

In The
Supreme Court of the United States

SAMANTHA ESTEFANIA FRANCISCO CASTRO,
Applicant,

v.

JOSE LEONARDO BRITO GUEVARA,
Respondent.

**On Application to the Honorable Samuel A. Alito, Jr.,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Fifth Circuit**

**RESPONDENT'S OPPOSITION TO EMERGENCY
APPLICATION FOR STAY**

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INTRODUCTION

Samantha Castro’s application to this Court is yet another attempt to delay the return of her daughter, A.F., to her home country of Venezuela, from where Castro wrongfully removed her. Legally, Castro is incorrect—no “extraordinary circumstance” justifies a stay that the Fifth Circuit has already denied. And factually, Castro is incorrect—A.F.’s ordered return will not return her to a country where no one with custody rights would reside. The opposite is true. A.F.’s return will reunite her with ***both*** parents. Each has testified under oath (numerous times) that if and when A.F. is ordered to return to Venezuela, they too will return to Venezuela to be with her.¹ Supp.App.73; Supp.App.248.

This Court should not take the extraordinary measure of granting Castro’s application because all four stay factors weigh heavily against her. The fact that Castro’s forthcoming petition for certiorari is premised entirely on an alleged misapplication of *Monasky* is telling, given that she did not cite *Monasky* once in her response brief at the Fifth Circuit, nor did she raise any arguments regarding the standard of review at oral argument. This petition will not have merit. Moreover, Castro is unable to demonstrate irreparable injury absent a stay. Conversely, the interests of Brito, A.F., and the public all support denial of a stay.

Thus, this Court should deny Castro’s application.

¹ The Supplemental Appendix includes transcripts that were sealed. Accordingly, pursuant to Paragraph 7 of the Court’s Electronic Filing Guidelines, the Supplemental Appendix is not included in the electronic filing and will be submitted only in paper form.

STATEMENT OF THE CASE

A. The Hague Convention Application And Brito's Petition For A.F.'S Return to Venezuela.

The facts about A.F.'s life in Venezuela are largely undisputed. Brito, Castro, and A.F. are all Venezuelan citizens. App.54a. A.F. was born on May 3, 2018, in Yaracuy, Venezuela, and is the biological daughter of Brito and Castro. 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. App.2a; *see also* App.62a–63a.

In 2021, Brito told Castro that he planned to travel to Spain—where he holds dual citizenship—for a higher paying job that would allow him to send money back to his mother, who was caring for A.F. Supp.App.37. Brito did not intend to move permanently, which he communicated to Castro. Supp.App.37. While Brito was in Spain, and without his prior knowledge or consent, Castro absconded with A.F., taking her from the only home she had ever known. App.3a. She unlawfully crossed the border with A.F. into the United States in November 2021. App.3a.

Upon learning that Castro had taken A.F. out of Venezuela, Brito attempted to locate her through the authorities in Venezuela, airports throughout South America, and embassies in Venezuela, the United States, and Spain. App.3a. His efforts culminated in the filing of a Hague Convention Application (“Hague Application”) with Venezuelan authorities on January 20, 2022—less than two months after A.F.'s abduction—seeking the return of A.F. to Venezuela. 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. App.4a. Castro did not respond. 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 initially filed suit in the Eastern District of Texas (the "Eastern District") based on information provided by the United States State Department regarding A.F.'s location. App.4a. The Eastern District promptly entered a restraining order, followed by a preliminary injunction barring Castro from leaving the court's jurisdiction and requiring her to disclose her address. App.4a.

B. Castro's Purposeful Delay.

Despite Brito's efforts to locate Castro and A.F., Castro refused numerous requests from him to provide her address.² 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.³

Castro failed to appear at the preliminary injunction hearing, despite receiving actual notice of it. App.4a. In late June 2023, more than one month after Castro

² Appellant Opening Brief at 9, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

³ Appellant Opening Brief at 9, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

received actual notice of the lawsuit, newly acquired counsel for Castro accepted service and informed Brito that Castro and A.F. had moved to the Northern District of Texas. App.4a. The Eastern District promptly scheduled a hearing, and it held that Castro failed to provide sufficient evidence to identify A.F.’s location at the time of filing.⁴ It ordered Castro to provide such evidence to Brito, after which the Eastern District would hold another hearing.⁵ Although Castro did not supply evidence conclusive of A.F.’s physical location at the time of filing, Brito 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 consented to a transfer to the Northern District of Texas.⁶ The Eastern District Court transferred the case to the Northern District of Texas on August 1, 2023. App.4a.

