

No. 25-666

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In The  
Supreme Court of the United States

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SAMANTHA ESTEFENIA FRANCISCO CASTRO,

*Petitioner,*

v.

JOSE LEONARDO BRITO GUEVARA,

*Respondent.*

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On Petition for a Writ of Certiorari to the United  
States Court of Appeals for the Fifth Circuit

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**RESPONDENT'S BRIEF IN OPPOSITION**

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## **QUESTION PRESENTED**

The determination of whether a child is well-settled for purposes of the limited exception to the return remedy of the Hague Convention on the Civil Aspects of International Child Abduction is fundamentally a legal question based on underlying findings of fact.

The question presented is:

Is the trial court's decision as to whether a respondent has established the "well-settled" defense properly reviewed *de novo* on appeal?

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## STATEMENT OF THE CASE

The question presented by Petitioner does not warrant this Court's review. Yet even if it did, the fact that this Court's resolution of the question presented would not change the Fifth Circuit Court of Appeals' ruling, along with the irregularities in the underlying proceedings, makes this case the incorrect vehicle for such a question.

### I. Legal Background

The Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 ("Treaty Doc.") is the primary international legal instrument for ensuring the return of a child who has been abducted from her country of habitual residence. The Convention's explicitly stated purpose is "to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence." In the enabling statute for the Hague Convention—the International Child Abduction Remedies Act ("ICARA")—Congress expressly declared in § 9001(a)(1) that "[t]he international abduction or wrongful retention of children is harmful to their well-being." See Pub. L. No. 100-300, 102 Stat. 437 (1988) (codified at 22 U.S.C. §§ 9001-9011). Over one hundred countries, including the United States and Venezuela, are signatories. Hague Conference on Private Int'l Law, Convention of 25 Oct. 1980 on the Civil Aspects of Int'l

Child Abduction, Status Table,  
<https://perma.cc/N65B-Y24Y> (last visited Feb. 17, 2026).

As this Court has articulated, the “Convention’s core premise is that ‘the interests of children . . . in the matters relating to their custody’ are best served when custody decisions are made in the child’s country of “habitual residence.” *Monasky v. Taglieri*, 589 U.S. 68, 72 (2020) (quoting Convention Preamble, Hague Convention on the Civil Aspects of International Child Abduction, Mar. 26, 1986, T. I. A. S. No. 11670, S. Treaty Doc. No. 99–11, at 70; see *Abbott v. Abbott*, 560 U. S. 1, 20 (2010)). Ordering the return of a child to his or her country of habitual residence does not determine the final custody arrangement for the child, but it “does allow the courts of the home country to decide what is in the child’s best interests.” *Abbott*, 560 U.S. at 20. “Judges must strive always to avoid a common tendency to prefer their own society and culture, a tendency that ought not interfere with objective consideration of all the factors that should be weighed in determining the best interests of the child.” *Ibid.* To those ends, the Convention’s “central operating feature” is the return of the child. Art. 1, Treaty Doc.; *Abbott*, 560 U.S. at 9.

Article 12 of the Convention states that “where [] proceedings have been commenced after the expiration of the period of one year . . . [the Court] shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.” Art. 12, Treaty Doc. Neither the Convention nor ICARA defines the term “settled,” but

“[t]he State Department has explained that the term requires ‘nothing less than *substantial evidence* of the child’s *significant connections* to the new country.’” *Hernandez v. Garcia Pena*, 820 F.3d 782, 787 (5th Cir. 2016) (emphasis added) (quoting Hague International Child Abduction Convention; Text and Legal Analysis (State Legal Analysis), 51 Fed. Reg. 10494, 10509 (1986)).

## II. Factual Background

The facts of A.F.’s life in Venezuela were largely undisputed throughout the proceedings below. Jose Leonardo Brito Guevara, Respondent Estefenia Francisco Castro, and Child A.F. are all citizens of Venezuela.<sup>1</sup> Pet. App. 63a-64a. None are citizens of the United States, and neither Respondent nor A.F. have Lawful Permanent Residence in the United States. Pet. App. 18a, 63a-65a. A.F. was born on May 3, 2018, in Yaracuy, Venezuela, and is the biological daughter of Brito and Castro. Pet. App. 2a. Under Venezuelan law, Brito has custody rights over A.F., and at no point has Brito ever formally or informally relinquished his custody rights over A.F. Pet. App. 2a; see also Pet. App. 62a–63a.

In 2021, Brito traveled to Spain for a higher paying job, to provide financially for A.F., but he made clear to Castro that the move was temporary in nature. See Pet. App. 3a. While Petitioner was in Spain, and without his prior knowledge or consent, Castro

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<sup>1</sup> Brito is a dual citizen of Venezuela and Spain. Pet. App. 64a.

absconded with A.F., taking her from the only home she had ever known, and crossed unlawfully into the United States in November 2021. Pet. App. 3a.

Upon learning that Castro removed A.F. from Venezuela, Brito immediately attempted to locate A.F. by contacting the family's attorney as well as the U.S. and Venezuelan embassies in Spain. Pet. App. 4a; Fifth Circuit Record on Appeal ("R.") 334. As those efforts were unsuccessful, the Hague Convention Application seeking the return of A.F. to Venezuela was filed with Venezuelan authorities on January 20, 2022—less than two months after A.F.'s abduction. Pet. App. 3a–4a.

As a result of governmental delays, the Hague Application was not transferred to the U.S. Department of State until November 7, 2022 (almost a year after it was filed with the Venezuelan authorities), at which point the State Department contacted Castro requesting that she work to resolve any dispute with Brito or voluntarily return A.F. to Venezuela. Pet. App. 4a. Castro did not respond. Pet. App. 4a.

Having failed to secure Castro's agreement to voluntarily return A.F. to Venezuela, and with no response from Castro to the State Department's letter, Brito was put in contact with attorneys in the United States and ultimately filed suit. R. 27; see Pet. App. 4a.

