

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

REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR STAY

BRETT D. SOLBERG
DLA PIPER LLP (US)
845 Texas Avenue, Suite 3800
Houston, TX 77002

JACOB I. CHEFITZ
DLA PIPER LLP (US)
1251 Avenue of the Americas,
27th Floor
New York, NY 10020

SERGIO FILIPE ZANUTTA VALENTE
SAMUEL ATTICUS POLLOCK-BERNARD
DLA PIPER LLP (US)
500 Eighth Street, NW
Washington, DC 20004

MICHAEL E. KERAMIDAS
DLA PIPER LLP (US)
One Liberty Place
1650 Market Street, Suite 5000
Philadelphia, PA 19103

ROGER C. DISEKER
Counsel of Record
JOAKIM SOEDERBAUM
DUANE MORRIS LLP
300 Throckmorton Street,
Suite 1650
Fort Worth, TX 76102
(817) 704-1000
rdiseker@duanemorris.com

TRACY L. MCCREIGHT
DUANE MORRIS LLP
Terrace 7
2801 Via Fortuna, Suite 200
Austin, TX 78746

Counsel for Applicant

October 20, 2025

TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	2
I. THERE IS A REASONABLE PROBABILITY THAT THE COURT WILL GRANT CERTIORARI.....	2
II. THERE IS A REASONABLE PROBABILITY OF REVERSAL.....	5
A. Brito Fails to Distinguish <i>Monasky</i> , <i>U.S. Bank</i> , and <i>Bufkin</i>	5
B. The Standard of Review Is Dispositive Here.....	7
III. DENIAL OF A STAY WILL CAUSE IRREPARABLE HARM.....	10
IV. THE EQUITIES FAVOR A STAY	15
V. THE PUBLIC INTEREST FAVORS A STAY	16
CONCLUSION.....	17

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Ames v. Ohio Dep’t of Youth Servs.</i> , 605 U.S. 303 (2025)	5
<i>Antonio v. Bello</i> , No. 04-12794-GG (11th Cir. June 10, 2024)	17
<i>Bufkin v. Collins</i> , 604 U.S. 369 (2025)	5, 7
<i>Chafin v. Chafin</i> , 568 U.S. 165 (2013)	13, 14, 15, 17
<i>Conkright v. Frommert</i> , 556 U.S. 1401 (2009) (Ginsburg, J., in chambers)	15
<i>Cooper v. Harris</i> , 581 U.S. 285 (2017)	7, 8, 9
<i>Cuenca v. Rojas</i> , 99 F.4th 1344 (11th Cir. 2024).....	6
<i>da Costa v. de Lima</i> , 94 F.4th 174 (1st Cir. 2024)	6
<i>Dennis Melancon, Inc. v. City of New Orleans</i> , 703 F.3d 262 (5th Cir. 2012)	13
<i>England v. England</i> , 234 F.3d 268 (5th Cir. 2000)	4
<i>Erica P. John Fund, Inc. v. Halliburton Co.</i> , 563 U.S. 804 (2011)	5
<i>Hernandez v. Garcia Pena</i> , 820 F.3d 782 (5th Cir. 2016)	4, 6, 10, 17
<i>I.N.S. v. Cardozo-Fonseca</i> , 480 U.S. 421 (1987)	11
<i>Monasky v. Taglieri</i> , 589 U.S. 68 (2020)	1, 2, 3, 5, 6

<i>Neumann v. Neumann</i> , 310 F. Supp. 3d 823 (E.D. Mich. 2018)	2, 14
<i>Orellana v. Cartagena</i> , No. 17-6520 (6th Cir. Jan. 17, 2018).....	17
<i>Singh v. U.S. Dep’t of Homeland Security</i> , 2020 WL 9396227 (D. Ariz. Feb. 19, 2020).....	11
<i>Teva Pharm. USA, Inc. v. Sandoz, Inc.</i> , 572 U.S. 1301 (2014) (Roberts, C.J., in chambers)	15
<i>U.S. Bank N.A. v. Village at Lakeridge, LLC</i> , 583 U.S. 387 (2018)	5, 7
Statutes	
U.S.C. § 1158(a)(1)(D)	11
Other Authorities	
8 C.F.R. § 1208.13(d)(2)(i)(G)	11
Genevieve Glatky, <i>Venezuela Announces Sweeping Military Exercises as U.S. Escalates Pressure</i> , N.Y. Times (Oct. 18, 2025)	12
Juan Forero <i>et al.</i> , <i>Venezuela Mobilizes Troops and Militias as U.S. Military Looms Offshore</i> , Wall Street Journal (Oct. 16, 2025).....	13
Julian E. Barnes & Tyler Pager, <i>Trump Administration Authorizes Covert C.I.A. Action in Venezuela</i> , N.Y. Times (Oct. 15, 2025)	12

