UNITED STATES SUPREME COURT

MARÍA ELENA SWETT URQUIETA,	)	
	)	
Petitioner,	)	
	)	Docket No.
v.	)	
	)	
JOHN FRANCIS BOWE,	)	
	)	
Respondent.	)	
	)	

MOTION FOR
EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

1. Applicant Ms. Swett Urquieta requests an extension of time to file her Petition for a Writ of Certiorari. The Applicant requests a sixty (60) day extension of time from March 24, 2025, to May 23, 2025, pursuant to Rules of the Supreme Court 13.5 and 22. The petition will challenge the decision of the U.S. Court of Appeals for the Second Circuit in *Urquieta v. Bowe*, 120 F.4th 335 (2d Cir. 2024), a copy of which is attached.

2. The Second Circuit issued is decision on October 31, 2024. Ms. Swett filed a motion for rehearing which was denied on December 23, 2024. Dkt. No. 95. Without an extension, the petition for a writ of

certiorari would be due on March 24, 2025.[1] With the requested extension, the petition would be due on May 23, 2025. The application is submitted within ten (10) days of March 24, 2025.

3. This Court's jurisdiction will be based on 28 U.S.C. 1254(1) whereby cases from the Circuit Courts of Appeal may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party. Ms. Swett Urquieta seeks this Court's review of the Second Circuit orders.

I. Preliminary Statement

4. This case arises out of a dispute under the 1980 Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention"), as implemented by the International Child Abduction Remedies Act, 22 U.S.C. §§ 9001–9011.

5. This application is made by a mother who has been separated from her son ("S.B.S") due to the erroneous application of Hague Convention law. The effects of the courts' error in applying the law have been devastating to Ms. Swett and S.B.S., as the courts' decisions in this

[1] Ninety days from the denial of the petition for rehearing would fall on Sunday, March 23, 2025. The deadline is moved to the next business day pursuant to Fed. R. App. P. 26(a)(1)(C).

case have endorsed Mr. Bowe's clear-cut self-help and forum shopping with the goal of obtaining custody of S.B.S. by circumventing the Chilean family court.

6. The district court and appellate court both incorrectly calculated the subject child's date of wrongful retention, making the Article 12 "well-settled" defense available to Mr. Bowe when, by law, it should not have been.

7. Further, the appellate court affirmed a district court decision which waded into a best interest custody analysis, resulting in a decision which misapplied the law as related to the Article 13 "mature age" defense, which is one of the exceptions for the return of the abducted child under the Hague Convention.

8. Ms. Swett has limited funds and has been fighting to repatriate her son in both the U.S. federal and state courts since S.B.S. was wrongfully retained in New York. Ms. Swett respectfully asks this Court to extend her deadline to file a petition for a writ of certiorari for sixty (60) days while she secures funds to pay her legal fees related to the application.

9. The issues presented in this case are important because involve the application of the Hague Convention. The lower courts misapplication of the law sets a precedent which will encourage child abduction and encourage courts to wade into best interest analysis when the express purpose of the Hague Convention is to avoid making custody decisions. *Monasky v. Taglieri*, 589 U.S. 68, 72 (2020) ("the Convention's return requirement is a 'provisional' remedy that fixes the forum for custody proceedings.")

II. Background and Procedural History

10. Ms. Swett is a Chilean actress and television personality and Mr. Bowe is an American freelance writer. *Swett v. Bowe*, 733 F. Supp. 3d 225, 244 (S.D.N.Y.), aff'd sub nom. *Urquieta v. Bowe*, 120 F.4th 335 (2d Cir. 2024).

11. The subject child, S.B.S., was born in Minnesota in 2012. *Id.* The relationship ended, and the parties agreed in 2013 that S.B.S. would live primarily with Ms. Swett in Chile and have visitation with Mr. Bowe in the United States. *Id.* at 245.

12. In December 2022, S.B.S. traveled to New York with Mr. Bowe for a vacation and was scheduled to return to Chile in early 2023.

Id. at 255-256. Instead, Mr. Bowe retained S.B.S. in New York (*id*. at 260) and petitioned the New York Family Court for custody. *Id*.

13. On February 23, 2024, Ms. Swett petitioned for the return of S.B.S. to Chile pursuant to the Hague Convention. *Id*. at 276. On May 7, 2024, the district court issued an Opinion and Order (the "Order") denying S.B.S.'s return to Chile. *Id* at 225. The Order was affirmed in a per curium decision by the Second Circuit.

