5*(a).* The District Court denied relief, holding that the father's *ne exeat* right did not constitute a "righ[t] of custody" under the Convention and, thus, that the return remedy was not authorized. The Fifth Circuit affirmed.

Held: A parent has a right of custody under the Convention by reason of that parent's *ne exeat* right. Pp. 4–17.

(a) The Convention applies because A. J. A. is under 16; he was a

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habitual resident of Chile; and both Chile and the United States are contracting states. The ICARA instructs the state or federal court in which a petition alleging international child abduction has been filed to "decide the case in accordance with the Convention." §§11603(b), (d). P. 5.

(b) That A. J. A. was wrongfully removed from Chile in violation of a "righ[t] of custody" is shown by the Convention's text, by the U. S. State Department's views, by contracting states' court decisions, and by the Convention's purposes. Pp. 5–18.

(1) Chilean law determines the content of Mr. Abbott's right, while the Convention's text and structure resolve whether that right is a "righ[t] of custody." Minors Law 16,618, art. 49, provides that "[o]nce the court has decreed" that one of the parents has visitation rights, that parent's "authorization" generally "shall also be required" before the child may be taken out of the country. Because Mr. Abbott has direct and regular visitation rights, it follows that he has a *ne exeat* right under article 49. The Convention recognizes that custody rights can be decreed jointly or alone, see Art. 3*(a),* and Mr. Abbott's *ne exeat* right is best classified as a "joint right of custody," which the Convention defines to "include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence," Art. 5*(a).* Mr. Abbott's right to decide A. J. A.'s country of residence allows him to "determine the child's place of residence," especially given the Convention's purpose to prevent wrongful removal across international borders. It also gives him "rights relating to the care of the person of the child," in that choosing A. J. A.'s residence country can determine the shape of his early and adolescent years and his language, identity, and culture and traditions. That a *ne exeat* right does not fit within traditional physical-custody notions is beside the point because the Convention's definition of "rights of custody" controls. This uniform, text-based approach ensures international consistency in interpreting the Convention, foreclosing courts from relying on local usage to undermine recognition of custodial arrangements in other countries and under other legal traditions. In any case, this country has adopted modern conceptions of custody *e.g.,* joint legal custody, that accord with the Convention's broad definition. Ms. Abbott mistakenly claims that a *ne exeat* right cannot qualify as a right of custody because the Convention requires that any such right be capable of "exercis[e]." When one parent removes a child without seeking the *ne exeat* holder's consent, it is an instance where the right would have been "exercised but for the removal or retention," Art. 3*(b).* The Fifth Circuit's conclusion that a breach of a *ne exeat* right does not give rise to a return remedy would render the Convention meaningless in many cases where it is

most needed. Any suggestion that a *ne exeat* right is a right of access is atexual, as a *ne exeat* right is not even arguably a "right to take a child for a limited period of time." Art. 5*(b).* Ms. Abbott's argument that the *ne exeat* order in this case cannot create a right of custody is not dispositive because Mr. Abbott asserts rights under Minors Law 16,618, which do not derive from the order. Pp. 6–11.

(2) This Court's conclusion is strongly supported and informed by the longstanding view of the State Department's Office of Children's Issues, this country's Convention enforcement entity, that *ne exeat* rights are rights of custody. The Court owes deference to the Executive Branch's treaty interpretations. See *Sumitomo Shoji America, Inc.* v. *Avagliano*, 457 U. S. 176, 185. There is no reason to doubt this well-established canon here. The Executive, when dealing with delicate foreign relations matters like international child abductions, possesses a great store of information on practical realities such as the reactions from treaty partners to a particular treaty interpretation and the impact that interpretation may have on the State Department's ability to reclaim children abducted from this country. Pp. 11–12.

(3) The Court's view is also substantially informed by the views of sister contracting states on the issue, see *El Al Israel Airlines, Ltd.* v. *Tsui Yuan Tseng,* 525 U. S. 155, 176, particularly because the ICARA directs that "uniform international interpretation" of the Convention is part of its framework, see §11601(b)(3)(B). While the Supreme Court of Canada has reached an arguably contrary view, and French courts are divided, a review of the international law confirms that courts and other legal authorities in England, Israel, Austria, South Africa, Germany, Australia, and Scotland have accepted the rule that *ne exeat* rights are rights of custody within the Convention's meaning. Scholars agree that there is an emerging international consensus on the matter. And the Convention's history is fully consistent with the conclusion that *ne exeat* rights are just one of the many ways in which custody of children can be exercised. Pp. 12–16.

(4) The Court's holding also accords with the Convention's objects and purposes. There is no reason to doubt the ability of other contracting states to carry out their duty to make decisions in the best interests of the children. To interpret the Convention to permit an abducting parent to avoid a return remedy, even when the other parent holds a *ne exeat* right, runs counter to the Convention's purpose of deterring child abductions to a country that provides a friendlier forum. Denying such a remedy would legitimize the very action, removal of the child, that the Convention was designed to prevent, while requiring return of the child in cases like this one helps deter abductions and respects the Convention's purpose to prevent harms

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to the child resulting from abductions. Pp. 16–18.

(c) While a parent possessing a *ne exeat* right has a right of custody and may seek a return remedy, return will not automatically be ordered if the abducting parent can establish the applicability of a Convention exception, such as "a grave risk that . . . return would expose the child to . . . harm or [an] otherwise . . . intolerable situation," or the objection to removal by a child who has reached a sufficient "age and degree of maturity" to state a preference, Art. 13*(b)*. The proper interpretation and application of exceptions may be addressed on remand. P. 18.

542 F. 3d 1081, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, GINSBURG, ALITO, and SOTOMAYOR, JJ., joined. STEVENS, J., filed a dissenting opinion, in which THOMAS and BREYER, JJ., joined.