

22-1966-cv

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ISACCO JACKY SAADA,
Petitioner-Appellee,

v.

NARKIS ALIZA GOLAN,
Respondent-Appellant.

*On Appeal from the United States District Court
For the Eastern District of New York (Civ. No. 18-5292)
(The Honorable Ann M. Donnelly, J.)*

**BRIEF FOR *AMICI CURIAE* SANCTUARY FOR FAMILIES AND OTHER
ADVOCATES FOR VICTIMS OF DOMESTIC VIOLENCE IN SUPPORT OF
RESPONDENT-APPELLANT**

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FED. R. APP. P. 26.1 CORPORATE DISCLOSURE STATEMENT

None of the corporate *amici* has a parent corporation, and no publicly held corporation owns 10% or more of the stock of any of the *amici*.

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IDENTITIES AND INTERESTS OF *AMICI CURIAE*¹

Amici are non-profit and academic organizations, law school professors, and legal clinics that advocate for and support victims of domestic abuse and their children. *Amici* have substantial expertise and experience in the patterns of coercive control and escalation of violence that are present in this case. Each of the *amici* is concerned with the decision below because it disregards well-established social science findings about the characteristics of domestic abuse, the impact of domestic abuse and coercive control on victims and their children, and the progression of domestic abuse over time. This brief is filed with the consent of both parties.

Amici are listed below:

- Sanctuary for Families, Inc.
- Battered Mothers Custody Conference
- Georgetown University Law Center's Domestic Violence Clinic
- National Family Violence Law Center at the George Washington University Law School
- Legal Momentum, the Women's Legal Defense and Education Fund

¹ No counsel for a party authored this brief in whole or in part, and no party, party's counsel, or person other than *amici curiae*, their members, or counsel contributed money intended to fund preparing or submitting the brief. *Amicus* Sanctuary for Families, Inc., a non-profit organization that provides services to domestic violence victims, has provided Ms. Golan with various services, including limited legal advice on matters not at issue in this case.

- Merle Weiner, Philip H. Knight Professor of Law, University of Oregon School of Law
- National Network to End Domestic Violence
- New York Legal Assistance Group, Inc.
- New York State Coalition Against Domestic Violence
- Safe Horizon, Inc.

ARGUMENT

I. INTRODUCTION

In this case, the Supreme Court recognized that the Hague Convention on the Civil Aspects of International Child Abduction (“Convention”)² “sets as a primary goal” the physical and psychological “safety of the child.” SPA-19 (*Golan v. Saada*, 142 S. Ct. 1880 (2022)).³ The Court explained that returning the child to his or her country of habitual residence would be inappropriate in certain situations—chief among those, when doing so would expose the child to an obvious grave risk, such as domestic violence, that cannot readily be mitigated. SPA-15–16. Here the district court found earlier, by clear and convincing evidence, that B.A.S. faces a grave risk of exposure to harm if he were returned to Italy, citing Mr. Saada’s repeated violence against Ms. Golan. A-1694–95, 1723–26. The Supreme Court remanded for the district court to “determine whether the measures [previously imposed] are adequate to order return in light of its factual findings concerning the risk to B.A.S., *bearing in mind that the Convention sets as a primary goal the safety of the child.*” SPA-19 (emphasis added).

On remand, however, the district court failed to prioritize B.A.S.’s safety, ordering him returned to Italy subject to the same “ameliorative measures” it had

² Mar. 26, 1986, T.I.A.S. No. 11670, S. Treaty Doc. No. 99-11.

³ “A” refers to the parties’ joint appendix. “SPA” refers to the special appendix filed with Appellant’s opening brief.

imposed in 2020. It refused to update the record to reflect Mr. Saada's abusive conduct since the 2019 trial or to evaluate B.A.S.'s current circumstances, given his autism diagnosis and the fact that he is now three and a half years older than at the time of trial. *See* SPA-29–32 (*Saada v. Golan*, No. 1:18-CV-5292, 2022 WL 4115032 (E.D.N.Y. Aug. 31, 2022)). In short, the district court made no inquiry into the specific risks B.A.S. faces *now* if he is returned to his abusive father's sphere of control in Italy, nor whether measures crafted several years ago will ensure his physical and psychological safety going forward.

The district court's decision reflects a deep misunderstanding of the dangers domestic violence perpetrators, such as Mr. Saada, present over time and the magnitude of harm their abuse inflicts on both adult victims and vulnerable developing children, such as B.A.S., who are exposed to it. The district court failed to appreciate that domestic violence encompasses a wide range of controlling behaviors that are profoundly injurious, both physically and psychologically, to both adult victims and children. The court did not consider studies showing that domestic abusers are loath to relinquish control over their victims or abide by court-imposed measures, and instead are likely to increase and broaden their abuse over time, particularly following separation from the caretaker parent. For these reasons, and others, the court's conclusion that the grave risk to B.A.S. it had

previously found “can be readily mitigated by” ensuring Mr. Saada and Ms. Golan remain physically separate, is deeply flawed. SPA-33.

