APPENDIX

TABLE OF CONTENTS

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 20-1544

Isacco Jacky Saada,
Petitioner-Appellee,

v.

Narkis Aliza Golan,
Respondent-Appellant.

Filed: October 28, 2020

Before: WALKER, Jr. and MENASHI, Circuit Judges[*]

SUMMARY ORDER

WATFORD, Circuit Judge.

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

---

[*] Senior Circuit Judge Ralph K. Winter, originally a member of the panel, is currently unavailable, and the appeal is being adjudicated by the two available members of the panel, who are in agreement. *See* 2d Cir. IOP E(b).

Upon due consideration, it is hereby **ORDERED**, **ADJUDGED**, and

DECREED that the judgment of the district court is **AFFIRMED**.

Respondent-Appellant Narkis Aliza Golan appeals the district court's order granting the petition of Petitioner-Appellee Isacco Jacky Saada for the return of their son, B.A.S., to Italy pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. The district court granted Saada's petition after determining that there were adequate ameliorative measures that remedied any grave risk of harm to B.A.S. upon his return to Italy. We assume the parties' familiarity with the underlying facts, procedural history, and arguments on appeal.

This marks the second time this case comes before our court. In Golan's earlier appeal, we ruled that the district court's initial order failed to adequately remedy the grave risk of harm to B.A.S. that the court found would result from B.A.S.'s return to Italy. *Saada v. Golan*, 930 F.3d 533, 540 (2d Cir. 2019) (*Saada II*). We remanded the case to allow the district court to determine if other ameliorative measures were available to remedy that risk of harm and could be "either enforceable by the District Court or ... supported by other sufficient guarantees of performance." *Id.* at 541. On remand, the district court sought out such measures, found the measures to be satisfactory, and granted Saada's petition. Finding no clear error in the district court's factual determinations, and concluding that those facts support its judgment, we affirm.

BACKGROUND

Isacco Saada and Narkis Golan wed in Milan in August 2015. They had a son, B.A.S., the next June and lived in

Milan for the first two years of his life. In July 2018, Golan traveled with B.A.S. to the United States for a wedding, and they have remained in the United States since that time. The district court determined that Italy was B.A.S.'s country of habitual residence for the purposes of the Hague Convention. *Saada v. Golan*, No. 18-CV-5292, 2019 WL 1317868, at *17 (E.D.N.Y. Mar. 22, 2019), *aff'd in part, vacated in part, remanded*, 930 F.3d 533 (2d Cir. 2019) (*Saada I*). We affirmed that decision in Golan's initial appeal. *Saada II*, 930 F.3d at 539.

Saada's relationship with Golan was abusive almost from its inception. The district court found that Saada would yell, slap, hit, and push Golan. He would call her names and pull her hair. He once threw a glass bottle at her and also threatened to kill her. This abuse often occurred in B.A.S.'s presence. Saada admitted to many relevant accusations. *Saada I*, 2019 WL 1317868, at *5.

The district found, based on expert testimony, that Saada's abuse of Golan had and could continue to have severe effects on B.A.S.'s psychological health. *Id.* at *18. The district court noted that Saada, at that point, had not demonstrated an ability to change his behavior or to control his anger. *Id.* As a result, the district court concluded that returning B.A.S. to Italy would subject him to a grave risk of psychological harm, and therefore the Hague Convention did not require that the district court order B.A.S.'s return. *Id.*

That conclusion, however, did not end the analysis. Circuit precedent required the district court to determine if there were any ameliorative measures, or "undertakings," it could impose on Saada that would eliminate the grave risk of harm to B.A.S. and allow the court to return B.A.S. back to Italy. *Id.* (citing *Blondin v. Dubois*, 189

F.3d 240, 248 (2d Cir. 1999) (*Blondin I*)). The court decided that it could mitigate the grave risk by ordering Saada, *inter alia*, to pay Golan $30,000, to stay away from her in Italy, and to visit B.A.S. only with Golan's consent. *Id.* at *19 & n.40.

