

No. 25-666

IN THE
Supreme Court of the United States

SAMANTHA ESTEFANIA FRANCISCO CASTRO,
Petitioner,

v.

JOSE LEONARDO BRITO GUEVARA,
Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

This is a cert-worthy case. The Fifth Circuit’s decision below expressly acknowledged that it deepened a clear Circuit split on an important issue of federal law: whether a district court’s determination that a child is “well settled” for purposes of the Hague Convention should be reviewed *de novo* or deferentially for clear error. The decision below also flies in the face of three of this Court’s recent precedents on the appellate standard of review for mixed questions of law and fact, and Brito does not even try to argue otherwise.

Brito’s attempt to wave away the Circuit split fails. He tries to distinguish the Fifth Circuit’s “seven-factor test” (which, according to Brito, is reviewed *de novo*) from other Circuits’ “totality of the circumstances” test (which, according to Brito, is reviewed for clear error). But there is no meaningful distinction between those two fact-intensive tests—certainly none that would require different standards of review. And Brito’s alternative attempt to minimize the split is likewise unavailing: at bottom, five Circuits and at least one state high court have addressed the question presented, and they are split 4-3. Further percolation is unnecessary.

Confronted with a clear Circuit split on an important issue of federal law, Brito instead tries to downplay its significance and conjure a vehicle problem, relitigating complaints about supposed “procedural irregularities” in the district court. But those purported irregularities have no bearing on whether the Fifth Circuit erroneously applied *de novo* review to the district court’s “well settled” determination. And contrary to Brito’s argument, whether *de novo* or clear-error review applies is a significant issue warranting this Court’s review. The Court should grant the writ of certiorari.

I. There Is a Well-Established Circuit Split on the Standard of Appellate Review.

As explained in the Petition, there is a clear Circuit split on the appellate standard of review of a trial court’s “well-settled” determination under the Hague Convention, with the First and Eleventh Circuits on one side and the Second, Fourth, Fifth, and Ninth Circuits on the other. Pet. at 13-18. Even the Fifth Circuit acknowledged that a Circuit “split already exist[ed]” before its decision. App.13a n.40. Brito nonetheless attempts to deny both the split’s existence and its extent. Those attempts fail.

a. A Split Exists.

According to Brito, “[t]here is no split” because the Circuits that apply *de novo* review use a seven-factor test for the underlying legal standard while Circuits that review for clear error use a totality-of-the-circumstances test. Opp. at 15-16.

Brito is wrong twice over. First, the Circuits do not apply different substantive legal tests—only different standards of appellate review. Second, even if the legal tests were different, it would not affect the appellate-review standard.

A. Brito is wrong that the Fifth Circuit’s “seven-factor” test differs from the First and Eleventh Circuit’s “totality-of-the-circumstances” test. Opp. at 16-17. To start, the First and Eleventh Circuits consider *the same factors* that the Fifth Circuit considers. See *Cuenca v. Rojas*, 99 F.4th 1344, 1350-51 (11th Cir. 2024) (identifying the same seven factors and citing *Hernandez v. Garcia Pena*, 820 F.3d 782, 787-88 (5th Cir. 2016)); see also *da Costa v. de Lima*, 94 F.4th 174, 180 (1st Cir. 2024) (same). And, as explained in the Petition, the Fifth Circuit’s test, like the First and

Eleventh Circuit’s tests, is *non-exhaustive*. Pet. at 22 n.5. The Fifth Circuit describes the seven factors as merely “factors [that] should be considered,” not exclusive factors. *Hernandez*, 820 F.3d at 787. The Fifth Circuit also imported these factors from the Second Circuit, *id.* at 787-88, which wrote only that “[f]actors that courts consider should generally include” the seven factors, *Lozano v. Alvarez*, 697 F.3d 41, 57 (2d Cir. 2012), *aff’d*, 572 U.S. 1 (2014). The Fourth Circuit has even described the Fifth Circuit’s non-exhaustive, multifactor test as evaluating “the totality of the child’s circumstances.” *Alcala v. Hernandez*, 826 F.3d 161, 174 (4th Cir. 2016). There is simply no daylight between the Fifth Circuit’s test and the other Circuits’ totality-of-the-circumstances test.