Instead of evaluating the severe dangers posed by domestic abusers such as Mr. Saada, the ways in which the grave risk of harm to B.A.S. has increased, and whether the stale ameliorative measures would protect B.A.S. in today’s circumstances, the district court weighted the scales in favor of return, just as it had prior to the Supreme Court’s decision. It dismissed important evidence pertaining to Mr. Saada’s ongoing abuse and the progression of B.A.S.’s autism spectrum disorder, both of which are highly relevant to the risk of harm B.A.S. faces if he is returned to Italy. The district court also failed to evaluate the impact of the passage of time and how the measures it imposed are likely to play out if B.A.S. is returned now. The court’s failure to receive and consider additional evidence—or even to reanalyze the existing record in light of the time that has passed—is inconsistent with the Supreme Court’s mandate to consider whether the measures originally imposed are adequate in light of the earlier factual findings concerning the risk to B.A.S. and the primary goal of safety of the child.⁴ *See* SPA-18–19.

⁴ *See also Blondin v. DuBois*, 78 F. Supp. 2d 283, 288–93 (S.D.N.Y. 2000) (declining to return child on remand based on new findings related to domestic abuse), *aff’d*, 238 F.3d 153 (2d Cir. 2001) (endorsing district court’s approach), *abrogated on other grounds by Golan*, 142 S. Ct. at 1880.

The district court’s order puts B.A.S.—now a six-year-old child with autism spectrum disorder, who has been traumatized by exposure to his father’s physical, psychological, and emotional abuse of his mother—in real danger. When—as here—the grave risk to the child arises from something as complex and dangerous as domestic violence, it is unlikely that any “ameliorative measures” can ensure the child’s safety. Had it prioritized B.A.S.’s safety, as required by the Convention and the Supreme Court’s decision, the district court should have dismissed Mr. Saada’s petition on the ground that returning B.A.S. would be inconsistent with the Convention’s “primary goal” of protecting children and that Mr. Saada’s abuse “constitute[s] an obvious grave risk to the child’s safety *that could not readily be ameliorated.*” SPA-16 (emphasis added). At the very least, the district court should have updated the record and considered evidence related to Mr. Saada’s continuing abuse and B.A.S.’s autism spectrum disorder to reevaluate the risks B.A.S. faces upon return, and whether any ameliorative measures could ever *ensure* his safety. As explained below, they cannot.

II. THE DISTRICT COURT FAILED TO PROPERLY EVALUATE B.A.S.’s RISK OF HARM IF HE IS RETURNED TO ITALY NOW.

Despite the Supreme Court’s instruction to “prioritize [B.A.S.’s] physical and psychological safety,” the district court failed to analyze, and consider evidence relevant to, the severe risk of danger B.A.S. faces *now* if he is returned to Italy, relying instead on a factual record developed over three years ago. But to be

meaningful, evaluation of a child’s safety must focus on the time of return.

Evidence of Mr. Saada’s ongoing abuse and B.A.S.’s current circumstances would show that the risk to B.A.S.’s safety has increased. The measures the court imposed in 2020 could not protect him then, and they certainly cannot protect him if he is returned to Italy now.

Had the district court conducted the inquiry required by the Supreme Court, it would have identified only one safe option: to deny return.

A. The District Court’s Conclusion that Previously Imposed Measures Will Mitigate B.A.S.’s Risk of Harm Reflects a Misunderstanding of the Severity and Ongoing Nature of Mr. Saada’s Abusive Conduct and Its Impact on B.A.S.

1. Domestic abuse involves complex patterns of coercive control.

In reinstating its 2020 decision ordering B.A.S.’s return subject to “ameliorative measures,” the district court assumed that the grave risk to B.A.S. it had previously found “can be readily mitigated by keeping” Mr. Saada and Ms. Golan physically apart. SPA-33. That conclusion reflects a serious misunderstanding of the nature of Mr. Saada’s abuse and the dynamics of domestic violence.

Contrary to the district court’s assumption, domestic violence is not merely a time-limited series of discrete acts that can be remedied by physical separation, but is rather a continuous pattern “that includes tactics to isolate, degrade, exploit, and control” the victim “as well as to frighten them or hurt them physically.” Evan

Stark, *Looking Beyond Domestic Violence: Policing Coercive Control*, 12 J. Police Crisis Negots. 199, 201 (2012). The point of this pattern—known as “coercive control”—is to, over time, “establish a formal regime of domination/subordination behind which [the abuser] can protect and extend their privilege[s].” *Id.* at 206.

As part of this coercive control, abusers combine physical, sexual, psychological, emotional, economic, immigration, religious, and legal abuse to satisfy their inexorable need for dominance. *See id.* at 203, 206 (“[B]etween 60% and 80% of the victims who seek outside assistance are experiencing multiple tactics to frighten, isolate, degrade, and subordinate them, as well as assaults and threats.”). The consequences can be devastating; cases involving these multiple modes of abuse are associated with an alarming rate of femicide. *See* Esperanza Garcia-Vergara et al., *A Comprehensive Analysis of Factors Associated with Intimate Partner Femicide: A Systematic Review*, 19 Int’l J. Env’t Res. Pub. Health 7336, at 11 (2022).