On appeal, we vacated the district court's decision regarding the adequacy of these ameliorative measures. *Saada II*, 930 F.3d at 540. We ruled that to eliminate a grave risk of harm, the ameliorative measures must be either enforceable by the district court or supported by other sufficient guarantees of performance. *Id.* at 541. Because the district court could not enforce its instructions regarding Saada's distance from Golan and visits with B.A.S. once the parties were in Italy—and there were no other guarantees of performance—the district court's order did not adequately ameliorate the grave risk of harm to B.A.S. *Id.* at 540.

We remanded the case for the district court to determine if any other enforceable or sufficiently guaranteed ameliorative measures were available. *Id.* at 541. Specifically, we invited the district court to consider whether Italian courts could issue orders that prohibited Saada from approaching Golan or visiting B.A.S. without her consent. *Id.* at 541-42.

On remand, the district court communicated with Italian authorities to determine whether they could issue a protective order requiring Saada to stay away from Golan and to attend therapy. J. App'x 493-511. The district court then instructed the parties to petition the Italian courts for such an order. *Id.* at 512-14. The parties complied. *Id.* at 517-40.

An Italian court entered an order requiring, *inter alia*, that (1) Saada not approach Golan, her place of work or

residence, or B.A.S.'s school; (2) B.A.S. be entrusted to Italian social services and placed with Golan for residence; (3) Saada visit B.A.S. only in a neutral space under observation by Italian social services; and (4) Italian social services evaluate Saada and initiate psychological counseling for him. *Id.* at 564-66. This protective order will run for one year from when Golan and B.A.S. arrive in Italy and is renewable. *Id.* at 564.

In light of these developments, the district court granted Saada's petition to return B.A.S. to Italy. *Saada v. Golan*, No. 118-CV-5292, 2020 WL 2128867, at *6 (E.D.N.Y. May 5, 2020) (*Saada III*). The district court noted that Saada had complied with previous social service investigations in Italy and that he had he abided by all conditions of his supervised visits with B.A.S. in the United States. *Id.* at *4. Combined with the consequences Saada would face for violating the Italian protective order, the district court concluded that these findings provided it with sufficient confidence that Saada would comply with that order. *Id.* Additionally, the district court indicated that the psychological counseling mandated by the Italian court could reduce Saada's abusive tendencies. *See id.* The district court also ordered Saada to pay Golan $150,000 to cover her and B.A.S.'s expenses upon their return to Italy. *Id.* at *5. Taken together, the district court concluded, these measures ameliorated the "grave risk of harm to B.A.S." that could result from "exposure to violence between" Saada and Golan. *Id.* at *2. In making its decision, the court also noted the absence of "evidence in the record that [Saada] was abusive to B.A.S. or that B.A.S. would be unsafe with [Saada]." *Id.* at *2 n.4.

Golan now appeals the district court's decision to grant Saada's petition.

STANDARD OF REVIEW

"We review the district court's interpretation of the [Hague] Convention *de novo* and its factual determinations for clear error." *Souratgar v. Lee*, 720 F.3d 96, 103 (2d Cir. 2013). Clear error review is "significantly deferential," and "[w]e must accept the trial court's findings unless we have a definite and firm conviction that a mistake has been committed." *Id.* (internal quotation marks omitted). "The District Court's *application* of the Convention to the facts it has found, like the *interpretation* of the Convention, is subject to de novo review." *Blondin v. Dubois*, 238 F.3d 153, 158 (2d Cir. 2001) (*Blondin II*). In this case, then, we will employ a clear error standard to assess the district court's findings that Saada will comply with the Italian court order and that the $150,000 payment to Golan will meet her and B.A.S.'s needs until a custody arrangement is concluded. We then determine *de novo* if, given those conclusions, the protective measures adequately ameliorate the "grave risk of harm" to B.A.S. *See id.*