B. Even assuming the tests were distinct, it would amount to a distinction without a difference. Brito never even attempts to explain *why* the appellate standard of review should differ for the Fifth Circuit’s seven-factor test versus the First and Eleventh Circuit’s totality-of-the-circumstances test. Whether framed as a “seven-factor” test or a “totality of the circumstances” test, the inquiry still “entails primarily . . . factual work,” *Monasky v. Taglieri*, 589 U.S. 68, 83-84 (2020) (internal quotation omitted), as a review of the Fifth Circuit’s analysis makes clear. Pet. at 24. It should be reviewed for clear error.

b. The Circuit Split Is Pervasive.

Once it is established that the Circuits use the same legal standard, even Brito must acknowledge that at least a 2-1 split exists. Brito’s remaining arguments amount to quibbling with the *extent* of the split. These arguments too are unpersuasive.

A. Brito first tries to remove the Second and Ninth Circuits’ post-*Monasky* decisions from the equation,

asserting that the parties there did not contest the standard of review and thus those Circuits did not “address[] the proper standard of review.” Opp. at 19-21. Appellate courts, however, have “an independent obligation to determine the proper standard of review,” even when “the parties do not dispute it.” *Brown v. Romanowski*, 845 F.3d 703, 711 n.4 (6th Cir. 2017). And both the Second and Ninth Circuits (erroneously) determined that, for a district court’s “well-settled” determination, *de novo* review applies. See *Radu v. Shon*, 62 F.4th 1165, 1172 (9th Cir. 2023); *Stein ex rel J.S. v. Kohn*, No. 23-8078, 2024 WL 4848986, at *1 (2d Cir. Nov. 21, 2024) (per curiam); *Lomanto v. Agbelusi*, No. 23-933, 2024 WL 3342415, at *2 (2d Cir. July 9, 2024). That those decisions did not analyze the relevant standard of review does not make them any less wrong—if anything, it highlights the need for this Court’s intervention. Brito also does not dispute that the Ninth Circuit’s decision in *Radu* will bind all future panels. After all, the Ninth Circuit there expressly cited *Monasky*, so it would be hard to argue that it was not aware of the intervening precedent. *Radu*, 62 F.4th at 1169.

B. Brito next tries to discredit all pre-*Monasky* decisions and thereby remove the Fourth Circuit from the split. Opp. at 19 & n.10. This is a curious move given that the decision below—which Brito defends—specifically held (albeit wrongly) that *Monasky* did not “override the *de novo* standard of review set by the [Fifth Circuit] panel in *Hernandez*.” App.12a. It is therefore fair for Castro to include the Fourth Circuit’s pre-*Monasky* decision as part of the split. And Brito is wrong that “there is every reason to believe that” the Fourth Circuit will apply clear-error review, Opp. at 19 n.10, given that three Circuits (the Second, Fifth,

and Ninth) have each continued to apply *de novo* review even after *Monasky*, see Pet. at 18. As the decision below put it, “[w]ithout clearer direction from the Supreme Court, we cannot override the *de novo* standard of review.” App.12a. The Court should provide that direction.

C. Finally, Brito wrongly discounts the decision of the Supreme Judicial Court of Maine. Opp. at 17 n.9. He argues that Maine “simply followed its local Federal Court of Appeals decision.” *Id.* Brito forgets, however, that state high courts are “not required to follow any lower federal court decision[s], even as to matters of federal law.” *Nadeau v. Twin Rivers Paper Co.*, 247 A.3d 717, 727 (Me. 2021). Thus, although the Supreme Judicial Court of Maine cited the First Circuit’s decision with approval, it necessarily exercised its independent authority and found the First Circuit’s decision persuasive, rather than mechanically following binding precedent. See *Xamplas v. Xamplas*, 347 A.3d 1000, 1010 (Me. 2025). That decision binds all Maine state courts.

II. The Decision Below Contravenes This Court’s Precedents.

Brito’s opposition entirely ignores Castro’s second argument for why this Court should grant the petition: The Fifth Circuit “has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c) (criteria for granting cert); see also Pet. at 19-25. The Fifth Circuit’s decision contradicts no less than three decisions from this Court over the past eight years. See *Bufkin v. Collins*, 604 U.S. 369, 381-82 (2025); *Monasky*, 589 U.S. at 83; *U.S. Bank, N.A. v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 389 (2018). Because the Fifth Circuit

(and other Circuits) failed to heed *three separate instructions* from this Court, this Court should intervene.