C. Further Delay by the Northern District of Texas.

Immediately after the case was transferred to the Northern District of Texas, Brito requested a status conference to schedule a final hearing on the merits, alerting the District Court of the Hague Convention’s mandate for a rapid remedy and the need for expeditious relief in light of the delays caused by Castro’s evasiveness.⁷ Two months later, still without response from the District Court on his request to schedule a final hearing on the merits, Brito again requested that the court expeditiously

⁴ Appellant Opening Brief at 10–11, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

⁵ Appellant Opening Brief at 11, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

⁶ Appellant Opening Brief at 11, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

⁷ Appellant Opening Brief at 11, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

schedule the trial.⁸ The District Court again did not address Brito's request, and it instead scheduled an informal and off-the record, in-chambers status conference for November 7, 2023.⁹

This procedural abnormality of an in-chambers conference without a record, along with the delay by the District Court in scheduling an expedited trial greatly concerned Brito. During the status conference, where only counsel, 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 District Court.¹⁰ Rather than address these concerns, the District Court requested a high-level recitation of the facts. The Court then indicated that it would require mediation prior to trial. Counsel for both parties raised concerns regarding the effectiveness of mediation in a Hague Convention case, and Brito's counsel again raised concerns about the further delay this mediation would cause.¹¹ The District Court ended the conference early due to a scheduling conflict and requested that counsel make themselves available in the

⁸ Appellant Opening Brief at 11-12, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

⁹ Appellant Opening Brief at 12, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025). Counsel for all Parties were present on November 7, 2023 for the status conference, but the Court ultimately rescheduled the status conference for November 9, 2023. See ROA.14 (Nov. 8, 2023 Docket Order (D.E. 64)).

¹⁰ 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.

¹¹ 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).

following days by Zoom to continue the conference—which would, again, be held informally and off the record.

At the District Court’s request, on November 10, 2023, counsel for all parties attended a Zoom conference. However, upon appearing, they were informed by the Court clerk that Judge Brown had a conflict and was unable to attend. Counsel for both parties requested that the conference be rescheduled as both had outstanding issues they wanted to raise with the Court.¹² The clerk informed counsel that Judge Brown had authorized him to hold the conference in her place and conveyed that he believed the trial would be set no earlier than March 2024. Brito’s counsel once again objected to the (further) delay, the lack of a record to memorialize that objection, and the fact that this conference was held without Judge Brown present.

At the conclusion of the November conferences, the District Court still did not schedule a final hearing on the merits. Instead, it ordered the parties to file yet another status report.¹³ It also indicated that the earliest a trial would occur would be in March 2024, amounting to an additional five-month delay.

As part of the status report, Brito expressly requested an earlier expedited setting and indicated that he reserved all rights to request further relief, including a formal statement of delay from the District Court or a judicial transfer due to the

¹² The District Court declined to schedule any further conferences or hearings after the informal conference in chambers and counsel did not have the chance to appear in front of her again until the pretrial hearing in this case.

¹³ Appellant Opening Brief at 13, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

significant prejudice to the case.¹⁴ Additionally, Brito moved yet again to set a more expedited final hearing or, in the alternative, to reassign the matter to a judge with a less crowded docket.¹⁵

As Brito identified for the District Court at the time of his November 2023 filing, 219 days had elapsed from the filing of his petition, making Brito's case the second-longest running Hague Convention case in the Northern District between filing and final trial.¹⁶ And at that point, Brito had yet to receive a trial date.¹⁷ As in prior filings and conversations with the District Court, Brito again underscored the importance of a speedy resolution, and urged the District Court to recognize that the longer the case remained pending without resolution, the more likely Respondent would be to succeed on the well-settled affirmative defense.¹⁸ Brito also informed the Court that if the motion was denied, he would be "left with no alternative but to request a statement of delay," as available under the Hague Convention.¹⁹

¹⁴ Appellant Opening Brief at 13-14, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

¹⁵ Appellant Opening Brief at 13-14, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

¹⁶ Appellant Opening Brief at 14, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025). The following cases were inadvertently omitted from the November 2023 filing, all of which serve to further reinforce Brito's position. *See Garcia v. Posada*, 3:24-cv-00360-X (N.D. Tex.) (23 days between filing and final trial, *see* ECF Nos. 1, 52); *Garcia v. Acevedo*, No. 3:16-cv-00808-D-BF (N.D. Tex.) (24 days between filing and final trial, *see* ECF Nos. 1, 19); *Barraza v. Uribe*, No. 5:12-cv-00215 (N.D. Tex.) (49 days between filing and final trial, *see* ECF Nos. 1, 20); *Vega v. Reyes*, No. 3:13-cv-01152-9 (N.D. Tex.) (59 days between filing and final trial, *see* ECF Nos. 1, 10, 12); *Guardian v. Banuelos*, No. No. 3:23-cv-02340 (N.D. Tex.) (87 days between filing and final trial, *see* ECF Nos. 1, 102); *Colohua v. Laughlin*, No. 4:16-cv-00707 (N.D. Tex.) (163 days between filing and final trial, *see* ECF Nos. 1, 46, 48).