DISCUSSION

The Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, *reprinted in* 51 Fed. Reg. 10,494 (Mar. 26, 1986), as implemented by the International Child Abduction Remedies Act ("ICARA"), 22 U.S.C. §§ 9001-11, requires courts to "promptly return[]" a child removed from his country of habitual residence "unless one of the narrow exceptions set forth in the Convention applies." 22 U.S.C. § 9001(a)(4). Article 13(b) of the Convention provides an exception for cases in which "there is a grave risk" that repatriation "would expose the child to physical or psy-

chological harm or otherwise place the child in an intolerable situation." The ICARA places the burden on the respondent to prove, by clear and convincing evidence, that this exception applies. 22 U.S.C. § 9003(e)(2)(A).

A district court that finds a grave risk of harm "must examine the full range of options that might make possible the safe return of a child" before denying repatriation. *Blondin II*, 238 F.3d at 163 n.11. This rule "honor[s] the important treaty commitment to allow custodial determinations to be made—if at all possible—by the court of the child's home country." *Blondin I*, 189 F.3d at 248. However, a district court may rely only on "ameliorative measures that are either enforceable by [it] or ... supported by other sufficient guarantees of performance." *Saada II*, 930 F.3d at 541.

In this case, the district court found that "exposure to violence" perpetuated by Saada against Golan posed a "grave risk of harm to B.A.S." *Saada III*, 2020 WL 2128867, at *2.[1] After taking steps to ensure that a protective order from the Italian courts would be in place upon the return of B.A.S. to Italy, however, the district court subsequently found that this Italian protective order coupled with a $150,000 payment from Saada to Golan ameliorated that risk. *Id.* at *2-6. These measures, if effective, will ensure that Saada and Golan are not in the same

[1] On appeal, Golan argues that the district court failed to account for *other* grave risks of harm. These include risks that B.A.S. will be retraumatized simply by returning to Italy and that Saada will directly abuse B.A.S. in Italy. Appellant's Br. 41-45. Because Golan did not establish additional risks by clear and convincing evidence, the district court did not err in focusing on the risk of exposure to violence.

place.[2] This separation, in turn, protects B.A.S. from any trauma that would result from abuse that Saada might perpetrate against Golan if they were together, and therefore ameliorates the grave risk of harm to B.A.S.

These measures are "either enforceable by the District Court or ... supported by other sufficient guarantees of performance." *Saada II*, 930 F.3d at 541. The district court can enforce its order that Saada must make the $150,000 payment before B.A.S. is repatriated. And the existing Italian protective order and ongoing involvement of the Italian courts with this case provides sufficient assurance that Saada will not approach Golan in Italy. *See id.* at 541 n.33 ("In most cases, the international comity norms underlying the Hague Convention require courts in the United States to assume that an order by a foreign court imposing protective measures will guarantee performance of those measures.").

Golan argues that this case presents a circumstance in which "even a foreign court order might not suffice," *id.*, because Saada will not comply with the Italian protective order. Golan points to the district court's findings in the initial proceeding that Saada "has to date not demonstrated a capacity to change his behavior" and "could not control his anger." *Saada I*, 2019 WL 1317868, at *18. The

[2] The $150,000 payment—which amounts to over 75 percent of what Golan claimed her and B.A.S.'s expenses will be in Italy until an Italian court can enter a support order— ensures that B.A.S. will be able to live with Golan during the pendency of the custody proceedings in Italy and that Golan will not need to rely on Saada for support during that time. Without this payment, there might be a risk that Golan would need to interact with Saada regarding B.A.S.'s expenses, and that interaction could have created the risk of abuse in B.A.S.'s presence.

district court also commented then that Saada's "reliability was 'down the tube.'" *Id.*

On remand, however, the district court concluded that Saada will likely comply with the Italian protective order. The court observed that Saada has complied with previous Italian social service investigations as well as the conditions of his supervised visits with B.A.S. in the United States. *Saada III*, 2020 WL 2128867, at *4. The court also noted that Saada knows he will face consequences in Italy, in terms of both contempt of court and B.A.S.'s custody and visitation determination, if he violates the Italian court's protective order. *Id.*

Given the record before us, we do not have a "definite and firm conviction that a mistake has been committed" by the district court. *Souratgar*, 720 F.3d at 103. Saada has shown an ability to follow rules in related contexts and knows the Italian court will police his activities and punish him for violations. The district court, therefore, did not clearly err in determining that Saada will likely comply with the Italian protective order.