### III. Procedural History

#### A. U.S. District Court for the Eastern District of Texas Proceedings

On April 19, 2023, Brito<sup>2</sup> petitioned the United States District Court for the Eastern District of Texas (“Eastern District”) for the return of A.F. under the Hague Convention and ICARA. R. 22-32. Brito filed in the Eastern District based on information from the United States State Department regarding A.F.’s location in Texas. R. 24, 58-59. Brito relied on this information alone because Castro refused all attempts from Brito to obtain a current address of A.F. See R. 144. In his Verified Complaint, Brito sought to secure the return of A.F. to Venezuela, filed an emergency application for *ex parte* temporary restraining order, and requested expedited relief in the form of a consolidated preliminary injunction hearing and trial on the merits. R. 22-32, 80-104.

On May 4, 2023, the Eastern District promptly entered the temporary restraining order and set the case for a consolidated preliminary injunction hearing and trial on an expedited schedule based on the mandates in the Hague Convention. R. 5-6. Had the trial occurred on the date initially set by the Eastern District, the case would have been resolved in less

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<sup>2</sup> Ms. Beatriz Zulay Guevara Flores, Brito’s mother and A.F.’s grandmother, initially joined the suit at the district court alongside Brito. The Northern District ruled that Ms. Guevara did not have custody rights under Venezuelan law and, as a result, Brito alone filed an appeal with the Fifth Circuit. R. 1167-70.

than six weeks, in accordance with the Hague Convention. Instead, because of Castro’s purposeful delay—and subsequent delay by the U.S. District Court for the Northern District of Texas (“Northern District”)—this is not what occurred.

Despite Brito’s best efforts to locate Castro and A.F., Castro refused numerous requests from him to provide her address. R. 156-57. As a result, Brito attempted to serve her through the U.S. Marshal Service in the Eastern District based on information from the U.S. Department of State, and when that failed, he engaged a private investigator to effectuate service. R. 144-45, 149-50. In June 2023, a month after receiving actual, but not proper, service of the lawsuit, newly-acquired counsel for Castro accepted service informed Brito that Castro and A.F. had moved to the Northern District of Texas, and they moved to transfer the case. Pet. App. 5a. Castro provided no evidence alongside her motion to transfer. R. 389. The Eastern District promptly scheduled a hearing on Castro’s Motion to Transfer and ruled that Castro failed to provide sufficient evidence to identify A.F.’s location at the time of Brito’s initial filing. R. 358. It ordered Castro to provide such evidence to Brito, after which the Eastern District would hold another hearing. R. 403. Although Castro did not supply evidence conclusive of A.F.’s physical location at the time of Brito’s initial filing, he withdrew his opposition to Castro’s motion to transfer venue—which would have required another hearing and time for ruling had he remained opposed—and he consented to a transfer to the Northern District of Texas. Pet. App. 5a; R. 535. On August 1, 2023, the

Eastern District transferred the case to the Northern District. Pet. App. 5a.

**B. U.S. District Court for the Northern District of Texas Proceedings**

Immediately after the case was transferred to the Northern District, Brito requested a status conference to schedule a final hearing on the merits, alerting the Northern District to the Hague Convention's mandate for a rapid remedy and the need for expeditious relief in the light of the delays caused by Castro's evasiveness. R. 51. With no action from the Northern District, Brito renewed the request and again asked that the court expeditiously schedule the trial. R. 687-92. The Northern District did not address Brito's request to schedule a final trial, and instead scheduled an informal and off-the-record, in-chambers status conference for November 7, 2023, which later was rescheduled for November 9, 2023. R. 13.

This procedural abnormality of an in-chambers conference without a record, along with the delay by the Northern District in scheduling an expedited trial, greatly concerned Brito. During the status conference, where only counsel, the Honorable Judge Brown, and court staff were present, Brito's counsel raised concerns about expediency, once again requested that an expedited trial date be set, and objected to the already considerable delays caused by Castro's actions

and the inaction of the Northern District.<sup>3</sup> The Northern District did not address these concerns.

Instead of scheduling a final trial or addressing Brito's pressing concerns about the lack of urgency his case was being treated with, the Northern District requested a recitation of the facts. Upon hearing the facts, the Northern District indicated that it would require the parties to mediate prior to trial—something both parties objected to due to the binary nature of available relief in Hague Convention cases. Brito also raised concerns about the additional delay in setting a final trial that mediation would cause.<sup>4</sup> Ultimately, the Northern District ended the conference early due to a scheduling conflict and requested that counsel make themselves available in the following days by Zoom to continue the conference, which would, again, be held informally and off the record.

At the Northern District's request, on November 10, 2023, counsel for all parties attended a Zoom conference. Upon appearing, however, court staff of the Northern District court informed the parties that the District Judge was unable to attend due to another conflict. As counsel for both parties had

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<sup>3</sup> For reasons beyond Brito's control, he is unable to provide record cites to support his assertions in respect to this and the following informal and off-record status conferences.

<sup>4</sup> Because the Hague Convention and ICARA only authorizes courts to determine *which* country should determine a custody dispute not *how* the dispute should be resolved, there is little room for compromise. 22 U.S. C. § 9001(b); *Smith v. Smith*, 976 F. 3d 558, 561 (5th Cir. 2020).

outstanding issues they wanted to raise with the District Judge, both requested that the conference be rescheduled.<sup>5</sup> This request was denied. Instead, the Court Clerk informed counsel that the District Judge authorized him to hold the conference in court's place and conveyed that he believed the trial would be set no earlier than March 2024. Brito's counsel once again objected to the continued delay, the lack of a record to memorialize that objection, and the fact that this conference was held without a judge present.