¹⁷ Appellant Opening Brief at 14, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

¹⁸ Appellant Opening Brief at 14, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

¹⁹ Appellant Opening Brief at 14, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

The Court denied the motion by Docket Order without a hearing and instead scheduled a final trial for March 2024—over seven months after the transfer.²⁰ Ultimately, the case lasted 337 days, short only 35 days of the longest running Hague Convention case in the Northern District.²¹

D. Merits Trial and Northern District’s 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. App.4a. It reserved judgment, and six weeks later, it entered its Findings of Fact and Conclusions of Law, holding that Brito proved his *prima facie* case that Castro had wrongfully removed A.F. from Venezuela. *See* App.51a.

Of the three affirmative defenses raised by Castro—that Brito consented to A.F.’s relocation to the United States, that A.F. faced a grave risk of physical or psychological harm if she returned to Venezuela, and 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. App.66a–72a.

²⁰ Appellant Opening Brief at 15, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025). After the U.S. Department of State learned of the denial and the ultimate trial setting, it sent an Article 11 letter to the District Court requesting a Statement of Delay. In response, the District Court, through its Courtroom Deputy, emailed the U.S. Department of State the scheduling order but did not provide any further statement for its delay on the record. Based on the District Court’s rejection of the State Department’s request and denial of Brito’s numerous requests for expedited relief, he did not request an additional statement of delay from the District Court.

²¹ Appellant Opening Brief at 15, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

In ruling on Castro’s consent defense, the Northern District held that “Brito did not consent to A.F.’s removal [and] 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.” App.67a.

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.” App.68a.

Ultimately, however, the Northern District ruled in Castro’s favor on the well-settled defense, holding that “A.F. has formed significant connections to her environment in Texas—stronger than her connections to Venezuela,” and that she should not be returned to Venezuela despite her wrongful removal. App.70a.

Brito timely appealed.

E. Fifth Circuit Appeal and Order.

Brito filed a Notice of Appeal on June 7, 2024. On June 2, 2025, after briefing and oral 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.” App.18a.

Two weeks later, Castro filed a Petition for Rehearing *En Banc* (“Rehearing Petition”), which resulted in a temporarily stay of the Fifth Circuit’s mandate.²² On September 5, 2025, the Fifth Circuit issued a new opinion that again reversed the Northern District’s ruling, and it again remanded “with instructions that the district court order A.F.’s return to Venezuela.” App.1a–2a.

Castro filed an opposed Motion for Stay of Issuance of Mandate Pending Petition for Writ of Certiorari.²³ The Fifth Circuit denied her motion on September 26, 2025, in a reasoned Order. *See* App.49a.

Castro filed the instant Emergency Application for Stay (“Stay Application”). Brito opposes the relief sought therein.

ARGUMENT

I. STANDARD

“Stays pending appeal to this Court are granted only in extraordinary circumstances.” *Graves v. Barnes*, 405 U. S. 1201, 1203 (1972). When the Court of Appeals has already denied a motion for a stay—as is the case here—the applicant bears “an especially heavy burden.” *Edwards v. Hope Med. Grp. for Women*, 512 U. S. 1301, 1302 (1994) (quoting *Packwood v. Senate Select Comm. on Ethics*, 510 U. S. 1319, 1320 (1994)); *see also Beame v. Friends of the Earth*, 434 U.S. 1310, 1312 (1977)

²² Petition for Rehearing En Banc, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025); Order Withholding Issuance of Mandate, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

²³ Motion for Stay of Issuance of Mandate Pending Petition for Writ of Certiorari, *Guevara v. Castro*, 139 F.4th 422 (5th Cir. 2025).

(a stay applicant’s “burden is particularly heavy when . . . a stay has been denied by the District Court and by a unanimous panel of the Court of Appeals”).

“In considering whether to stay a return order” under the Hague Convention, this Court applies four factors: ‘(1) whether the stay applicant has made a strong showing that [s]he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.’” *Chafin v. Chafin*, 568 U.S. 165, 178–79 (2013) (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)).

II. CASTRO HAS NOT MADE A “STRONG SHOWING” THAT SHE IS LIKELY TO SUCCEED ON THE MERITS.

Castro’s ongoing motion practice shows only that she wants A.F. to remain in the United States in contravention of the Fifth Circuit’s Order, and not that she is likely to succeed in her forthcoming petition for certiorari to this Court. As a threshold matter, her application presupposes that the Court will accept her case in the first instance—which occurs in less than 1% of cases in which certiorari is sought.²⁴

That the Court will grant certiorari here is especially unlikely, because the Fifth Circuit properly reviewed *de novo* and properly held that A.F. was not well-settled in Texas as a matter of law. However, even if the underlying issue was one that the Court wants to address in the future, this case is not the one to do so with. There were numerous procedural abnormalities at the Northern District that do not

²⁴ ABOUT THE COURT, SUPREME COURT AT WORK, <https://www.supremecourt.gov/about/courtatwork.aspx> (last visited Oct. 16, 2025).

typically occur in Hague Convention cases. Brito addressed these abnormalities, including the considerable delay that the Northern District failed to consider, on appeal. But because the Fifth Circuit held that the Northern District erred in its legal application of the well-settled defense, it did not reach these additional issues.