In light of this finding, the district court correctly concluded that there existed sufficiently guaranteed ameliorative measures that would remedy the grave risk of harm to B.A.S. upon his return to Italy. It therefore properly granted Saada's petition.[3]

---

[3] Our court recently rejected an appeal that presented facts very similar to this case. In *Valles Rubio v. Veintimilla Castro*, we concluded that a district court did not err in determining that "ameliorative measures such as litigation in Ecuadorian courts were sufficient to protect" the child from the grave risk of harm presented by his father's "physical and psychological abuse." 813 F. App'x 619, 621 (2d Cir. 2020). In so holding, we highlighted the mother's "record of ... successful litigation in Ecuadorian courts" and measures set out in an

We have considered Golan's remaining arguments, which are without merit. For the foregoing reasons, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

/s/ Catherine O'Hagan Wolfe

---

agreement between the parents that provided for "weekly visits between [the child] and [his mother's] family [and] daily conversations by video or telephone between" the mother and child. *Id.* "Although we decided [*Valles Rubio*] by nonprecedential summary order, rather than by opinion, our '[d]enying summary orders precedential effect does not mean that the court considers itself free to rule differently in similar cases.'" *United States v. Payne*, 591 F.3d 46, 58 (2d Cir. 2010) (quoting Order dated June 26, 2007, adopting 2d Cir. Local R. 32.1). Unlike the respondent in *Valles Rubio*, Golan is not a citizen of the country of her child's habitual residence nor does she speak the local language well. *Saada III*, 2020 WL 2128867, at *5. In other respects, however, this case includes greater assurances of amelioration. Unlike the petitioner in *Valles Rubio*, Saada does not have a history of directly abusing B.A.S., *id.* at *2 n.4, and unlike the mother there, Golan will be returning to Italy with B.A.S., *id.* at *2. Furthermore, the parties here already have a foreign protective order in place while the parties in *Valles Rubio* did not.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

No. 1:18-CV-5292 (AMD) (SMG)

ISACCO JACKY SAADA,
Petitioner,

– against –

NARKIS ALIZA GOLAN,
Respondent.

Filed: May 5, 2020

MEMORANDUM DECISION AND ORDER

DONNELLY, United States District Judge.

On September 20, 2018, the petitioner, Isacco Jacky Saada, brought this case against the respondent, Narkis Aliza Golan, pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, as implemented by the International Child Abduction Remedies Act, 22 U.S.C. §§ 9001-9011. Mr. Saada, an Italian citizen, alleged that in August of 2018, Ms. Golan, an American citizen, wrongfully kept their minor son, B.A.S., in the United States.

In a March 22, 2019 decision, I found that B.A.S. was a habitual resident of Italy, and that while he would be subject to grave risk of harm upon repatriation, there were sufficient measures that would ameliorate the risk. (ECF No. 64 (*Saada I*) at 35.) The Second Circuit affirmed the decision in part and vacated it in part. *Saada v. Golan* (*Saada II*), 930 F.3d 533, 537 (2d Cir. 2009). The Court agreed that Italy is B.A.S.'s "habitual residence" under the Hague Convention, but determined that certain measures could not be enforced before B.A.S. was repatriated to Italy. *Id.* at 542-43. Accordingly, the Second Circuit remanded the case with instructions to ensure that the measures necessary for B.A.S.'s safe repatriation could be "enforce[d] by the District Court or supported by other sufficient guarantees of performance." *Id.* at 543.