Brito offers no response. He never endeavors to explain how the Fifth Circuit’s decision can be reconciled with these cases. He does not even cite *Bufkin* or *U.S. Bank* outside the background section of his opposition. Brito’s silence is telling and underscores the incongruity between the Fifth Circuit’s decision and this Court’s precedents.

III. The Question Presented Is Important and Recurring.

a. Resolving the Standard of Review Will Advance the Treaty’s Dual Purposes of Speed and Uniformity.

A. This Court has recognized that the Convention places a “premium on expedition” and that “clear-error review speeds up appeals.” *Monasky*, 589 U.S. at 84. Brito does not dispute this. *See Opp.* at 25.

Brito instead contends that clear-error review will come “at the expense of wisdom” because appellate courts will be “[f]orc[ed] . . . to defer to erroneous” factual findings. *Id.* Brito overstates the strictures of clear-error review. That standard does not operate to shield *all* findings of fact. *See Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 18 (2024) (findings of fact may be set aside if appellate court is “left with the definite and firm conviction that a mistake has been committed” (internal quotation omitted)). More fundamentally, Brito elides the specialized roles that different courts play in our judicial system. Appellate courts defer to trial court findings of fact because the “trial judge’s major role is the determination of fact, and with experience in fulfilling that role comes expertise.”

Brown v. Plata, 563 U.S. 493, 513 (2011) (internal quotation omitted). Clear-error review thus *promotes* accuracy by ensuring that facts found by trial courts receive appropriate deference. Hague Convention cases are no different.

B. This Court’s review is also important to ensure that the standard of review for “well settled” determinations is applied uniformly. Brito does not dispute that the Hague Convention’s efficacy rests on its uniform application. *See* 22 U.S.C. § 9001(b)(3)(B). He instead addresses a strawman, asserting that Castro is seeking to establish a “*per se* standard that all cases addressing the proper interpretation of an international treaty” must be reviewed by this Court. *Opp.* at 26. The Petition, however, makes the straightforward point that granting certiorari here will promote the Convention’s goal of uniformity, especially when domestic courts are unaligned with their foreign counterparts. *See* *Pet.* at 27. This Court has recognized as much time and again. *See, e.g., Monasky*, 589 U.S. at 79; *Lozano*, 572 U.S. at 12-13; *Abbott v. Abbott*, 560 U.S. 1, 16 (2010).

Nor does Brito meaningfully dispute that the Fifth Circuit’s *de novo* review departs from courts across the world, including appellate courts in Canada, Australia, Scotland, England, and New Zealand. *Pet.* at 27-29. At most, he asserts that foreign appellate courts may not have a distinct standard of review “for mixed questions of fact and law.” *Opp.* at 27. But whether foreign courts recognize a distinct standard of review for such issues is irrelevant. What matters is that, unlike the Fifth Circuit below, foreign courts are deferential to a lower court’s “well settled” determination. The Fifth Circuit’s (and other Circuits’) deviation from

the approach of other Hague Convention signatories is just another reason for this Court to intervene.

b. The Question Presented Is Recurring.

Brito does not deny that the appellate standard of review necessarily arises in every Hague Convention appeal and is therefore a recurring issue. Brito, in fact, admits that there are hundreds of Hague Convention applications filed each year in the United States. Opp. at 23. Brito nonetheless argues that the question presented just doesn't recur frequently enough. *Id.* at 23-24. But Brito provides no support for his assumption that "only a handful of cases each year" adjudicate the "well settled" defense. *Id.* at 24. Brito asserts that he has identified only 46 federal Circuit decisions since 1995 that have addressed the "well settled" defense, but that is a misleading figure. For starters, it fails to consider any *state* appellate courts,¹ which also confront the question presented. Moreover, it ignores that parties often choose *not* to appeal *because of the appellate standard of review*. The decision to appeal often turns on the predicted likelihood of success, which depends on the standard of appellate review. So simply looking at the total number of federal appeals obscures the full significance of the question presented.