Putting aside the issues of delay that complicate the procedural history of this case and separate it from other cases in which the well-settled defense is raised, even if this Court were to grant certiorari and hold that clear error review applies, the ultimate finding of the Fifth Circuit—that A.F. was not well-settled and, thus, must return to Venezuela—would not change.

A. The Well-Settled Defense Requires a Movant to Prove “Substantial Evidence of a Child’s Significant Connections” to Override the Hague Convention’s Return Remedy.

“The Convention was adopted in 1980 in response to the problem of international child abductions . . . [and] seeks ‘to secure the prompt return of children wrongfully removed to or retained in any Contracting State,’ and ‘to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.’ *Abbott v. Abbott*, 560 U.S. 1, 8 (2010) (quoting art. 1, S. Treaty Doc. No. 99-11, at 7); *see also Salazar v. Maimon*, 750 F.3d 514, 519 (5th Cir. 2014) (quoting Hague Convention art. 1).²⁵ “The return remedy is the central operating feature of the Convention and provides that a wrongfully removed child must be returned to his or her country of habitual residence unless certain defenses apply.” *Hernandez v. Garcia Pena*, 820 F.3d 782, 786 (5th Cir. 2016)

²⁵ The United States and Venezuela are both signatories to the Convention.

(footnote omitted). When return proceedings are initiated after the expiration of one year since the wrongful removal, a respondent may raise the well-settled affirmative defense. Hague Convention, art. 12.

While “[t]he term ‘settled’ is not defined in the Convention or its implementing legislation,” “[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.” *Garcia Pena*, 820 F.3d at 787 (emphasis in original) (quoting Hague International Child Abduction Convention; Text and Legal Analysis (State Legal Analysis), 51 Fed. Reg. 10494, 10509 (1986)). To determine whether a child is well-settled under Article 12 of the Hague Convention, the Fifth Circuit, like other circuits, looks to the following nonexclusive factors:

- (1) the child’s age; (2) the stability and duration of the child’s residence in the new environment; (3) whether the child attends school or day care consistently; (4) whether the child has friends and relatives in the new area; (5) the child’s participation in community or extracurricular activities; (6) the respondent’s employment and financial stability; and (7) the immigration status of the respondent and child.

Garcia Pena, 820 F.3d at 787–88 (the “*Pena* Factors”).

As the Fifth Circuit held, courts should not engage in a “mathematical tallying of how the evidence aligns with each of the seven factors.” App.8a. The nondispositive *Pena* Factors instead are meant to guide courts in arriving at a holistic “legal judgment” of whether a child has formed “such deep or enduring ties to her new environment that returning to her home . . . would contravene her best interests.” *Id.*

Critically, there were no disputes of fact underlying the *Pena* Factors, either at the Northern District, during the Fifth Circuit appeal, or in Castro’s Motion for

Rehearing. Instead, the parties disputed the legal implications of those undisputed facts—namely whether, as a matter of law, the facts established that A.F. was well settled in Texas. As the Fifth Circuit held, the facts did not come close to establishing “deep” and “enduring ties” such that the Hague Convention’s return remedy should be overridden. App.12a.

B. *De Novo* Review is Proper for the Well-Settled Analysis.

Determining the “appropriate standard of appellate review for mixed question[s] of law and fact] ‘depends . . . on whether answering it entails primarily legal or factual work.’” *Monasky v. Taglieri*, 589 U.S. 68, 83–84 (2020) (quoting *U.S. Bank N.A. v. Village at Lakeridge, LLC*, 583 U.S. 387, 388 (2018)). In *Monasky*, the Court held that “[o]nce the trial court correctly identifie[d] the governing totality-of-the-circumstances standard” for the habitual residence inquiry, “what remain[ed] for the court to do in applying that standard . . . [was] to answer a factual question” that “should be judged on appeal by a clear-error review.” *Id.* at 84 (citation omitted).

Castro states that the “panel below made no serious attempt to distinguish *Monasky*,” Appl. at 17, but that is simply untrue. To the contrary, the Fifth Circuit analyzed at length the proper standard of review. *See* App.7a–9a; App.23a–29a. As it ultimately concluded, unlike locating a child’s home—an objective, “fact-driven inquiry”—the defense at issue here requires a primarily legal determination of whether a child is sufficiently settled under the Hague Convention to override the return remedy. App.10a–11a.