Over the past nine months, I undertook an extensive examination of the measures available to ensure B.A.S.'s safe return to Italy. With the assistance of the United States Department of State, I contacted the Honorable Peter J. Messitte, Senior Judge of the United States District Court for the District of Maryland and the Representative of the United States Federal Judiciary for the International Judicial Network under the Hague Convention. With Judge Messitte's assistance, I corresponded with the Italian Central Authority and the Italian Ministry of Justice on matters concerning B.A.S., the petitioner and the respondent. (*See, e.g.*, ECF Nos. 73, 74, 77, 78, 85, 87, 88.) The parties appeared for multiple conferences and submitted status reports and briefs on the status of the case in Italy and the sufficiency of various ameliorative measures. (ECF Nos. 100, 103, 106.)

As I explained in my earlier decision, these determinations are difficult, and are certain to bring heartache to one side. Nor am I unmindful of the inevitable upheaval

that necessarily follows decisions of this kind.[1] Nevertheless, based on the record before me at the trial and upon remand from the Second Circuit, I am confident that the Italian courts are willing and able to resolve the parties' multiple disputes, address the family's history and ensure B.A.S.'s safety and well-being. I find that B.A.S. must be returned to Italy.

DISCUSSION[2]

The Hague Convention seeks to protect children from the harmful effects of wrongful removal, and establishes procedures to ensure their prompt return to the state of their habitual residence. *See Abbott v. Abbott*, 560 U.S. 1, 8 (2010) (explaining purpose of the Convention). The general rule is that a wrongfully retained child "must be returned" to his country of habitual residence. *Souratgar v. Lee*, 720 F.3d 96, 102 (2d Cir. 2013) (citing *Blondin v. Dubois* (*Blondin II*), 189 F.3d 240, 245 (2d Cir. 1999)). The rule is not absolute, though; a child will not be returned if repatriation would cause "grave risk" of "physical or psychological harm" to the child, or "otherwise place [him] in an intolerable situation." Hague Convention, art. 13(b); *see also* 22 U.S.C. § 9003(e)(2)(A) (exception must be proven by "clear and convincing evidence"). In such a case, the child should not be repatriated absent ameliorative measures that protect him from the "grave risk" of harm. *See Valles Rubio v. Veintimilla Castro*, No. 19-CV-2524, 2019 WL 5189011, at *23 (E.D.N.Y. Oct. 15, 2019)

[1] "The ordinary disruptions necessarily accompanying a move [do] not by themselves constitute a" grave risk of harm. *Blondin v. Dubois* (*Blondin IV*), 238 F.3d 153, 164 (2d Cir. 2001).

[2] Familiarity with the facts is assumed.

("[A] grave risk finding would . . . be fatal to a petition" absent sufficient ameliorative measures.).

A thorough consideration of all potential ameliorative measures safeguards not only the child, but "the important treaty commitment" articulated in the Hague Convention "to allow custodial determinations to be made—if at all possible—by the court of the child's home country." *Blondin II*, 189 F.3d at 248. "[T]he whole structure of the Convention depend[s] on the institutions of the abducted-to state generally deferring to the forum of the child's home state." *Id.* (citation and internal quotation marks omitted).

I. AMELIORATIVE MEASURES

To ensure a child's safe repatriation, the ameliorative measures must "reduce whatever risk might otherwise be associated with the child's" return. *Id.* at 248. The court should "examine the full range of options," *Blondin IV*, 238 F.3d at 163 n.11, including measures undertaken "by the authorities of the state having jurisdiction over the question of custody[,]" and measures undertaken "by the parents[.]" *Blondin II*, 189 F.3d at 248. The analysis includes, for example, the capability and willingness of the court in the country of habitual residence "to give the child adequate protection," *Souratgar*, 720 F.3d at 103 (citing *Blondin IV*, 238 F.3d at 162), as well as measures undertaken *before* the child's repatriation, *Saada II*, 930 F.3d at 542. The measures must be "enforceable by the [d]istrict [c]ourt or supported by other sufficient guarantees of performance." *Id.* at 543.

It is not clear in this Circuit whether it is the petitioner's or respondent's burden to establish the "appropriateness and efficacy of any proposed undertakings."