III. <u>The Misapplication of the Hague Convention</u>

a. <u>The Child' Objection Defense</u>

14. The child's objections exception gives a district court discretion to "refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views." Hague Convention, art. 13.

15. Rather than promptly return S.B.S. back home to Chile, as is the goal of the Hague Convention the Second Circuit affirmed what amounted to a best interests custody analysis and ultimately rewarded Mr. Bowe for abducting and manipulating his son. Fundamentally, the lower courts denied the Petition based on the belief that S.B.S. would be

happier living with his father than his mother. The root cause of this error was the improper consideration of S.B.S.'s parental preference. The United States federal courts are not tasked with determining custody but rather where custody determinations should be made. The 102-page decision of the district court is indistinguishable from a best interest custody ruling, complete with an analysis of each parents' relative strengths and weaknesses in response to S.B.S.'s feelings leading up to the wrongful retention.

16. The district court found that S.B.S. lived happily in Chile for all but the last few months before he came to New York. *Swett*, 733 F. Supp. 3d at 291. ("by all accounts, prior to mid-2022, S.B.S. had been a content child"). A primary complaint S.B.S. expressed to the court was not wanting to live with his mother and preferring to live with his father.

17. Expressions of parental preference are not valid objections within the meaning of the Hague Convention. *See Hirst v. Tiberghien*, 947 F. Supp. 2d 578, 600 (2013 D.S.C.) (ordering repatriation where "the instant dispute is a custody matter involving the children's preferences with regard to which parent they want to live with, not well-reasoned particularized objections to their return to their place of habitual

residence"). That is because "considering such a preference would place the Court in the position of deciding parental custody, which is prohibited by the Hague Convention and ICARA." *Alcala v. Hernandez*, 2015 WL 4429425, at *14 (D.S.C. July 20, 2015), aff'd in part, appeal dismissed in part, 826 F.3d 161 (4th Cir. 2016); *see also Hazbun Escaf v. Rodriquez*, 200 F.Supp.2d 603, 615 (E.D. Va. 2002) (finding that to accommodate a thirteen-year-old's preference to stay in the United States and spend more time with his father "would be a custody determination that is not at issue in a Hague Convention petition"); *Guzzo v. Hansen*, 2022 WL 3081159, at *10 (E.D. Mo. Aug. 3, 2022), aff'd, No. 22-2972, 2023 WL 8433557 (8th Cir. 2023) (preference for one parent not an objection to be considered).

18. The lower courts also ignored the overwhelming evidence that S.B.S. was unduly influenced by Mr. Bowe. A child's should not be considered if the court believes that the objection is the product of the abductor parent's undue influence over the child. *Tsai-Yi Yang v. Fu-Chiang Tsui*, 499 F.3d 259, 279 (3d Cir. 2007).

19. The evidence of undue influence in this case is overwhelming. This included S.B.S. parroting his father's positions, using adult

terminology during his in camera interview, complaining about the financial impact of the litigation on him and his father, and knowingly recording his phone calls with his mother to use in court at his father's behest.

20. This manipulation included telling S.B.S. that his mother was mentally ill, which S.B.S. then relayed to the district court in camera. The district court found that Mr. Bowe, leading up the wrongful retention, developed a "problematic buddy-relationship with S.B.S." *Swett*, 733 F. Supp. 3d at 253.

21. This relationship systematically poisoned S.B.S. against his mother before S.B.S. came to New York in December 2022. The undue influence was so severe in this case that S.B.S. saw himself and Mr. Bowe as a cohesive party with identical goals. By the time the trial took place, S.B.S. was manipulated so severely that he was no longer a child in the middle of a custody dispute, but an active litigant siding with his father against his mother.

22. The district court identified numerous signs, frequently cited by other courts as evidence, of undue influence but neither it nor the

Second Circuit reached the natural conclusion that S.B.S. was being unduly influenced.

