

IN THE
Supreme Court of the United States

MARIA FABIA SIMONETTI,

Petitioner,

v.

GERARD ANTHONY SIMONETTI, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

DONALD C. MOSS
Counsel of Record
Moss & Moss LLP
381 Park Avenue South, Suite 1220
New York, NY 10016
(212) 644-1000
dcmoss@mossandmoss.com

Attorneys for Respondents

QUESTION PRESENTED

Do the courts of the United States have jurisdiction to determine the merits of the instant matter?

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE.....	1
Introduction	1
Facts	1
REASONS FOR DENYING THE PETITION	2
This Court Has No Jurisdiction to Adjudicate This Matter	2
(a) Introduction	2
(b) The Absence of Diversity and Subject Matter Jurisdiction	3
(c) The Absence of Federal Question Jurisdiction	6
(i) The Hague Convention.....	6
(ii) The Alien Tort Statute	7
CONCLUSION.....	8

TABLE OF AUTHORITIES

	<i>Page(s)</i>
 Cases	
<i>Colavito v. N.Y. Organ Donor Network, Inc.</i> , 438 F.3d 214 (2d Cir. 2006)	4
<i>Gitter v. Gitter</i> , 396 F.3d 124 (2d Cir. 2005)	6
<i>Pa. Pub. Sch. Emps. Ret. Sys. v. Morgan Stanley, Inc.</i> , 772 Fed. 3d 111 (2d Cir. 2017)	5
<i>Raymond Loubier Irrevocable Tr. v. Loubier</i> , 858 F.3d 719 (2d Cir. 2017)	5
 Statutes	
28 U.S.C. § 1331	3
28 U.S.C. § 1332	3-5
28 U.S.C. § 1332(a)	3, 4
28 U.S.C. § 1332(a)(1)	4
28 U.S.C. § 1332(a)(2)	4
Alien Tort Statute, 28 U.S.C. § 1350	7
Hague Convention, Oct. 25, 1980. T.I.A.S. No. 11670, S. Treaty Doc. No. 99-11	7

STATEMENT OF THE CASE

Introduction

This Court should deny the Petition for a Writ of Certiorari leaving in place the Summary Order of the United States Circuit Court for the Second Circuit and the Orders of the District Court which it affirmed, granting Respondents' Motion to Dismiss for lack of both diversity, subject matter jurisdiction and federal question jurisdiction. The record in this matter does not support Petitioner's application; it refutes it.

Facts

Respondent, Gerard A. Simonetti and Petitioner, Maria Fabia Simonetti, are the parents of Jennifer Simonetti, born in Brazil, September 1, 2011. The parties were divorced in Brazil in 2015. Jennifer Simonetti has lived continuously in Brazil since birth and has never travelled to the United States. She has lived with Gerard Simonetti since 2018 when, in September of that year, a Brazilian tribunal awarded physical custody to him. Prior to 2018, Jennifer resided with her maternal aunt and grandmother having been abandoned by her mother when Petitioner moved to Brooklyn, New York in 2015 after Petitioner and Mr. Simonetti were divorced that year. **[Appendix Exhibit 1]**

Respondent Gerard A. Simonetti lives in Sao Miguel do Gustavo RN Brazil having continuously resided in Brazil since May of 2000. His business interests are exclusively in Brazil. He does not reside at 307 South Main Street, New City, NY 10956, the business address of his brother, Joseph Simonetti, and the address to which Respondent mails her documents. He has had no involvement in his brother's

business since 1991 or any other business in the United States. He does not reside at 265 Brewery Road, New City, New York, which was the address of his parents, both of whom are deceased. **[Appendix Exhibit 2]**

Respondent Joseph A. Simonetti lives in New City, New York. He has never met his niece, who was born and has constantly resided in Brazil. He has never spoken to her as she speaks Portuguese and he does not. He has no custodial authority over Jennifer Simonetti and has no relationship whatsoever with her. **[Appendix Exhibit 3]** Nor has Joseph A. Simonetti ever been a party to or appeared in any proceeding involving his brother and/or Petitioner. **[Appendix Exhibit 3, *supra*]**

Petitioner lives according to her complaint at 33 Schermerhorn – 11D, Brooklyn, NY 11217. **[Appendix Exhibit 4]**

REASONS FOR DENYING THE PETITION

This Court Has No Jurisdiction to Adjudicate This Matter

(a) Introduction

There is a glaring and fatal defect in Petitioner's position. Respondent, Joseph A. Simonetti, is a resident of the State of New York and resides in New City, New York. Petitioner is a resident of the State of New York residing in Brooklyn, New York. Petitioner refers to the residency of Respondent Gerard A. Simonetti, a Brazilian resident, in support of her assertion of diversity jurisdiction. As the District Court found, and as the Circuit Court affirmed, Joseph A. Simonetti's New York residency coupled with Petitioner's New York residency destroys and defeats diversity jurisdiction.

(b) The Absence of Diversity and Subject Matter Jurisdiction

Petitioner's Statement of Jurisdiction in her Notice of Appeal [**Appendix Exhibit 5**] is based on 28 USC §§ 1331 and 1332. Petitioner's complaint [**Appendix Exhibit 4 *supra***] is based solely upon diversity jurisdiction. The complaint, [**Appendix Exhibit 4 *supra***], states Petitioner's address as "33 Schermerhorn – 11D, Brooklyn, NY 11217". The complaint, [**Appendix Exhibit 4 *supra***] states the Respondent Gerard Simonetti's address as "365 Brewery Road, New City, NY 10956" and Respondent Joseph Simonetti's address as "307 S. Main St, New City, NY". [*Ibid.* omitting the zip code] It is undisputed that Appellee Gerard Simonetti resides at Rua das Maraquitas, Number 564, Sao Miguel do Gostoso, Rio Grand do Norte, Brazil, 59585-000. [**Appendix Exhibit 3, *supra***] Respondent Joseph Simonetti is a resident of New York State. Complete diversity of citizenship being absent, federal diversity jurisdiction is destroyed and jurisdiction providing federal courts to adjudicate the merits of this matter does not attach.

The District Court granted Petitioner's motion to dismiss [**Appendix Exhibit 6**] and reaffirmed its decision to dismiss subsequent to Petitioner's motion to reconsider [**Appendix Exhibit 7**]

On appeal the Petitioner asserted that her ex-husband is a U.S. citizen living in Brazil. The Circuit Court determined that U.S. citizens domiciled abroad are neither citizens of any state of the United States nor citizens or subjects of a foreign state Section 1332(a) [**Appendix Exhibit 8**]. does not provide that the courts have jurisdiction over a suit to which such persons are parties. [**Appendix Exhibit 8, *supra***].

Nor does subject matter jurisdiction exist. Nowhere in Petitioner's Complaint **[Appendix Exhibit 4, *supra*]** is there even a single reference to the amount in controversy. Petitioner's assertion in her Brief to the Circuit Court at page 6 **[Appendix Exhibit 9]** that:

'The amount to [sic] controversy exceeds \$75,000.00.'

does not overcome the absence of such an allegation in the Complaint nor does it make it so. Petitioner's assertion in her Brief to the Circuit Court 4 that:

"...the value of the case is \$6,000,000.00."

does not overcome the absence of such an allegation in the Complaint nor does it make it so.

The District Court wrote:

"First, Plaintiff does not allege facts sufficient to show that the Court can consider her claims under state law under the court's diversity jurisdiction. To establish diversity jurisdiction under 28 U.S.C. § 1332, a plaintiff must first allege that she and the defendants are citizens of different American States; a party may alternatively be a citizen or subject of a foreign country, so long as that party is not lawfully admitted for permanent residence in the United States and domiciled in the same American State where the opposing party is a citizen. See § 1332(a)(1),(2). In addition, for diversity jurisdiction, the plaintiff must allege to a "reasonable probability" that her claims are in excess of the sum or value of \$75,000, the statutory jurisdictional amount. See § 1332(a); *Colavito v. N.Y. Organ Donor Network, Inc.*, 438 F.3d 214, 221 (2d Cir. 2006). Construing the Complaint liberally, Plaintiff appears to be a citizen of New York, as she alleges that she lives in New York and requests her daughter be removed from Brazil to New York. See Compl. at 10–11. However, even construing Plaintiff's allegations generously, the Complaint does not allege facts sufficient for the Court to determine the citizenship of Defendants in a manner that would establish diversity jurisdiction. At times, the

Complaint states that the Defendants live in Brazil, see *id.* at 5, but the addresses provided for the Defendants in the Complaint are residential addresses in New York State, see *id.* at 4. To the extent that Plaintiff's former husband would qualify as a "subject" of a foreign country, Plaintiff appears to allege that the co-defendant former brother-in-law is a citizen of New York, which would destroy diversity. Furthermore, even if complete diversity of citizenship had been properly pled or could be determined from the allegations of the Complaint or other documents in this case, Plaintiff has not established the statutory jurisdictional amount of \$75,000 in controversy. See *id.* at 6 (Plaintiff's request for relief does not include any monetary damages). Therefore, the Court does not have diversity jurisdiction." **[Appendix Exhibit 6, *supra*]**

The District Court wrote:

" [T]he Court independently knows of no federal law, constitutional provision, or treaty that would provide relief to Plaintiff under the circumstances alleged in the Complaint." **[Appendix Exhibit 6, *supra*]**

The Circuit Court affirmed that diversity jurisdiction was absent stating:

"28 U.S.C. § 1332 requires "competent diversity meaning that "all plaintiff's must be citizens of states diverse from that of all defendants [*Pa. Pub. Sch. Emps. Ret. Sys. V. Morgan Stanley, Inc.*, 772 Fed. 3d 111, 118 (2d Cir. 2017)]. Simonetti bears the burden of making a preponderance showing of competent diversity [*Raymond Loubier Irrevocable Tr. v. Loubier*, 858 F.3d 719, 725 (2d Cir. 2017)]. She has failed to do so because her complaint does not allege diversity of citizenship and provides only New York addresses for herself and both defendants'. **[Appendix Exhibit 8, *supra*]**

The Circuit Court affirmed that the absence of subject matter jurisdiction stating:

"The district court correctly dismissed Simonetti's complaint for lack of subject-matter **jurisdiction.**" **[Appendix Exhibit 8, *supra*]**

(c) The Absence of Federal Question Jurisdiction

(i) The Hague Convention

Nor does federal question jurisdiction exist under the Hague Convention as an additional basis in the complaint for jurisdiction. The District Court so found stating the prerequisites for a claim under the Hague Convention did not exist. Jennifer Simonetti has continuously resided in Brazil since birth and with Petitioner since 2018. Moreover, as the District Court found, the parties' child was born and has never lived in the United States having lived her entire life in Brazil since birth. Petitioner's assertion that the child was abducted is patently absurd.

The District Court wrote:

“First, to the extent that Plaintiff attempts to assert her custody claims under the Hague Convention, the allegations fail on their face because “a petitioner cannot invoke the protection of the Hague Convention unless the child to whom the petition relates is ‘habitually resident’ in a State signatory to the Convention and has been removed to or retained in a different State.” *Gitter v. Gitter*, 396 F.3d 124, 131 (2d Cir. 2005). Even construing Plaintiff's allegations liberally, it appears to be undisputed (indeed the Complaint does not allege otherwise) that Plaintiff's minor child was born in Brazil, currently lives in Brazil, and has never lived in the United States. The Hague Convention is thus inapplicable because “parental intent cannot alone establish a child's habitual residence,” rather, “a change in geography is a necessary condition to a child acquiring a new habitual residence[.]” *Id.* at 133. Second, Plaintiff's other claim, see Compl. at 10 (alleging “divorce fraud” because Plaintiff's father-in-law's will allegedly stated that he “loved” Plaintiff), is a state law claim over which the Court has no independent jurisdiction. Finally, given the Plaintiff's pro se status, the Court independently knows of no federal law, constitutional provision, or treaty that would provide relief to Plaintiff under the circumstances alleged in the Complaint. Accordingly, Plaintiff has failed to properly invoke this Court's federal

question subject matter jurisdiction. **[Appendix Exhibit 6, *supra*]**

The Circuit Court affirmed:

‘[T]he district court considered whether she could be liberally construed as invoking the Hague Convention, Oct. 25, 1980. T.I.A.S. No. 11670, S. Treaty Doc. No. 99-11....The district court correctly concluded that the Hague Convention failed to offer a basis for federal jurisdiction here.” **[Appendix Exhibit 8, *supra*]**

(ii) The Alien Tort Statute

On appeal, Petitioner invoked the Alien Tort Statute, 28 U.S.C. § 1350. The Circuit

Court determined :

“The ATS inly confers jurisdiction over torts based upon violations of United States treaties or the law of nations.... Simonetti’s claims – which involve divorce, inheritance, child custody, and alleged fraud by her ex-husband and former brother-in-law – do not implicate any constitutional provision. Federal law or treaty, or any aspect of international law....Simonetti has failed to invoke federal-question jurisdiction.” **[Appendix Exhibit 8, *supra*]**

CONCLUSION

Petitioner's application for a Writ of Certiorari must fail. Despite her best efforts to disguise the absence of essential jurisdictional predicates with a cornucopia of unfounded claims, there is no jurisdictional basis to support *any* of Petitioner's claims in this matter.

Petitioner's claims of diversity jurisdiction do not exist. Petitioner's initial pleading confirms one of the two named Defendants – Joseph A. Simonetti – and Petitioner are *both* New York State residents. Petitioner's claims of subject matter jurisdiction do not exist . Plaintiff has not established the statutory jurisdictional amount of \$75,000 in controversy. Petitioner's claims of federal question jurisdiction do not exist. Petitioner' s claims under the Hague Convention and the Alien Tort Statute do not meet the criteria or predicates of either statute.

The Petition for a Writ of Certiorari should be denied.

Dated October 2, 2026

New York, New York

Respectfully submitted.

/s/ Donald C. Moss

DONALD C. MOSS

Counsel of Record

MOSS & MOSS LLP

381 Park Ave. South, Suite 1220

New York, New York 10016

(212) 644 1000

dcmoss@mossandmoss.com

Attorneys for Respondents

APPENDIX

TABLE OF CONTENTS

	<i>Page</i>
APPENDIX EXHIBIT 1 — AFFIDAVIT IN SUPPORT OF APPELLEES’ RESPONSE TO APPELLANT’S BRIEF OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED AUGUST 1, 2025.	2a
APPENDIX EXHIBIT 2 — AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED JULY __, 2024	8a
APPENDIX EXHIBIT 3 — AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED JULY 18, 2024	12a
APPENDIX EXHIBIT 4 — COMPLAINT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED MARCH 11, 2024	15a
APPENDIX EXHIBIT 5 — MOTION FOR APPEAL OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED JANUARY 14, 2025.	34a
APPENDIX EXHIBIT 6 — ORDER OF DISMISSAL OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED DECEMBER 18, 2024	46a
APPENDIX EXHIBIT 7 — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED JULY 9, 2026.	53a
APPENDIX EXHIBIT 8 — SUMMARY ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED FEBRUARY 18, 2026	56a
APPENDIX EXHIBIT 9 — APPEAL OF ORDER OF DISMISSAL OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED JANUARY 14, 2025	65a

EXHIBIT 1

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Maria F. Simonetti,

Plaintiff,

v.

25-117

AFFIDAVIT

Gerard Anthony Simonetti, and

Joseph A. Simonetti,

Defendants.

Gerard A. Simonetti, being duly sworn, deposes and says:

1. I am the principal defendant in the above-referenced matter.
2. I make this Affidavit in support of Appellees' response to Appellant's Brief in the above-referenced matter and to draw attention to the misrepresentations and falsehoods contained in Appellant's Brief.
3. I am an American citizen, born and raised in Rockland County, New York. In 1998 I married the Appellant, Fabia Maria Simonetti (Maria Fabia Calixto Teixeira), a Brazilian national. We met in Brazil in 1997. The following year she came to visit me in New York and we married in 1998. We returned to Brazil in 2000 with our older daughter, who is now an adult. I live in Sao Miguel do Gustoso RN Brazil and have lived continuously in Brazil since May of 2000.
4. In 2012 Ms. Teixeira and I separated in Fortaleza Brazil, shortly after our daughter Jennifer was born in Brazil. The divorce was approved in Brazil on May 17, 2015 and recorded with the Clerk of Rockland County, New York on July 1, 2015. Our daughter Jennifer has never traveled outside of Brazil.
5. In the summer of 2015, Ms. Teixeira abandoned Jennifer, who was four years old at that time. Ms. Teixeira moved to Brooklyn, leaving Jennifer with her grandmother and aunt (Fabia's sister Fabrícia). Ms. Teixeira has never explained to Jennifer or me why she abandoned Jennifer and what prompted her move to Brooklyn.
6. Since her arrival in the United States ten years ago, Ms. Teixeira has engaged in a pattern of malicious and eccentric behavior here to harass me and my family. She made unannounced and disruptive visits to my elderly aunt and to my brother's business. The

receptionist at my brother's business had to call the police because of the disruptive behavior.