In both the Motion for Rehearing and her instant application, Castro summarily argues that the Court’s holding in *Monasky*—that clear error review

applies for the habitual residence determination—should be extended to the well-settled analysis. And it is all but guaranteed that this argument will form the basis of her forthcoming petition for certiorari as well. But Castro’s likelihood of success at this Court is just as low as her unsuccessful Motion for Rehearing.

Indeed, Brito largely did not challenge the Northern District’s factual findings. Brito instead challenged the legal conclusions that the Northern District drew from its factual findings. That review must be conducted *de novo*. For example, the Northern District found that A.F. is a “very young child” and that “A.F. do[es] not have Lawful Permanent residence status in the United States.” App.70a. Brito does not dispute those facts. Instead, he disputed the legal conclusion that the Northern District derived from those facts, that they were “lukewarm factors” of the well-settled analysis. App.70a. The Fifth Circuit agreed with Brito that the Northern District’s legal conclusions were incorrect. App.12a; App.16a–17a. Likewise, the facts that A.F. attended church, had a primary care physician, visited Disney World, and played at playgrounds were not disputed. App.71a. But, again, Brito disputed the Northern District’s legal conclusion premised on those facts—that those facts established “overwhelming” evidence of A.F.’s participation in her community. App.71a. And, again, the Fifth Circuit agreed with Brito that the Northern District’s legal conclusions were incorrect. App.15a. Because the errors raised by Brito were all legal in nature, the Fifth Circuit correctly applied a *de novo* standard of review.

Thus, there is no reasonable likelihood that Castro will succeed on the underlying merits of her argument that the Fifth Circuit applied the incorrect standard of review.

C. Regardless of the Standard of Review, Castro’s Position is Not Meritorious.

Assuming *arguendo* that the Fifth Circuit should have reviewed for clear error, the ultimate outcome would not change even if the Court granted Castro’s certiorari petition. Clear error review mandates that an appellate court first answer the question of whether the district court applied the correct legal standard. *See Harm v. Lake-Harm*, 16 F.4th 450, 454 n.6 (5th Cir. 2021) (citing *Monasky*, 589 U.S. at 83). Then, if it did, the appellate court may move to a review of the factual issues. *Id.* But here, “the district court erred in [] its legal framing,” of the well-settled defense. App.12a.²⁶ Because the Northern District applied the incorrect legal standard, under a clear error review, a reviewing court must apply the facts to the correct legal standard.²⁷

²⁶ The Northern District engaged in a two-part determination in its analysis of the well settled defense where it first (correctly) noted that “the term [well-settled] requires ‘nothing less than substantial evidence of the child’s significant connections to the new country,’” but then (incorrectly) weighed the child’s “connections [in] her environment in Texas” against her connections in Venezuela and found that she had “stronger [ties in Texas] than her connections to Venezuela.” App.59a; App.69a. This is not the correct legal standard. 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 U.S. Dist. LEXIS 67364, at *19-20 (W.D. Tex. Apr. 18, 2023) (citation omitted).

²⁷ While the Fifth Circuit could have remanded to the Northern District, this remedy is largely disfavored in Hague Convention cases because “remand would consume time when swift resolution is the Convention’s objective.” *Monasky* 589 U.S. at 86. This is especially true in situations like the instant case when there is no need to reappraise facts, but rather, apply the facts to the correct legal standard. *See Smith v. Smith*, 976 F.3d 558, 563 (5th Cir. 2020).

To begin, the Fifth Circuit correctly held that both Castro and the Northern District erroneously downplayed the legal significance of A.F.’s immigration status, which the Northern District found cut against finding A.F. was well-settled, albeit in a “lukewarm” fashion. App.12a. Most critically, it was undisputed that Castro lacks Lawful Permanent Residence status, and she introduced no evidence as to the credibility of her asylum application, including that A.F. faced any risk of harm if ordered to return. App.16a; App.68a. The Fifth Circuit explained that Castro’s immigration status should not be assigned greater weight than any other *Pena* Factor, but it further explained that Castro’s immigration status cannot be examined in a vacuum. App.16a–17a. Because neither Castro nor her boyfriend (nor any other of A.F.’s relatives residing in the United States) possessed Lawful Permanent Residence, the Fifth Circuit correctly held that the resulting uncertainty of long-term residency “erodes any stability A.F. may have developed in the United States.” App.17a.