INTRODUCTION

This case readily meets the standard for a stay of the mandate. As Castro explained in her application, there is a reasonable probability that the Court will grant certiorari here. The decision below (i) expressly splits with multiple other Circuits, (ii) contravenes this Court’s controlling decision in *Monasky v. Taglieri*, 589 U.S. 68 (2020), and (iii) implicates an important issue of federal and international law that calls for uniformity. There is also a strong probability of reversal, as the Fifth Circuit’s majority opinion cannot be reconciled with several of this Court’s recent decisions regarding the appropriate standard of review for mixed questions of fact and law. And the denial of a stay will irreparably harm both A.F. and Castro. Both will be forced to presumptively abandon their asylum applications, which would very likely foreclose their ability to return to the United States, even if this Court reverses the Fifth Circuit. And A.F., a seven-year-old girl, will be uprooted from her school and community and sent to a country that she does not remember, where neither of her parents currently live, and whose tensions with the United States have been increasing by the day.

In opposing Castro’s application, Brito makes no serious attempt to challenge the certworthiness of this case. He ignores the circuit split entirely. He offers no coherent basis on which to distinguish *Monasky* and disregards this Court’s other recent precedents on the appropriate standard of review in cases like this. And he does not contest that the issue here—the appellate standard of review for “well settled” determinations under the Hague Convention—is important and recurring. These glaring omissions say all that needs telling.

Instead, Brito spills much ink complaining about the district court's management of this case and accusing Castro of engaging in delay. Brito's complaints, based largely on unsupported factual assertions from his Fifth Circuit brief and off-the-record conferences, are meritless. They are also ultimately beside the point and do not make this case any less certworthy.

Brito's argument on irreparable harm fares no better. Brito does not dispute that, absent a stay, Castro and A.F. will be forced to presumptively abandon their asylum applications. That alone is a tacit admission of irreparable harm. And he does not dispute that, absent a stay, A.F. will be abruptly uprooted from her school and community in Texas and sent to a country that she does not remember. The Hague Convention's "well settled" defense exists precisely to avoid such situations.

The Court should therefore stay the Fifth Circuit's mandate pending Castro's petition for certiorari.

ARGUMENT

I. There Is a Reasonable Probability that the Court Will Grant Certiorari

As explained in Castro's application, there is a reasonable probability of certiorari here because the Fifth Circuit's decision (i) expressly deepens a Circuit split; (ii) contravenes this Court's holding in *Monasky*; and (iii) implicates an important and recurring issue of federal and international law that demands uniformity—*i.e.*, the correct appellate standard of review of a district court's determination under the Hague Convention that a child is "well settled." Application at 13-19.

Brito's opposition—like the Fifth Circuit's order denying a stay—provides no reason to cast doubt on the certworthiness of this case. For starters, he entirely ignores the identified Circuit split, effectively conceding its existence. He also does not deny the significance of the question presented here, or the crucial need for uniformity in the Hague Convention context.

Instead, Brito states generally that certiorari is rare; that, in his view, the Fifth Circuit correctly applied *de novo* review, even under *Monasky*; and that supposed “procedural abnormalities” and “considerable delay” during the district court proceedings make this case a bad vehicle for certiorari. Opp. at 11-12. But certiorari's *general* rarity says little about whether certiorari is likely *here*. And the two reasons Brito offers for questioning the likelihood of a cert-grant here are unpersuasive.

First, as explained further below, Brito's arguments in defense of the Fifth Circuit fail. *See infra* Part II. He offers no persuasive basis to distinguish *Monasky*, and he does not even try to reconcile the Fifth Circuit's decision with this Court's other, on-point holdings regarding the appellate standard of review for mixed questions. He also completely ignores the other Circuits that have held, post-*Monasky*, that clear-error review applies to a “well settled” determination. *See id.* But even putting the merits aside, whether the Fifth Circuit correctly applied *de novo* review does not change the fact that a clear Circuit split exists on this issue that warrants this Court's resolution.