At the conclusion of the November conferences, the Northern District did not schedule a final hearing on the merits. Instead, it ordered the parties to file yet another status report. R. 708\_11. As part of that status report, Brito expressly requested an earlier expedited hearing and indicated that he reserved all rights to request further relief, including requesting a formal statement of delay from the Northern District, or a judicial reassignment within the Northern District due to the significant prejudice that the district judge's delay had on the merits of his case. R. 733 n.1.

In the required status report, the Northern District ordered the parties to include March 2024 as the date of trial. Just prior to filing that status report, in yet another attempt to secure the scheduling of an

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<sup>5</sup> The District Court declined to schedule any further conferences or hearings after the informal conference in chambers on November 9, 2023, and counsel did not have the chance to appear in front of her again until the pretrial hearing on March 18, 2024. See R. 13-18.

expedited trial, Brito moved that the Northern District set an expedited final hearing prior to March 2024 or, in the alternative, to reassign the matter to a judge with a less crowded docket. R. 712. Brito argued that the delay caused by the Northern District's inaction would materially impact the merits of his case. R. 712-13, 720, 722. Moreover, Brito's case—which was still without a final trial date—was already the second-longest running Hague Convention case in the Northern District, and he had not been provided any reason for this extreme delay. R. 712 n.1, 726-28. As in prior filings and conversations with the Northern District, Brito again underscored the importance of a speedy resolution and urged the Northern District to recognize that the longer the case remained pending without resolution, the more likely Castro would be to succeed on the well-settled affirmative defense. R. 720-22.

On November 30, 2023, the Northern District summarily denied Brito's motion in a paperless order devoid of any indicia of reasoned consideration. R. 14.

**C. March 21, 2024, Merits Trial and May 8, 2024, District Court Order.**

Just shy of one year after the case was filed—and two years from when Brito initially filed his Hague Application—the Northern District held a two-day bench trial beginning on March 21, 2024. Pet. App. 5a; R. 19. It reserved judgment, and six weeks later, on May 8, 2024, the Northern District entered its Findings of Fact and Conclusions of Law, finding that Brito proved his prima facie case that Castro had

wrongfully removed A.F. from Venezuela. Pet. App. 5a, 59a, 80a.

Of the three affirmative defenses raised by Castro—(1) that Brito consented<sup>6</sup> to A.F.’s relocation to the United States, (2) that A.F. faced a grave risk of physical or psychological harm<sup>7</sup> if she returned to Venezuela, and (3) that A.F. was well-settled in the United States as a matter of law—the Northern District found that only the well-settled defense had merit. Pet. App. 59a, 80a-88a.

Brito timely appealed. R. 20.

**D. June 2, 2025, Fifth Circuit Order Reversing and Remanding to the District Court**

Brito filed a Notice of Appeal on June 7, 2024. R. 20. On June 2, 2025, after briefing and oral

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<sup>6</sup> In ruling on Castro’s consent defense, the Northern District held that “Brito did not consent to A.F.’s removal. Petitioners presented evidence of text conversations between Petitioner Brito and Respondent [Castro] prior to the removal [of A.F.] in which Petitioner Brito—repeatedly and emphatically—stated that he disagreed with Respondent taking A.F. to the United States with her.” Pet. App. 81a-82a.

<sup>7</sup> In ruling on Castro’s grave risk defense, the Northern District held that “[t]here is no evidence before the Court of physical or psychological abuse present in Venezuela that A.F. would be subjected to if returned. In fact, Respondent [Castro] could not point the Court to any pertinent evidence demonstrating any risk of harm. Respondent [Castro] merely offered that the return of A.F. would place A.F. in an ‘intolerable situation’ as she is only five years old and no one with any custody rights of her has been to Venezuela since 2021.” Pet. App. 83a.

argument, the Fifth Circuit reversed the ruling of the Northern District and remanded “with instructions that the district court enter an order that A.F. be returned to Venezuela.” See Pet. App. 1a-2a.

In relevant part, the majority and dissent analyzed the proper standard of review, with the majority holding that “the balancing of factors under the well-settled defense as a legal question [is] subject to *de novo* review.” *Brito v. Castro*, 139 F.4th 422, 429 (5th Cir. 2025), withdrawn on reh’g sub nom. *Guevara v. Castro*, 155 F.4th 353 (5th Cir. 2025). The Fifth Circuit contrasted the well-settled analysis—an “inquiry which is primarily legal in character”—with this Court’s analysis of the “benefit-of-the doubt rule” in *Bufkin v. Collins*, 604 U.S. 369 (2025). The Fifth Circuit held that “the well-settled factors are a judicially crafted framework to inform a legal judgement: is the child well-settled?” *Guevara*, 139 F.4th at 430. The task of determining the well-settled defense “is to assess whether, taken together, the evidence supports the district court’s legal conclusion [that A.F. was well settled.” *Ibid.* The Fifth Circuit “conclude[d] that the district court erred in both its legal framing and application of the well-settled exception” and, ultimately, held that “[b]ecause Brito established a prima facie case for return—and because the well-settled exception does not apply—the district court erred in denying his petition.” *Id.* at 431, 434.

**E. September 5, 2025, Fifth Circuit Order Denying Castro’s Motion for Rehearing En Banc and Reversing and Remanding to the District Court.**

On June 16, 2025, two weeks after the Fifth Circuit issued its Order “with instructions that the district court enter an order directing A.F.’s return to Venezuela,” Castro filed a Petition for Rehearing *En Banc* (“Rehearing Petition”). Petition for Rehearing *En Banc*, No. 24-10520 (5th Cir. June 16, 2025); see Pet. App. 1a. In that motion, Castro argued that the Fifth Circuit’s *de novo* review conflicted with this Court’s decision in *Monasky*. *Id.* at ii, 5. That Castro did not even cite to *Monasky* once in her initial briefing or to mention it during oral argument belied her true intent: to continue elongating the time that A.F. would remain in the United States. See generally Brief of Appellee, No. 24-10520 (5th Cir. Nov. 12, 2024); Recording of Oral Argument, No. 24-10520 (5th Cir. Feb. 24, 2025) <https://perma.cc/YJVV2-4824> (last visited Feb. 17, 2026). On July 7, 2025, Brito filed his Opposition to the Petition for Rehearing *En Banc*. Brief in Opposition to Petition for Rehearing *En Banc*, No. 24-10520 (5th Cir. July 7, 2025).