7. Ms. Teixeira has filed four lawsuits in Kings County Family Court and this federal case. In each case Ms. Teixeira has lied about the custody decisions in the Brazilian courts, she asserts that she does not know Jennifer's whereabouts and repeats false and damaging statements about me and Jennifer in the public record. In this federal case Ms. Teixeira went further and sued my brother, a business owner and respected member of his community who has never met or spoken to my daughter.
8. On April 30, 2018, Judge Vargas of Kings County Family Court dismissed a case brought by Ms. Teixeira that sought physical custody of Jennifer. Judge Vargas noted Jennifer's "birth and continuous residence in Brazil for the seven years of her life; she has never been or lived in New York. It is also apparent that Mother intentionally misrepresented Father's residence as being here, although he does not live in New York and has not resided here for several years." Judge Vargas stated, "[n]or is there any indication from the record presented that this Child is in any imminent risk of harm." [AFFIDAVIT EXHIBIT 1]. Notwithstanding this decision, Ms. Teixeira continues to file litigation in Kings County Family Court. At present she is appealing before the Appellate Division an April 3, 2024 decision of Kings County Family Court (Judge Munoz) that dismissed for lack of jurisdiction another petition for custody that Ms. Teixeira filed. [AFFIDAVIT EXHIBIT 2]
9. Mrs. Teixeira made her true motives clear in a filing in the S.D.N.Y. District Court, an extortionate demand that I deliver Jennifer to Ms. Teixeira's sister Fabricia in Brazil, that my brother pay her \$500,000 from his business and that I transfer to her the property lawfully awarded to me by the Brazilian court in our divorce proceeding. [AFFIDAVIT EXHIBIT 3]
10. Ms. Teixeira filed a letter from my deceased father in the S.D.N.Y. District Court and falsely stated in her brief that the letter "states that he would take full responsibility for my financial support". In fact, my father wrote the letter to support Ms. Teixeira's sister for a student visa in 1999 for short-term study at Rockland Community College- the letter refers to "Fabricia," Ms. Teixeira's sister.
11. Ms. Teixeira has no custody order whatsoever. Her statements to this court and in the S.D.N.Y. District Court about her custody rights are untrue. Here is the history of the Brazilian custody decisions:
 - a. In a September 4, 2018 emergency order, the Brazilian Family Court granted me physical custody of Jennifer, stating that Ms. Teixeira had committed "disrespectful and criminal conduct towards the law". The Court observed that Ms. Teixeira failed to advise the Court that she had moved abroad and for how long she planned to remain outside of Brazil, and she and her family had obstructed my visits with Jennifer. The Court stated that "Mr. Gerard Anthony Simonetti, remains the holder of the full family power over his daughter Jennifer

and has been prevented from even having access to his daughter". The Court issued a warrant for Jennifer to be removed from the home of Ms. Teixeira's sister (Fabricia) and mother (Jennifer's grandmother) and transferred to my custody with the assistance of the police. Jennifer lawfully remains in my custody. [AFFIDAVIT EXHIBIT 4]

- b. On January 10, 2019, a higher Brazilian Court, the Tribunal Family Court Fortaleza, issued a "Supersedeas Effect Decision", in which it ordered Ms. Teixeira to explain her whereabouts, current address and her plans for Jennifer. This Court held that *"As long as the clarifications are not provided by the appellee and the present appeal is not judged, the child is prevented from leaving the country with any of the parents, without judicial authorization, which must be officiated to the Federal Police and to the Consulate of the United States of America"*. The Court also stated, "There is also documentation that shows that the defendant [Ms. Teixeira] has filed a lawsuit in the United States, pleading for the custody of her daughter, by using untrue grounds." [AFFIDAVIT EXHIBIT 5]
- c. On May 22, 2019 the Tribunal Family Court Fortaleza issued a "Judgment", finding that Ms. Teixeira failed to notify the Court that she has resided in the US since 2016, that she left Jennifer under the care of the maternal grandmother and aunt (Fabricia) and that the aunt raised obstacles to visits by Gerard. The Court noted that Ms. Teixeira instead reported that she was residing in Fortaleza, acting in bad faith. The Court observed that Ms. Teixeira reported to the Court that she was in the United States because Jennifer as an American citizen is entitled to treatment for autism and this was the reason for her trip to the US (which the Court later referred to as a pretext). The Court established that the residence of Jennifer would be Gerard's home until the mother returns to reside in Fortaleza. [AFFIDAVIT EXHIBIT 6]
- d. On July 24, 2023 the Family Court Touros issued a "Sentencia Improvidencia", revoking Ms. Teixeira's right to visit Jennifer, citing years of unpredictable, misleading and aggressive behavior. We will translate and submit this decision if you would like us to do so.
- e. On April 1, 2024, the Family Tribunal Court Order Touros, Brazil ("Acórdão") confirmed that physical custody remains with me. The Court observed that Jennifer was well cared for in my custody and is in good health, and that Jennifer reported mistreatment when residing with her mother. Ms. Teixeira's sister Fabricia was her counsel in this proceeding. [AFFIDAVIT EXHIBIT 7]

12. Ms. Teixeira has intentionally and repeatedly made false statements to this Court, the S.D.N.Y. District Court and the Kings County Family Court about Jennifer's health.

- a. When Jennifer came to reside with me in September of 2018, shortly after she was seven, I transferred her from the public clinic in which her mother had enrolled

her to a private clinic. There were serious doubts from the start that Jennifer was on the autism spectrum. The following November the private clinic psychiatrists stated there was no need for her to attend any longer. Over the following two years (2020-21) although the clinic did not conclude it was necessary, I kept Jennifer enrolled in weekly private therapy sessions to ensure she received support and to ensure independent professional documentation of Jennifer's condition for the Brazilian court process. Jennifer was also interviewed on a number of occasions by a Social Services public psychologist, by the Ministério Público psychologists, including a neurologist requested by Family Court, Touroso, Sao Miguel do Gostoso. These psychologists and the neurologist unanimously concluded that Jennifer showed no symptoms whatsoever of being on the autism spectrum or any other disorder. She is presently enrolled in the eighth grade in a private school in Sao Miguel de Gostoso and considered to be at the top of her class.

- b. With respect to Jennifer's heart disease and a gastrointestinal condition: Ms. Teixeira filed two exams with in the S.D.N.Y. District Court and falsely stated that Jennifer has health issues. Jennifer was born with the most common type of heart murmur, called an innocent or functional murmur. When she was an infant we took her to the best cardiologist for children in Fortaleza – that is the exam that Ms. Teixeira filed in the S.D.N.Y. District Court. No treatment was required. Jennifer has no signs or symptoms of any heart disorder whatsoever.
 - c. I was present and participated in taking Jennifer for the gastrointestinal exam. When Jennifer was an infant she had reflux and it was completely resolved with a simple change in her feeding formula. She has no gastrointestinal disorder.
 - d. The American consulate performed two "well being visits" on Jennifer here in Brazil and in both cases determined that she was well and recommended no further action. We filed these reports with the S.D.N.Y. District Court ("The Consular Officer observed Jennifer living in a healthy, happy, and family-oriented home environment. Overall, Jennifer appeared to be in good physical and psychological health typical of a child her age. Consular Officer did not observe any anxiety, apprehension, coercion, or fear. The Consular Officer did not observe anything adverse to the welfare and well being of Jennifer.") Report 3/12/20. [AFFIDAVIT EXHIBIT 8]
13. Ms. Teixeira's statements that Jennifer is missing, that she does not know her address or that Jennifer has been kidnapped are knowingly and entirely false.
- a. In 2020 my partner and I, Fatima Lopes de Freitas, moved from Fortaleza Brazil to Sao Miguel de Gostoso, Brazil with Jennifer and stepson Rian. We advised the Family Court Fortaleza of our new address in February or March of 2020. In fact, on December 30, 2020 Ms. Teixeira appeared in front of our home in Sao Miguel

FRANKLIN TARBUTTON, a former fugitive from Panamanian justice, that Fabia presented this information to the American justice system in 2017, that I threatened Fabia.

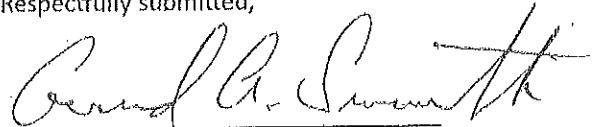
- c. Ms. Teixeira's sister also stated to the Brazilian Federal Police that, in the United States, Ms. Teixeira obtained a job in accordance with the rules of a protective order issued by the American courts. However, neither I nor my attorney are aware of any such American court order.
- d. The Brazilian Federal Police investigation included an interview of me, and an interview of Fabia (who stated to the investigators that I made remittances to Panama but failed to provide documents she said would support these false accusations).
- e. This report concludes that the investigations carried out did not establish any such offense, as no evidence was found. [AFFIDAVIT EXHIBIT 9]

15. All of the facts I described above are documented in more than 12 years of litigation here in Brazil and the United States.

16. The pattern of harassment has affected me, my brother, his family and business and our extended family, and most of all Jennifer. It has caused enormous expense while Ms. Teixeira has either proceeded *pro se* or been permitted to proceed *in forma pauperis* despite court orders issued by the District Court to the contrary,

17. I respectfully request this Court's help to end this unconscionable pattern of harassment and defamation.

Respectfully submitted,



Gerard A. Simonetti

Sworn before me this 1
day of August 2025

Notary Public

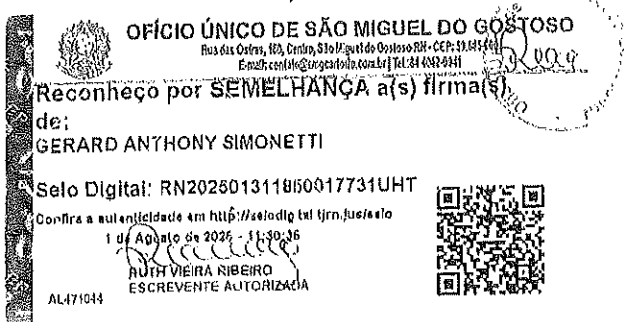


EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Marla F. Simonetti,

Plaintiff,

v.

Gerard Anthony Simonetti, and

Joseph A. Simonetti,

Defendants.

24-cv-01869

AFFIDAVIT IN SUPPORT

OF MOTION TO DISMISS

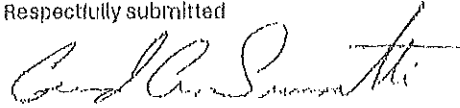
Gerard A. Simonetti, being duly sworn, deposes and says:

1. I am the principal defendant in the above-referenced matter.
2. My older brother, Joseph A. Simonetti, is the other defendant in this action.
3. I make this affidavit in support of the Motion to Dismiss Plaintiff's action against me brought in this Court under the principles of diversity of citizenship.
4. This is a state court matter involving the physical custody of my minor daughter, Jennifer Simonetti.
5. This matter mirrors a matter pending in the Appellate Division, Second Department denominated: Marla F. Simonetti, Appellant against Gerard A. Simonetti, Respondent, Docket No.2024 - 03476 filed on May 1, 2024 [Exhibit 1 hereto].
6. Plaintiff, Marla Fabia Simonetti, and I are Jennifer's parents; we share legal custody of our daughter under Brazilian law. Pursuant to a decision of the Brazilian Courts, in 2018 I was awarded physical custody of our daughter [Exhibit 2 hereto].
7. Jennifer Simonetti was born in Brazil, September 1, 2011. Plaintiff and I were divorced in Brazil in 2015. Jennifer Simonetti has lived continuously in Brazil since birth and has never travelled to the United States. She has lived with me since 2018 when, in September of that year, a Brazilian Family Court awarded physical custody of our daughter to me [*Ibid.*]. Prior to that time, Jennifer had been residing with her maternal aunt and grandmother having been abandoned by her mother when Plaintiff moved to Brooklyn, New York in 2015 after she and I were divorced.
8. I live in Sao Miguel do Gostoso RN Brazil, a city in northeastern Brazil; Plaintiff lives in Brooklyn, NY.
9. I have lived continuously in Brazil since May of 2000.
10. My business interests are exclusively in Brazil.
11. I do not reside at 307 South Main Street, New City, NY 10956 which is the business address of my brother, Joseph A. Simonetti, the address to which Plaintiff mails her documents.
12. I have no involvement in my brother's business or any other business in the United States.

13. I do not reside at 265 Brewery Road, New City, NY which was the address of my parents who are both deceased.
14. The Plaintiff receives her mail at PO Box 170072 in Brooklyn, NY 11017; she recites her address as 33 Schermerhorn Street, 11D, Brooklyn, New York 11217.
15. My brother, Joseph A. Simonetti, who has a business address in New City, New York, is the only contact to the Southern District.
16. My brother's only relationship to this matter is that he is Jennifer's uncle.
17. As can be seen from Joseph A. Simonetti's affidavit, he has never met or spoken with Jennifer [Exhibit of Joseph A. Simonetti @ paras. 5 and 6].
18. He has never been a party to any previous proceeding involving Jennifer and has no custodial authority over her.
19. Absent his tenuous, insignificant and irrelevant contact with this matter, the proper venue for this action is in the Eastern District of New York.
20. The instant matter is the fourth attempt Plaintiff has made to secure physical custody of our daughter. All such attempts rely on essentially the same set of facts.
21. All prior proceedings have been brought in Kings County.
22. Plaintiff appears *pro se* and proceeds *in forma pauperis*.
23. I, on the other hand, have been required to engage counsel at not inconsiderable expense.
24. The first such attempt was made to the Family Court of the State of New York in Brooklyn, New York 2017 in a Petition for Custody for Jennifer in The Family Court, Index No. V-026712-2017 [Exhibit 3 hereto].
25. That matter ripened into a plenary hearing in which was the first time I was required to engage counsel and in which I appeared and gave testimony.
26. In that matter, Plaintiff sought to domesticate her sole legal custody and applied for a grant of permission to apply for a passport for my daughter to travel to the United States without my signature or consent.
27. That matter was dismissed by the Hon. Javier E. Vargas, JFC for lack of jurisdiction over the child [*ibid.*].
28. Judge Vargas' decision was not appealed.
29. In 2019, Appellant filed a second Petition in the Family Court in Brooklyn to register a Foreign Order of Visitation to Register a Foreign Order of Custody. The application again came before Judge Vargas. Judge Vargas denied the application on the basis that Plaintiff's assertion that she had an order from the Brazilian Courts granting her custody was vacated by a Brazilian Appeals Court and modified and gave custody of our daughter to me [Exhibit 4].
30. That Order was never appealed.
31. In 2024, Appellant brought third Petition for Custody for Jennifer in The Family Court, Kings County, Index No. V-06598-2024 [Exhibit 5 hereto].
32. I was not served with this Petition and did not appear.
33. By Decision and Order dated April 3, 2024, Justice Sandra M. Munoz, JFC, dismissed the Petition against me with prejudice for lack of jurisdiction [*ibid.*].
34. It is the Munoz decision which is presently on appeal to the Second Department.
35. I was required to engage counsel to oppose Plaintiff's application in the Second Department. This is the second time I was required to engage counsel.
36. There has been no determination by the Second Department that there is jurisdiction over me or my daughter.

37. Additionally, Plaintiff brought an Order to Show Cause in the Second Department seeking substantive relief prior to a determination on whether the courts of the State of New York have the power to entertain this matter.
38. The basis for the Order to Show Cause is my alleged false testimony before Judge Vargas in the prior 2018 Family Court matter which was never appealed.
39. The allegation of false testimony is untrue and is denied. I further dispute each and every claim made by Plaintiff.
40. The Order to Show Cause also falsely alleges Jennifer is in danger and unwell.
41. I respectfully submit that it is in Jennifer's best interests to remain in my physical custody. The Brazilian courts so held in 2024 (Exhibit 6 hereto) and the American authorities implicitly so found by sustaining her father's physical custody.
42. A decision on The Order to Show Cause is pending.
43. A decision on the underlying appeal is also pending.
44. The filings in the Order to Show Cause are attached hereto as Exhibit 7.
45. I respectfully submit that if there is federal jurisdiction herein, the appropriate venue is in the Eastern District of New York.
46. I respectfully submit that this matter properly resides within the jurisdiction of the Courts of the State of New York where active litigation is ongoing.
47. I respectfully submit this court should dismiss the instant suit or, at a minimum, defer to exercise its jurisdiction under the standards set forth in *Colorado River Water Conservation District v. United States*, 424 US 800 (1976).

Respectfully submitted



Gerard A. Simonetti

Sworn before me this _____

day of July, 2024

Notary Public.

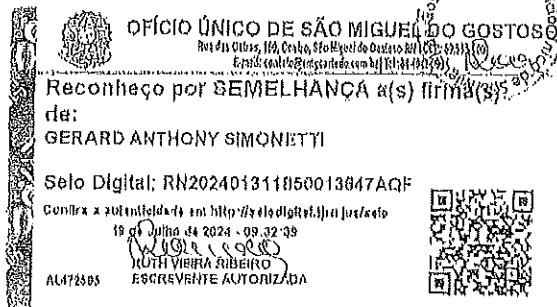


EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Marla F. Simonetti,

Plaintiff,

v.

Gerard Anthony Simonetti, and

Joseph A. Simonetti,

Defendants.