Second, while Brito complains about supposed “procedural abnormalities” and argues that the district court's “considerable delay” provides an alternative basis for

granting him relief, those issues have no bearing on the question that will be presented in Castro’s forthcoming petition for certiorari.¹ The question for this Court is whether the Fifth Circuit applied the correct appellate standard of review to the “well settled” determination. What’s more, Brito does not and cannot explain why his grievances with the district court should affect the “well settled” determination even in the first instance. He has cited no authority—either in his opposition or in his Fifth Circuit briefs below—for the proposition that a court’s busy schedule affects the “well settled” determination. *See Guevara v. Castro*, No. 24-10520 (5th Cir. 2025), ECF No. 35–1 at 31.² And that lack of authority is unsurprising. “The underlying purpose of [the ‘well settled’] defense” is to determine whether removing the child from their current home is “in the child’s best interests.” *Hernandez v. Garcia Pena*, 820 F.3d 782, 787 (5th Cir. 2016). It would make no sense to ignore the child’s best interests and uproot her from her current home just because the trial court had a busy docket.

It also does not matter that the Fifth Circuit “did not reach” Brito’s arguments concerning the supposed delays in the district court. Opp. at 12. This Court regularly decides cases even when there are “alternative arguments . . . that the Court of

¹ Brito’s accusations of “purposeful delay” by Castro are baseless too. They are based entirely on assertions from his Fifth Circuit brief, which in turn cites unsupported assertions in his trial court motions. Brito omits, however, the district court’s undisputed (indeed, stipulated) finding that neither he nor his mother informed Castro of this lawsuit at any point before filing, despite Brito being in consistent contact with Castro and A.F. at the time. App.58a. And Brito does not and cannot explain how any of Castro’s alleged conduct prevented him from filing this lawsuit within a year of A.F.’s removal.

² The only case Brito cited in the Fifth Circuit was *England v. England*, 234 F.3d 268 (5th Cir. 2000). *See* ECF No. 35–1 at 31. But *England* did not involve the “well settled” defense or any alleged delay by the district court.

Appeals did not address in the first instance and that fall beyond the scope of the question presented.” *Ames v. Ohio Dep’t of Youth Servs.*, 605 U.S. 303, 313 (2025); *see also Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 815 (2011) (same). That Brito thinks that the district court’s management of this case provides him with an alternative basis for relief does not impact the question presented here.

In short, this is a certworthy case, and Brito cannot convincingly argue otherwise.

II. There Is a Reasonable Probability of Reversal

As Castro explained in her application, reversal is likely here because the Fifth Circuit’s decision cannot be squared with either *Monasky* or with this Court’s other, recent decisions on the appellate standard of review for mixed questions of fact and law, including *U.S. Bank N.A. v. Village at Lakeridge, LLC*, 583 U.S. 387 (2018), and *Bufkin v. Collins*, 604 U.S. 369 (2025). Application at 19-21. Brito’s opposition provides no persuasive reason to conclude otherwise. His attempt to distinguish *Monasky* falls flat, and he does not even discuss *U.S. Bank* or *Bufkin*. Nor does he convincingly argue that the Fifth Circuit would have reversed even under clear-error review.

A. Brito Fails to Distinguish *Monasky*, *U.S. Bank*, and *Bufkin*

As Castro explained in her application, this Court held in *Monasky* that a district court’s determination of a child’s “habitual residence” under the Hague Convention must be reviewed for clear error because, after “identif[ying] the governing totality-of-the-circumstances standard,” the district court must “answer a factual question: Was the child at home in the particular country at issue?” *Monasky*,

589 U.S. at 84. The same is true of the “well settled” determination, as every Circuit to have considered the issue post-*Monasky* in a published opinion has held—cases Brito ignores. *See da Costa v. de Lima*, 94 F.4th 174, 181 (1st Cir. 2024); *Cuenca v. Rojas*, 99 F.4th 1344, 1350 (11th Cir. 2024).

Brito does not explain why the outcome here should be any different from *Monasky*. He just asserts that the habitual-residence inquiry involves only “locating a child’s home” and is “an objective, ‘fact-driven’ inquiry,” whereas the “well settled” inquiry “requires a primarily legal determination of whether a child is sufficiently settled.” Opp. at 14 (quoting App.10a–11a). But merely labeling one inquiry as “fact-driven” and the other as a “legal determination” is not a substantive argument. Both the “well settled” and “habitual residence” inquiries are totality-of-the-circumstances tests that require courts to consider and weigh many of the same factors, including the child’s age, immigration status, academic activities, social engagements, and extracurricular activities. *Compare Monasky*, 589 U.S. at 78 (listing considerations for the habitual-residence inquiry) *with Hernandez*, 820 F.3d at 787-88 (listing non-exclusive factors for the “well settled” defense). Brito provides no explanation, nor could he, for why one is a “fact-driven” inquiry while the other is “primarily legal.” Opp. at 14.