Because coercive control is so complex, there are no simple measures that can mitigate its effects. *See infra* Section II.B. Physical separation cannot deter the abuser’s persistent efforts to reestablish control. *See* Stark, *supra*, at 209 (describing that stalking and “[s]urveillance tactics allow abusers to ‘cross social space,’ making physical separation ineffective”); Kimberly A. Crossman & Jennifer L. Hardesty, *Placing Coercive Control at the Center: What Are the*

Processes of Coercive Control and What Makes Control Coercive?, 8 Psych.

Violence 196, 200, 204 (2017).

2. *Mr. Saada has exerted and continues to exert coercive control over Ms. Golan.*

Mr. Saada's abuse before Ms. Golan fled plainly constituted "coercive control." Following the 2019 trial, the district court found that his domestic abuse encompassed nearly every one of the modes of control listed above. He was "physically, psychologically, emotionally, and verbally" abusive to Ms. Golan, and these incidents occurred "repeatedly" throughout their relationship, often in the presence of B.A.S. A-1725.

Mr. Saada's ceaseless abuse was intense and dangerous. As the district court found, among other acts, he strangled Ms. Golan until she lost consciousness, A-1705; forced her to have sex (at least once while B.A.S. was in bed with them), *id.*; beat her when she was pregnant with B.A.S., A-1702-04; sent her threatening messages, A-1705-06; threatened to kill her and to harm B.A.S., A-1708-09; limited her movements and social interactions, A-1702-06; and isolated her by relocating her to Italy, where she did not speak the language, could not work, and had no support system, A-1696; A-1712; A-1792-93. Mr. Saada's regime of dominance was reinforced by members of his family, many of whom lived nearby. A-1702-03; *see also* A-1707-08.

The nature and extent of Mr. Saada's abuse portend a serious (indeed, possibly lethal) threat to both Ms. Golan and B.A.S. if he is returned to Italy. *See* Lynn Hecht Schafran, *Saada v. Golan: Ignoring the Red Flags of Domestic Violence Danger and What Is Required to Protect a Child From "Grave Risk,"* 25 *Dom. Violence Rep.* 13, 15 (2019) (Mr. Saada raised the "reddest of red flags for escalating violence and femicide").

Even after Ms. Golan fled with B.A.S., Mr. Saada attempted to control her. *See, e.g.,* A-497, A-1711 (Eldar Golan, Ms. Golan's brother: "He told me if she comes back she would either be leaving in a pine box or that he would drive her into a mental ward. . . . [T]he only option was to send the baby back or if she came back, it wouldn't be too good for her.").

During the years since the district court last held an evidentiary hearing, Mr. Saada has continued to take steps to maintain control over Ms. Golan and B.A.S. For example, he claimed to have hired "investigators" who collected information concerning Ms. Golan's habits within her New York apartment. A-2006. Inexplicably, the district court refused to take further evidence of this continued harassing, intrusive, and frightening behavior. *See* A-2183-84.

Critically, Mr. Saada also continues to withhold from Ms. Golan a *get*, a religious divorce under Jewish law, unless she agrees to grant him sole custody of B.A.S. and convinces another man to pay Mr. Saada \$2 million "for [his] years that

[he] wasted on her.” A-2010. There could not be clearer evidence of Mr. Saada’s continuing determination to exercise coercive control. *See* Keshet Starr, *Scars of the Soul: Get Refusal and Spiritual Abuse in Orthodox Jewish Communities*, 31 *Nashim: J. of Jewish Women’s Studs. & Gender Issues* 37, 37 (2017) (describing *get* refusal “as a form of spiritual abuse, in which faith is turned into a weapon of power and control in an abusive relationship”); Jennifer Medina, *Unwilling to Allow His Wife a Divorce, He Marries Another*, *N.Y. Times* (Mar. 21, 2014), www.nytimes.com/2014/03/22/us/a-wedding-amid-cries-of-unfinished-business-from-a-marriage.html.

The district court’s dismissal of the *get* as “not a factor that affects B.A.S.’s well-being,” SPA-36, n.11, illustrates its failure to grasp the dynamics of domestic violence and abusers’ insatiable need to retain control and terrorize their victims. Withholding the *get* in an effort to extract concessions from Ms. Golan regarding her parental rights is an ongoing, abusive control tactic Mr. Saada can continue to inflict on Ms. Golan, regardless of their physical proximity. Mr. Saada’s continued abuse of Ms. Golan severely damages B.A.S., whose well-being is inextricably linked to the physical and psychological safety of his mother. *See* Lynn Hecht Schafran, *Domestic Violence, Developing Brains, and the Lifespan: New Knowledge from Neuroscience*, 53 *Judges’ J.* 32, 34 (2014) (“Developing brains

are acutely sensitive to stress and to the internal state of the caregiver upon whom the child depends.”).