24-cv-01859

AFFIDAVIT IN SUPPORT

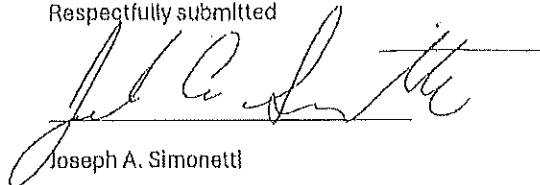
OF MOTION TO DISMISS

Joseph A. Simonetti, being duly sworn, deposes and says:

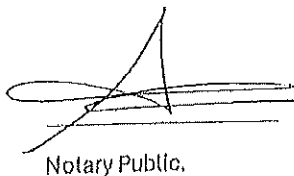
1. I am one of two defendants in the above-referenced matter.
2. I am the older brother of Gerard A. Simonetti, the principal defendant in this action.
3. I make this affidavit in support of the Motion to Dismiss Plaintiff's action against me brought in this Court under the principles of diversity of citizenship.
4. This is a state court matter involving the physical custody of my brother's daughter, Jennifer Simonetti.
5. I have never met my niece who was born and resides in Brazil.
6. I have never spoken to her as she speaks Portuguese and I do not.
7. I have no custodial authority over Jennifer Simonetti.
8. In fact, I have no relationship whatsoever with my niece.
9. I have not spoken or communicated with Plaintiff since 2011, four years prior to her divorce from my brother. I could not, therefore, have misinformed her of any of my brother's Brazilian addresses. Nor did I do so.
10. I know of no, nor have I observed, any instance of domestic abuse by my brother involving my brother directed toward Plaintiff.
11. All allegations made against me are untrue and are denied.
12. My brother has not been employed in my business or my business endeavors since 1990.
13. Nor have I ever been a party to or appeared in any prior proceeding involving my brother and Plaintiff.
14. This matter mirrors a matter pending in the Appellate Division, Second Department denominated: Marla F. Simonetti, Appellant against Gerard A. Simonetti, Respondent, Docket No. 2024-03476 filed on May 1, 2024 [Exhibit 1 to the Affidavit of Gerard A. Simonetti].
15. I am not a party to that matter.
16. I am informed and believe no decision has been reached in that matter.

17. Jennifer Simonetti was born in Brazil, September 1, 2011. Plaintiff and Defendant were divorced in Brazil in 2015. Jennifer Simonetti has lived continuously in Brazil since birth. To the best of my knowledge, she has never travelled to the United States and has lived with Defendant since 2018 when, in September of that year, a Brazilian tribunal awarded physical custody of Jennifer to my brother [Exhibit 1 to Affidavit of Gerard Simonetti].
18. 307 South Main Street, New City, NY 10956 is my business address and the address to which Plaintiff mails her documents.
19. 265 Brewery Road, New City, NY was the address of my parents who are both deceased.
20. I am informed and believe the instant matter is the fourth attempt Plaintiff has made to secure physical custody of my niece.
21. Plaintiff appears in this matter *pro se* and proceeds *in forma pauperis*.
22. I, on the hand, have been required to engage counsel.
23. I am informed and believe that all previous attempts by Plaintiff to secure custody of her daughter have been unsuccessful.
24. I respectfully submit that this matter properly resides within the jurisdiction of the Courts of the State of New York where active litigation is ongoing.
25. I respectfully submit that if there is federal jurisdiction herein, the appropriate venue is in the Eastern District of New York.
26. I have had no contact with Jennifer during her lifetime and I have no contact with Plaintiff since 2011, six (6) years prior to her initial attempt in 2017 brought to gain physical custody of Jennifer.
27. I respectfully submit this court should dismiss the instant action or, at a minimum, defer to exercise its jurisdiction under the standards set forth in *Colorado River Water Conservation District v. United States*, 424 US 800 (1976) and allow this matter to be determined in the New York State Courts where it properly has been and should be decided.

Respectfully submitted


Joseph A. Simonetti

Sworn before me this 18
day of July, 2024


Notary Public.

GERALD E. HULL
Notary Public, State of New Jersey
Comm. # 50191955
My Commission Expires 04/13/2027

EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
2024 MAR 11 AM 12:12
S.D. OF N.Y.W.P.

MARIA FABIA SIMONETTI

Write the full name of each plaintiff. J.C.S (MINOR)

CV

(Include case number if one has been assigned)

-against-

GERARD ANTHONY SIMONETTI

and JOSEPH A. SIMONETTI

COMPLAINT

Do you want a jury trial?

☐ Yes ☐ No

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

☐ Federal Question

☒ Diversity of Citizenship

A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

PERSONAL INJURY; PROPERTY RIGHTS; LABOR; IMMIGRATION;
CIVIL RIGHTS AND OTHER STATUTES.

B. If you checked Diversity of Citizenship

1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, MARIA FABIA SIMONEtti, is a citizen of the State of
(Plaintiff's name)

(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an Individual:

The defendant, GERARD ANTHONY SIMONEtti, is a citizen of the State of
(Defendant's name)

He is BRAZILIAN. (BRAZIL) - He lives 265 Sweeney Rd. New City - NY.
or, if not lawfully admitted for permanent residence in the United States, a citizen or
subject of the foreign state of

If the defendant is a corporation:

The defendant, _____, is incorporated under the laws of
the State of _____

and has its principal place of business in the State of _____

or is incorporated under the laws of (foreign state) _____

and has its principal place of business in _____

If more than one defendant is named in the complaint, attach additional pages providing
information for each additional defendant.

II. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional
pages if needed.

<u>MARIA</u>	<u>FABIA</u>	<u>SIMONEtti</u>
First Name	Middle Initial	Last Name

333 SCHERMERHOAN - 11D
Street Address

<u>BROOKLYN</u>	<u>NY</u>	<u>11217-0072</u>
County, City	State	Zip Code

(917) 756 0898
Telephone Number

Email Address (if available)

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1: GERARD ANTHONY SIMONEtti
 First Name Last Name
Refined
 Current Job Title (or other identifying information)
265 BREWERY Rd
 Current Work Address (or other address where defendant may be served)
NEW CITY NY 10956
 County, City State Zip Code

Defendant 2: JOSEPH SIMONEtti
 First Name Last Name
AMERICAN MINUTEMEN IS OWNER
 Current Job Title (or other identifying information)
307 S MAIN St
 Current Work Address (or other address where defendant may be served)
NEW CITY NY
 County, City State Zip Code

Defendant 3:
 First Name Last Name
 Current Job Title (or other identifying information)
 Current Work Address (or other address where defendant may be served)
 County, City State Zip Code

Defendant 4:

First Name

Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

III. STATEMENT OF CLAIM

Place(s) of occurrence: CITIZEN/SUBJECT IN BRAZIL COUNTRY.

Date(s) of occurrence: 11/09/2023.

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

I, MARIA FABIA SIMONETTI, HAVE A JUDGE ORDER THAT
STATES THAT GERARD ANTHONY SIMONETTI SHOULD STAY
WITH MY DAUGHTER JENNIFER CALIXTO SIMONETTI
UNTIL I STEP IN BRAZIL TO RECOVER HER BACK.
HOWEVER, THE FATHER IS NOT OBEYING THE LAW OVER
HERE. CASE ORDER # 0036493.04.2018.8.06.0001;
PAGE 120; MY DAUGHTER IS AUTISTIC, SHE HAS ALSO
HEART DISEASE + GASTRIC DISEASES AND THE FATHER
DOES NOT TAKING HER FOR HER DOCTOR AND PUTTING
HER HEALTH IN RISK + NOT PAY HER HEALTH PLAN
AND MORE. YOUR HONOR PLEASE SEE ATTACHED THAT
5 PAGES EXPLAINING IN DETAIL.

To Honor of the Federal Building and Courthouse.
 I, Maria Fabia Simonetti, am a petitioner against
 Gerard Anthony Simonetti and his brother Joseph S.
 Simonetti ^(MINOR) FOR HIDING MY DAUGHTER ~~JENNIFER~~ ^{CHARLOTTE}
 Simonetti, (Autistic, 12 y old, Brazil-american citizen);
 FOR NOT taking her to her pediatrician doctors,
 around 5 years missing in Brazil; Gerard and his
 brother gave wrong information about his address
 that changed it twice. I went over around 5 times.
 I lost MTA's, Fedex, and others job; I have to
 pay creditcards around \$10,000. I lost college and
 Financial, and I lost NYCHA Rent, I am in Risk
 to become a Homeless. I am trying divorce for
 about 10 years that my ex, Gerard A. Simonetti is
 practicing FRAUD in all the cases that is in Brazil.
 I have a will from my Father in Law Joseph Char-
 les Simonetti. In 2013, I found out that Gerard
 were in the SCAM with THOMAS FRANKLYN FARBURRO,
 and I Reported them to the local Federal Brasili-
 an Police. After that Gerard disappear with my
 daughter and put her Health in Risk (Autistic + Heart disease).
 I am going to explain better, in the following pages.

① I applied for divorce ON HIS BIRTHDAY April 16, 2012.

He missed the leaving date 3 times (Jun 18; July 05).

P.S.: By the law everything I said, I should win the case. However, the court house never gave ^{to} me, and ^{to} my daughters rights; it closed on 22, MAY, 2012.

②. I had domestic violence since I got pregnant from the first daughter (Talita C. S.); born in 10/15/98.

He kept me (NO ENGLISH) IN the room; financial total dependant on him; small town, I never saw the neighborhood for a year. His brother Joseph Simoneffi knew it about all. they are very close brothers.

I asked help for him, thinking that Gerard had Even his brother's EX wife knew it; I asked to help me; ^{Bifolano} Disposal.

③. I had domestic violence pregnant of the second daughter. Born with 8 months pregnancy FOR LEADING the placental INSUFFICIENCY DUE TO STRESS. ON September, 1st, 2011.; The father, GERARD ANTHONY SIMONEFFI, ABANDONED the house when she was 6 months old. LEAVING the daughters with NO paying for even the Health plan, in Fortaleza - Brazil. I tried to comeback home (265, Brewery Rd, New City,) on July, 10, 2011. After I tried to do my daughter's passport, but the Consul DAVID FREITAS did not allowed

me issue it; He Helped the father, because I proved that I have custody and judge Brazilian permission to travel with my daughters. I had 45y old, and an Autistic / Gastric and Heart Disease baby with out child support and health plan. So I came myself looking for Divorce / Alimony and child support. I got into a scammer: 2015 in NY.

- ④. In 2013, on the first time that I should give my both daughters to spend time, SUNDAY visitation, with father and I had domestic violence in front my oldest, 13y old, Talita helped me. I lost my uterus bleeding for 45 days. He never got on jail for it.
 case # 013.3129-33. 2013. 8.06.0025. (CEARA, Fortaleza-BR)
 { 0155880.77. 2014. 8.06.0025. IN BRAZIL.
 013.4813-90. 2013. 8.06.0025

After that I was investigating him, I open his computer. I learned that he plays stupid, drinks every day, knows Portuguese perfect, and HE IS A THIEF, and says that "I DON'T know the difference of bipolar and bisexual", so the ^{Guys} ~~gays~~ at court helps him in not go to jail. He was fool a poor old man ~~gay~~ with cancer to do all the pages for work as an agency, but He stopped help him after He found out that Gerard hurt me because my maid that he is in love and He is fool people at internet (scam).

⑤. After the domestic Violence, I stay on bad. I started learn how to use his computer. I learned that he is a thief. His partner get on jail in PANAMA (THOMAS FRANKLYN Tarbutto) and Gerard had a investigation about involved with CÂMBIO in his bank LARRET International / BEACON Hill. serv. Corp. (IPL: ~~040~~ 0228/2006.) So He know Tarbutto since 2006. Gerard want divorce and tried to kill me because I did not allowed or Help him with a fake agency, when he told me that he want work in Brazil, I told lets go to Ny and work overthere is better. And I did not open the agency in my name. I learn that he offer INTERCÂMBIO for American kids and He does not have No Address or permission to do that. He fool people at internet. FortalezaBEACHES.COM / ^{wrong investigation} ~~no~~ SKIPE He uses his girlfriend's NAME: FATIMA Lopes de Freitas - ME. (She does Not read and write). She was my maid I fired her because she was making my daughter vomite after bottle feeding. that maid was not supposed to feeding her. I was breastfeeding my daughter.

- ⑥ Gerard find out that I gave all proves of the involvement with SCAM PARTNER "THOMAS F. TARBUTTO" (in jail in SAN ANGELO CALIFORNIA).
- ⑦ He was hidden from a Federal officer subpoena. - IN BRAZIL, when a crime investigation take 2 years - IT EXPIRES.
However, HE took and hide MY daughter with HIM.
- ⑧ I went to the family companies in New City, I beging for help to his brother.
Around 5 years MY daughter is MISSING HER Doctor's and treatments for Autism.
The father lied about his Address - changed twice.
and the proccuter in Rio G. do Norte - BRAZIL went to his new address 3 times - missed subpoena.
- ⑨ I lost college (Financial); I lost housing RENT (NYCHA) and MY daughter has HER health IN DANGER. CASE # 0200933. 29. 2013. 806. 0296.
reported missed since 2020 + CHILD VIOLENCE (ART. CODIGO PENAL - 1369)
- ⑩ For all that, I would like to SUE GERARD ANTHONY SIMONETTI and His Brother Joseph for also divorce fraud because I HAVE A WILL from my FATHER-IN-LAW, that he loved me.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

I lost jobs 3 times; I lost college (Financial)
I am losing my rent (NYCHA); and my daughter
is having damage in her Health; And I
have 3 creditcards to pay + No job.

IV. RELIEF

State briefly what money damages or other relief you want the court to order.

I have my Father's in law will; I Kindly
request your Honor to see Gerard and his
brother Joseph as you want, in New York's
law, I would like to have my daughter with
me safely.

V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

03/11/2024
Dated
MARIA F.
First Name Middle Initial
P.O. Box 170072
Street Address
Brooklyn NY 11217-0072
County, City State Zip Code
(917) 756 0898
Telephone Number
Email Address (If available)

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☐ Yes ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.



DECLARATION OF MEDICAL INSURANCE

INTERNATIONAL MEDICAL GROUP

CERTIFICATE NUMBER: GMI0000039007

(GMI-83320)

CERTIFICATE TYPE: 0100

PRODUCT TYPE: GLOBAL MEDICAL INSURANCE

EFFECTIVE DATE: 01-Jun-2008

EXPIRATION DATE: 01-Jul-2008

ANNUAL PREMIUM: \$1,102.00 (U.S.)

DEDUCTIBLE: \$5,000.00 (U.S.)

POLICY MAXIMUM: \$5,000,000.00 (U.S.)

PAY MODE: A

ORIGINAL DATE: 01-Jun-2008

INSURED PERSON	DATE OF BIRTH	GENDER
SIMONETTI GERARD	18-Apr-1957	M

MAILING ADDRESS

205 BREWERY ROAD
NEW CITY, NY 10956
USA

ADMINISTERED BY: INTERNATIONAL MEDICAL GROUP® INC. as Agent for the Insurer.

International Medical Group
206 North Meridian Street
Indianapolis, IN 46204-4713-USA
1-317-633-1300
www.imglobal.com

INSURER: SIRIUS INTERNATIONAL INSURANCE CORPORATION (p/b)

(In Witness whereof this certificate has been signed, as authorized by the Insurer, by:

AUTHORIZED SIGNATURE

UNITED STATES OF AMERICA

DEPARTMENT OF STATE

02952224

Consular Report of Birth Abroad

OF A CITIZEN OF THE UNITED STATES OF AMERICA

This is to certify that:

JENNIFER CALIXTO SIMONEITI

Sex FEMALE, born at FORTALEZA CE, BRAZIL.

On SEPTEMBER 01, 2011.

Acquired United States CITIZENSHIP at birth as established by documentary evidence.

Presented to the Consular Service of the United States at:

RECIFE, BRAZIL

On JANUARY 02, 2014

MOTHER/FATHER/PARENTS:

MARIA FABIA CALIXTO TEIXEIRA

GERARD ANTHONY SIMONEITI

Date of Birth: NOVEMBER 26, 1968

Date of Birth: APRIL 16, 1957

Assistant Secretary for Consular Affairs

Date of Issuance: JANUARY 02, 2014

05-10387-83

159-6746226

USA

FOUNDATION EDSON QUEIROZ
UNIVERSITY OF FORTALEZA
NAMI
Medical attention Nucleo

Prescriptions

The patient Jennifer Calixto Simonetti has moderate autism, requiring monitoring and speech therapy, occupational therapy and psychotherapy to her social and academic development.

ICD-10 F84

Dr. Savio Caldas
Neurologist Children
CRM 10,206
(DOCTOR signature and stamp)

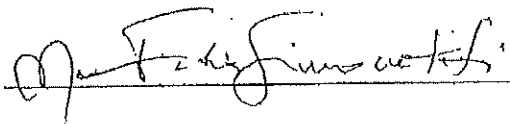
10. 05, 15 (dd, mm, yy)

State of New York

Country of United States

I, Maria Fábila Calixto Simonetti, attest to my competency to translate from Portuguese to English, and I certify that this is a correct translation of all pertinent information from the Portuguese original.

Signed this August 30, 2016, in New York City, New York.