Rather than engaging with *Monasky* or any of this Court’s recent precedents on the appropriate standard of review for mixed questions, Brito insists—without citation—that *de novo* review was appropriate because he was challenging “the legal conclusions that the [district court] drew from its factual findings.” Opp. at 15. As an

example, Brito argues that the district court, in considering the “evidence of A.F.’s participation in her community,” gave undue weight to “the facts that A.F. attended church, had a primary care physician, visited Disney World, and played at playgrounds.” Opp. at 15.

But this Court’s precedents make clear that weighing evidence is fundamentally a *factual* inquiry that must be reviewed for clear error. As this Court held in *Bufkin*, “[a]ssigning weight to evidence—whether individual pieces of evidence or collections of it—is an inherently factual task.” 604 U.S. at 382. That is because “tak[ing] a raft of case-specific historical facts, consider[ing] them as a whole, [and] balanc[ing] them one against another” is a task for “the court that has presided over the presentation of evidence, that has heard all the witnesses, and that has both the closest and the deepest understanding of the record.” *U.S. Bank*, 583 U.S. at 397-98. Such factual determinations must be reviewed for clear error only.

B. The Standard of Review Is Dispositive Here

This Court should likewise reject Brito’s contention that the Fifth Circuit would reverse the district court even under clear-error review. Clear error is “a deferential standard of review.” *Cooper v. Harris*, 581 U.S. 285, 291 (2017). It requires affirmance of any “finding that is ‘plausible’ in light of the full record—even if another is equally or more so,” and the appellate court “may not reverse just because [it] ‘would have decided the [matter] differently.’” *Id.* at 293 (second alteration in original) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1985)).

The clear-error standard required affirmance here. Brito does not suggest that the district court considered any impermissible factors or failed to consider any

mandatory factors. Instead, he, like the Fifth Circuit, faults the district court for not applying sufficient weight (or applying too much weight) to certain facts and factors. Opp. at 17-19. But whether Brito or the Fifth Circuit would have reached the same conclusion as the district court in the first instance is irrelevant. All that matters is that the district court's findings were "plausible" in light of the full record." *Cooper*, 581 U.S. at 291 (quoting *Anderson*, 470 U.S. at 573).

Here, the record firmly supports the district court's finding that A.F. is "well settled" in Texas. The evidence at trial showed, among other things, that A.F. lives in a stable home, having moved only once in nearly three years (before starting school); that A.F. lives with her mother and her mother's now-husband Otton Rodriguez, both of whom can provide for her financially;³ that A.F. is surrounded not only by her mother but by other family members, including her aunt and a cousin who attends the same school; that she attends school in Texas, and was even nominated (and later accepted into) the Gifted and Talented Program there; that she attends church in Texas; that she has friends in Texas; and that she has a primary care physician in Texas. App.70a-71a. On this record, it was far from clear error for the district court to find that A.F. is well settled in Texas.

What's more, Brito's criticism of the district court betrays that he is not really applying clear-error review. He expressly proposes that the Court of Appeals reweigh evidence and second-guess the trial court's credibility determinations. For example,

³ The district court expressly found that Otton Rodriguez "cares deeply for A.F. and acts as a father-figure in her life." App.59a.

Brito argues that “[t]he 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.” Opp. at 19 (emphasis added). Brito does not explain, however, why it was clearly erroneous for the district court to credit the testimony it heard. *See Cooper*, 581 U.S. at 309 (“[W]e give singular deference to a trial court’s judgments about the credibility of witnesses.”)

Lastly, perhaps recognizing that his appeal would not survive clear-error review, Brito suggests that the district court applied an incorrect legal standard by comparing the relative strength of A.F.’s ties to Texas with her connections to Venezuela. *See* Opp. at 16 & nn. 26-27. This last-ditch attempt to conjure legal error fails.