Moreover, the district court did not consider Mr. Saada’s continuing attempt to control Ms. Golan through litigation. In the Italian proceedings, Mr. Saada seeks full custody of B.A.S., despite having shown almost no interest in him in recent years.⁵ Abusers often use litigation as a control tactic to continue tormenting their victims long after physical separation, using “children as proxies.” Brittany E. Hayes, *Indirect Abuse Involving Children During the Separation Process*, 32 J. Interpersonal Violence 2975, 2978–80 (2017) (“Fathers who were previously uninvolved in their children’s lives have pursued custody to maintain contact with their former partner and to have the children as an avenue to maintain power.”). That Mr. Saada has shown little interest in B.A.S. strongly suggests that his Convention petition and the Italian litigation are motivated not by a fatherly desire for a relationship with B.A.S., but his need to control and torment Ms. Golan. See Vivienne Elizabeth, *Custody Stalking: A Mechanism of Coercively Controlling Mothers Following Separation*, 25 Feminist L. Stud. 185, 187, 198–99 (2017) (“custody stalking”—i.e., “a malevolent course of conduct involving the use or

⁵ For two years, Mr. Saada has had no substantive contact with B.A.S., blocking video and phone calls from B.A.S. and declining to travel to visit him. Dkt. No. 19 ¶ 38; see also A-2219. For the past four years, Mr. Saada has provided no financial support for B.A.S. Dkt. No. 19 ¶ 38; see also A-2219.

threatened use of legal and other bureaucratic proceedings by fathers to obtain, or attempt to obtain, care time with their children far in excess of their involvement with them prior to separation”—is a “form of attack on mothers’ psychological integrity”).

Mr. Saada’s use of investigators to monitor Ms. Golan, his withholding of the *get* to extract concessions, and his insistence on securing custody of B.A.S. despite his apparent lack of interest in his son in recent years show that he will continue to use any lever within his reach to further control Ms. Golan and B.A.S. and that he will be able to continue his abusive control strategies even if the parents live at separate addresses in Italy. These levers—and others—will be much easier for Mr. Saada to pull once B.A.S. and Ms. Golan are back in Italy, where they will have no language skills, connections, support system, immigration stability, safe and confidential housing, or ability to support themselves financially.

3. *The district court should have considered how Mr. Saada’s efforts to exert control after return would increase B.A.S.’s risk of harm.*

The district court erred when it refused to update the record to incorporate Mr. Saada’s ongoing efforts to maintain control over Ms. Golan, including his withholding of a *get* and his hiring of an investigator to monitor Ms. Golan. In considering how B.A.S. would be affected by return *at this time*, the district court should also have considered research showing that an abuser is more likely to

increase abuse, seek to reestablish control, and even begin abusing a child, after a period of separation. *See infra* Section II.B.1.

Even if Mr. Saada did not abuse B.A.S. directly following his return to Italy—and studies suggest he will—and even if the parents lived apart, B.A.S. would undoubtedly experience psychological harm due to Mr. Saada’s continuing abuse of Ms. Golan, B.A.S.’s primary caretaker and key source of love and support over his lifetime, and particularly over the past few years. Exposure to coercive control can have lasting adverse effects on a child’s health, even if the child is not the direct target. *See, e.g.,* Areti Tsavoussis et al., *Child-Witnessed Domestic Violence and Its Adverse Effects on Brain Development: A Call for Societal Self-Examination and Awareness*, 2 *Front. Pub. Health* 178 (2014) (noting that witnessing domestic violence has a measurable and adverse impact on a child’s neurological development and may lead to post-traumatic stress disorder, attention deficit hyperactivity disorder, substance abuse, anxiety disorder, and elevated stress levels); Isabelle Mueller & Ed Tronick, *Early Life Exposure to Violence: Developmental Consequences on Brain and Behavior*, 13 *Frontiers in Behavioral Neuroscience* 158 (2019) (finding exposure to domestic violence in adolescence may compromise a child’s cognitive development, lead to an increased sensitivity to stress, and produce symptoms of post-traumatic stress syndrome).

The progression of B.A.S.’s autism spectrum disorder since the 2019 trial—another factor the district court disregarded in ordering return—is also highly important. As the district court found following the trial, Mr. Saada has significant anger management issues. A-1714–15. His hot temper makes him especially likely to react poorly to B.A.S.’s behavior and limited communication skills related to his autism spectrum disorder, particularly as B.A.S. struggles to cope with an unfamiliar Italian-language environment. Research confirms this risk, revealing that children with autism have “significantly higher odds of . . . maltreatment relative” to neurotypical children. Christina G. McDonnell et al., *Child Maltreatment in Autism Spectrum Disorder and Intellectual Disability: Results from a Population-Based Sample*, 60 J. Child Psychol. Psychiatry 576, 585 (2019); see also Emily Sohn, *How Abuse Mars the Lives of Autistic People*, Spectrum Autism Res. News (Feb. 2020), www.spectrumnews.org/features/deep-dive/how-abuse-mars-the-lives-of-autistic-people/ (summarizing study finding that having autism more than doubles a child’s chances of referral to child protective services). Maltreatment of an autistic child is often more frequent and complex than that suffered by neurotypical children, and is commonly perpetrated by an immediate family member. *McDonnell, supra*, at 586.