In the same vein, the Fifth Circuit also held that the Northern District downplayed the significance of A.F.’s age and its legal implications on the well-settled defense. App.12a. Courts routinely recognize that young children like A.F. are unable to form the same type of bonds and attachment to a new environment as older children. *See Garcia Pena*, 820 F.3d at 789 (“[H]e is a very young [five-year old] child not able to form the same level of attachments and connections to a new environment as an older child.”). Importantly, despite the time that had passed between A.F.’s unlawful removal and the Northern District’s bench trial proceedings, A.F. is still

only seven years old. She is therefore still unable to form significant connections to the United States. Indeed, courts routinely grant Hague Convention petitions over the objections of much older children. *See, e.g., Dietz v. Dietz*, 349 F. App'x 930, 934 (5th Cir. 2009) (upholding a finding that children aged nine and thirteen had not attained sufficient age and degree of maturity).

A.F.'s return therefore does not raise the same concerns of undue stress as for older children who are capable of forming deeper connections to their new environment. *Id.* And contrary to the Northern District's characterization of this factor as "non-dispositive" and "lukewarm," courts have afforded a child's age significant weight in determining whether a child is well-settled under the Convention. *See, e.g., Hernandez v. Erazo*, No. 23-50281, 2023 U.S. App. LEXIS 10584, at *11 (5th Cir. Mat 1, 2023) (rejecting a well-settled defense when a two-year-old had stable home for over a year and daycare attendance six days a week).

Castro also argued at the Fifth Circuit that because the stability of her and A.F.'s residence could be worse, that factor should cut in favor of a well-settled finding. But she does not deny that she lived in her first home in Lewisville, Texas, for less than a year, or that she had resided in her current residence for less than six months as of the date Brito filed his Petition—a far cry from a stable living situation. *See* App.13a; App.56a. Relatedly, the fact that Castro had held at least four different jobs at the time of the Northern District's final award hardly supports a finding of stable employment, no matter how her salary has changed over time. *See* App.15a; App.56a. And it is undisputed that Castro's salary alone is insufficient to support

A.F., forcing her to depend financially on a man whose lawful immigration status is as uncertain as hers. App.15a. While Castro spun such financial dependence as a hallmark of stability, courts have not been persuaded. *See Moretti v. Braga*, No. 3:23-CV-0586-L, 2023 U.S. Dist. LEXIS 88748, at *59 (N.D. Tex. May 22, 2023); *Vite-Cruz v. Del Carmen Sanchez*, No. 3:18-cv-01943-DCC, 2018 U.S. Dist. LEXIS 215768, at *22–23 (D.S.C. Dec. 19, 2018). Taken together, these undisputed facts severely undercut Castro’s legal argument that A.F. is well settled. App.17a.

The evidence supporting A.F.’s ties to her community was also minimal. The Northern District heard no evidence of the frequency or duration of A.F.’s playdates, swimming, or attendance at playgrounds and birthday parties, nor did it hear any evidence that those activities began before 2024. Supp.App.220, 287–88. The Northern District heard evidence of church attendance, family vacations, and friends, but the only supporting evidence, beyond testimony, consisted of undated video footage and photographs. Supp.App.#222–25. Finally, A.F. did not start school or even begin to learn English until August 2023. App.57a. Before that, she did not attend daycare, as the Northern District erroneously found, but was instead watched five days a week by her great-aunt since October 2022. App.57a. Like the preceding facts, when applied to the correct legal standard, it is clear that A.F. is not well-settled as a matter of law.

In short, under either *de novo* review or clear error review, the facts here do not support a legal conclusion that A.F. was well-settled. Because Castro cannot

demonstrate a “strong showing” that she is likely to succeed on the merits, her pending application for a stay should be denied.

III. CASTRO WILL NOT BE IRREPARABLY INJURED ABSENT A STAY.

Even if Castro could satisfy the other requirements for this Court to grant a stay (which she cannot), she cannot carry her burden of showing that she would be “irreparably injured absent a stay.” *Chafin*, 568 U.S. at 179. As this Court has held, the issuance of a circuit court’s mandate will not cause irreparable harm if the ultimate relief Castro seeks is not rendered an impossibility. *See Conkright v. Frommert*, 556 U.S. 1401, 129 S. Ct. 1861, 1862 (2009) (stay not warranted when relief would not be impossible); *cf. Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 572 U.S. 1301, 1301 (2014) (no irreparable harm when damages are available). Here, the ultimate relief sought is a denial of Brito’s petition under the Hague Convention, which will not be rendered impossible by the denial of a stay.

As the Fifth Circuit correctly acknowledged when denying Castro’s request for a stay, “appellate rights in Hague Convention cases are not extinguished upon a child’s repatriation.” App.50a. (citing *Chafin*, 568 U.S. at 178–79). Indeed, this Court has warned that stays of return orders “would undermine the [Hague Convention’s] goal of prompt return and the best interests of children who should in fact be returned.” *Chafin*, 568 U.S. at 179. At the same time, however, the return of a child “does not render [the] case moot; there is a live dispute between the parties over where their child will be raised, and there is a possibility of effectual relief for the prevailing parent.” *Id.* at 180. Because A.F.’s return does not foreclose that possibility

of ultimate relief, Castro is incorrect that irreparable harm would result from enforcement of the Fifth Circuit's mandate. This alone requires this Court to deny the stay.