FUNDAÇÃO EDSON QUEIROZ
UNIVERSIDADE DE FORTALEZA
CIÊNCIAS E SAÚDE

NAMI
Núcleo de Atenção Médica Integrada

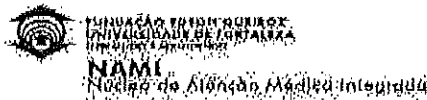
RECEITUÁRIO

A paciente Jennifer Calixto
Simionetti apresenta autismo
moderado, com necessidade
de acompanhamento com fono-
terapia, terapia ocupacional
e psicoterapia para seu desen-
volvimento social e acadêmi-
co.

CPD 10 F84

Dr. Saviio Saklas
Neurologista Infantil
CRM 10.206

10.05.15.



RECEITUÁRIO

A paciente possui um diagnóstico de desenvolvimento secundário de um quadro de autismo, que se manifesta por atraso da linguagem, com uma verbalização frágil, redução de interesse e déficit social com os pares.

Recomenda-se terapia com fonoaudióloga, terapia ocupacional e psicoterapia para seu desenvolvimento social e econômico.

CID 10 F84

[Handwritten signature]



10/08/2018



MINISTERIO PÚBLICO DO RIO GRANDE DO NORTE

MINISTÉRIO PÚBLICO DO ESTADO DO RIO GRANDE DO NORTE
PROCURADORIA GERAL DE JUSTIÇA

TERMO DE INFORMAÇÃO PRESTADO POR NOTIFICADOR

UNIDADE SOLICITANTE:

DESTINATARIO: *[Handwritten signatures]*

Tipo de Documento: ☒ Notificação ☐ Ofício ☐ Outro. Especificar: _____

Eu, JOÃO CARLOS (nome completo legível), prestador de serviços terceirizados (motorista / motonista) junto ao MPRN, informo que o expediente acima discriminado **NÃO FOI ENTREGUE** ao destinatário pelo(s) seguinte(s) motivo(s):

Mudou-se ou não reside no endereço. Novo endereço (caso informado)

Endereço insuficiente ou inexistente

Desconhecido na localidade

Imóvel fechado

(*) O destinatário não foi localizado, após 3 tentativas em dias e horários diferentes, conforme registro abaixo:

1. $42/20/23/27$ h 80 min

20141123 12h12min

at _____ h min

9) Outros motivos (descrever abaixo)

Responsável pelas informações:	(nome completo) e	(CPF)
--------------------------------	-------------------	-------

Feitos os 09 dias do mês de 23

Motorista / Motorista

EXHIBIT 5

1.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Appeal

25-0117

MARIA FABIA SIMONETTI

(List the full name(s) of the plaintiff(s)/petitioner(s).)

24 CV 01259 () ()

-against-

NOTICE OF APPEAL

GERARD ANTHONY SIMONETTIJOSEPH ANTHONY SIMONETTI

(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: MARIA FABIA SIMONETTI

(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the ☐ judgment ☒ order entered on: DECEMBER 18, 2024
(date that judgment or order was entered on docket)that: DISMISSAL ORDER OF CIVIL CHAIRS BASED ON LACK OF JURISDICTION

(If the appeal is from an order, provide a brief description above of the decision in the order.)

JANUARY 14, 2025
Dated

Signature

SIMONETTI, MARIA
Name (Last, First, MI)P.O. Box 170072
Address

City

State

Zip Code

(917) 7560898
Telephone NumberMFABIA CT @ gmail . com
E-mail Address (if available)STATE OF NEW YORK
COUNTY OF KINGSSIGNED BEFORE ME ON 1/14/2025KAMAL P. SONI
Notary Public, State of New York
No. 01SQ6089949
Qualified in Kings County
Commission Expires March 31, 2027

* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

Rev. 12/23/13

MARIA F SIMONETTI

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Maria Fabia Simonetti,

Plaintiff-Appellant,

v.

Gerard Anthony Simonetti and Joseph Anthony Simonetti

Defendants-Appellee.

e-filed attorney's: John O. C.-Moss Moss & Moss LLP (jmoss@mossandmoss.com)

Nature of the Appeal: Appeal from the dismissal order of
civil claims based on lack of jurisdiction

Appeal from the United States District Court for the Southern District of New York

Case # 2024 -cv- 01859, docket #30

Nature of Suit: 440 Civil Rights and Others

TO THE HONORABLE COURT:

The Plaintiff, Maria Fabia Simonetti, respectfully submits this Motion to Appeal the ruling rendered by the Honorable Judge Margaret M. Garnett on December 18, 2024, in which the Court dismissed the Plaintiff's suit on the grounds that the Southern District of New York (SDNY) Court lacks jurisdiction. **The Plaintiff asserts that the lower court's decision misinterpreted the nature of the underlying claims and misapplied the law.** I respectfully request that the Court of Appeals review and reverse this dismissal, allowing the claims to proceed based on the following grounds:

I. Statement of Jurisdiction

This Court has jurisdiction over this matter under 28 U.S.C. § 1332 (diversity of citizenship), as the parties are citizens of different countries, and the claims involve fraud and financial damages tied to assets located in New York. Additionally, jurisdiction is proper under 28 U.S.C. § 1331 as

the claims involve violations of federal law concerning the enforcement of foreign judgments and rights under international treaties. Moreover, I am able to pursue civil rights claims under U.S. federal law, such as fraud in divorce proceedings (including my 'in-laws' will), emotional distress, and financial damages, due to the involvement of U.S. jurisdiction in the matter.

Further, the Southern District of New York should have exercised jurisdiction because the claims involve U.S. citizens, including my daughter, who is a U.S. citizen born abroad and is entitled to full protection under the U.S. Constitution. The failure to recognize jurisdiction over claims involving U.S. citizens, such as my daughter, undermines the rights afforded by U.S. law.

II. GROUNDS FOR APPEAL

The Plaintiff respectfully requests the Court to reverse the dismissal and hold that the SDNY Court has proper jurisdiction to hear this case. For **diversity jurisdiction (28:1332)** to apply in a federal court, the **Complete Diversity** that parties are from different countries. Since my daughter and I are from a foreign country, duo-citizen, and the defendants are Americans, one is in Brazil, this seems to meet the requirement of diversity. Also, the **Amount in Controversy** exceeds \$75,000. If my claim meets this threshold, diversity of jurisdiction could apply. In addition, the Plaintiff submits the following grounds for appeal:

A. Misapplication of Jurisdictional Law

The court misapplied the law regarding subject-matter jurisdiction, erroneously conflating issues of child custody with the civil rights violations alleged in the complaint. The claims at issue relate to fraud and violations of Plaintiff's property rights under the Constitution, specifically concerning the Defendant's unlawful conduct regarding divorce settlement and will provisions.

Under the federal court's jurisdictional framework, **subject-matter jurisdiction over civil rights violations falls under 28 U.S.C. § 1331 (federal question jurisdiction)**. The case involves an alleged violation of federal law (fraud, fiduciary breach), which gives this Court proper jurisdiction. The lower court improperly dismissed the claims based on a misreading of the nature of the case. See, e.g., **Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance**

Co., 559 U.S. 393 (2010) (affirming federal court's jurisdiction over claims arising under federal law even where there may be state law concerns).

B. The Court Erred by Not Applying Proper Legal Standards to the Civil Rights Claim

The Plaintiff asserts that the trial court failed to consider the core civil rights issue involved. In a case such as this, where fraud and misappropriation of assets within divorce proceedings are alleged, the court should apply relevant civil rights statutes, such as 42 U.S.C. § 1983 (action for the deprivation of rights under color of law), in determining jurisdiction, not merely rely on child custody jurisdictional considerations. See 42 U.S.C. § 1983; *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 924 (1982) (defining action under color of law and the rights protected by civil rights claims).

C. Judicial Error in Characterizing the Case as a Child Custody Dispute

The lower court improperly classified the suit as involving child custody. The Plaintiff's claim is rooted in fraud, misappropriation of property, and interference with legal rights concerning the Plaintiff's divorce and will, not child custody. As such, the SDNY court's decision to dismiss the case based on an incorrect assumption of subject-matter jurisdiction is legally flawed. The suit does not center on child custody issues but rather on fraud and violations of property rights within the context of family law matters, and violation of custody order, my right to have and assist my daughter as a mother.

See, e.g., *Thompson v. United States*, 492 F.2d 493 (9th Cir. 1973) (holding that federal jurisdiction may be invoked in civil rights cases irrespective of family law issues such as child custody).

D. Court's Failure to Recognize Civil Rights Violations of a U.S. Citizen Child Abroad

The district court's reliance on the argument that it has no jurisdiction due to the child's residence abroad misinterprets the scope of U.S. civil rights law. The Plaintiff's case involves a claim under U.S. law, including the right to healthcare and protection from harm, which must be protected by U.S. courts, regardless of the child's residence abroad. The Defendant's actions in denying medical treatment for the child who suffers from autism and heart disease present a direct violation of these rights. So, the father's actions, such as taking the child without mother's consent, neglecting her health, and denying her medical care could potentially be viewed as a

violation of federal rights. Courts have consistently held that U.S. citizens, particularly children, are entitled to protections under U.S. law, even when they are abroad.

F. Incorporation of the Hague Convention in Jurisdiction Over International Custody Matters

The district court's ruling dismisses the applicability of international treaties, such as the Hague Convention on the Civil Aspects of International Child Abduction, which provides a framework for protecting the welfare of children in custody disputes. Although the court referenced the Hague Convention, it did not sufficiently address the child's health and civil rights violations in the context of U.S. jurisdiction. The Plaintiff's case is not merely a custody dispute but is centered around the protection of civil rights, especially considering the child's special needs.

G. Legal Precedent Supporting U.S. Jurisdiction Over Civil Rights Violations Abroad

U.S. courts have long recognized the right of U.S. citizens, especially minors, to seek redress for violations of their civil rights, including healthcare, regardless of their location abroad. The denial of medical care and refusal to provide treatment for the child's health conditions presents a serious issue of neglect, which U.S. courts have the responsibility to address. As established in cases like *Doe v. Abbott*, 2021 U.S. App. LEXIS 20147 (5th Cir. 2021), U.S. courts are empowered to protect their citizens' fundamental rights from violations occurring abroad.

H. Plaintiff's Claim Involves More Than Custody Disputes

Contrary to the district court's assessment, the Plaintiff's complaint involves claims of severe medical neglect, fraud, emotional distress, and economic harm caused by the Defendant's actions. The Plaintiff has shown substantial evidence of how the Defendant's actions have directly affected both the child's health and the Plaintiff's economic well-being. The district court's dismissal fails to account for the broader nature of the Plaintiff's claims, which extend beyond a simple custody dispute.

I. Violation of Parental Rights and Property Interests in the U.S.

The Plaintiff also asserts that the actions of the Defendant violate her rights to custody and her financial rights as stipulated by the U.S. legal system, including enforcement of parental rights under the laws of New York, and the will of the Plaintiff's father-in-law. These rights are protected under U.S. law, and the Plaintiff has a legitimate claim to seek enforcement of these rights, particularly given the Defendant's disregard for them.

III. Statement of the Case

1. Background:

- The Plaintiff (myself) was married to the Defendant (Ex-Husband) in New York in 1998.
- The Plaintiff and Defendant, Gerard A. S., have two daughters, one of whom, J. C. S., Autistic, is missing has duo-citizen. The first daughter born in Nyack, NY, 1998; second daughter born in Brazil is being use to financially and emotionally hurt me, Autistic, duo-citizen, she has been missing her doctor's specialist treatments for about 6 years. She doesn't have her rights.
- A Brazilian court has issued an order for temporary custody to the father, one of the defendants, and he should return the child to the Plaintiff, mother, when I get in Brazil, but the Defendant has failed to comply with this order, evading enforcement. This order is already writ by the father's lawyers as you Honor can see in previously motion, at Kings Court. The plaintiff has the right to have the child and continue her medical treatments.
- The Defendant is also implicated in fraudulent activities related to FBI investigation (Thomas Franklyn Tarbutto in Jail in California), this is the reason he difficult the division of assets in the Plaintiff's divorce. Also, he is hiding from federal investigation with the little girl missing to hurt the mother, for I have given all his skype conversations to the Federal investigator in Brazil and at Kings Court.

2. Previous Ruling:

On December 18, 2024, the SDNY Court dismissed the Plaintiff's case for lack of jurisdiction. However, I assert that this ruling fails to take into account the significant ties to New York and the civil damages that I suffered, I became homeless and even the father evicted my daughters (duo-citizens), without our rights due to the Defendant's fraudulent actions.

IV. Legal Arguments for Appeal

1. Jurisdiction Exists in SDNY for Civil Claims

The dismissal of the case for lack of jurisdiction was erroneous. Jurisdiction exists in this Court due to the Defendant's strong ties to New York, including his birth in Bronx, New York, my residence in New York, and the Defendant's potential assets and business connections in the state. There are significant financial and emotional damages that are directly tied to the Plaintiff's civil rights violations and the Defendant's fraudulent activities.

- Both defendants were born in Bronx, New York, and the Plaintiff lived in New York during the marriage and divorce.
- The Defendant's business and financial interests are based in New York.
- The Plaintiff and her daughters are U.S. citizens, with one daughter having dual citizenship (Brazil and the U.S.).
- The Plaintiff has faced domestic violence in Brazil, and the Defendant's actions have caused harm to both, plaintiff and my daughters, including fraudulent financial actions in the divorce over \$75,000. I, the plaintiff, lost jobs looking for my daughter, dropped Law school in Brazil, Criminal Justice and Pre-Nursing at College in NY. I am being retaliate for witness of the scam, and in Brazil there is no protection for me and my daughter who is missing for 6 years abducted.

Given these factors, SDNY has jurisdiction over this case, especially considering the fraudulent financial activities and potential assets in New York.

2. My Ability to Continue the Case

I am the plaintiff seeking to sue Gerard and Joseph Simonetti for fraud in relation to the division of marital assets and my rightful share of my late father-in-law's estate. As noted in Exhibit 1 (my daughter's address does not exist; wrong email address to federal investigation, Gerard S. states that family company in NY, with brother Joseph S. supported us in federal investigation in Brazil), Gerard's fraudulent actions have caused me significant emotional, financial, and psychological distress, further exacerbating the

harm caused to me and my daughter's health. I stopped work and dropped out of Pre-Nursing College, looking to find them and worry about my daughter. Also, violation of custody order, the custody of my daughter is an issue that has already been addressed by Brazilian courts. However, Gerard's actions have violated Brazilian court orders that I GRANTED CUSTODY ALREDY IN BRAZIL; The order that the father issued in Kings Court clearly states that my daughter should be returned to me upon my arrival in Brazil (Exhibit 2). Despite this, Gerard has evaded enforcement of this order, that he writ in Kings Court, NY, and has put my daughter's health at risk to hurt me.

As defendant's failure to comply with this order puts my daughter in immediate danger, and for the reasons stated above, the Plaintiff-Appellant respectfully requests that the Court of Appeals grant this petition for appeal, reverse the district court's denial of jurisdiction, and remand the case for further proceedings. For not only my custody rights granted by the Brazilian court should be enforced, and U.S. courts can take jurisdiction over cases involving U.S. citizens abroad when their rights are being violated, so the rights of a U.S. citizen child are at stake, and it is critical that U.S. courts intervene to ensure my daughter's well-being and protect her civil rights under U.S. law.

Damage Claims: The Defendant's fraudulent actions and violation of Brazilian court orders, which led to hiding my daughter's whereabouts, have caused emotional, financial to me, and health-related harm to my U.S Citizen daughter.

Civil Rights Claims: These claims are brought under U.S. federal law, including fraud, emotional distress, and financial damages.

3. Fraudulent Actions and Financial Harin:

I am seeking to sue Gerard and Joseph Simonetti for fraud in relation to the division of marital assets and my rightful share of my late father-in-law's estate, as well as for their involvement in defrauding the FBI during a federal investigation. As noted in Exhibit 3, putting my daughter in a challenge with his girlfriend, at Instagram, where is no hospital near, no electricity in the street, put my daughter's health in danger to hurt me; Gerard's fraudulent actions with a corrupted lawyer in Brazil, invade the house, broke everything, almost killed me and never got on jail for that; he have caused me

significant emotional, financial, and psychological distress, further exacerbating the harm caused to me and now to my daughter.

4. Violation of Custody Order:

The custody of my daughter is an issue that has already been addressed by Brazilian courts. However, Gerard's actions have violated Brazilian court orders. A Brazilian judge's temporary custody order clearly states that my daughter should be returned to me upon my arrival in Brazil (**Exhibit 3**). Despite this, Gerard has evaded enforcement of this order and has put my daughter's health at risk. I appeal this decision, as Gerard's failure to comply with this order puts my daughter in immediate danger.

5. Enforcement of Brazilian Child Custody Orders

While custody issues are typically handled by Brazilian courts, I am not seeking custody but rather enforcement of my rights as I granted the custody of my autistic daughter and civil damages. The Hague Convention on the Civil Aspects of International Child Abduction provides a legal framework for the return of children wrongfully removed or retained across international borders. Given that Brazil is a signatory, the wrongful retention of my daughter there falls under this framework, and the U.S. courts have the authority to assist in enforcing these orders.