Valles Rubio, 2019 WL 41890111, at *23 (citations omitted). While "[l]ogically . . . the burden would appear to fall on the petitioner" to rebut a finding of grave risk of harm,[3] the Second Circuit has previously "impl[ied]" that the burden is part of the respondent's grave risk claim—that is, "to prove grave risk, the respondent must also prove" the absence of adequate ameliorative measures. *Id.* (characterizing language in *Blondin IV*). In any event, the focus is on measures that "make possible the safe return of [the] child to the home country." *Blondin IV*, 238 F.3d at 153 n.11.

II. APPLICATION

The grave risk of harm to B.A.S. is exposure to violence between the petitioner and the respondent. The record is clear that "Mr. Saada was violent—physically, psychologically, emotionally, and verbally—to Ms. Golan," and "that B.A.S. was present for much of it." (ECF No. 64 at 32.) While B.A.S. was not the target of abuse himself, "a child who is exposed to domestic violence . . . could face a grave risk of harm." (*Id.*) That risk is greatly reduced when the parties are not together.

The respondent has made it clear that she intends to return to Italy with B.A.S. if the Court orders his repatriation. Because the respondent is B.A.S.'s primary caretaker, her safety is a factor in the Court's decision. *See, e.g.*, *In re Krishna v. Krishna,* No. C 97-0021, 1997 WL 195439, at *3-4 (N.D. Cal. Apr. 11, 1997) (courts may deny

[3] The First Circuit and Sixth Circuit explicitly assign the burden to the petitioner. *See Simcox v. Simcox*, 511 F.3d 594, 611 (6th Cir. 2007) ("[T]he petitioner proffering the undertakings bears the burden of proof.") and *Danaipour v. McLarey*, 286 F.3d 1, 21 (1st Cir. 2002) ("[T]he proponent of the undertaking bore the burden of showing" its adequacy.).

petition where the respondent would be forced to rely on abusive spouse in new country). However, it is B.A.S.'s safety and well- being that is paramount—not the respondent's. *See Davies v. Davies*, 717 F. App'x 43, 48 (2d Cir. 2017) (The grave risk "inquiry is not whether repatriation would place the respondent parent's safety at grave risk, but whether so doing would subject the child to a grave risk of physical or psychological harm.").[4] "[A] respondent should not be rewarded for declining to ameliorate the risk" to her child, *Valles Rubio*, 2019 WL 5189011, at *31, and harm that is "a consequence of choices made by [the] respondent" should not affect the Court's repatriation decision. *In re Koc*, 181 F. Supp. 2d 136, 156 (E.D.N.Y. 2001), *report and recommendation adopted* (Apr. 3, 2001).

The respondent maintains "that no set of ameliorative measures is appropriate" because the petitioner is "unwilling" and "unable" to comply with court orders. (ECF No. 103 at 4.) The petitioner disagrees, and says that in any case, the proposed measures do not require the Court "to rely on any promises" by him. (ECF No. 100 at 8.) For the reasons that follow, I find that the proposed measures are sufficient to ameliorate the grave risk of harm to B.A.S. upon his return to Italy.

[4] There is no evidence in the record that the petitioner was abusive to B.A.S. or that B.A.S. would be unsafe with the petitioner. In fact, the respondent frequently left B.A.S. with the petitioner when she lived in Italy. (*See* Tr. 536:18, 618:7-15, 1036:21-1037-19, 1042:13-18.) Accordingly, B.A.S.'s return to Italy is not necessarily contingent on the respondent also living there.