Castro raises three additional arguments to support her contention of irreparable harm without a stay. None are persuasive. *First*, Castro speculates about consequences that might result from A.F.'s removal from her current community and return to her home country. *Second*, Castro contends that A.F.'s return to her country of habitual residence would result in presumptive abandonment of Castro and A.F.'s asylum petitions, which she now contends would subject them both to inescapable harm in Venezuela. And *third*, Castro contends that there would be no one in Venezuela to exercise parental authority over A.F. All three are as unsound legally as they are factually.

Castro's first argument seems to be premised on a comparison of her subjective views of A.F.'s opportunities in the United States against those in Venezuela. But Hague Convention precedent expressly disavows this type of comparison under the grave risk defense. *See Cuellar v. Joyce*, 596 F.3d 505, 509 (9th Cir. 2010) ("At the time the Convention was adopted, the State Department took care to emphasize that grave risk doesn't 'encompass . . . a home where money is in short supply, or where educational or other opportunities are more limited.'" (quoting 51 Fed. Reg. 10494, 10510 (1986))). It is axiomatic that a theory which would not support an affirmative defense under the Hague Convention cannot be relied on by Castro to avoid the same outcome by different means.

Even if it could, Castro’s unsupported arguments fall flat. She states that “removing a developing seven-year-old child” would be “incredibly destabilizing and harmful,” but she provides nothing to support this assertion beyond a single citation to *Brown v. Board of Education* which states that “education has come to be ‘a principal instrument in awakening the child to cultural values, in preparing [her] for later professional training, and in helping [her] to adjust normally to [her] environment.’” Emergency Application for Stay, at *22, *Guevara v. Castro*, No. 24-10520, 2025 LX 379275 (5th Cir. Sep. 5, 2025) (on petition for rehearing en banc). That this Court need not be concerned with a seven-year-old’s “preparation for later training” goes without saying. And it is the precise reason why Hague Convention cases routinely hold that “very young child[ren] [are] not able to form the same level of attachments and connections to a new environment as an older child.” *See Garcia Pena*, 820 F.3d at 789. Moreover, A.F.’s return to Venezuela will not deprive her of the ability to attend church or school, nor will it deprive her of the ability to engage with friends and family. Quite the opposite. She will instead be reintegrated into the community of her place of habitual residence.²⁸

As to Castro and A.F.’s asylum petition, this argument is a red herring. As the Fifth Circuit observed, there is no credible evidence that Castro or A.F. have any credible asylum petition pending. App.16a; *see also* App.68a (“There is no evidence

²⁸ It is undisputed that as part of Brito’s *prima facie* case, he established the Venezuela is A.F.’s place of habitual residence. *See* App.12a (“The parties do not dispute the district court’s finding that Brito established a *prima facie* case for A.F.’s return. The sole question on appeal is whether the well-settled defense bars that return.”).

before the Court of physical or psychological abuse present in Venezuela that A.F. would be subjected to if returned.”). Castro now states that “[a]lthough not part of the record on appeal, [her] asylum application is based on political opinion . . . [and] [s]he fled Venezuela to protect her life and that of A.F.”²⁹ But the reason this is not part of the appellate record is because this is the first time Castro has raised this argument. It therefore cannot form the basis for relitigating facts.

Moreover, at the Northern District, Castro raised the grave risk defense but premised that defense on an argument that the return of A.F. would create a “grave risk” for A.F. by placing her “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.” App.68a. Surely, if Castro felt that returning to Venezuela would endanger A.F.’s life, she would have raised this as part of the grave risk defense. It is telling that she did not. *See Sanchez v. R.G.L.*, 761 F.3d 495, 510 (5th Cir. 2014) (holding that the failure to present evidence before a district court, despite having an opportunity to do so undercuts any contention that return would put the child at grave risk).

Finally, Castro stresses that “A.F. has no custodial parent in Venezuela, [so] Castro would have no choice but to accompany A.F. there.” Appl. at 24. This is untrue. As in her Fifth Circuit briefing, she again misrepresents the Northern District’s findings as to the circumstances awaiting A.F. back home in Venezuela.

That Brito is currently located in Spain is of no consequence. At every turn, Brito has affirmed, under oath, that as soon as his daughter is ordered to return home

²⁹ Appl. at 23 n4.

he too will permanently return to Venezuela to care for her. Supp.App.24, Supp.App.73. He already has a job lined up, as well as housing for himself and A.F. Supp.App.73–74. The only reason Brito has not yet returned to Venezuela is because his daughter is not there to return to. Supp.App.73–74.