Evidence relating to B.A.S.’s autism spectrum disorder is relevant to the grave risk of harm he faces for another reason. As a child with autism, he is more

likely to be affected by exposure to abuse, including Mr. Saada’s efforts to control Ms. Golan (and B.A.S. himself) and a sudden change in environment. Research shows that children with autism are more likely than neurotypical children to experience significant harm from stressful or traumatic situations. *See* Connor M. Kerns et al., *Exploring Potential Sources of Childhood Trauma: A Qualitative Study with Autistic Adults and Caregivers* 0(0) *Autism* 1, 9 (2022). Indeed, for autistic children, changes—even day-to-day stressors that may not impact neurotypical children—can be “sources of long-lasting psychological injury.” *Id.*

* * * * *

In failing to consider the research described above along with its earlier grave risk finding, or to admit evidence to update the record, the district court abused its discretion, ordering B.A.S. returned to Italy, where he faces foreseeable danger.

B. The District Court Abused Its Discretion When It Ordered Return in Reliance on the Ameliorative Measures Crafted in 2020.

As described above, domestic violence and coercive control are complex, multidimensional issues, and exposure to them causes significant harm to a child. The Supreme Court emphasized that reliance on ameliorative measures is inappropriate where the risk associated with return is so grave that the measures will not work or where the court reasonably expects the measures will not be followed. SPA-15–16.

Despite the Supreme Court’s warning and the Convention’s clear instruction to prioritize a child’s safety above return, the district court engaged in only the most cursory assessment of ameliorative measures, repeating its earlier conclusion that a 2020 Italian protective order and a \$150,000 cash payment to Ms. Golan would be “sufficient” to ameliorate the risk identified in 2019. SPA-21, 29–32. But the district court failed to consider how the specific risks to B.A.S. *at this time* are likely to unfold once he is returned to Italy. On their face, its measures cannot mitigate those risks, and it is unlikely that Mr. Saada will comply with them. *See* SPA-15–16. In fact, there are *no* measures that can ensure B.A.S.’s safety once he reenters Mr. Saada’s much more potent sphere of control in Italy.

1. *The district court failed to consider whether the measures will be effective given the nature of the risk to B.A.S.*

The Supreme Court specifically mentioned domestic violence—as well as “[o]ther physical or psychological abuse”—as situations that “may . . . constitute an obvious grave risk to the child’s safety that could not readily be ameliorated.” SPA-16. The district court incorrectly concluded, however, that “the grave risk of harm to B.A.S. comes from a single source—the violence between his parents,” and, therefore, that risk “can be readily mitigated by keeping his parents apart.” SPA-33.

For the reasons discussed above, this conclusion is plainly erroneous. And even if the sole risk to B.A.S. stemmed from exposure to his father’s violence

against his mother, the Italian protective order and the cash payment would not ensure B.A.S.’s safety following return.

The district court failed to evaluate the measures it imposed in light of social science research and other evidence showing that abusers who, like Mr. Saada, use a range of coercive control tactics against the caretaker parent typically continue—and frequently escalate—their violence following a period of separation, often “in an attempt to . . . punish [the caretaker parent] for leaving.” Peter G. Jaffe et al., *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, 54 *Juv. & Fam. Ct. J.* 57, 59 (2003); *see also* Emma Katz et al., *When Coercive Control Continues to Harm Children: Post-Separation Fathering, Stalking, and Domestic Violence*, 29 *Child Abuse Rev.* 310, 312 (2020) (“Separation often produces neither safety nor freedom, with perpetrators continuing and intensifying their coercive control post-separation.”). The consequences of this escalation can be dire. *See, e.g.*, Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 *Am. J. Pub. Health* 1089, 1090 (2003) (finding separation puts victim at higher risk of murder by the abusive partner than before separation).

Moreover, after separation from the caretaker parent, abusers like Mr. Saada may also begin to directly target a child even if they had not previously done so.⁶ *See, e.g.,* Kathryn J. Spearman et al., *Post-Separation Abuse: A Concept Analysis*, *J. Adv. Nursing* 1, 2 (early release May 2022) (collecting research showing that “separation is a well-established risk factor for lethality for women and children,” and parental intimate partner violence, separation, and custody disputes “are risk factors for child homicides”); April M. Zeoli et al., *Post-Separation Abuse of Women and Their Children: Boundary-setting and Family Court Utilization among Victimized Mothers*, 28 *J. Fam. Violence* 547, 548 (2013). In one case, a father drowned his three children in the bathtub of the hotel room where he was having court-ordered visitation, even though he had not previously been violent towards them. *Maryland v. Castillo*, No. 108119017-22 (Balt. Cir. Ct. filed Mar. 31, 2008) (guilty plea entered Oct. 14, 2009). In another case, a father who had not

⁶ Although the court found that Mr. Saada primarily directed his long-running pattern of abuse against Ms. Golan, the evidence showed that he had also abused B.A.S. directly. *See* A-745, 757 (testimony of Dr. Brandt identifying multiple episodes of Mr. Saada endangering B.A.S., including reckless driving and placing the child in extremely hot bathwater). Moreover, the district court found that Mr. Saada’s abuse of Ms. Golan had harmed B.A.S. and constituted a grave risk to his future safety. A-1725–26.

previously been violent towards his children obtained their return pursuant to the Convention, and later shot them.⁷

An abuser can target the caretaker parent and child even when the abuser lives elsewhere and even with an order of supervised visitation, features of the Italian protective order the district court asserted would mitigate the risk of harm to B.A.S. *See* SPA-30–31. Studies document that abusers may use supervised visitation to continue abuse, for example, by passing threatening messages to children, using a supervisor’s momentary lapse in attention to expose the child to other risks, or attempting “to gain information from the children regarding the mother’s address, place of employment, or routines.” Lundy Bancroft & Margaret Miller, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* 107, 136, 138 (2d ed. 2012); *see also* Katz, *supra*, at 312.