6. Federal Claims for Fraud and Emotional Distress

Under 42 U.S.C. § 1983 (Civil Rights Act) and common law fraud principles, I am bringing claims for fraud and emotional distress due to the Defendant's actions neglecting my daughter's health and making me travel giving wrong/ not existent address to U.S Embassy. These claims are based on the Defendant's evasion of both Brazilian and U.S. legal processes, causing harm to my financial well-being and emotional state.

7. International Law and the Hague Convention:

The failure to consider international legal frameworks, including the Hague Convention on the Civil Aspects of International Child Abduction, is another ground for appeal. Gerard's wrongful retention of my daughter in Brazil, despite the existing custody order, directly violates international child protection protocols, and this Court must address this issue.

8. Fraudulent Concealment of Daughter's Whereabouts:

Gerard has actively concealed my daughter's whereabouts by providing false addresses to both U.S. Welfare and U.S. Embassy officers. I have made multiple trips to Brazil to locate my daughter, but Gerard and his accomplices deliberately misled me, putting my daughter at further risk. This deliberate concealment, as detailed in Exhibit 3, further demonstrates the fraud and deceit on Gerard's part, which should be considered in these proceedings.

9. Emergency Relief:

Given the immediate health risks to my daughter, I request that the Court issue an emergency writ of injunction, compelling Gerard Simonetti to comply with the Brazilian court's order for the return of my daughter. As my daughter's guardian, I am entitled to seek her immediate return and ensure her access to necessary medical care.

IV. Conclusion and Request for Relief

Based on the arguments above, I respectfully request that the Court:

1. Reverse the District Court's dismissal of the case for lack of jurisdiction and allow the claims to proceed on their merits, including my daughter's rights and my claims for financial damages, fraud, and emotional distress.
2. Recognizes that U.S. federal courts have jurisdiction to hear civil rights claims arising from the medical neglect and harm to a U.S. citizen child, birth abroad, as well as claims involving custody, divorce division, and inheritance.
3. Grant an emergency writ of injunction compelling the Defendant to comply with the Brazilian court's order for the return of my daughter to stopping her father from neglecting on her health needs.
4. Issue relief under the Hague Convention on the Civil Aspects of International Child Abduction and the International Child Abduction Remedies Act (ICARA), 42 U.S.C. §

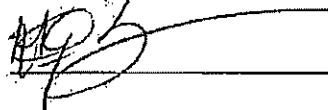
11601, et seq., due to the Defendant's wrongful retention of my daughter and neglect of her medical and treatments for autism, all her needs.

5. Provide temporary alimony or spousal support to ensure that I can meet my basic financial needs or while this situation with my daughter is ongoing, I am not able to work.
6. Waive all Courts fees for this appeal under 28 U.S.C. § 1915, as I am currently indigent and unable to afford the costs of litigation.

Given the urgency and importance of my daughter's health and well-being, as well as the financial hardships I have suffered, I respectfully ask for your urgent attention to this matter.

Thank you for your time and consideration.

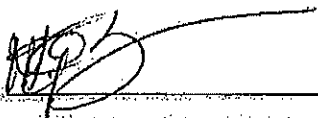
Sincerely, ,



Maria Fabia Simonetti

Certificate of Service

I hereby certify that a true and correct copy of this Motion for Appeal was served on the Defendants, and Defendant's lawyer, by email and mail on January 14, 2025



Maria Fabia Simonetti

Notary:

STATE OF NEW YORK
COUNTY OF KINGS
SIGNED BEFORE ME ON 11/14/2025

MARIA F SIMONETTI


KAMAL P. SONI
Notary Public, State of New York
No. 01SQ6089949
Qualified in Kings County
Commission Expires March 31, 2027

EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIA FABIA SIMONETTI,

Plaintiff,

-against-

GERARD ANTHONY SIMONETTI; AND
JOSEPH A. SIMONETTI,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/18/2024

24-CV-01859 (MMG)

ORDER OF DISMISSAL

MARGARET M. GARNETT, United States District Judge:

BACKGROUND

This action was initiated by Complaint on March 11, 2024, by Plaintiff *pro se* Maria Fabia Simonetti (“Plaintiff”). *See* Dkt. No. 1 (the “Complaint” or “Compl.”). Broadly speaking, this case concerns a custody dispute over the minor child of Plaintiff and Defendant Gerard A. Simonetti. *See id.* Also named as a Defendant is Gerard A. Simonetti’s brother, Joseph Simonetti (together with Gerard A. Simonetti, the “Defendants”). The minor child has lived in Brazil since she was born and has never lived in, or even traveled to, the United States. *Id.* Among other claims, Plaintiff alleges that her daughter’s mental and physical health is not being properly treated in Brazil. *See generally* Compl.; *see also* Dkt. No. 27 (containing additional allegations). Construing her request for relief liberally due to Plaintiff’s *pro se* status, *see McEachin v. McGuinnis*, 357 F.3d 197, 200 (2d Cir. 2004), she requests the Court enjoin the Defendants from “harming” her daughter and that her daughter be returned to her from Brazil. *See* Compl. at 11; *see also* Dkt. No. 27 at 1 (“I am seeking immediate relief, including the restoration of my rights as a parent, an injunction to prevent further harm.”).

On June 3, 2024, this case was reassigned from Chief Judge Laura T. Swain to the undersigned. On July 22, 2024, Defendants Gerard Anthony Simonetti and Joseph Simonetti

(“Defendants”) moved to dismiss this case pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and arguing, *inter alia*, that this case is identical to multiple cases already adjudicated in New York State Court. *See* Dkt. No. 12. Plaintiff opposed Defendants’ motion to dismiss on July 29, 2024. *See* Dkt. No. 13. On October 24, 2024, the Court referred this matter to the designated Magistrate Judge, Judge Barbara C. Moses, for General Pretrial matters and a Report and Recommendation on Defendants’ pending motion to dismiss. *See* Dkt. No. 22.

While the motion has been pending, Plaintiff has repeatedly contacted the Court’s Chambers by email and, on occasion, by telephone. Additionally, and despite the pending motion to dismiss, on November 13, 2024, Plaintiff filed a Proposed Order to Show Cause seeking a preliminary injunction and temporary restraining order with emergency relief. *See* Dkt. No. 25. Upon review of the submission, the Court declined to sign the Order to Show Cause and denied Plaintiff’s motion for a preliminary injunction and temporary restraining order. *See* Dkt. No. 26. Furthermore, the Court prohibited Plaintiff from contacting Chambers and informed Plaintiff that further communications should be addressed to Judge Moses. *Id.* Shortly thereafter, on December 3, 2024, Plaintiff filed yet another motion for preliminary injunction with emergency relief. *See* Dkt. No. 27. On December 16, 2024, Defendants opposed. *See* Dkt. No. 28.

Although this matter is referred to Judge Moses for GPT and R&R, upon closer review of the Complaint and other filings in this matter, and for the reasons discussed herein, the Court has determined that it lacks subject matter jurisdiction to hear this matter. Accordingly, the reference is withdrawn and the case is DISMISSED for lack of subject matter jurisdiction.

DISCUSSION

Federal district courts are courts of limited jurisdiction and may not hear a case absent subject matter jurisdiction. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005). The requirement of subject matter jurisdiction cannot be waived, *United States v. Cotton*, 535 U.S. 625, 630 (2002), and its absence may be raised at any time by a party or by the court *sua sponte*. See *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011) (“[F]ederal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press.”).

Even in *pro se* cases, the obligation to establish subject matter jurisdiction lies with the Plaintiff. *Lyndonville Sav. Bank & Trust Co. v. Lussier*, 211 F.3d 697, 700–01 (2d Cir. 2000); *Micolo v. Greenpoint Sav. Bank*, No. 17-CV-5991(JS)(AKT), 2018 WL 1730352, at *2 (E.D.N.Y. Apr. 9, 2018) (“Notwithstanding the liberal pleading standard afforded *pro se* litigants, federal courts are courts of limited jurisdiction and may not preside over cases if they lack subject matter jurisdiction.”). A federal district court’s subject matter jurisdiction is available only when a “federal question” is presented or, if asserting claims under state law under the court’s diversity jurisdiction, when, among other circumstances, the plaintiff is a citizen of an American State, the defendant is a citizen of another American State or a citizen or subject of a foreign country, and the amount in controversy exceeds the sum or value of \$75,000. See 28 U.S.C. §§ 1331, 1332(a)(1), (2). When a court lacks subject matter jurisdiction, dismissal is mandatory. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006); see also Fed. R. Civ. P. 12(h)(3).

For the reasons discussed below, the Complaint does not allege facts sufficient to show that the Court has subject matter jurisdiction over Plaintiff’s claims.

First, Plaintiff does not allege facts sufficient to show that the Court can consider her claims under state law under the court's diversity jurisdiction. To establish diversity jurisdiction under 28 U.S.C. § 1332, a plaintiff must first allege that she and the defendants are citizens of different American States; a party may alternatively be a citizen or subject of a foreign country, so long as that party is not lawfully admitted for permanent residence in the United States and domiciled in the same American State where the opposing party is a citizen. *See* § 1332(a)(1), (2). In addition, for diversity jurisdiction, the plaintiff must allege to a “reasonable probability” that her claims are in excess of the sum or value of \$75,000, the statutory jurisdictional amount. *See* § 1332(a); *Colavito v. N.Y. Organ Donor Network, Inc.*, 438 F.3d 214, 221 (2d Cir. 2006). Construing the Complaint liberally, Plaintiff appears to be a citizen of New York, as she alleges that she lives in New York and requests her daughter be removed from Brazil to New York. *See* Compl. at 10–11. However, even construing Plaintiff’s allegations generously, the Complaint does not allege facts sufficient for the Court to determine the citizenship of Defendants in a manner that would establish diversity jurisdiction. At times, the Complaint states that the Defendants live in Brazil, *see id.* at 5, but the addresses provided for the Defendants in the Complaint are residential addresses in New York State, *see id.* at 4. To the extent that Plaintiff’s former husband would qualify as a “subject” of a foreign country, Plaintiff appears to allege that the co-defendant former brother-in-law is a citizen of New York, which would destroy diversity. Furthermore, even if complete diversity of citizenship had been properly pled or could be determined from the allegations of the Complaint or other documents in this case, Plaintiff has not established the statutory jurisdictional amount of \$75,000 in controversy. *See id.* at 6 (Plaintiff’s request for relief does not include any monetary damages). Therefore, the Court does not have diversity jurisdiction.

Second, neither has Plaintiff established federal question jurisdiction. Federal question subject matter jurisdiction may be established pursuant to § 1331 where a claim arises under the “Constitution, laws or treaties of the United States.” 28 U.S.C. § 1331. “A plaintiff properly invokes § 1331 jurisdiction when he pleads a colorable claim ‘arising under’ the Constitution or laws of the United States.” *Arbaugh*, 546 U.S. at 513. A claim alleging federal question subject matter jurisdiction “may be dismissed for want of subject matter jurisdiction if it is not colorable, *i.e.*, if it is ‘immaterial and made solely for the purpose of obtaining jurisdiction’ or is ‘wholly insubstantial and frivolous.’” *Id.* at 513 n.10. First, to the extent that Plaintiff attempts to assert her custody claims under the Hague Convention, the allegations fail on their face because “a petitioner cannot invoke the protection of the Hague Convention unless the child to whom the petition relates is ‘habitually resident’ in a State signatory to the Convention and has been removed to or retained in a different State.” *Gitter v. Gitter*, 396 F.3d 124, 131 (2d Cir. 2005). Even construing Plaintiff’s allegations liberally, it appears to be undisputed (indeed the Complaint does not allege otherwise) that Plaintiff’s minor child was born in Brazil, currently lives in Brazil, and has never lived in the United States. The Hague Convention is thus inapplicable because “parental intent cannot alone establish a child’s habitual residence,” rather, “a change in geography is a necessary condition to a child acquiring a new habitual residence[.]” *Id.* at 133. Second, Plaintiff’s other claim, *see* Compl. at 10 (alleging “divorce fraud” because Plaintiff’s father-in-law’s will allegedly stated that he “loved” Plaintiff), is a state law claim over which the Court has no independent jurisdiction. Finally, given the Plaintiff’s *pro se* status, the Court independently knows of no federal law, constitutional provision, or treaty that would provide relief to Plaintiff under the circumstances alleged in the Complaint. Accordingly, Plaintiff has failed to properly invoke this Court’s federal question subject matter jurisdiction.

The Court declines to address the Defendants' *res judicata* arguments raised in their motion to dismiss the Complaint because, as stated, the Court does not have jurisdiction to reach the merits of this dispute.

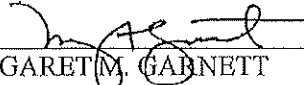
CONCLUSION

In light of the foregoing, this Court lacks subject matter jurisdiction to adjudicate Plaintiff's claims. This action is therefore DISMISSED without prejudice. *See Hollander v. Garrett*, 710 F. App'x 35, 36 (2d Cir. 2018) (holding dismissal for subject matter jurisdiction must be without prejudice). The Court certifies, under 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and, therefore, IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is respectfully directed to CLOSE this case and terminate all deadlines. The Clerk of Court is also respectfully directed to mail a copy of this Order to Plaintiff.

Dated: December 18, 2024
New York, New York

SO ORDERED.



MARGARET M. GARNETT
United States District Judge

EXHIBIT 7

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 7/9/2026

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIA FABIA SIMONETTI,

Plaintiff,

-against-

GERARD ANTHONY SIMONETTI; AND JOSEPH
A. SIMONETTI,

Defendants.

24-CV-01859 (MMG)

ORDER

MARGARET M. GARNETT, United States District Judge:

The Court assumes familiarity with the facts and procedural history of this matter. On December 18, 2024, the Court dismissed Ms. Simonetti's complaint for lack of subject matter jurisdiction, Dkt. No. 30, which the Second Circuit affirmed by summary order. Dkt. No. 37. Ms. Simonetti now moves for civil and criminal sanctions and fees against Defendant Gerard Simonetti and his lawyer for allegedly "committing a deliberate misrepresentation upon [the] State of New York's Court, to intentionally [sic] exonerate [Defendant] from a financial ponzi federal crime." Dkt. No. 38 ("Mot.") at 1. Ms. Simonetti's motion is DENIED.

Ms. Simonetti alleges that Defendant and his counsel committed fraud upon this Court by falsely asserting, *inter alia*, that Defendant was exonerated in relation to active Federal Bureau of Investigation and foreign law enforcement inquiries. Mot. at 3, 6. But the Court's determination of a lack of subject matter jurisdiction was based solely on the face of Ms. Simonetti's pleadings, not on any fraud or misrepresentation by Defendant or his counsel. Accordingly, the current allegations, even if taken as true, do nothing to cure the jurisdictional defect. Ms. Simonetti's attempt to "premise jurisdiction on the alleged violations of various Federal Rules of Civil Procedure" fails, because "[t]he Rules do not provide an independent ground for subject matter jurisdiction over an action for which there is no other basis for jurisdiction." *Cresswell v. Sullivan & Cromwell*, 922 F.2d 60, 70 (2d Cir. 1990).

Ms. Simonetti also invokes this Court's inherent equitable power to impose sanctions. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43–44 (1991). "Because of their very potency, inherent powers must be exercised with restraint and discretion." *Id.* at 44. Sanctionable conduct must be proven by clear and convincing evidence, and the court must make a specific finding of bad faith. *DLC Mgmt. Corp. v. Town of Hyde Park*, 163 F.3d 124, 136 (2d Cir. 1998). The court must also make factual findings and identify the particular misconduct it deems sanctionable. *See MacDraw, Inc. v. CIT Group Equip. Fin., Inc.*, 73 F.3d 1253, 1262 (2d Cir. 1996). The Court of course takes seriously any suggestion that an attorney or litigant has made false representations. However, in light of the irrelevance of the representations (whether true or false), the lack of subject matter jurisdiction over the substance of the litigation, the high bar for imposition of sanctions pursuant to the Court's inherent power, and Ms. Simonetti's failure to establish sanctionable conduct by "clear and convincing evidence," the Court will not re-open a

matter over which it has no subject matter jurisdiction merely to investigate the possibility of sanctions for representations that, even if false, played no role in any aspect of the Court's decision to dismiss this case. Accordingly, Ms. Simonetti's request for sanctions under the Court's inherent power is also denied.

While the Court is very sympathetic to Ms. Simonetti's difficulties related to her child custody battle, nothing in her motion, nor any of her previous filings, changes the fundamental fact that this Court lacks subject matter jurisdiction to adjudicate her claims and thus is without power to assist her. Although Ms. Simonetti is proceeding *pro se*, courts "should not excuse frivolous or vexatious filings by *pro se* litigants," nor does *pro se* status "exempt a party from compliance with relevant rules of procedural and substantive law." *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 477 (2d Cir. 2006) (per curiam). Accordingly, Ms. Simonetti is advised that continued frivolous filings may warrant sanctions, including designation as a "vexatious litigant" or a filing bar.

The Clerk of Court is respectfully directed to terminate Dkt. No. 38.

Dated: July 9, 2026
New York, New York

SO ORDERED.

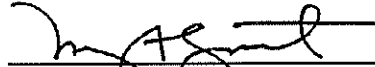

MARGARET M. GARNETT
United States District Judge

EXHIBIT 8

25-117-cv

Simonetti v. Simonetti, et al.