A. Undertakings by the Italian Courts

The Italian courts are willing and able to enforce the conditions necessary to protect B.A.S. in Italy. It is undisputed that both parties have obtained legal counsel and are active litigants in an ongoing custody dispute in Italy.[5] On December 12, 2019, the Italian court overseeing the custody dispute issued a comprehensive order imposing various measures to facilitate B.A.S.'s Italian repatriation. (ECF No. 96-1.) The order included, among other directives, a protective order against the petitioner and an order directing Italian social services to oversee his parenting classes and behavioral and psychoeducational therapy. (*Id.* at 11-13.) The order also noted the extensive case documentation in this Court's proceedings, as well as the Court's finding that the petitioner was physically and psychologically violent toward the respondent, sometimes in the presence of B.A.S. (*Id.* at 7-8.) Separately, on January 31, 2020, an Italian criminal court dismissed charges that the petitioner initiated against the respondent in connection with B.A.S.'s removal from Italy. (ECF No. 99-1.) The petitioner also signed a statement agreeing not to pursue future criminal or civil actions against the respondent and submitted it to the Italian court. (ECF No. 94-1 at 31.) In short, the Italian justice system is actively involved with the parties and their disputes, including most significantly, B.A.S.'s welfare.

The respondent challenges the scope of the Italian order of protection, and argues that it should extend to the petitioner's parents. (ECF No. 103 at 19.) Next, she takes

---

[5] Indeed, the respondent apparently secured counsel as early as August 2018 (ECF No. 102-2 at 35); at the time of the trial, that lawyer was representing the respondent *pro bono*, which is apparently still the case.

issue with the details of the Italian court's order that the petitioner undergo therapy; she says that the order must specify the duration and frequency of the petitioner's treatment (*id.* at 20), and that in any event, the petitioner cannot be trusted to follow any court order. (*Id.* at 12.) Finally, the respondent challenges the adequacy of the Italian courts generally, suggesting that the judges do not appreciate the significance of the proceedings in this court and are somehow incapable of "expeditiously translating key materials" from this proceeding.[6] (*Id.* at 24.) None of these arguments are persuasive.

There is insufficient evidence on the record before me to require an order of protection against the petitioner's parents before B.A.S. can be returned safely to Italy.[7] While there is evidence that the petitioner's parents took his side against the respondent, including when he was physically and verbally abusive to her (*see, e.g.*, Tr. 80:1-20), there is no evidence that their behavior constitutes a

---

[6] The respondent says that the Italian court must have the entire record of this Court's proceedings translated to Italian before B.A.S. can be returned to Italy. (ECF No. 103 at 23-24.) This is unnecessary; the Italian court already has multiple documents in Italian, has acknowledged the comprehensive proceedings before this Court, and has recognized the findings of violence. The Italian court is more than capable of deciding which parts of the record should be translated.

[7] When the respondent cited her in-laws' animosity as a basis for requiring an order of protection against them, I made the following observation in a footnote of a previous order: "To the extent that the respondent believes that an order of protection against the petitioner's family is necessary, the petitioner should submit that request to the Italian court for adjudication." (ECF No. 89.) The respondent seems to have interpreted this as an expression of my agreement that such an order is a condition precedent to B.A.S.'s repatriation. (ECF No. 95 at 1-2.) It is not. The scope of any orders of protection beyond what is necessary for B.A.S.'s safe return is best left to the court overseeing the custody dispute and enforcing the order of protection.

grave risk to B.A.S., or that they were violent or abusive to B.A.S. *See Blondin II*, 189 F.3d at 246 ("As the federal statute implementing the Convention makes clear, these four exceptions are meant to be 'narrow.'"). I am also not persuaded by the respondent's claims that the petitioner's father poses a danger to B.A.S. There was no mention at trial of two of the accusations—that he "threw B.A.S. into a swimming pool without flotation devices," and "kicked a soccer ball hard at [him]." (ECF No. 45 at 18.) In any case, even if true, neither constitutes a grave risk of harm.[8] "Sporadic or isolated incidents of physical discipline directed at the child, or some limited incidents aimed at persons other than the child, even if witnessed by the child, have not been found to constitute a grave risk." *Souratgar*, 720 F.3d at 104 (collecting cases). The respondent also testified that the grandfather took B.A.S. from the petitioner and respondent's first floor apartment to the grandparents' third floor apartment one time, while the respondent and petitioner were out for the evening and the child was with a babysitter. (Tr. 268:2-269:1.) This incident does not warrant a finding that B.A.S.'s grandparents pose a grave risk of harm to him.