23. The district court detailed the contents of these messages which undoubtedly unduly influenced S.B.S. Mr. Bowe "insulted Swett as a bad person and parent, and mocked her perceived faults." *Swett*, 733 F. Supp. 3d at 251. Mr. Bowe told S.B.S. that Ms. Swett "has no idea how to take care of you w/o a nanny" *Id.* He called Ms. Swett a "fucking idiot." *Id.* These communications "grew and increased in venom" leading up to the wrongful retention. *Id.*

24. Effectively all the indicators of undue influence that other courts have identified are present in this case. With the district court even finding that S.B.S.'s "word choice, and his critiques of Ms. Swett appeared to emanate from Mr. Bowe." *Swett*, 733 F. Supp. 3d at 272. The district court noted that S.B.S.'s usage of the term "gaslight[ing]" in referring to his mother came from an adult. *Id.*

b. <u>The Well Settled Defense Should Not Have Been Available</u>

25. The lower courts also erred in finding that S.B.S. was well settled in New York under Article 12 of the Convention. The well settled defense requires a respondent to show by a preponderance of evidence

that the proceeding seeking the child's return was commenced more than one year "from the date of the wrongful removal or retention" and "the child is now settled in its new environment." Convention, art. 12; 22 U.S.C. § 9003(e)(2)(B). "[T]he now 'settled' exception only applies where the child has been in the destination state for more than one year from the date of the wrongful removal or retention." *Hofmann v. Sender*, 716 F.3d 282, 295 (2d Cir. 2013).

26. The lower courts found the incorrect date of wrongful retention, making the well settled exception available to Mr. Bowe when it should not have been. After originally giving her consent for S.B.S. to stay in the United States until January 8, 2023, Ms. Swett extended her consent for S.B.S.'s stay until February 26, 2023 as the parties had originally planned.

27. Since Ms. Swett consented to extend S.B.S.'s stay beyond the original contemplated return date, the retention becomes wrongful at the conclusion of the extension. *See Taveras v. Morales*, 22 F. Supp. 3d 219, 232 (S.D.N.Y. 2014), aff'd sub nom. *Taveras ex rel. L.A.H. v. Morales*, 604 F. App'x 55 (2d Cir. 2015).

28. Here, Ms. Swett agreed to extend S.B.S.'s stay in the United States until February 26, 2023. She had initially agreed on to let S.B.S. stay until January 8, 2023 when he was supposed to temporarily return to Chile. On January 8, 2023, instead of returning temporarily to Chile with S.B.S., Mr. Bowe emailed Ms. Swett and claimed he would take [S.B.S.] back to Chile in February.

29. The following day, on January 9, 2023, Ms. Swett emailed Mr. Bowe explaining that she would be traveling to Mexico for a friend's wedding in February as he made his plans for S.B.S.'s return. Ms. Swett had planned the trip to Mexico because she expected that after returning to Chile on January 8, 2023, S.B.S. would return to New York for the rest of his vacation with Mr. Bowe.

30. On January 21, 2023, Ms. Swett emailed Mr. Bowe that "[S.B.S.] starts school on March 1. I need him to arrive in Chile, please, on Sunday a.m., February 26th so I can celebrate my Christmas with him before the week begins."

31. The record here contains two emails from Ms. Swett where she unequivocally agrees to extend S.B.S.'s stay until February 26. Mr. Bowe testified that he understood that Ms. Swett wanted S.B.S. to be

returned to Chile on February 26, 2023. Mr. Bowe promised to return S.B.S. on February 26. *Swett*, 733 F. Supp. 3d at 279.

32. The error the lower courts made was based, in part, on an invented standard, reasoning that because Ms. Swett "begrudgingly acceded" to S.B.S. remaining in New York, she did not actually consent to an extension. Although Ms. Swett was certainly unhappy that Mr. Bowe did not return temporarily to Chile as planned, she still agreed to extend his stay to February 26, 2023 (*Swett*, 733 F. Supp. 3d at 278), which was the parties' original agreement. *Id* at 258-259.

33. A begrudging consent is consent nonetheless, and courts should not examine the relative enthusiasm of a left behind parent's consent to extend a child's stay abroad as the lower courts did here.

34. The well settled exception therefore should not have been available to Mr. Bowe.

IV. Good Cause Exists

35. This application seeks to accommodate Ms. Swett's legitimate needs. She is fighting to be reunited with her child and has limited means to fund litigation. After a multi-day trial and appeal, this process has been costly for Ms. Swett and has severely impacted her ability to work,

as she has had to spend a considerable amount of time in the United States. She seeks a reasonable extension to permit her to secure funding to continue this case and bring her son back home to Chile.

Respectfully submitted,

/s/ Richard Min

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