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of February, two thousand twenty-six.

PRESENT:

MICHAEL H. PARK,
SARAH A. L. MERRIAM,
Circuit Judges,
KIYO A. MATSUMOTO,
*District Judge.**

Maria Fabia Simonetti,
Plaintiff-Appellant,

v.

25-117

Gerard Anthony Simonetti,
Joseph Simonetti,
Defendants-Appellees.

* Judge Kiyo A. Matsumoto, of the United States District Court for the Eastern District of New York, sitting by designation.

FOR PLAINTIFF-APPELLANT:

MARIA FABIA SIMONETTI,
pro se, Brooklyn, NY.

FOR DEFENDANTS-APPELLEES:

JOHN O. C. MOSS, Moss &
Moss LLP, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Garnett, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Maria Simonetti, proceeding pro se, appeals from the district court's December 18, 2024 judgment sua sponte dismissing her complaint for lack of subject-matter jurisdiction. Simonetti sued her ex-husband and her former brother-in-law ("Defendants"), alleging that her ex-husband had violated a Brazilian court order regarding custody of their daughter and asserting fraud related to her efforts to find her daughter, her divorce, and her father-in-law's will. Defendants moved to dismiss the complaint on various grounds. The district court sua sponte dismissed the complaint without prejudice for lack of subject-matter jurisdiction, concluding that the complaint did not raise a federal question or satisfy diversity jurisdiction. *Simonetti v. Simonetti*, 24-CV-01859 (MMG), 2024 WL 5155759 (S.D.N.Y. Dec. 18, 2024). The district court

subsequently denied Simonetti's motion for reconsideration. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review *de novo* a sua sponte dismissal for lack of subject-matter jurisdiction. *Digitel, Inc. v. MCI Worldcom, Inc.*, 239 F.3d 187, 190 (2d Cir. 2001). Because Simonetti "has been *pro se* throughout, [her] pleadings and other filings are interpreted to raise the strongest claims they suggest." *Shakirov v. Philips Med. Sys. MR, Inc.*, 103 F.4th 159, 166 (2d Cir. 2024).

The district court correctly dismissed Simonetti's complaint for lack of subject-matter jurisdiction. First, Simonetti's complaint did not invoke any federal statute, and her allegations—which concern her ex-husband's neglect of their daughter, the couple's custody dispute, and Defendants' fraud—did not present a federal question. See 28 U.S.C. § 1331. Because she was proceeding *pro se*, the district court considered whether she could be liberally construed as invoking the Hague Convention, Oct. 25, 1980, T.I.A.S. No. 11670, S. Treaty Doc. No. 99-11. However, the district court correctly concluded that the Hague Convention failed to offer a basis for federal-question jurisdiction here. "A petitioner cannot invoke the protection of the Hague Convention unless the child to whom the petition relates is 'habitually resident' in a State signatory to the Convention

and has been removed to or retained in a different State.” *Gitter v. Gitter*, 396 F.3d 124, 130 (2d Cir. 2005). Simonetti had alleged that her daughter always resided in Brazil, not that she had been wrongfully taken from her country of habitual residence. *See Golan v. Saada*, 596 U.S. 666, 670 (2022).

In her reconsideration motion, Simonetti invoked the Alien Tort Statute (“ATS”), and on appeal, she newly invokes 42 U.S.C. § 1983. But Simonetti does not raise “colorable” claims under either statute, so they cannot form the basis for federal-question jurisdiction here. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 513 n.10 (2006). Simonetti’s claims—which involve divorce, inheritance, child custody, and alleged fraud by her ex-husband and former brother-in-law—do not implicate any constitutional provision, federal law, treaty, or aspect of international law. *See Mastafa v. Chevron Corp.*, 770 F.3d 170, 180 (2d Cir. 2014) (“The ATS only confers jurisdiction over torts based upon violations of United States treaties or of the law of nations.”); *Chan v. City of New York*, 1 F.3d 96, 103 (2d Cir. 1993) (“Section 1983 . . . may be available as a vehicle for remedying violations of federal statutes as well as constitutional violations.”). Simonetti has thus failed to invoke federal-question jurisdiction.

Second, diversity jurisdiction is also absent. 28 U.S.C. § 1332 requires “complete diversity,” meaning that “all plaintiffs must be citizens of states diverse from those of all

defendants.” *Pa. Pub. Sch. Emps.’ Ret. Sys. v. Morgan Stanley & Co., Inc.*, 772 F.3d 111, 118 (2d Cir. 2014). Simonetti bears the burden of making a preponderance showing of complete diversity. *See Raymond Loubier Irrevocable Tr. v. Loubier*, 858 F.3d 719, 725 (2d Cir. 2017). She has failed to do so because her complaint does not allege diversity of citizenship and provides only New York addresses for herself and both defendants.

On appeal, Simonetti now asserts that her ex-husband is a U.S. citizen living in Brazil. But “United States citizens domiciled abroad are neither citizens of any state of the United States nor citizens or subjects of a foreign state,” so “§ 1332(a) does not provide that the courts have jurisdiction over a suit to which such persons are parties.” *Herrick Co. v. SCS Commc’ns, Inc.*, 251 F.3d 315, 322 (2d Cir. 2001) (internal quotation marks omitted).

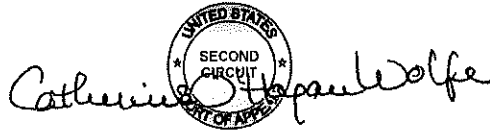
Finally, the district court properly dismissed the complaint without leave to amend. “A pro se complaint should not be dismissed without the [c]ourt granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.” *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (cleaned up). However, “a futile request to replead should be denied.” *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000). Here, leave to amend would have been futile.

As discussed above, nothing in Simonetti's complaint, reconsideration motion, or appellate brief suggests that she could establish subject-matter jurisdiction.

We have considered all of Simonetti's arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.¹

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

The image shows a handwritten signature, "Catherine O'Hagan Wolfe", in cursive script. Overlaid on the signature is a circular official seal. The seal contains the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom, with small stars on either side of the center text.

¹ We deny Simonetti's pending motion for reconsideration as moot.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: February 18, 2026
Docket #: 25-117
Short Title: Simonetti v. Simonetti

DC Docket #: 1:24-cv-1859
DC Court: SDNY (NEW YORK
CITY)
DC Judge: Trial Judge - Margaret M.
Garnett

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filers edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed electronically or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: February 18, 2026
Docket #: 25-117
Short Title: Simonetti v. Simonetti

DC Docket #: 1:24-cv-1859
DC Court: SDNY (NEW YORK
CITY)
DC Judge: Trial Judge - Margaret M.
Garnett

VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to
prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature

EXHIBIT 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIA FABIA SIMONETTI

(List the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

GERARD ANTHONY SIMONETTI

JOSEPH ANTHONY SIMONETTI

(List the full name(s) of the defendant(s)/respondent(s).)

24 CV 01859 () ()

NOTICE OF APPEAL

Notice is hereby given that the following parties: MARIA FABIA SIMONETTI

(List the names of all parties who are filing an appeal).

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the ☐ judgment ☒ order entered on: DECEMBER 18, 2024
(date that judgment or order was entered on docket)

that: DISMISSAL ORDER OF CIVIL CHITS BASED ON LACK OF JURISDICTION

(If the appeal is from an order, provide a brief description above of the decision in the order.)

JANUARY 14, 2025
Dated

[Signature]
Signature

SIMONETTI, MARIA
Name (Last, First, MI)

P.O. Box 170072 Brooklyn NY 11217
Address City State Zip Code

(917) 7560898
Telephone Number

MFABIA-CT@gmail.com
E-mail Address (if available)

STATE OF NEW YORK
COUNTY OF KINGS

SIGNED BEFORE ME ON 1/14/2025

KAMAL P. SONI
Notary Public, State of New York
No. 01508089949
Qualified in Kings County
Commission Expires March 31, 2027

Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Maria Fabia Simonetti,

Plaintiff-Appellant,

v.

Gerard Anthony Simonetti and Joseph Anthony Simonetti

Defendants-Appellee.

e-filed attorney's: John O. C. Moss Moss & Moss LLP (jmooss@mossandmoss.com)

Nature of the Appeal: Appeal from the dismissal order of
civil claims based on lack of jurisdiction

Appeal from the United States District Court for the Southern District of New York

Case # 2024 -cv- 01859, docket #30

Nature of Suit: 440 Civil Rights and Others

TO THE HONORABLE COURT:

The Plaintiff, Maria Fabia Simonetti, respectfully submits this Motion to Appeal the ruling rendered by the Honorable Judge Margaret M. Gamett on December 18, 2024, in which the Court dismissed the Plaintiff's suit on the grounds that the Southern District of New York (SDNY) Court lacks jurisdiction. **The Plaintiff asserts that the lower court's decision misinterpreted the nature of the underlying claims and misapplied the law.** I respectfully request that the Court of Appeals review and reverse this dismissal, allowing the claims to proceed based on the following grounds:

I. Statement of Jurisdiction

This Court has jurisdiction over this matter under 28 U.S.C. § 1332 (diversity of citizenship), as the parties are citizens of different countries, and the claims involve fraud and financial damages tied to assets located in New York. Additionally, jurisdiction is proper under 28 U.S.C. § 1331 as

the claims involve violations of federal law concerning the enforcement of foreign judgments and rights under international treaties. Moreover, I am able to pursue civil rights claims under U.S. federal law, such as fraud in divorce proceedings (including my in-laws' will), emotional distress, and financial damages, due to the involvement of U.S. jurisdiction in the matter.

Further, the Southern District of New York should have exercised jurisdiction because the claims involve U.S. citizens, including my daughter, who is a U.S. citizen born abroad and is entitled to full protection under the U.S. Constitution. The failure to recognize jurisdiction over claims involving U.S. citizens, such as my daughter, undermines the rights afforded by U.S. law.

II. GROUNDS FOR APPEAL

The Plaintiff respectfully requests the Court to reverse the dismissal and hold that the SDNY Court has proper jurisdiction to hear this case. For **diversity jurisdiction (28:1332)** to apply in a federal court, the **Complete Diversity** that parties are from different countries. Since my daughter and I are from a foreign country, duo-citizen, and the defendants are Americans, one is in Brazil, this seems to meet the requirement of diversity. Also, the **Amount in Controversy** exceeds \$75,000. If my claim meets this threshold, diversity of jurisdiction could apply. In addition, the Plaintiff submits the following grounds for appeal:

A. Misapplication of Jurisdictional Law

The court misapplied the law regarding subject-matter jurisdiction, erroneously conflating issues of child custody with the civil rights violations alleged in the complaint. The claims at issue relate to fraud and violations of Plaintiff's property rights under the Constitution, specifically concerning the Defendant's unlawful conduct regarding divorce settlement and will provisions.

Under the federal court's jurisdictional framework, **subject-matter jurisdiction over civil rights violations falls under 28 U.S.C. § 1331 (federal question jurisdiction)**. The case involves an alleged violation of federal law (fraud, fiduciary breach), which gives this Court proper jurisdiction. The lower court improperly dismissed the claims based on a misreading of the nature of the case. See, e.g., **Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance**

Co., 559 U.S. 393 (2010) (affirming federal court's jurisdiction over claims arising under federal law even where there may be state law concerns).

B. The Court Erred by Not Applying Proper Legal Standards to the Civil Rights Claim

The Plaintiff asserts that the trial court failed to consider the core civil rights issue involved. In a case such as this, where fraud and misappropriation of assets within divorce proceedings are alleged, the court should apply relevant civil rights statutes, such as 42 U.S.C. § 1983 (action for the deprivation of rights under color of law), in determining jurisdiction, not merely rely on child custody jurisdictional considerations. See 42 U.S.C. § 1983; **Lugar v. Edmondson Oil Co., 457 U.S. 922, 924 (1982)** (defining action under color of law and the rights protected by civil rights claims).

C. Judicial Error in Characterizing the Case as a Child Custody Dispute

The lower court improperly classified the suit as involving child custody. The Plaintiff's claim is rooted in fraud, misappropriation of property, and interference with legal rights concerning the Plaintiff's divorce and will, not child custody. As such, the SDNY court's decision to dismiss the case based on an incorrect assumption of subject-matter jurisdiction is legally flawed. The suit does not center on child custody issues but rather on fraud and violations of property rights within the context of family law matters, and violation of custody order, my right to have and assist my daughter as a mother.

See, e.g., **Thompson v. United States, 492 F.2d 493 (9th Cir. 1973)** (holding that federal jurisdiction may be invoked in civil rights cases irrespective of family law issues such as child custody).

D. Court's Failure to Recognize Civil Rights Violations of a U.S. Citizen Child Abroad

The district court's reliance on the argument that it has no jurisdiction due to the child's residence abroad misinterprets the scope of U.S. civil rights law. The Plaintiff's case involves a claim under U.S. law, including the right to healthcare and protection from harm, which must be protected by U.S. courts, regardless of the child's residence abroad. The Defendant's actions in denying medical treatment for the child who suffers from autism and heart disease present a direct violation of these rights. So, the father's actions, such as taking the child without mother's consent, neglecting her health, and denying her medical care could potentially be viewed as a

violation of federal rights. Courts have consistently held that U.S. citizens, particularly children, are entitled to protections under U.S. law, even when they are abroad.

F. Incorporation of the Hague Convention in Jurisdiction Over International Custody Matters

The district court's ruling dismisses the applicability of international treaties, such as the Hague Convention on the Civil Aspects of International Child Abduction, which provides a framework for protecting the welfare of children in custody disputes. Although the court referenced the Hague Convention, it did not sufficiently address the child's health and civil rights violations in the context of U.S. jurisdiction. The Plaintiff's case is not merely a custody dispute but is centered around the protection of civil rights, especially considering the child's special needs:

G. Legal Precedent Supporting U.S. Jurisdiction Over Civil Rights Violations Abroad

U.S. courts have long recognized the right of U.S. citizens, especially minors, to seek redress for violations of their civil rights, including healthcare, regardless of their location abroad. The denial of medical care and refusal to provide treatment for the child's health conditions presents a serious issue of neglect, which U.S. courts have the responsibility to address. As established in cases like *Doe v. Abbott*, 2021 U.S. App. LEXIS 20147 (5th Cir. 2021), U.S. courts are empowered to protect their citizens' fundamental rights from violations occurring abroad.

H. Plaintiff's Claim Involves More Than Custody Disputes

Contrary to the district court's assessment, the Plaintiff's complaint involves claims of severe medical neglect, fraud, emotional distress, and economic harm caused by the Defendant's actions. The Plaintiff has shown substantial evidence of how the Defendant's actions have directly affected both the child's health and the Plaintiff's economic well-being. The district court's dismissal fails to account for the broader nature of the Plaintiff's claims, which extend beyond a simple custody dispute.

I. Violation of Parental Rights and Property Interests in the U.S.

The Plaintiff also asserts that the actions of the Defendant violate her rights to custody and her financial rights as stipulated by the U.S. legal system, including enforcement of parental rights under the laws of New York, and the will of the Plaintiff's father-in-law. These rights are protected under U.S. law, and the Plaintiff has a legitimate claim to seek enforcement of these rights, particularly given the Defendant's disregard for them.

III. Statement of the Case

1. Background:

- The Plaintiff (myself) was married to the Defendant (Ex-Husband) in New York in 1998.
- The Plaintiff and Defendant, Gerard A. S., have two daughters, one of whom, J. C. S., Autistic, is missing has duo-citizen. The first daughter born in Nyack, NY, 1998; second daughter born in Brazil is being use to financially and emotionally hurt me. Autistic, duo-citizen, she has been missing her doctor's specialist treatments for about 6 years. She doesn't have her rights.
- A Brazilian court has issued an order for temporary custody to the father, one of the defendants, and he should return the child to the Plaintiff, mother, when I get in Brazil, but the Defendant has failed to comply with this order, evading enforcement. This order is already writ by the father's lawyers as you Honor can see in previously motion, at Kings Court. The plaintiff has the right to have the child and continue her medical treatments.
- The Defendant is also implicated in fraudulent activities related to FBI investigation (Thomas Franklyn Tarbutto in Jail in California), this is the reason he difficult the division of assets in the Plaintiff's divorce. Also, he is hiding from federal investigation with the little girl missing to hurt the mother, for I have given all his skype conversations to the Federal investigator in Brazil and at Kings Court.

2. Previous Ruling:

On December 18, 2024, the SDNY Court dismissed the Plaintiff's case for lack of jurisdiction. However, I assert that this ruling fails to take into account the significant ties to New York and the civil damages that I suffered, I became homeless and even the father evicted my daughters (duo-citizens), without our rights due to the Defendant's fraudulent actions.

IV. Legal Arguments for Appeal

1. Jurisdiction Exists in SDNY for Civil Claims

The dismissal of the case for lack of jurisdiction was erroneous. Jurisdiction exists in this Court due to the Defendant's strong ties to New York, including his birth in Bronx, New York, my residence in New York, and the Defendant's potential assets and business connections in the state. There are significant financial and emotional damages that are directly tied to the Plaintiff's civil rights violations and the Defendant's fraudulent activities.