An abuser may also use visitation as an opportunity to physically attack or confront the caretaker parent. *See* Bancroft & Miller, *supra*, at 136. In one tragic

⁷ *See* Graeme Hamilton, *Children Caught in the Middle; Montreal Family’s Custody Battle Takes Deadly Turn*, Nat’l Post (Can.), Dec. 16, 2010, p. A1, www.pressreader.com/canada/national-post-latest-edition/20101216/281492157736497; *see also* U.S. Divorce Child Murder Data, Ctr. for Jud. Excellence, centerforjudicialexcellence.org/cje-projects-initiatives/child-murder-data/ (last visited Oct. 10, 2022) (collecting stories of children murdered by a divorcing/separating parent).

example, “a woman was murdered in the parking lot of a supervised visitation center following a scheduled visit.” *Id.*

Further, as discussed in Section II.A, the district court declined to investigate and consider the ways in which Mr. Saada has already continued his abuse of Ms. Golan from a distance, and the impact such abuse has had and will continue to have on B.A.S. Even while she has been in the United States, Mr. Saada has hired investigators to monitor Ms. Golan and report to him on her activities, he continues to deny her a *get*—leaving her chained to him indefinitely⁸—and he has pursued litigation to control Ms. Golan. There are other ways Mr. Saada can torment her psychologically upon return to Italy, even when they are living apart, including through his family. Despite substantial evidence at the 2019 trial that Mr. Saada’s family members—who live in Italy—had emotionally abused Ms. Golan, *see* A-1702–03, 1707–08, the Italian court declined to order any limitations on his family, a fact that should have caused the district court to deny return.

In addition, Mr. Saada will have ample opportunity to abuse Ms. Golan directly. The Italian court stated that the parents should cooperate, *see* SPA-25, which will require direct communication, opening the door to further efforts by Mr. Saada to exert coercive control over Ms. Golan and B.A.S., and for B.A.S. to

⁸ The term for a woman whose husband refuses to grant her a Jewish divorce is *agunah*, which literally means “chained woman.” Medina, *supra*.

be exposed to Mr. Saada’s psychological (and potentially physical) abuse of his mother.

2. *The district court abused its discretion when it assumed that Mr. Saada would comply with the measures.*

The Supreme Court recognized that the child’s safety outweighs any preference for return “where [the court] reasonably expects that [ameliorative measures] will not be followed.” SPA-16. It is highly unlikely that Mr. Saada will comply with the terms of the Italian protective order, all of which are to be carried out in Italy. The district court’s analysis of his likelihood of compliance was woefully deficient.

First, the district court suggested that Mr. Saada would comply with the protective order terms because any violation “would jeopardize [his] custody case.” SPA-31. This is nothing more than wishful thinking. The district court previously found that Mr. Saada abused Ms. Golan—both physically and psychologically, and often in the presence of B.A.S., *see supra* Section II.A.2, reflecting deep disregard for the law, for societal norms, and for the safety of his family. There is no evidence that he is likely to suddenly change his behavior and comply with court-ordered measures once B.A.S. is in Italy and beyond the jurisdiction of U.S. courts.

Such wishful thinking is at odds with the substantial body of research showing that domestic abusers are highly prone to recidivism. One study found

that 60% of domestic violence offenders revert to their abusive behavior within ten years following law enforcement intervention. *See* Andrew R. Klein & Terri Tobin, *A Longitudinal Study of Arrested Batterers, 1995–2005: Career Criminals*, 14 *Violence Against Women* 136, 144 (2008); *see also* Julian Farzan-Kashani et al., *Anger Problems Predict Long-Term Criminal Recidivism in Partner Violent Men*, 32 *J. Interpersonal Violence* 3541, 3551 (2015).

Of particular relevance, abusers are unlikely to abide by protective orders entered in Convention cases. A 2003 survey of 22 Convention cases found that in the six cases in which courts ordered return subject to compliance with measures prohibiting violence, abusers violated such measures in *every* case. Reunite Rsch. Unit, *The Outcomes for Children Returned Following an Abduction* 31–33 (2003); *see also* Jeffrey L. Edleson et al., *Multiple Perspectives on Battered Mothers and their Children Fleeing to the United States for Safety: A Study of Hague Convention Cases* 163–64, 181–85 (2010) (study of Convention cases, finding renewed violence upon return despite ameliorative measures).

The consequences of misplaced trust in abusers' compliance with purported protective measures can be devastating. The case of Cassandra Hasanovic is a stark example. After her husband's conviction for sexual assault, Hasanovic fled from England with her children to her family in Australia. In her husband's Convention action, the Australian court ordered the children returned to England. Paola Totaro,

Following a Court Order Killed Her, Sydney Morning Herald (May 4, 2009), www.smh.com.au/world/following-a-court-order-killed-her-20090503-ard1.html.