For one thing, the Fifth Circuit never suggested that it was reversing the district court on that ground; rather, it reversed because, “balancing the factors *de novo*,” it disagreed “that A.F. is so firmly planted in the United States that returning her to Venezuela would contravene her best interests.” App.17a. Nor did the district court apply an incorrect legal standard. Rather, the district court simply observed, as part of its *factual findings*, that “A.F. has formed significant connections to her environment in Texas—stronger than her connections to Venezuela.” App.59a. And, at any rate, it is entirely permissible for a court to make such a comparison. The Fifth Circuit itself has explained that, in assessing a “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 (quoting Hague International Child Abduction Convention; Text and Legal Analysis (State Legal Analysis), 51 Fed. Reg. 10,494, 10,509 (1986)). Thus, the district court did not apply any “incorrect legal standard.”

* * *

In sum, there is more than a reasonable chance here that the Court will grant certiorari, that this Court will reverse the Fifth Circuit, and that, under the correct standard of review, the district court’s “well settled” determination will be affirmed.

III. Denial of a Stay Will Cause Irreparable Harm

In her application, Castro identified two clear ways in which effectuating a return order will irreparably harm her and A.F.: (1) Castro and A.F. will be forced to abandon their asylum applications, likely preventing both from ever returning to the United States, and (2) A.F. will be uprooted from the school, church, community, and family in which she has become well settled and sent to a country where neither of her parents currently reside, which she does not remember, and whose relations with the United States are deteriorating by the day. Brito’s counterarguments miss the mark.

First, on the asylum application, Brito ***does not dispute*** that, absent a stay, A.F. and Castro will be forced to abandon their asylum applications. Brito also does not dispute that being forced to abandon an asylum application before it is adjudicated is a form of irreparable harm. *See* Application at 23. And Brito does not dispute that, if A.F. and Castro are forced to abandon their asylum applications, they will likely be unable to return to the United States and seek asylum in the future,

even if Castro prevails in this Court. *See id.* Those facts alone suffice to show irreparable harm. *See, e.g., Singh v. U.S. Dep't of Homeland Security*, 2020 WL 9396227, at *4 (D. Ariz. Feb. 19, 2020)

Instead, Brito just speculates that Castro's and A.F.'s asylum applications have no "credible" basis. Opp. at 22-23. But Brito's speculation about the ultimate merits of Castro's and A.F.'s asylum applications—which remain pending and which were not before either the district court or the Fifth Circuit—does not change the fact that Castro and A.F. will be irreparably harmed by being forced to ***abandon*** their asylum applications before they ever decided.

Crucially, denial and abandonment of asylum applications have different implications for future asylum applications. *Compare* 8 U.S.C. § 1158(a)(1)(D) (allowing subsequent asylum applications after a *denial* based on "changed circumstances") *with* 8 C.F.R. § 1208.13(d)(2)(i)(G) (effectively barring subsequent asylum applications after an *abandoned* application). In any subsequent asylum application, A.F.'s and Castro's prior abandonment of their asylum claims will likely be held against them and would make it nearly impossible for them to receive asylum in the United States. *See* 8 C.F.R. § 1208.13(d)(2)(i)(G) (preventing the Attorney General from exercising her discretion in favor of applicants who "have abandoned a prior asylum application").⁴ In other words, even if this Court reversed the Fifth

⁴ Although the regulation speaks of "discretion," because asylum "is a discretionary mechanism that gives the Attorney General the authority to grant . . . relief," *I.N.S. v. Cardozo-Fonseca*, 480 U.S. 421, 441 (1987) (emphasis removed), prohibiting exercise of that discretion effectively bars a future claim of asylum.

Circuit, both Castro and A.F. would still face the consequences of their abandoned asylum applications, meaning that they almost certainly will be unable to return to the United States regardless of a subsequent decision in their favor by this Court.

For the same reason, the district court’s denial of Castro’s grave-risk defense does not lessen the irreparable harm that would flow from Castro’s and A.F.’s abandonment of their asylum applications. Further, the district court’s denial of that defense does not mean that Castro’s and A.F.’s asylum applications are not “credible.” Opp. at 22. As Judge Douglas correctly observed, “asylum seekers face different standards of proof and review than do those seeking to demonstrate a grave risk of harm under the Hague Convention.” App.40a-41a.