The Fifth Circuit treated the Petition for Rehearing *En Banc* as a petition for panel rehearing, denied rehearing *en banc*, and granted panel rehearing. Pet. App. 2a. It then withdrew its prior opinion and substituted a new opinion. Pet. App. 2a. In its new opinion, issued September 5, 2025, it analyzed *Monasky* alongside the analysis it had already provided of *Bufkin* in determining the proper

standard of review. Pet. App. 11a-12a. The majority for the Fifth Circuit properly held “*Monasky’s* clear-error standard of review is not binding in Hague Convention contexts other than the habitual-residence inquiry.” Pet. App. 12a-13a. *Monasky* dealt solely with the “fact-driven” habitual-residence inquiry, and not the well-settled exception, which is a “primarily legal inquiry.” Pet. App. 12a-13a.

The Fifth Circuit again reversed the Northern District’s ruling, and it again remanded “with instructions that the district court order A.F.’s return to Venezuela.” Pet. App. 1a–2a.

**F. September 26, 2025, Fifth Circuit Order Denying Castro’s Motion for Stay Pending the Petition for Writ of Certiorari**

On September 17, 2025, following the denial of her Petition for Rehearing *En Banc*, Castro filed an opposed Motion for Stay of Issuance of Mandate Pending Petition for Writ of Certiorari. Opposed Motion to Stay Issuance of the Mandate, No. 24-10520 (5th Cir. Sep. 17, 2025). On September 26, 2025, the Fifth Circuit issued a reasoned order denying her motion. Court Order Denying Motion to Stay, No. 24-10520 (5th Cir. Sep. 26, 2025).

**G. November 13, 2025, Supreme Court of the United States Order Denying Castro’s Emergency Application for Stay**

Subsequent to that denial, Castro filed an Emergency Application for Stay with this Court on October 1, 2025, raising the same arguments that the Fifth Circuit rejected. Application for Stay, *Francisco*

*Castro v. Brito Guevara*, No. 25A376 (U.S. Oct. 1, 2025). Brito filed his Opposition on October 16, 2025. Response in Opposition to Application for Stay, *Francisco Castro v. Brito Guevara*, No. 25A376 (U.S. Oct. 16, 2025). The Supreme Court denied Castro’s Emergency Application for Stay on November 13, 2025. *Francisco Castro v. Brito Guevara*, No. 25A376 (U.S. Nov. 11, 2025).

#### **H. December 19, 2025, Northern District Order Granting Brito’s Petition for Return of A.F. to Venezuela**

On January 17, 2026—just over four years after her initial abduction from Venezuela—A.F. returned home. Joint Status Report, *Brito Guevara v. Francisco Castro*, No. 3:23-cv-1726, Dkt. No. 164 (N.D. Tex. Jan. 20, 2025).

### **REASONS TO DENY THE PETITION**

#### **I. Any Circuit Split Is Narrow, At Best**

The Petition asserts that the Fifth Circuit’s decision, reviewing the well-settled defense *de novo*, deepens a circuit split. There is no split. But even if there were, that “split” is minimal and does not require this Court’s intervention.

*First*, the First and Eleventh Circuits (which Petitioner identifies as applying clear error review) have articulated a different legal test for evaluating the well-settled defense than the Fifth Circuit does. This is critical because, as this Court’s precedents make clear, the manner in which a legal question is

answered is key in determining whether clear error or *de novo* review should apply. *Google LLC v. Oracle Am., Inc.*, 593 U.S. 1, 24 (2021) (“[T]he standard of review for a mixed question all depends—on whether answering it entails primarily legal or factual work.”) Here, the First and Eleventh Circuits’ legal tests for the well-settled inquiry controlled the outcome of their analyses of their standards of review.

In *da Silva v. de Aredes*, the First Circuit considered the question of the appropriate standard of review for the “now settled”<sup>8</sup> defense after this Court’s decision in *Monasky v. Taglieri*. 953 F.3d 67, 72 (1st Cir. 2020). The First Circuit’s decision to apply clear error review hinged on the legal test it applies to the question of whether a child is “now settled,” which requires courts in the First Circuit to “look to the totality of the circumstances in determining whether a child is now settled.” *da Silva v. de Aredes*, 953 F.3d 67, 75 (1st Cir. 2020).

The First Circuit’s articulation of the standard of review depended on the “now settled”—and not the Fifth Circuit’s “well settled”—test was made clear in *da Costa v. de Lima*, where the First Circuit explained that, in light of *Monasky*, the legal standard for assessing the merits of “the now settled defense mirrors that of the country-of-habitual-residence

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<sup>8</sup> The First Circuit refers to this as the “now settled” defense as opposed to the “well-settled” terminology that is used in the Second, Fifth, and Ninth Circuits.

determination.” 94 F.4th 174, 181 (1st Cir. 2024).<sup>9</sup> Thus, based on the now common legal standard, its “review of that question is for clear error.” *Ibid.*

Similarly, in *Cuenca v. Rojas*, the Eleventh Circuit addressed, for the first time, “the standard of review for a district court’s determination that a child is or is not ‘settled’ in his new home within the meaning of the Convention.” 99 F.4th 1344, 1349 (11th Cir. 2024). While, like the First Circuit, the Eleventh Circuit ultimately concluded that clear error review applied, the Eleventh Circuit analogized the now-settled inquiry to the habitual residence inquiry as (at least in the Eleventh Circuit) both share a common legal framework: “a case-specific totality-of-the-circumstances analysis.” *Id.* at 1350. Because *Monasky* set out that, with respect to the Convention, such a “totality-of-the-circumstances analysis” requires clear error review, the Eleventh Circuit held that its review of the “well settled” defense, which uses the same legal framework, must also be for clear error. *Id.*

In contrast, the Second, Fifth, and Ninth Circuits apply a seven-factor test in evaluating whether “*substantial evidence* of the child’s *significant*

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<sup>9</sup> While Petitioner points to the Supreme Judicial Court of Maine as another example, the Supreme Judicial Court of Maine simply followed its local Federal Court of Appeals decisions, it performed no independent analysis of the appropriate standard of review. And even if it did, it also adopted the First Circuit’s articulation of the test for “now-settled” as a “totality of the circumstances test” explaining its subsequent adoption of clear error review.