- Both defendants were born in Bronx, New York, and the Plaintiff lived in New York during the marriage and divorce.
- The Defendant's business and financial interests are based in New York.
- The Plaintiff and her daughters are U.S. citizens, with one daughter having dual citizenship (Brazil and the U.S.).
- The Plaintiff has faced domestic violence in Brazil, and the Defendant's actions have caused harm to both, plaintiff and my daughters, including fraudulent financial actions in the divorce over \$75,000. I, the plaintiff, lost jobs looking for my daughter, dropped Law school in Brazil, Criminal Justice and Pre-Nursing at College in NY. I am being retaliate for witness of the scam, and in Brazil there is no protection for me and my daughter who is missing for 6 years abducted.

Given these factors, SDNY has jurisdiction over this case, especially considering the fraudulent financial activities and potential assets in New York.

2. My Ability to Continue the Case

I am the plaintiff seeking to sue Gerard and Joseph Simonetti for fraud in relation to the division of marital assets and my rightful share of my late father-in-law's estate. As noted in Exhibit 1 (my daughter's address does not exist; wrong email address to federal investigation, Gerard S. states that family company in NY, with brother Joseph S. supported us in federal investigation in Brazil), Gerard's fraudulent actions have caused me significant emotional, financial, and psychological distress, further exacerbating the

harm caused to me and my daughter's health. I stopped work and dropped out of Pre-Nursing College, looking to find them and worry about my daughter. Also, violation of custody order, the custody of my daughter is an issue that has already been addressed by Brazilian courts. However, Gerard's actions have violated Brazilian court orders that I GRANTED CUSTODY ALREDY IN BRAZIL; The order that the father issued in Kings Court clearly states that my daughter should be returned to me upon my arrival in Brazil (**Exhibit 2**). Despite this, Gerard has evaded enforcement of this order, that he writ in Kings Court, NY, and has put my daughter's health at risk to hurt me.

As defendant's failure to comply with this order puts my daughter in immediate danger, and for the reasons stated above, the Plaintiff-Appellant respectfully requests that the Court of Appeals grant this petition for appeal, reverse the district court's denial of jurisdiction, and remand the case for further proceedings. For not only my **custody rights** granted by the Brazilian court should be enforced, and **U.S. courts can take jurisdiction over cases involving U.S. citizens abroad when their rights are being violated**, so the rights of a U.S. citizen child are at stake, and it is critical that U.S. courts intervene to ensure my daughter's well-being and protect her civil rights under U.S. law.

Damage Claims: The Defendant's fraudulent actions and violation of Brazilian court orders, which led to hiding my daughter's whereabouts, have caused emotional, financial to me, and health-related harm to my U.S Citizen daughter.

Civil Rights Claims: These claims are brought under U.S. federal law, including fraud, emotional distress, and financial damages.

3. **Fraudulent Actions and Financial Harm:**

I am seeking to sue Gerard and Joseph Simonetti for fraud in relation to the division of marital assets and my rightful share of my late father-in-law's estate, as well as for their involvement in defrauding the FBI during a federal investigation. As noted in **Exhibit 3**, **putting my daughter in a challenge with his girlfriend, at Instagram, where is no hospital near, no electricity in the street, put my daughter's health in danger to hurt me**; Gerard's fraudulent actions with a corrupted lawyer in Brazil, invade the house, broke everything, almost killed me and never got on jail for that; he have caused me

significant emotional, financial, and psychological distress, further exacerbating the harm caused to me and now to my daughter.

4. Violation of Custody Order:

The custody of my daughter is an issue that has already been addressed by Brazilian courts. However, Gerard's actions have violated Brazilian court orders. A Brazilian judge's temporary custody order clearly states that my daughter should be returned to me upon my arrival in Brazil (**Exhibit 3**). Despite this, Gerard has evaded enforcement of this order and has put my daughter's health at risk. I appeal this decision, as Gerard's failure to comply with this order puts my daughter in immediate danger.

5. Enforcement of Brazilian Child Custody Orders

While custody issues are typically handled by Brazilian courts, I am not seeking custody but rather enforcement of my rights as I granted the custody of my autistic daughter and civil damages. The Hague Convention on the Civil Aspects of International Child Abduction provides a legal framework for the return of children wrongfully removed or retained across international borders. Given that Brazil is a signatory, the wrongful retention of my daughter there falls under this framework, and the U.S. courts have the authority to assist in enforcing these orders.

6. Federal Claims for Fraud and Emotional Distress

Under 42 U.S.C. § 1983 (**Civil Rights Act**) and common law fraud principles, I am bringing claims for fraud and emotional distress due to the Defendant's actions neglecting my daughter's health and making me travel giving wrong/ not existent address to U.S Embassy. These claims are based on the Defendant's evasion of both Brazilian and U.S. legal processes, causing harm to my financial well-being and emotional state.

7. International Law and the Hague Convention:

The failure to consider international legal frameworks, including the Hague Convention on the Civil Aspects of International Child Abduction, is another ground for appeal. Gerard's wrongful retention of my daughter in Brazil, despite the existing custody order, directly violates international child protection protocols, and this Court must address this issue.

8. Fraudulent Concealment of Daughter's Whereabouts:

Gerard has actively concealed my daughter's whereabouts by providing false addresses to both U.S. Welfare and U.S. Embassy officers. I have made multiple trips to Brazil to locate my daughter, but Gerard and his accomplices deliberately misled me, putting my daughter at further risk. This deliberate concealment, as detailed in Exhibit 3, further demonstrates the fraud and deceit on Gerard's part, which should be considered in these proceedings.

9. Emergency Relief:

Given the immediate health risks to my daughter, I request that the Court issue an emergency writ of injunction, compelling Gerard Simonetti to comply with the Brazilian court's order for the return of my daughter. As my daughter's guardian, I am entitled to seek her immediate return and ensure her access to necessary medical care.

IV. Conclusion and Request for Relief

Based on the arguments above, I respectfully request that the Court:

1. Reverse the District Court's dismissal of the case for lack of jurisdiction and allow the claims to proceed on their merits, including my daughter's rights and my claims for financial damages, fraud, and emotional distress.
2. Recognizes that U.S. federal courts have jurisdiction to hear civil rights claims arising from the medical neglect and harm to a U.S. citizen child, birth abroad, as well as claims involving custody, divorce division, and inheritance.
3. Grant an emergency writ of injunction compelling the Defendant to comply with the Brazilian court's order for the return of my daughter to stopping her father from neglecting on her health needs.
4. Issue relief under the Hague Convention on the Civil Aspects of International Child Abduction and the International Child Abduction Remedies Act (ICARA), 42 U.S.C. §

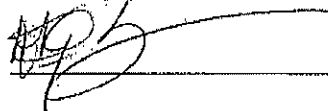
11601, et seq., due to the Defendant's wrongful retention of my daughter and neglect of her medical and treatments for autism, all her needs.

5. Provide temporary alimony or spousal support to ensure that I can meet my basic financial needs or while this situation with my daughter is ongoing, I am not able to work.
6. Waive all Courts fees for this appeal under 28 U.S.C. § 1915, as I am currently indigent and unable to afford the costs of litigation.

Given the urgency and importance of my daughter's health and well-being, as well as the financial hardships I have suffered, I respectfully ask for your urgent attention to this matter.

Thank you for your time and consideration.

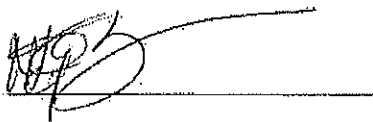
Sincerely,



Maria Fabia Simonetti

Certificate of Service

I hereby certify that a true and correct copy of this Motion for Appeal was served on the Defendants, and Defendant's lawyer, by email and mail on January 14, 2025



Maria Fabia Simonetti

STATE OF NEW YORK
COUNTY OF KINGS
Notary: SIGNED BEFORE ME ON 1/14/2025
MARIA F SIMONETTI


KAMAL P. SONI
Notary Public, State of New York
No. 01506089949
Qualified in Kings County
Commission Expires March 31, 2027



Affidavit in Support of Application to Waive Court Fees and Costs

UCS-FW1 (07/2023)
 Page 1 of 2
 nycourthelp.gov

SECOND CIRCUIT Court

County of NEW YORK

In the matter of:

MARIA FABIA SIMONETTI

Plaintiff/Petitioner (party bringing case) or Subject of Proceeding

-against-

GERARD ANTHONY SIMONETTI & JOSEPH A. SIMONETTI

Defendant/Respondent (opposing party, if none, leave blank)

Index/File Number:

State of New York, County of NEW YORK

I, MARIA FABIA SIMONETTI, being duly sworn, says:

1. I am a party in this case.

2. I live at 3365 HERPERHORN ST. BROOKLYN NY

3. I have the following: [Check all that apply]

☐ Income	Source:	Monthly Amount:
	☒ Public Assistance	\$ <u>100</u>
	☐ Spousal Support	\$ _____
	☐ Social Security/SSI/SSID	\$ _____
	☐ Wages	\$ _____
	☐ Other:	\$ _____
☐ Bank Account(s)	Type:	Balance:
	☐ Checking	\$ _____
	☐ Savings	\$ _____
☐ Real Estate	Address:	Market Value:
		\$ _____
☐ Personal Property	Description:	Value:
		\$ _____

4. I request a court order:

☒ Waiving any and all court filing fees for this case

☒ Waiving the filing fee for a Notice of Appeal

☒ Other (specify): all court fees

5. I make this application based on CPLR §1101. I do not have and cannot get the funds to pay the necessary costs, fees, and expenses. I cannot proceed unless the order is granted.

6. The facts of my case are:

☒ explained in my attached court papers.

☒ as follows:

Civil Rights and others.

7. No other person who may benefit from the outcome of this case is able to pay such costs, fees, and expenses.

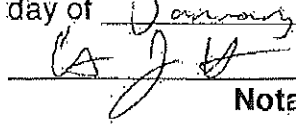
8. ☐ I **have not** previously applied to waive the court fees and costs in this case.

☒ I **have** previously applied to waive the court fees and costs in this case, but I am applying again because:

I am appealing judges' dismissal order.


Signature In Presence of Notary

Sworn to before me this 14
day of January, 2025.


Notary Public

CURTIS J. KNECHT
Notary Public, State of New York
No. 04KN0023571
Qualified in Kings County
Commission Expires April 15, 2028

Note: Contact the court and ask if you are required to submit any additional documentation and/or if you are required to serve any other party.

CLOSED, APPEAL, CASREF, ECF, PRO-SE

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:24-cv-01859-MMG-BCM

Simonetti v. Simonetti et al
Assigned to: Judge Margaret M. Garnett
Referred to: Magistrate Judge Barbara C. Moses
Cause: 28:1332 Diversity Action

Date Filed: 03/11/2024
Date Terminated: 12/18/2024
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Diversity

Plaintiff**Maria Fabia Simonetti**

represented by **Maria Fabia Simonetti**
P.O. Box 170072
Brooklyn, NY 11217-0072
(917) 756-0898
PRO SE

V.

Defendant**Gerard Anthony Simonetti**

represented by **John O. C. Moss**
Moss & Moss LLP
381 Park Avenue South
Suite 1220
New York, NY 10016
212-644-1000
Fax: 212-644-2590
Email: jmoss@mossandmoss.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Joseph Simonetti**

represented by **John O. C. Moss**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/11/2024	<u>1</u>	COMPLAINT against Gerard Anthony Simonetti, Joseph Simonetti. Document filed by Maria Fabia Simonetti. (sac) (Entered: 03/12/2024)
03/11/2024	<u>2</u>	REQUEST TO PROCEED IN FORMA PAUPERIS. Document filed by Maria Fabia Simonetti. (sac) (Entered: 03/12/2024)
03/11/2024		Case Designated ECF. (sac) (Entered: 03/12/2024)
04/23/2024	<u>3</u>	MOTION TO EXPEDITE CASE. Document filed by Maria Fabia Simonetti.(rro) (Entered: 04/25/2024)
04/23/2024	<u>4</u>	DECLARATION of Maria Simonetti in Support re: <u>3</u> MOTION to Expedite.. Document filed by Maria Fabia Simonetti..(rro) (Entered: 04/25/2024)
05/15/2024		NOTICE OF CASE REASSIGNMENT – SUA SPONTE to Judge Laura Taylor Swain. Judge Unassigned is no longer assigned to the case. (vba) (Entered: 05/15/2024)
05/20/2024	<u>5</u>	ORDER GRANTING IFP APPLICATION: Leave to proceed in this Court without prepayment of fees is authorized. 28 U.S.C. § 1915. (Signed by Judge Laura Taylor Swain on 5/20/2024) (vn) (Entered: 05/20/2024)

05/21/2024		MAILING RECEIPT: Document No: 5. Mailed to: Maria Fabia Simonetti P.O. Box 170072 Brooklyn, NY 11217-0072. (gp) (Entered: 05/21/2024)
06/03/2024		NOTICE OF CASE REASSIGNMENT to Judge Margaret M. Garnett. Judge Laura Taylor Swain is no longer assigned to the case. (sgz) (Entered: 06/03/2024)
06/03/2024		Magistrate Judge Barbara C. Moses is designated to handle matters that may be referred in this case. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf . (sgz) (Entered: 06/03/2024)
06/06/2024	<u>7</u>	LETTER addressed to Judge Margaret M. Garnett from Maria Simonetti re: Request for the litigation stays at White Plains. Document filed by Maria Fabia Simonetti. (sgz) (Entered: 06/07/2024)
06/12/2024	<u>8</u>	ORDER OF SERVICE: The Clerk of Court is directed to issue summonses for Defendants Gerard Anthony Simonetti and Joseph A. Simonetti, complete the USM-285 forms with the addresses for these defendants, and deliver all documents necessary to effect service to the U.S. Marshals Service. The Clerk of Court is further directed to mail a copy of this order to Plaintiff, together with an information package. Plaintiff may receive court documents by email by completing the attached form, Consent to Electronic Service. Furthermore, given the foregoing Order directing service on the Defendants, Plaintiff's Motion to Expedite at Dkt. No. 3 is hereby DENIED as moot. SO ORDERED. Motions terminated: <u>3</u> MOTION to Expedite. filed by Maria Fabia Simonetti. (Signed by Judge Margaret M. Garnett on 6/12/2024) (mml) Transmission to Pro Se Assistants for processing. (Entered: 06/12/2024)
06/12/2024	<u>9</u>	NOTICE OF APPEARANCE by John O. C. Moss on behalf of Gerard Anthony Simonetti, Joseph Simonetti. (Attachments: # <u>1</u> Supplement Rule 7.1 Statement).(Moss, John) (Entered: 06/12/2024)
06/24/2024	<u>10</u>	SUMMONS ISSUED as to Gerard Anthony Simonetti, Joseph Simonetti. (nb) (Entered: 06/24/2024)
06/24/2024		FRCP 4 SERVICE PACKAGE DELIVERED TO U.S.M.: on 6/24/2024 Re: Judge Margaret M. Garnett & Order of Service. The following document(s) were enclosed in the Service Package: Complaint, Summons, IFP, Order of Service, Completed U.S.M. form(s) for defendant(s)Gerard Anthony Simonetti, Joseph Simonetti. (nb) (Entered: 06/24/2024)
06/24/2024	<u>11</u>	INFORMATION PACKAGE MAILED to Maria Fabia Simonetti P.O. Box 170072 Brooklyn, NY 11217-0072, at, on 6/24/2024 Re: <u>8</u> Order of Service. The following document(s) were enclosed in the Service Package: a copy of the order of service or order to answer and other orders entered to date, the individual practices of the district judge and magistrate judge assigned to your case, Instructions for Litigants Who Do Not Have Attorneys, Notice Regarding Privacy and Public Access to Electronic Case Files, a flyer about the free legal assistance clinic located in the Thurgood Marshall Courthouse (only in non prisoner cases), a Motions guide, a notice that the Pro Se Manual has been discontinued, a Notice of Change of Address form to use if your contact information changes, a handout explaining matters handled by magistrate judges and consent form to complete if all parties agree to proceed for all purposes before the magistrate judge, a form for you to complete if you consent to receive filings electronically (only in nonprisoner cases). (nb) (Entered: 06/24/2024)
07/22/2024	<u>12</u>	MOTION to Dismiss Pursuant to FRCP 12(b)(1) and (6). Document filed by Gerard Anthony Simonetti, Joseph Simonetti. (Attachments: # <u>1</u> Affidavit Affidavit of Gerard Simonetti in Support of Motion to Dismiss, # <u>2</u> Exhibit Affidavit of Gerard Simonetti in Support of Motion to Dismiss – Exhibit 1, # <u>3</u> Exhibit Affidavit of Gerard Simonetti in Support of Motion to Dismiss – Exhibit 2, # <u>4</u> Exhibit Affidavit of Gerard Simonetti in Support of Motion to Dismiss – Exhibit 3, # <u>5</u> Exhibit Affidavit of Gerard Simonetti in Support of Motion to Dismiss – Exhibit 4, # <u>6</u> Exhibit Affidavit of Gerard Simonetti in Support of Motion to Dismiss – Exhibit 5, # <u>7</u> Exhibit Affidavit of Gerard Simonetti in Support of Motion to Dismiss – Exhibit 6, # <u>8</u> Exhibit Affidavit of Gerard Simonetti in Support of Motion to Dismiss – Exhibit 7, # <u>9</u> Affidavit Affidavit of Joseph Simonetti in Support of Motion to Dismiss, # <u>10</u> Supplement Memorandum of Law in