Brito also ignores that the situation in Venezuela has dramatically changed since the district court adjudicated Castro’s grave risk defense seventeen months ago—and even in the weeks since Castro filed her stay application. The United States has carried out multiple military operations off the coast of Venezuela, and the President has suggested he might carry out operations on land too.⁵ American officials have told reporters that “the ultimate goal is to push out President Nicolas Maduro of Venezuela.”⁶ In response, President Maduro has begun mobilizing the country’s militia and declared that “[t]he people are ready for combat, ready for

⁵ Julian E. Barnes & Tyler Pager, *Trump Administration Authorizes Covert C.I.A. Action in Venezuela*, N.Y. Times (Oct. 15, 2025), <https://www.nytimes.com/2025/10/15/us/politics/trump-covert-cia-action-venezuela.html>.

⁶ Genevieve Glatsky, *Venezuela Announces Sweeping Military Exercises as U.S. Escalates Pressure*, N.Y. Times (Oct. 18, 2025), www.nytimes.com/2025/10/18/world/americas/venezuela-military-us.html.

battle.”⁷ In this precarious environment, it is not difficult to believe that two people who fled Venezuela for the United States and claimed political asylum because of their anti-regime views may face persecution if sent back.

Second, the Court should reject Brito’s attempt to downplay the irreparable harm that his daughter, A.F., will experience if she is uprooted from her life in Texas and sent back to Venezuela. This Court has recognized “that shuttling children back and forth between parents and across international borders may be detrimental to those children.” *Chafin v. Chafin*, 568 U.S. 165, 178 (2013). That is the case here. A.F. will be forced to leave the only community she can remember; she will be abruptly removed from the school she has now attended for over two years and in which she is enrolled in the Gifted and Talented program; she will be separated from her primary care physician, her community, and her church; and she will be sent to a country which she does not remember, where neither of her parents currently live, and whose tensions with the United States are at a fever pitch. *See* Application at 22-23. Uprooting A.F. from her community and sending her to Venezuela—against her best interests, as the district court found—will irreparably harm her because it cannot be undone and cannot be compensated monetarily. *See Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012) (explaining that an injury is irreparable if it cannot be remedied through monetary damages).

⁷ Juan Forero *et al.*, *Venezuela Mobilizes Troops and Militias as U.S. Military Looms Offshore*, Wall Street Journal (Oct. 16, 2025), <https://www.wsj.com/world/americas/venezuela-military-movement-militia-c59ca9ef?st=mLKuRF>.

Brito casts aside these realities by blithely asserting that A.F. will “be reintegrated into the community of her place of habitual residence.” Opp. at 22. But the district court—the only judge to hear the live testimony and the only judge empowered to weigh the evidence in the first instance—found that it was not in A.F.’s best interest to send her to Venezuela because of her strong connections to Texas. Although Brito relies heavily on his testimony that he would return to Venezuela if A.F. were sent back, Opp. at 23-24, the district court heard that testimony too and was unconvinced—perhaps because “Mr. Brito has not been back to Venezuela since he moved to Spain” over four years ago. App.55a; *see also Neumann v. Neumann*, 310 F. Supp. 3d 823, 840 (E.D. Mich. 2018) (declining to “put much weight in [a parent’s] assurance” that they would “return to Mexico” “if the boys are ordered return[ed]”).

The irreparable harm here is especially acute because, as explained above, this Court is likely to grant certiorari and reverse the Fifth Circuit. Even assuming A.F. could be returned to the United States, which is likely impossible, A.F. would then be shuttled “back and forth between parents and across international borders,” precisely the outcome that concerned this Court in *Chafin*. 568 U.S. at 178. The better course—the approach that avoids unnecessary irreparable harm to A.F.—is to keep A.F. in the community where she is well settled until this Court has an opportunity to weigh in.

Finally, the Court should reject Brito’s argument that, because sending A.F. to Venezuela does not moot this appeal, there can be no irreparable harm. Opp. at 20-21. This is the same argument that the Fifth Circuit made in denying Castro’s stay

motion, and, as Castro explained in her application, it is wrong. *See* Application at 24-25. Whether a case is moot under Article III is distinct from whether a party will suffer irreparable harm absent a stay. Indeed, the main case on which Brito relies, *Chafin*, explained that, even though a return order generally does not moot a Hague Convention appeal, a court can still issue a stay pending appeal where appropriate, including when “the applicant will be irreparably injured absent a stay” and where a stay is in “the child’s best interests.” *Id.* at 179.⁸ That is the case here.

IV. The Equities Favor a Stay

As explained above and in Castro’s application, denying a stay here will substantially and irreparably harm both A.F. and Castro. A.F., in particular, will be forced out of her school and community and sent to a country she does not know and from which she is seeking asylum. Her life will be upended.