*connections to the new country*” exists such that the child is “well-settled” under the Convention. *Garcia Pena*, 820 F.3d at 787 (emphasis added); *Broca v. Giron*, 530 F. App’x 46, 47 (2d Cir. 2013) (relying on a “multi-factor test” to evaluate “well-settled” defense); *In re B. Del C.S.B.*, 559 F.3d 999, 1009 (9th Cir. 2009) (identifying seven factors considered “[i]n determining whether a child is settled within the meaning of Article 12”); Pet. App. 7a (“To assess whether the well-settled defense applies, we consider seven factors”). Thus, as the Fifth Circuit explained, its “approach aligns with the circuits that apply multi-factor balancing tests in contrast to the First and Eleventh Circuits, which apply a totality-of-the-circumstances test.” Pet. App. 13a.

The decisions of the various courts of appeals make clear that the issue of the appropriate standard of review is inextricably intertwined with the framing of the legal question of whether a child is well-settled. Thus, to the extent any split exists, it is what the correct legal test is to determine if a child is “well-settled” under the Convention—either the Fifth Circuit’s factor-based inquiry or the First and Eleventh Circuit’s totality-of-the-circumstances inquiry—not the proper standard of review. But even if that issue were properly raised below—it was not—Petitioner does not request this Court decide that issue. Because the Fifth Circuit’s legal framing has not been challenged, and since that legal framing was a significant, if not dispositive, factor in the Fifth Circuit’s decision, there is no need for the Court’s intervention.

**Second**, Petitioner fails to identify any court besides the Fifth Circuit that has actually considered the question presented post-*Monasky* and found *de novo* review appropriate. Instead, Petitioner identifies post-*Monasky* decisions by the Ninth and Second circuits which, while applying *de novo* review to the “well settled” defense, did so without addressing the proper standard of review.<sup>10</sup> In the absence of further disagreement between the circuit courts, this Court’s intervention is premature.

Starting with the Ninth Circuit, Petitioner identifies three cases which she claims erroneously utilized *de novo* review. But none of those cases had occasion to consider the standard of review. First, in *Flores Castro v. Hernandez Renteria*, the Ninth Circuit stated, without analysis, “We review the district court’s factual determinations for clear error, and the district court’s application of the Convention to those facts *de novo*.” *Flores Castro v. Hernandez Renteria*, 971 F.3d 882, 886 (9th Cir. 2020). This is

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<sup>10</sup> Petitioner is simply wrong to include the Fourth Circuit in its discussion of the purported split. Petitioner fails to identify a single post-*Monasky* case in the Fourth Circuit which even involved the well-settled defense, let alone addressed the question presented in the Petition. Moreover, the Fourth Circuit has stated that its legal framework for evaluating the well-settled defense, while adopting the seven-factors as a guide, is more properly considered a “a totality-of-the-circumstances analysis.” *Alcala v. Hernandez*, 826 F.3d 161, 170-71(4th Cir. 2016). Thus, there is every reason to believe that, when presented with the issue, the Fourth Circuit will follow its sister circuits that apply a totality-of-the-circumstances analysis and review the district court’s decision on the well-settled defense for clear error.

unsurprising, as the parties' briefing agreed that *de novo* review was appropriate.<sup>11</sup> Compare Brief of Petitioner-Appellant, *Flores Castro v. Hernandez Renteria*, 971 F.3d 882 (9th Cir. 2020), 2019 WL 4889757, at \*15 (identifying *de novo* review as standard of review), with Brief of Respondent-Appellee, *Flores Castro*, 971 F.3d 882, 2019 WL 6529568, at \*16 (same).

Similarly, in *Radu v. Shon*, the Ninth Circuit quoted *Flores Castro*'s articulation of the proper standard of review. *Radu v. Shon*, 62 F.4th 1165, 1172 (9th Cir. 2023) (quoting *Flores Castro*, 971 F.3d at 886). But, like *Flores Castro*, neither party disputed the appropriate standard of review.<sup>12</sup> Compare Brief for Respondent-Appellant, *Radu v. Shon*, 62 F.4th 1165, 1168 (9th Cir. 2023), 2022 WL 6805574, at \*25 (identifying *de novo* review as standard of review), with Brief for Petitioner-Appellee, *Radu*, 62 F.4th 1165, 2022 WL 16908296, at \*26 (same). Notably,

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<sup>11</sup> While the parties' briefing was completed in 2019, the case was argued in July 2020, and neither party sought to raise the issue of the standard of review after this Court's *Monasky* decision.

<sup>12</sup> *In re ICJ* considered the grave risk defense, not the well settled defense, but nevertheless follows the same fact pattern. See *In re ICJ*, 13 F.4th 753, 761 (9th Cir. 2021) (outlining issues under review). The Ninth Circuit quoted *Flores Castro* not because it considered the question presented and determined *de novo* review was appropriate, but because the appellee did not dispute appellant's articulation of the standard of review. *Id.* (quoting *Flores Castro*, 971 F.3d at 886); compare Brief for Petitioner-Appellant, *id.*, 2021 WL 1822415, at \*11 (identifying *de novo* review as standard of review), with Brief for Respondent-Appellee, *In re ICJ*, 13 F.4th 753, 2021 WL 2273783 (not addressing standard of review).

unlike in *Flores Castro*, the parties' briefs in *Radu* were filed nearly two years after this Court announced clear error review for the habitual residence inquiry in *Monasky*, so the issue of whether *Monasky* abrogated *de novo* review for the well-settled defense was ripe for argument.