IV. This Case Is an Ideal Vehicle.

As explained in the Petition, this case presents an ideal vehicle for review because (1) there is an existing split and (2) the panel below extensively considered (and was divided on) the question presented, including

¹ Indeed, running Brito's Westlaw search string (Opp. at 24 n.16) over all federal appellate courts and state courts yields more than 200 cases.

on rehearing. *See* App.2a. Thus, this case neatly sets up the issue for review.

Brito’s contrary view relies on an attempt to relitigate other issues in the case that this Court need not decide or even consider. *See* Opp. at 28-32. Brito argues (1) that the standard of review would not change the ultimate result, Opp. at 28, and (2) that supposed delays in the district court make this “an unusual case.” Opp. at 31. Neither creates a vehicle problem.

A. At the threshold, those arguments *do not matter* for purposes of this Court’s review. If this Court grants the Petition, it will be to determine the appropriate standard of appellate review. Addressing that question does not require determining who will prevail once the proper standard for appellate review is applied—although this Court is of course free to do so. This Court has frequently granted petitions for a writ of certiorari, vacated the underlying decision, and then remanded for the appellate court to consider other arguments or apply the appropriate legal framework. *See, e.g., Ames v. Ohio Dep’t of Youth Servs.*, 605 U.S. 303, 313 (2025) (vacating the judgement but “leav[ing] it to the courts below to address any of Ohio’s remaining arguments on remand”); *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 815 (2011) (vacating the Fifth Circuit’s denial of class certification but remanding “[t]o the extent Halliburton has preserved any further arguments against class certification”). What the Fifth Circuit does on remand does not affect whether this Court should grant certiorari to clarify the standard for appellate review for all future cases.

B. In any event, Brito is wrong that the result below would not change regardless of the standard of review. Brito does not deny that clear-error review is

highly deferential. *See* Pet. at 25-26. Indeed, he laments it. Opp. at 25. And there is no reason to think the district court *clearly* erred here. To the contrary, four judges have weighed in on the merits of this case—the district court and three circuit judges. Two, reviewing *de novo*, found A.F. was not “well settled”—the two judges in the Fifth Circuit majority. Two other judges, effectively reviewing *de novo* found A.F. was “well settled” in Texas—the district court deciding the case in the first instance and Judge Douglas in dissent reviewing *de novo* for the sake of argument. App.35a. If this case presented a close question on *de novo* review, evenly splitting four judges, then the result is plain under the highly deferential clear-error review. The district court’s decision should be affirmed.

Brito resists this conclusion by arguing the Fifth Circuit would still have reversed because, in Brito’s view, the district court applied an “incorrect legal standard” by comparing A.F.’s connections with Texas to her connections with Venezuela. Opp. at 28-29. But the Fifth Circuit never concluded that the district court applied the wrong legal standard, which, if true, would have been a simpler resolution of the case. Instead, it reversed because “balancing the factors *de novo*” it “disagree[d] with the district court’s assessment.” App.20a. Moreover, there is nothing wrong with considering the relative strengths of the child’s ties to the different locations. The Fifth Circuit itself has explained that, in assessing the “well settled” defense, “[t]he child’s significant connections to the new country” must “be considered in light of evidence . . . concerning the child’s contacts with and ties to his or her State of habitual residence.” *Hernandez*, 820 F.3d at 787 (omission in original) (quoting Hague International Child Abduction Convention; Text and Legal

Analysis (State Legal Analysis), 51 Fed. Reg. 10,494, 10,509 (1986)).

C. Brito’s final argument fares no better. He claims that the “factual record is complicated” by the length of the district court proceedings. Opp. at 30 (capitalization removed). But a “complicated” factual background does not make the case a poor vehicle. Brito does not argue, because he cannot, that any of the purported “complications” below have any bearing on the question presented in the Petition—the relevant appellate standard of review—or even that it would affect the result on remand. *Id.*

This Court need only decide whether the “well settled” determination is primarily legal or factual. Brito cites no cases, and Castro is aware of none, supporting the proposition that a district court’s busy schedule affects the “well settled” determination. That is unsurprising because “[t]he underlying purpose of [the “well settled”] defense” is to determine whether removing the child from their current home is “in the child’s best interest.” *Hernandez*, 820 F.3d at 787. There is no reason to ignore the child’s best interest simply because the trial court has a busy docket.

CONCLUSION

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

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