Bruto’s argument that, on balance, a stay will *harm* A.F. is not credible. *See* Opp. at 25. If this Court ultimately denies Castro’s certiorari petition, then a stay will just have delayed her return to Venezuela by months. To the extent that such a delay causes any harm, it pales in comparison to the harm of removing A.F. from her school

⁸ Brito’s other cited cases involved situations where the harm was not irreparable because it could be redressed later through monetary damages. Opp. at 20; *see Conkright v. Frommert*, 556 U.S. 1401, 1403 (2009) (Ginsburg, J., in chambers) (denying stay because monetary relief was possible); *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 572 U.S. 1301, 1301 (2014) (Roberts, C.J., in chambers) (same). There are no monetary damages at issue here, and no monetary damages could redress the forced abandonment of A.F. and Castro’s asylum applications and their ensuing inability to return to their well-settled lives in Texas.

(where she is excelling academically), her community, her church, and her friends—especially if the district court’s “well settled” determination is ultimately affirmed.

Any harm to Brito does not outweigh the irreparable harm that will befall both Castro and A.F. absent a stay. Brito contends that, until A.F. is sent back to Venezuela, he cannot see her. But that is a problem of Brito’s own making. Brito voluntarily chose to leave A.F. and Castro in Venezuela and move to Spain in 2021. “[N]one of this would have occurred” had he not done so. Opp. at 25. Brito also stipulated in the district court that he was previously able to visit the United States. See App.54a. And Brito could have filed a Hague Convention petition within a year of A.F.’s entry to the United States. He did not, instead waiting more than a year to do so.

Bruto complains that Castro’s forthcoming petition for certiorari could unduly delay A.F.’s return to Venezuela by “as much as another year.” Opp. at 25. As an initial matter, it is unlikely that this Court will take that much time to decide Castro’s petition. Additionally, if Brito is truly concerned about the possibility of delay, he could have asked for expedited briefing. He did not.

At bottom, any harm to Brito from the grant of a stay is far outweighed by the certain and substantial injuries that A.F. and Castro will face if A.F. is removed from the United States.

V. The Public Interest Favors a Stay

Finally, the public interest weighs in favor of granting Castro’s stay application. While Brito generally invokes the Hague Convention’s interest in the

prompt return of children, he ignores that the Hague Convention and this Court’s traditional stay factors also emphasize the “child’s best interests.” *Chafin*, 568 U.S. at 179. And, through the “well settled” defense, the Hague Convention recognizes that, at a certain point, “return is no longer in the child’s best interests,” *Hernandez*, 820 F.3d at 787. The public’s interest in ensuring that well-settled children are not uprooted from their new homes will be furthered by a stay here.⁹

CONCLUSION

For these reasons, the Court should grant Castro’s application for a stay of the Fifth Circuit’s mandate pending her forthcoming petition for certiorari.

Respectfully submitted.

/s/ Roger C. Diseker

ROGER C. DISEKER

Counsel of Record

JOAKIM SOEDERBAUM

DUANE MORRIS LLP

300 Throckmorton St., Ste. 1650

Fort Worth, Texas 76102

817-704-1000

RDiseker@duanemorris.com

TRACY L. MCCREIGHT

DUANE MORRIS LLP

Terrace 7

2801 Via Fortuna, Suite 200

Austin, Texas 78746

BRETT D. SOLBERG
DLA PIPER LLP (US)
845 Texas Avenue Suite 3800
Houston, Texas 77002

JACOB I. CHEFITZ
DLA PIPER LLP (US)
1251 Avenue of the Americas, 27th Floor
New York, New York 10020

MICHAEL E. KERAMIDAS
DLA PIPER LLP (US)
One Liberty Place
1650 Market Street, Suite 5000
Philadelphia, Pennsylvania 19103

⁹ Neither of the two orders that Brito cites involved the “well settled” defense, so they are inapposite. *See Orellana v. Cartagena*, No. 17-6520 (6th Cir. Jan. 17, 2018), ECF No. 9-2; *Antonio v. Bello*, No. 04-12794-GG (11th Cir. June 10, 2024).

SERGIO FILIPE ZANUTTA VALENTE
SAMUEL ATTICUS POLLOCK-BERNARD
DLA PIPER LLP (US)
500 Eighth Street, NW
Washington, DC 20004

October 20, 2025