The Second Circuit cases Petitioner cites are no different. Both *Stein ex rel J.S. v. Kohn* and *Lomanto v. Agbelusi* simply state the applicable standard of review without analysis, and there was no underlying dispute between the parties on whether *de novo* or clear error review should apply to the ultimate "well settled" determination. See *Stein ex rel J.S. v. Kohn*, No. 23-8078, 2024 WL 4848986, at \*1 (2d Cir. Nov. 21, 2024); *Lomanto v. Agbelusi*, No. 23-933, 2024 WL 3342415, at \*2 (2d Cir. July 9, 2024).

In claiming the existence of a "deep" and "existing Circuit split," Pet. at 13, Petitioner appears to fault the Second and Ninth Circuits for failing to address Petitioner's question presented in their post-*Monasky* decisions and apparently faults the Fourth Circuit for failing to reconsider its *Alcala* decision *sua sponte*. But this Court's discussion of the party presentment principle makes clear that "in both civil and criminal cases, in the first instance and on appeal ... we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Greenlaw v. United States*, 554 U.S. 237, 243 (2008). Courts "do not, or should not, sally forth each day looking for wrongs to right. [They] wait for cases to come to [them], and when [cases arise, courts] normally decide only questions presented by

the parties.” *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020) (alterations in original). Contrary to Petitioner’s assertions, the Second, Fourth, and Ninth Circuits have not chosen a side of a circuit split, they simply have not had the opportunity to weigh in.

\* \* \*

When properly analyzed, only three circuits have considered the question presented since *Monasky*. Two (the First and Eleventh) have found clear error review applies, and one (the Fifth Circuit below) found *de novo* review appropriate. While this may be a split, it is certainly not one that cries out for resolution by this Court. As other circuits pass upon the question presented, the Fifth Circuit may well turn out to be an outlier, or the split may deepen, creating a stronger case for this Court’s review. Either way, this is the quintessential issue that would benefit from additional percolation among the circuit courts prior to this Court’s review.

## **II. The Question Presented Is Not Significant Enough To Warrant This Court’s Review**

The Petition asserts that the question presented is “an exceptionally important and recurring question.” Pet. at 25. Not so. While it is undoubtedly true that a standard of review is required in every appellate case, Petitioner fails to address the relative infrequency with which Hague Convention cases—let alone those addressing the well-settled defense—reach the appellate courts. Nor does the simple fact that Petitioner raises an issue regarding an international treaty render this case worthy of review.

### **A. The Question Presented Does Not Recur Frequently**

It is a legal truism that the standard of review is an issue that must be addressed in every appeal. But that fact alone cannot make an issue sufficiently important to merit this court’s review, otherwise every petition that challenged the standard of review would meet that exceedingly low bar. When going past that axiom of law to look at the specific question presented, it becomes clear that the circuit courts rarely have a need to address that issue. The Court should not grant certiorari to consider an issue that arises so infrequently.

There are—fortunately—fewer than 500 applications each year filed with the U.S. State Department seeking the return of an abducted child under the Convention,<sup>13</sup> very few of which will reach the question presented. For example, in 2023, the Hague Conference on Private International Law (“HCCH”) published detailed statistics regarding worldwide use of the Convention. According to HCCH, in 2021, the United States received 313 applications

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<sup>13</sup> U.S. Dep’t of State, Incoming Hague Abduction Convention Cases To The U.S. Central Authority: Applications For Return And Access In 2024, <https://perma.cc/R5UD-FJVH> (last visited Feb. 17, 2026) (480 cases in 2024); U.S. Dep’t of State, Incoming Hague Convention Cases To The U.S. Central Authority: Applications For Return And Access In 2023, <https://perma.cc/86K7-7WJL> (last visited Feb. 17, 2026) (440 cases in 2023); U.S. Dep’t of State, Incoming Hague Convention Cases To The U.S. Central Authority: Applications For Return And Access In 2022, <https://perma.cc/MCN2-GEV7> (last visited Feb. 17, 2026) (428 cases in 2022).

for return of a child.<sup>14</sup> Of those 313 applications, only 79 resulted in a judicial decision on the merits of the application. *Id.* at Annex 4. And, in many of those cases, the well-settled defense was unavailable as a matter of law because the proceeding had been commenced within one-year of the wrongful retention or removal of the child. Art. 12, Treaty Doc.; *Garcia Pena*, 820 F.3d at 784, 787. Thus, only a handful of cases each year will even result in a merits determination of the well-settled defense that could be reviewed on appeal.

That handful of cases narrows significantly when it is considered that in 2021, only 42% of all international Hague Convention cases that reached judicial decision involved an appeal,<sup>15</sup> and in the United States, that number is likely lower. Thus, unsurprisingly, since 1995, counsel has only been able to identify 46 circuit court opinions which address the “well settled” defense.<sup>16</sup> This is hardly the sort of frequently occurring issue that requires this Court’s immediate review. Indeed, based on the available data, it would appear the question presented comes up, at most, twice a year.

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<sup>14</sup> HCCH, *Global Report—Statistical Study of Applications Made in 2021 under the 1980 Child Abduction Convention*, at Annex 1, <https://perma.cc/JM6H-23DF> (last visited Feb. 17, 2026).

<sup>15</sup> HCCH, Appendix I at ¶ 21.

<sup>16</sup> These cases were identified by conducting a Westlaw search using the search string: (“petition!” /p (“Convention on the Civil Aspects of International Child Abduction”) OR “Hague!”) AND (“well\*settled” OR “well settled” OR “now settled”).