Castro has also testified unequivocally that she would voluntarily accompany A.F. back to Venezuela should the court order her return. But if Castro were to change her mind, A.F. has paternal family members who will travel to the United States to accompany A.F. back to Venezuela, where Brito would be waiting for her at the airport.³⁰

In short, it is undisputed that A.F. will have *both* parents — as well as maternal and paternal family members — with her in Venezuela and any argument to the contrary conflicts with the record in this case.

Thus, Castro has not demonstrated that irreparable harm would come to either herself or A.F. if she were returned to Venezuela pending a petition for certiorari, and this factor therefore weighs against granting the Stay Application.

IV. ISSUING A STAY WILL SUBSTANTIALLY INJURE BOTH A.F. AND BRITO.

Tellingly, Castro barely addresses whether granting her motion will cause substantial injury to Brito, devoting only five sentences to this argument out of 27 pages. Appl. at 26–27. This is because Castro cannot run from what she knows to be true: no one—not A.F., not Brito, and not Castro herself—would be in this position

³⁰ Due to issues obtaining a visa, Brito is unable to travel to the United States. See App.3a.

but for Castro's own actions. Had Castro not wrongfully removed A.F. from Venezuela without Brito's consent, none of this would have occurred, and A.F. would not need to re-adjust to her home life in Venezuela.

Further staying A.F.'s rightful return to Venezuela any longer will continue to injure her as well as her father. "The aim of the Convention is to secure prompt return of the child to the correct jurisdiction, and any unnecessary delay renders the subsequent return more difficult for the child, and subsequent adjudication more difficult for the foreign court." *Friedrich v. Friedrich*, 78 F.3d 1060, 1063 n.1 (6th Cir. 1996). Not only would a stay "conflict with the Convention's mandate of prompt return to a child's country of habitual residence," but it would also mean that A.F. would "lose precious months when she could [] be[] readjusting to life in her country of habitual residence." *Chafin*, 568 U.S. at 178.³¹ Here, A.F. would almost certainly lose more than one or two months, as the timeline for briefing and ruling on a petition for certiorari often greatly exceeds two months. In practice, Castro is asking that this Court delay A.F.'s return to Venezuela for as much as another year. Castro has requested that A.F.'s return to Venezuela be stayed pending this Court's decision on her forthcoming petition for certiorari, and Castro's filing deadline alone is three months away. *See* Supreme Court Rule 13(3). This does not account for time that will pass if the Court decides whether to hear the case, potentially requests briefing or argument from Brito, and ultimately rules.

³¹ Even if this Court were to grant certiorari, the earliest a decision would be made would be in October 2026, meaning that A.F. would lose even more than a few months away.

Like A.F., Brito would also face substantial injury if the stay is granted. As this Court has held, individualized treatment is necessary for motions to stay arising out of cases arising under the Hague Convention. *See Chafin*, 568 U.S. at 179 (“In every case under the Hague Convention, the well-being of a child is at stake.”). The individualized treatment here requires the Court to consider the additional harm to Brito if the stay is granted, separate from “standard” Hague Convention cases. It is undisputed that Brito will be unable to see his daughter until she is returned to Venezuela because he is unable to obtain visa authorization to travel to the United States. *See* App.49a. As it is, Brito has been unable to see his daughter for 47 months. Due to Castro’s actions, Brito could not take her to her Kindergarten or attend her last four birthdays. Every passing day that A.F. remains separated from Brito continues to harm both him and her.

Thus, because granting the stay would substantially injury Brito and A.F., this factor weighs in favor of denying Castro’s Stay Application.

V. PUBLIC INTEREST FIRMLY SUPPORTS DENYING THE REQUESTED STAY.

The public interest inquiry weighs substantially in favor of denying Brito’s stay application. In Hague Convention cases, the public has an interest in promoting the “driving objective” of the Convention, which is “to facilitate custody adjudications, promptly and exclusively, in the place where the child habitually resides.” *Chafin*, 568 U.S. at 180 (Ginsburg, J., concurring). Courts consistently hold that the public interest in such cases favors the child’s speedy return. *See Orellana v. Cartagena*, No. 17-6520, (6th Cir. Jan. 17, 2018) (“The public interest also favors their daughter’s

expeditious return”); *Antonio v. Bello*, No. 04-12794-GG, (11th Cir. June 10, 2004) (“The return order also furthers the public interest in complying with this country's treaty obligations, as implemented by ICARA, and in doing so expeditiously”).

As federal courts have recognized, issuing stays of orders returning children to their places of habitual residence should not be routine in Hague Convention cases. To issue a stay under the circumstances in this case would be diametrically opposed to the purposes of the Convention and would depart from well-settled precedent.

CONCLUSION

For the foregoing reasons, this Court should deny Castro’s application.

Respectfully submitted.

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