Hasanovic returned to England with the children, securing full custody and a protective order there. Her husband violated those orders multiple times. Sandra Laville, *Woman's Murder Could Have Been Prevented, Says Jury*, The Guardian (Feb. 26, 2014), www.theguardian.com/society/2014/feb/26/cassandra-hasanovic-murder-domestic-violence. Following several violent confrontations requiring police intervention, she attempted to flee to a women's shelter, but her husband chased her, dragged her from her car, and fatally stabbed her in front of their children. Totaro, *supra*. The consequences can be deadly when a Convention court mistakenly places faith in an abuser.

The record here does not support the district court's faith in Mr. Saada's compliance once B.A.S. is in Mr. Saada's home country. Mr. Saada's own expert testified that he was in control of neither his anger nor his behavior and that he had not shown a capacity to change. A-1725–26. Mr. Saada's lack of restraint—and disregard for legal consequences—is corroborated by the very public nature of his repeated physical assaults on Ms. Golan. *See, e.g.*, A-1710 (Mr. Saada striking Ms. Golan at a wedding), A-1703–04 (at a hospital), A-1704 (at a religious event), A-1703 n.18 (in front of security guards).

Second, the district court stated that Mr. Saada will likely comply with the protective order because he purportedly complied with court orders during the Convention case. The record shows otherwise. For example, despite pending proceedings in both Italy and the United States, when he presumably was on his best behavior, Mr. Saada delayed for nearly six months starting therapy the district court ordered. *See* A-1873–74.

Moreover, the district court’s faith in Mr. Saada disregards that abusers are master manipulators, who can “exhibit a smooth and charming persona in public and when it is in their interest.” Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 J. Gender, Soc., Pol’y & the Law 657, 690 (2003).

Finally, the district court believed that Mr. Saada likely would comply because he “has sought and received therapy in Italy.” SPA-30. That reasoning is undercut by research concluding that interventions such as therapy *do not* reduce the high recidivism rates for domestic violence abusers. *See, e.g.*, Christopher I. Eckhardt, et al., *The Effectiveness of Intervention Programs for Perpetrators and Victims of Intimate Partner Violence*, 4 Partner Abuse 196, 209, 220, 225–26 (2013).

Although on remand Ms. Golan attempted to introduce much of this research—including by citing *amici*’s Supreme Court brief, which describes these

studies, A-2217—the district court failed to consider it. Because it disregarded well-established literature regarding recidivism and abusers’ non-compliance with protective measures, the district court lacked the information necessary to properly evaluate the effectiveness of the measures it reimposed.

3. *The district court placed undue reliance on Italian courts and social services to protect B.A.S.*

Apart from its unjustified faith that Mr. Saada would comply with the Italian protective order, the district court relied on the Italian court and social services agencies to protect B.A.S. *See* SPA 29–32. In *amici*’s experience, however, despite “laws on the books” purporting to protect domestic violence victims, courts worldwide frequently fail to protect abuse victims (and in some cases re-victimize them). *See* Council of Europe, *Mid-Term Horizontal Review of GREVIO Baseline Evaluation Reports* ¶¶ 326–338 (2021); *see also* *Van De Sande v. Van De Sande*, 431 F.3d 567, 570–71 (7th Cir. 2005) (while most countries have “law[s] on the books” designed to protect a child from exposure to domestic violence, “[t]here is a difference between the law on the books and the law as it is actually applied, and nowhere is the difference as great as in domestic relations”).

Italy is no exception.⁹ A study of Italian women, social workers, and mental health professionals found, *inter alia*, that victims of domestic violence were often “blamed by professionals during the child custody proceedings,” and that there was a pervasive and unfounded belief that the mothers “invented or exaggerated abuse” allegations. Mariachiara Feresin, *Parental Alienation (Syndrome) in Child Custody Cases: Survivors’ Experiences and the Logic of Psychosocial and Legal Services in Italy*, 42 J. Soc. Wel. & Fam. L. 56, 64 (2020).¹⁰

Even if the Italian system were to dutifully implement and enforce the protective order, the order cannot eliminate the risk to B.A.S. by *preventing* Mr. Saada’s abusive behavior. It ensures only that Italian authorities may be able to

⁹ See Council of Europe, *supra* ¶¶ 329–31 (noting problems in Italy include “lack of expertise and understanding of violence against women of court-appointed experts whose contributions are relied upon by judges to reach their decisions” and that women who raise domestic violence in custody proceedings are often labeled “uncooperative” and “unfit for parenting”).