		Support of Motion to Dismiss).(Moss, John) (Entered: 07/22/2024)
07/29/2024	<u>13</u>	PLAINTIFF'S WRITTEN RESPONSE in Opposition to Motion re: <u>12</u> MOTION to Dismiss Pursuant to FRCP 12(b)(1) and (6).. Document filed by Maria Fabia Simonetti..(tro) (Entered: 08/01/2024)
08/05/2024	<u>14</u>	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED Summons and Complaint served. Joseph Simonetti served on 7/2/2024, answer due 9/3/2024. Service was made by Mail. Document filed by Maria Fabia Simonetti. (tro) (Entered: 08/09/2024)
08/27/2024	<u>17</u>	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED Summons and Complaint served. Maria Fabia Simonetti served on 8/14/2024, answer due 9/4/2024. Service was accepted by John Moss. Document filed by Maria Fabia Simonetti. (ar) (Entered: 09/13/2024)
09/03/2024	<u>18</u>	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE UNEXECUTED as to Gerard Anthony Simonetti. Attempted Service of Summons and Complaint. Service was attempted on 08/21/2024 at 265 Brewery Road New City, NY 10956. Document filed by Maria Fabia Simonetti. (jjc) (Entered: 09/17/2024)
09/05/2024	<u>15</u>	LETTER addressed to Judge Margaret M. Garnett from John O. C. Moss dated 09/05/2024 re: Request for Extension of Time. Document filed by Gerard Anthony Simonetti, Joseph Simonetti. (Attachments: # <u>1</u> Exhibit Exhibit re Plaintiff's Proof of Mailing).(Moss, John) (Entered: 09/05/2024)
09/05/2024	<u>16</u>	MEMO ENDORSEMENT on re: <u>15</u> Letter, filed by Joseph Simonetti, Gerard Anthony Simonetti. ENDORSEMENT: Counsel for Defendants filed a notice of appearance in this matter on June 12, 2024, approximately six weeks before Defendants filed their motion to dismiss (see Dkt. No. 12, filed on July 22, 2024), and almost seven weeks before Plaintiffs response in opposition to the motion to dismiss was docketed (see Dkt. No. 13, filed on July 29, 2024, and uploaded to the electronic docket on August 1, 2024). Pursuant to this Court's rules and the S.D.N.Y. Local Rules, once an attorney has appeared in a case, they are "responsible for updating their contact information on ECF should it change, and they are responsible for checking the docket sheet regularly, regardless of whether they receive an ECF notification of case activity[.]" See Individual Rule 1(B)(8); Local Rule 5.2. Indeed, it appears that counsel for Defendants has an active email address listed on the docket (jmoss@mossandmoss.com) to which all ECF notifications are presumably being sent. This would include, of course, a notification that Plaintiffs response in opposition to Defendants motion to dismiss was filed, with a clickable hyperlink that would take counsel directly to the filing, because, in this District, pro se litigants without ECF filing privileges deliver their filings to the Pro Se Clerk and they are then loaded onto ECF like counseled filings. ECF notification constitutes good service. But even if, for whatever reason, Defendants' counsel had not received an ECF notification email, Defendants' counsel could have checked the docket at any point after August 1, 2024 and would have immediately seen that Plaintiff had submitted an opposition. Furthermore, it appears to be undisputed that one of the named Defendants was timely served, in addition to ECF notice to counsel, and was on notice of Plaintiffs response having been submitted to the Court by early August, at the latest. For all these reasons, any complaint by Defendants' counsel of insufficient notice of Plaintiffs responsive filing rings hollow. Defendants' leave to belatedly file a Reply brief is therefore DENIED and the Court will rule on the pending motion to dismiss on the record as it currently stands. SO ORDERED. (Signed by Judge Margaret M. Garnett on 9/5/2024) (tg) (Entered: 09/06/2024)
09/09/2024		MAILING RECEIPT: Document No: 16. Mailed to: Maria Fabia Simonetti P.O. Box 170072 Brooklyn, NY 11217-0072. (vba) (Entered: 09/09/2024)
09/20/2024	<u>19</u>	FILING ERROR – DEFICIENT DOCKET ENTRY – MOTION TO DEFAULT JUDGMENT NY CPLR S 3215 (2023) as to. Document filed by Maria Fabia Simonetti. (jjc) Modified on 9/24/2024 (tp). (Entered: 09/24/2024)
09/24/2024		***NOTICE TO RE-FILE DOCUMENT – DEFICIENT DOCKET ENTRY ERROR. Notice to Maria Fabia Simonetti to RE-FILE Document <u>19</u> MOTION for Default Judgment as to. ERROR(S): the document is premature. Please see ECF Rule 16, 16.1, 16.2 and 16.3 for Default Instructions. (tp) (Entered:

		09/24/2024)
10/16/2024	<u>20</u>	DECLARATION of Maria Simonetti. Document filed by Maria Fabia Simonetti. (jjc) (Entered: 10/18/2024)
10/22/2024	<u>21</u>	LETTER addressed to Judge Margaret M. Garnett from John O. C. Moss dated October 21, 2024 re: Simonetti v. Simonetti et alia: 24 – CV – 01859. Document filed by Gerard Anthony Simonetti, Joseph Simonetti..(Moss, John) (Entered: 10/22/2024)
10/24/2024	<u>22</u>	ORDER REFERRING CASE TO MAGISTRATE JUDGE. Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for General Pretrial (includes scheduling, discovery, non-dispositive pretrial motions, and settlement) and Dispositive Motion (i.e., motion requiring a Report and Recommendation), Particular Motion: Dkt. No. 12. Referred to Magistrate Judge Barbara C. Moses. SO ORDERED. Motions referred to Barbara C. Moses. (Signed by Judge Margaret M. Garnett on 10/24/2024) (jca) (Entered: 10/24/2024)
10/24/2024	<u>23</u>	LETTER addressed to Judge Margaret M. Garnett re: would like to inform that the defendant's lawyers are trying to deceive your Honor again. Document filed by Maria Fabia Simonetti. (jbo) (Entered: 10/25/2024)
10/25/2024		MAILING RECEIPT: Document No: 23. Mailed to: Maria Fabia Simonetti P.O. Box 170072 Brooklyn, NY 11217-0072. (tn) (Entered: 10/25/2024)
10/31/2024	<u>24</u>	ORDER REGARDING GENERAL PRETRIAL MANAGEMENT: The above-referenced action has been referred to Magistrate Judge Barbara Moses for general pretrial management, including scheduling, discovery, non-dispositive pretrial motions, and settlement, and for report and recommendation on dispositive motions, including defendants' motion to dismiss (Dkt. 12), pursuant to 28 U.S.C. § 636(b)(1)(A) and (B). All pretrial motions and applications, including those related to scheduling and discovery must be made to Judge Moses and in compliance with this Court's Individual Practices in Civil Cases, available on the Court's website at https://nysd.uscourts.gov/hon-barbara-moses , as further set forth. (Signed by Magistrate Judge Barbara C. Moses on 10/31/2024) (mml) (Entered: 10/31/2024)
11/01/2024		MAILING RECEIPT: Document No: 24. Mailed to: Maria Fabia Simonetti P.O. Box 170072 Brooklyn, NY 11217-0072. (ak) (Entered: 11/01/2024)
11/13/2024	<u>25</u>	ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER. Document filed by Maria Fabia Simonetti. (jjc) Proposed Order to Show Cause to be reviewed by Clerk's Office staff. (Entered: 11/15/2024)
11/15/2024		***NOTICE TO COURT REGARDING PROPOSED ORDER TO SHOW CAUSE WITH EMERGENCY RELIEF. Document No. 25 Proposed Order to Show Cause Without Emergency Relief was reviewed and approved as to form. (km) (Entered: 11/15/2024)
11/20/2024	<u>26</u>	ORDER re: <u>25</u> Proposed Order to Show Cause Without Emergency Relief filed by Maria Fabia Simonetti. For these reasons, and because of the pending motion to dismiss and the ongoing referral to Magistrate Judge Moses, the Court hereby DECLINES to sign the Order to Show Cause and Plaintiff's motion for a preliminary injunction and temporary restraining order is DENIED WITHOUT PREJUDICE to renewing should Plaintiff's complaint survive Defendants' pending motion to dismiss. Furthermore, Plaintiff is HEREBY PROHIBITED from emailing or calling Chambers for the undersigned, see Individual Rules III(B)(1) ("Pro se parties may not call the Court"); III(B)(2) ("No documents or court filings may be sent directly to Chambers. Unless the Court orders otherwise, all communications with the Court will be filed on the public docket."), available at https://nysd.uscourts.gov/hon-margaret-m-garnett . Plaintiff is FURTHER ORDERED to direct all future letters to Magistrate Judge Moses pursuant to this Court's October 24, 2024 order of reference. The Clerk of Court is respectfully directed to mail a copy of this Order to Plaintiff. SO ORDERED. (Signed by Judge Margaret M. Garnett on 11/20/2024) (kv) Transmission to Pro Se Assistants for processing. (Entered: 11/20/2024)
11/21/2024		MAILING RECEIPT: Document No: 26. Mailed to: Maria Fabia Simonetti P.O. Box 170072 Brooklyn, NY 11217-0072. (ak) (Entered: 11/21/2024)

12/03/2024	<u>27</u>	REQUEST FOR PRELIMINARY INJUNCTION WITH EMERGENCY RELIEF TO ENFORCEMENT OF INTERNATIONAL CUSTODY ORDER ISSUED BY BRAZILIANS COURT GRANT TO PLAINTIFF AND TEMPORARY ALIMONY. Document filed by Maria Fabia Simonetti.(jjc) (Entered: 12/05/2024)
12/16/2024	<u>28</u>	RESPONSE in Opposition to Motion re: <u>27</u> MOTION for Preliminary Injunction. . Document filed by Gerard Anthony Simonetti, Joseph Simonetti. (Attachments: # <u>1</u> Exhibit Ex 1 – Order of Hon. J. Vargas dated 4/30/2018, # <u>2</u> Exhibit Ex 1 – Order of Dismissal of Hon. J. Vargas dated 6/18/2019).(Moss, John) (Entered: 12/16/2024)
12/16/2024	<u>29</u>	AFFIDAVIT OF SERVICE of Opposition to Order to Show Cause with appended Exhibits served on Maria Fabia Simonetti on 12/16/2024. Service was made by Mail. Document filed by Gerard Anthony Simonetti, Joseph Simonetti..(Moss, John) (Entered: 12/16/2024)
12/18/2024	<u>30</u>	ORDER OF DISMISSAL: In light of the foregoing, this Court lacks subject matter jurisdiction to adjudicate Plaintiff's claims. This action is therefore DISMISSED without prejudice. See Hollander v. Garrett, 710 F. App'x 35, 36 (2d Cir. 2018) (holding dismissal for subject matter jurisdiction must be without prejudice). The Court certifies, under 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and, therefore, IFP status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444–45 (1962). The Clerk of Court is respectfully directed to CLOSE this case and terminate all deadlines. The Clerk of Court is also respectfully directed to mail a copy of this Order to Plaintiff. SO ORDERED. (Signed by Judge Margaret M. Garnett on 12/18/2024) (mml) (Entered: 12/18/2024)
12/19/2024		MAILING RECEIPT: Document No: 30. Mailed to: Maria Fabia Simonetti P.O. Box 170072 Brooklyn, NY 11217–0072. (caf) (Entered: 12/19/2024)
12/19/2024	<u>31</u>	PLAINTIFF'S WRITTEN (RESPONSE) TO OPPOSITION TO ORDER TO SHOW CAUSE – REQUEST FOR PRELIMINARY INJUNCTION W/EMERGENCY RELIEF AND MY DAUGHTER'S RIGHTS re: <u>30</u> Order of Dismissal. Document filed by Maria Fabia Simonetti. (sac) (Entered: 12/23/2024)
12/26/2024	<u>32</u>	MOTION FOR RECONSIDERATION. Document filed by Maria Fabia Simonetti..(rro) (Entered: 12/30/2024)
01/03/2025	<u>33</u>	ORDER denying <u>32</u> Motion for Reconsideration. While the Court is sympathetic to Ms. Simonetti's situation, and that of her daughter, this Court has no jurisdiction over the custody of a child who has not been removed from the United States, even if the child is a United States citizen. See Dkt. No. 30 at 4–5 (describing the law governing federal question subject matter jurisdiction and the related applicability of custody claims under the Hague Convention). To the extent Ms. Simonetti is entitled to any relief, that relief cannot be granted by this Court. Nothing in Ms. Simonetti's motion for reconsideration, nor any of her previous filings, changes the fact that the Court lacks subject matter jurisdiction to adjudicate her claims, and therefore the motion for reconsideration at Dkt. No. 32 is DENIED. The Clerk of Court is respectfully directed to terminate Dkt. No. 32. This case remains CLOSED. The Court certifies, under 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and, therefore, IFP status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444–45 (1962). SO ORDERED. (Signed by Judge Margaret M. Garnett on 1/3/2025) (mml) (Entered: 01/03/2025)
01/06/2025		MAILING RECEIPT: Document No: 33. Mailed to: Maria Fabia Simonetti P.O. Box 170072 Brooklyn, NY 11217–0072. (ak) (Entered: 01/06/2025)
01/06/2025	<u>34</u>	LETTER addressed to Judge Margaret M. Garnett from Maria Fabia Simonetti dated 1/6/2025 re: I hope this message finds you well. I am writing to respectfully inform you that there was an issue with uploading the exhibit documents in my previous submissions, and as a result, the document may not have been properly attached or legible as further described herein. Document filed by Maria Fabia Simonetti. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2). (tp) (Entered: 01/08/2025)
01/14/2025	<u>35</u>	NOTICE OF APPEAL from <u>33</u> Order on Motion for Reconsideration, <u>30</u> Order of Dismissal. Document filed by Maria Fabia Simonetti. Form D–P is due within 14 days to the Court of Appeals, Second Circuit. (Attachments: # <u>1</u> Exhibit EXHIBITS). (tp) Modified on 1/15/2025 (tp). (Entered: 01/15/2025)

01/15/2025		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>35</u> Notice of Appeal. (tp) (Entered: 01/15/2025)
01/15/2025		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>35</u> Notice of Appeal, filed by Maria Fabia Simonetti were transmitted to the U.S. Court of Appeals. (tp) (Entered: 01/15/2025)

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: January 16, 2025
Docket #: 25-117
Short Title: Simonetti v. Simonetti

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 1:24-cv-1859
DC Court: SDNY (NEW YORK
CITY)
Trial Judge - Margaret M. Garnett
Magistrate Judge - Barbara Carol
Moses

DOCKETING NOTICE

A notice of appeal filed by Maria Fabia Simonetti in the above referenced case was docketed today as 25-117. This number must appear on all documents related to this case that are filed in this Court. For pro se parties the docket sheet with the caption page, and an Acknowledgment and Notice of Appearance Form are enclosed. In counseled cases the docket sheet is available on PACER. Counsel must access the Acknowledgment and Notice of Appearance Form from this Court's website <http://www.ca2.uscourts.gov>.

The form must be completed and returned within 14 days of the date of this notice. The form requires the following information:

YOUR CORRECT CONTACT INFORMATION: Review the party information on the docket sheet and note any incorrect information in writing on the Acknowledgment and Notice of Appearance Form.

The Court will contact one counsel per party or group of collectively represented parties when serving notice or issuing our order. Counsel must designate on the Acknowledgment and Notice of Appearance a lead attorney to accept all notices from this Court who, in turn will, be responsible for notifying any associated counsel.

CHANGE IN CONTACT INFORMATION: An attorney or pro se party who does not immediately notify the Court when contact information changes will not receive notices, documents and orders filed in the case.

An attorney and any pro se party who is permitted to file documents electronically in ACMS must notify the Court of a change to the user's mailing address, business address, telephone number, or e-mail. To update contact information, a Filing User must access PACER's Manage

My Appellate Filer Account, <https://www.pacer.gov/psco/cgi-bin/cmecf/ea-login.pl>. The Court's records will be updated within 1 business day of a user entering the change in PACER.

A pro se party who is not permitted to file documents electronically must notify the Court of a change in mailing address or telephone number by filing a letter with the Clerk of Court.

CAPTION: In an appeal, the Court uses the district court caption pursuant to FRAP 12(a), 32(a). For a petition for review or original proceeding the Court uses a caption pursuant to FRAP 15(a) or 21(a), respectively. Please review the caption carefully and promptly advise this Court of any improper or inaccurate designations in writing on the Acknowledgment and Notice of Appearance form. If a party has been terminated from the case the caption may reflect that change only if the district court judge ordered that the caption be amended.

APPELLATE DESIGNATIONS: Please review whether petitioner is listed correctly on the party listing page of the docket sheet and in the caption. If there is an error, please note on the Acknowledgment and Notice of Appearance Form. Timely submission of the Acknowledgment and Notice of Appearance Form will constitute compliance with the requirement to file a Representation Statement required by FRAP 12(b).

For additional information consult the Court's instructions posted on the website.

Inquiries regarding this case may be directed to 212-857-8551.