**B. The International Nature of the Convention Is Insufficient to Support Review**

Petitioner next contends that clarifying the standard of review serves dual purposes under the Conventions: speed and uniformity. Petitioner is wrong.

*First*, as for speed, while the Convention certainly envisions prompt determinations, it does not envision speed at the expense of wisdom.<sup>17</sup> The stakes of Hague Convention cases are among the highest in any civil case brought in the United States, and the Court should not modify the standard of review simply to expedite these determinations. Every case under the Convention includes allegations that a child has been wrongfully removed from the country of his or her habitual residence. The ultimate result, whether to return the child or allow them to remain, can be devastating to the unsuccessful party. Forcing the appellate courts to defer to erroneous, but not egregiously wrong, decisions by the district court simply for the sake of speed risks contravenes the Hague Convention's governing principals: (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting state; and (b) to ensure that rights of custody and access under the law of one Contracting State are effectively

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<sup>17</sup> Petitioner's emphasis on the need for expedition in Hague Convention cases rings hollow given her acquiescence to the district court's repeated delays below and use of those delays to expand the factual record.

respected in the other Contracting States.” Art 1, Treaty Doc. As this Court has made clear, “the best interests of the child are well served when decisions regarding custody rights are made in the country of habitual residence,” and putting speed ahead of ensuring legally and factually supported decisions is unwarranted. *Abbott v. Abbott*, 560 U.S. 1, 20 (2010). Speed alone presents no reason for this Court’s review.

**Second**, the uniform application of the treaty does not mandate this Court’s review. As an initial matter, like its arguments regarding the standard of review, Petitioner invites the Court to establish a *per se* standard that all cases addressing the proper interpretation of an international treaty are worthy of this Court’s review. Respectfully, this Court should decline Petitioner’s invitation.

Nor do the foreign cases Petitioner mentions provide a basis for this Court’s review. For example, in *J.E.A. v. C.L.M.* (2002), 200 D.L.R. (4th) 577 (N.C.S.A.), the Nova Scotia Court of Appeal considered numerous issues, such as the Convention’s goals and totality of the circumstances, before declining to disturb the lower court’s finding. *Id.* at ¶¶ 60-94. Given the totality of the circumstances review both the lower court and appellate court performed, it is unsurprising that the articulated standard of review loosely matches those cases Petitioner cites which likewise apply a totality of the circumstances analysis. Far from being an uneven application, this simply confirms that, like in the United States, the

standard of review internationally is closely dependent on the legal test applied.

But Petitioner's reliance on foreign law presents a more fundamental error. At no point does Petitioner establish that these jurisdictions even have varying levels of review for mixed questions of fact and law, as is the case here. Indeed, the language Petitioner cites is untethered from the specific well-settled analysis and is instead merely a statement of that jurisdiction's default standard of review. There is simply no conflict with other jurisdictions that need be resolved.

### **III. Factual Disputes And Intense Procedural Irregularities Make This A Poor Case For The Court's Review**

This case is a poor vehicle to address the question presented because the Northern District committed numerous substantive and procedural errors that irreparably infected its judgment, each of which would require reversal even under clear error review. Moreover, beyond its clearly erroneous factual findings and incorrect legal conclusions, the Northern District also repeatedly delayed the trial date, forsaking the Convention's emphasis on speed. Besides being improper under the Convention, the Northern District's repeated delays manifestly changed the factual record, which impacted the ultimate determination of the well-settled defense. The Court should decline review given the breadth and scope of the Northern District's errors and their impact on the judgment.

**A. Even under Petitioner’s Proposed Standard of Review, the Result Below Would Not Change**

In attempting to justify this Court’s review, Petitioner asserts that the standard of review is often outcome determinative. Pet. at 25. But, understandably, Petitioner never asserted that the standard of review would have been outcome dispositive *in this case*, because it would not have been. Thus, a decision in Petitioner’s favor would be meaningless because it would have no impact on the merits. Even under clear error review, the Northern District’s decision that A.F. was well-settled requires reversal.

Clear error review mandates that an appellate court first answer the question of whether the district court applied the correct legal standard. Then, if it did, the appellate court may move to a review of the factual issues. See *Harm v. Lake-Harm*, 16 F.4th 450, 454 n.6 (5th Cir. 2021) (citing *Monasky*, 589 U.S. at 83). But here, “the district court erred in both its **legal framing** and its application of the well-settled exception.” Pet. App. 14a (emphasis added).

The dissent, in agreeing with the Northern District that “A.F. has formed significant connections to her environment in Texas—stronger than those to Venezuela,” highlighted the fundamental legal error made by the district court. Pet. App. 24a-25a. The proper standard “does not call for determining in which location a child is relatively better settled.” *Maduhu v. Maduhu*, No. SA-23-CV-00142-XR, 2023 WL 2994141, at \*7 (W.D. Tex. Apr. 18, 2023). There

should be no comparison at all. Either a respondent proved “*substantial evidence* of the child’s *significant connections* to the new country,” in which case the well-settled exception is applicable—or not—in which case the well-settled exception does not apply. *Garcia Pena*, 820 F.3d at 787 (emphasis added).

Because the Northern District applied the incorrect legal standard, under a clear error review, a court of appeals would be charged with applying the facts to the correct legal standard, which is what the Fifth Circuit did and why the outcome would not change.

For example, the Northern District found that A.F. is a “very young child not able to form the same level of attachments and connections to a new environment as an older child” and that “A.F. do[es] not have Lawful Permanent Residence status in the United States.” R. 1175. Those facts are not in dispute – the legal conclusion the district court drew from those facts (that they were “lukewarm factors”) was, and clear error review would not change the ultimate conclusion of the Fifth Circuit that the district court applied those facts improperly to the legal question. Pet. App. 14a; R. 1175. Likewise, the fact that A.F. attended church and playgrounds, visited Disney World, and was learning English were not disputed. R. 1176. But, even under clear error review, the outcome would not change because the Northern District improperly relied on those facts to form the incorrect legal conclusion that “the evidence presented to support this factor [a child’s participation

in extracurricular or community activities] was overwhelming.” R. 1176.