¹⁰ See also U.N. CEDAW, Concluding Observations of the Committee on the Elimination of Discrimination Against Women ¶¶ 50–51 (2011) (expressing concern over Italy’s law forcing shared custody and “reports of suspicion towards claim[s] of child abuse in custody cases”); Gaia Pianigiani, *For Italy’s Abused Women, a Legal Labyrinth Compounds the Wounds*, N.Y. Times (Aug. 11, 2018), <https://www.nytimes.com/2018/08/11/world/europe/italy-abused-women.html> (citing high number of women killed in Italy by abusive partners and emphasizing that although “Italy has ratified international conventions on curbing violence against women, . . . women who do raise their voices are often ground up for years in Italy’s infamously Byzantine legal system and countless deferments, while their partners often threaten to sue them for defamation, stalk them or continue to abuse them”).

respond to that behavior after the fact, at which point it will be too late to ensure Ms. Golan's or B.A.S.'s safety. The Italian system will always be a step behind Mr. Saada, with potentially lethal consequences and potential life-long impact on B.A.S.'s psychological well-being.

Moreover, while the district court noted that the Italian protective order “is effective for a year and can be renewed,” SPA-31, there is no guarantee that the order will continue. Mr. Saada may well ask the Italian court to modify or vacate the order, or seek to terminate Ms. Golan's custody and visitation rights—either shortly after B.A.S. is returned to Italy or when the one-year order is set to expire. The district court would have no power to prevent the Italian court from granting such a request.

Similarly, the district court failed to assess whether Ms. Golan will be in a position to enforce the protective order if Mr. Saada violates it (assuming she and B.A.S. survive the violence). Once B.A.S. is returned, the power dynamic inevitably will shift heavily in favor of Mr. Saada. Ms. Golan and B.A.S. again will be within Mr. Saada's sphere of control, isolated from their familial, social, educational, legal, social service, and medical support systems in New York. They will be forced back to a country where Ms. Golan lacks a job, secure immigration status, a work permit, or employment history. She does not speak the language, is unfamiliar with the legal system, and lacks a support system in Italy. Assuming she

continues to have legal representation, she may be reluctant to pursue enforcement once she and B.A.S. are in close proximity to a dangerous abuser with a distinct home court advantage. *See* Appellant’s Br. 43–44.

At an earlier stage, the district court dismissed these concerns, finding that its order that Mr. Saada pay Ms. Golan \$150,000 would effectively “alleviate [Ms. Golan’s] asserted concerns about her vulnerability as a non-citizen with limited Italian language skills.” A-1925. However, this payment cannot protect B.A.S. from harm in every situation or help Ms. Golan communicate effectively with police or her lawyer in a moment of crisis. The payment also fails to address the many hurdles Ms. Golan will face seeking long-term financial and housing independence in Italy, making it likely that she may still “need to interact with Saada regarding B.A.S.’s expenses,” presenting the risk of further violence. A-1983 n.2. In these circumstances, it is highly unlikely that Ms. Golan will be able to resist Mr. Saada’s efforts to exert coercive control and modify the Italian order.

III. THE DISTRICT COURT SHOULD HAVE DENIED RETURN BASED ON THE GRAVE RISK OF HARM TO B.A.S.

The Supreme Court held that putting a thumb on the scale in favor of returning B.A.S. was error, and that the Convention’s interest in avoiding physical or psychological harm to the child may overcome the interest in return. For all the reasons explained above, this is a case in which the grave risk of harm cannot be

ameliorated, and to comply with the Supreme Court’s decision, the district court should have denied return. This is the only outcome that ensures safety for B.A.S.

As explained above, Mr. Saada’s abuse entails complex acts of coercive control, and there are no simple measures that could ameliorate the risk of harm to B.A.S. from that pattern of abuse. The nature of Mr. Saada’s conduct, together with his expert’s testimony that he did not appear to have the capacity to change, compel the conclusion that no ameliorative measures could eliminate the grave risk to B.A.S. At least one other court in this circuit has recently declined to order return of a child in similar circumstances, citing the Supreme Court’s decision in this case. *See Braude v. Zierler*, No. 22-CV-3586, 2022 WL 3018175, at *10 (S.D.N.Y. July 29, 2022) (finding measures involving, *inter alia*, a no-contact order and a therapy requirement did not “prioritize the children’s physical and psychological safety” because they did not “address [the father’s] history of aggressive behavior and coercive control”).

The district court simply reimposed measures crafted in 2020, without even considering Mr. Saada’s continuing abuse in the period since then or the research showing that abusers are highly likely to be recidivists and to increase their abuse (including possibly redirecting abuse toward the child) following a period of separation from their victims. Nor did the district court consider whether B.A.S.’s autism spectrum disorder diagnosis increases the likelihood that Mr. Saada will

direct future abuse toward B.A.S. and whether this disorder will magnify the effect of any abuse on B.A.S. The district court instead fell back on a preference for return, the very approach the Supreme Court rejected.

In view of the record in this case and the likelihood that, despite the measures the district court relied on, B.A.S. will face a grave risk of harm upon return to Italy, the district court abused its discretion in ordering return. At a minimum the district court should have considered evidence regarding Mr. Saada's continued abuse of Ms. Golan over the past few years, the research showing that abusers are likely to continue and increase their abuse, especially following a period of separation, and the ways in which B.A.S.'s autism diagnosis increases the likelihood that he will face a grave risk of harm if he is returned to Italy.

IV. CONCLUSION

For the reasons stated above, the judgment of the district court should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Local Rules 29.1 and 32.1 because this brief contains 6,997 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in a 14-point Times New Roman font.

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