**B. The Factual Record is Complicated by the Northern District’s Refusal to Act in a Timely Manner**

In contravention of the Convention’s expressed purpose, the Northern District failed to convene a trial on the merits until nearly a year after Brito filed the case. All told the district court case lasted 337 days, short only 35 days of the longest running Hague Convention case in the Northern District of Texas,<sup>18</sup>

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<sup>18</sup> *Navarro Parra v. Villalonga Camargo*, No. 3:24-cv-1290 (N.D. Tex.) (175 days); *Garcia v. Posada*, No. 3:24-cv-00360-X (N.D. Tex.) (23 days); *Garcia v. Acevedo*, No. 3:16-cv-00808-D-BF (N.D. Tex.) (24 days); *Barraza v. Uribe*, No. 5:12-cv-00215 (N.D. Tex.) (49 days); *Vega v. Reyes*, No. 3:13-cv-01152-9 (N.D. Tex.) (59 days); *Guardian v. Banuelos*, No. No. 3:23-cv-02340 (N.D. Tex.) (87 days); *Colohua v. Laughlin*, No. 4:16-cv-00707 (N.D. Tex.) (163 days); *Moretti v. Braga*, No. 3:23-cv-0586-L, 2023 U.S. Dist. LEXIS 88748 (N.D. Tex. May 22, 2023) (40 days); *Sanchez v. Jduarte*, No. 4:21-cv-0984-P, 2022 U.S. Dist. LEXIS 87465 (N.D. Tex. May 16, 2022) (148 days); *Soto v. Garcia*, No. 3:22-cv-0118-B, 2022 U.S. Dist. LEXIS 45318 (N.D. Tex. Mar. 15, 2022) (50 days); *Smith v. Smith*, No. 4:19-cv-00784-O, 2019 U.S. Dist. LEXIS 243356 (N.D. Tex. Nov. 20, 2019) (44 days); *Monroy v. de Mendoza*, No. 3:19-cv-1656-B, 2019 U.S. Dist. LEXIS 178580 (N.D. Tex. Oct. 16, 2019) (64 days), vacated in part, 2019 U.S. Dist. LEXIS 231615 (N.D. Tex. Nov. 4, 2019); *Chirinos v. Umanzor (In re Chirinos)*, No. 3:18-cv-02668-M, 2019 U.S. Dist. LEXIS 89320 (N.D. Tex. May 29, 2019) (202 days); *Medina v. Villasanti*, No. 3:17-cv-1371-N, 2018 U.S. Dist. LEXIS 102469 (N.D. Tex. June 19, 2018) (372 days); *Morgan v. Morgan*, No. 1:17-cv-00065-C, 2017 U.S. Dist. LEXIS 206138 (N.D. Tex. June 15, 2017) (38 days); *Gross v. Gross*, No. 1:17-cv-00057-C (N.D. Tex. June 6, 2017) (25 days); *Soto v. Contreras*, No. 3:16-cv-00867-N, 2016 U.S. Dist. LEXIS 192541 (N.D. Tex. Oct.

and nearly 300 days longer than the Convention's stated preference for a determination within six-weeks. Art. 11, Treaty Doc.

The Northern District's delay alone makes this an unusual case that should, at minimum, invite skepticism of whether to grant certiorari. But the delay did more than thwart the Convention's goal of expedition; it manifestly changed the factual record available to the parties. In the months while Brito sat helplessly waiting for his day in court, Petitioner was able to build a record to support her invocation of the well-settled defense. As just some examples of the impact of the delay, as a result of the Northern District's dilatory conduct, she crossed the two-year threshold for living in the Dallas area, widely considered the benchmark for proving stability of residence. See *Watts v. Watts*, 935 F.3d 1138, 1145 (10th Cir. 2019). Petitioner also enrolled A.F. in school and began sending her to a primary care physician during that time, and A.F. only then first started

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25, 2016) (181 days); *Sanchez v. Aguilera*, No. 3:16-cv-02063-C (N.D. Tex. Oct. 17, 2016) (89 days); *Angel v. Gonzalez*, No. 4:16-cv-00195-Y (N.D. Tex. Apr. 26, 2016) (43 days); *Ostos v. Vega*, No. 3:13-cv-3935-L, 2015 U.S. Dist. LEXIS 74707 (N.D. Tex. June 10, 2015) (113 days); *Santana v. Benitez*, No. 4:14-cv-400-BJ, 2014 U.S. Dist. LEXIS 186943 (N.D. Tex. Nov. 3, 2014) (145 days); *Vazquez v. Vasquez*, No. 3:13-cv-1445-B, 2013 U.S. Dist. LEXIS 184292 (N.D. Tex. Aug. 27, 2013) (125 days); *Vazquez v. Estrada*, No. 3:10-cv-2519-BF, 2011 U.S. Dist. LEXIS 5083 (N.D. Tex. Jan. 19, 2011) (35 days); *Guaragno v. Guaragno*, No. 7:09-cv-0187-O, 2010 U.S. Dist. LEXIS 154894 (N.D. Tex. May 18, 2010) (158 days); *Clausier v. Mueller*, No. 4:03-cv-1467-A, 2004 U.S. Dist. LEXIS 10367 (N.D. Tex. Apr. 27, 2004) (129 days).

learning English, and engaging in community activities with her school friends—factors that the Northern District cited in its well-settled finding without consideration of how Petitioner benefitted from the significant delay.

Moreover, the Northern District’s decision to repeatedly convey off the record conferences with the parties to discuss substantive issues deprived the Fifth Circuit of the full record. It makes little sense for this Court to consider certiorari where the record below was already incomplete.

#### **IV. Conclusion**

For the foregoing reasons, the Court should deny the petition for writ of certiorari.

Respectfully submitted,

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