The grave risk of danger to B.A.S. is his exposure to domestic violence, almost all of it perpetuated by the petitioner against the respondent. The order of protection put in place by the Italian court prohibits the petitioner from going near the respondent or B.A.S.[9] (ECF No. 96-1

---

[8] The respondent's claim that she did not include these incidents in her trial testimony because "[t]he parties had limited time on the Court's calendar" (ECF No. 103 at 20 n.10) is perplexing. I heard testimony from multiple witnesses over the course of nine days, including the respondent, who testified for two days.

[9] The order of protection lasts one year beginning when the respondent and B.A.S. return to Italy, and can be renewed. (*Id.*)

at 11.) This is sufficient to ameliorate the grave risk of harm resulting from his parents' violent relationship.

I also reject the respondent's claims about the efficacy of the Italian court's directives on the subject of the petitioner's therapy. Although there was no evidence that the petitioner was violent to B.A.S., I directed him to obtain therapeutic treatment because of the expert testimony about his lack of insight into his behavior and its effect on B.A.S. In the months following my decision, the petitioner provided evidence that he sought and obtained treatment. Moreover, the Italian court has directed Italian Social Services to investigate both parties and B.A.S. in order to assess parental suitability and B.A.S.'s needs. (ECF No. 96-1 at 12 ¶ 4.) The Italian court has also directed that any visitation be supervised. (*Id.* at 10.) Finally, the Italian judge warned the petitioner that failure to comply with Italian Social Services could be held against him in the custody proceedings. (*Id.* at 13 ¶ 10.) This order provides a sufficient guarantee that the petitioner will undergo appropriate treatment, and that B.A.S. will be safe in Italy.

The respondent also asserts that the petitioner will not follow the orders of the Italian court because he is untrustworthy. The record before me does not support the respondent's claim. The petitioner cooperated with the 2017 Italian Social Services investigation that was prompted by one of the respondent's calls to the Italian police. There is no evidence that he obstructed or refused to participate in the investigation; rather, the record shows that the petitioner participated in multiple interviews by himself and with the respondent. (Tr. 884:2-25.) Moreover, since the start of proceedings in this Court, the petitioner has traveled to the United States for the trial and other hearings. He has abided by all conditions of the supervised visits with B.A.S., despite the absence of any

court order. Finally, of course, the petitioner will suffer significant consequences if he disregards court orders. The Italian court, like any court, expects litigants to comply with its directives and is fully capable of imposing sanctions on litigants who flout its orders. If the petitioner is foolish enough to disobey court orders, he will risk losing not only custody of B.A.S., but any rights of visitation or access. (ECF No. 96-1 at 13 ¶ 10.) Given the severe consequences of noncompliance with the Italian court orders, as well as the record before me, I am confident that the Italian legal system is able to enforce its orders.[10]

"[T]he exercise of comity that is at the heart of the [Hague] Convention requires [the Court] to place [its] trust in th[ose] court[s]" of Italy to do what is necessary to protect B.A.S. *Saada II*, 930 F.3d at 539-40 (citing *Blondin II*, 189 F.3d at 248-49). Based on the expert testimony presented at trial, I concluded that the Italian legal system is capable of handling domestic violence cases involving children. (ECF No. 64 at 24.) My interactions with the Italian courts over the past nine months have confirmed that conclusion, as well as established specifically that the Italian court will protect B.A.S. The Italian court has issued a comprehensive order that demonstrates an understanding and respect for this Court's findings, and has imposed measures consistent with B.A.S.'s safe return.

B. Undertakings by the Parents

In addition to the conditions that the Italian court will enforce, the Court has considered additional measures to ameliorate the risk of harm to B.A.S. The respondent's

---

[10] The petitioner's alleged refusal to grant the respondent a "get"—a religious divorce—was not a subject of the trial, and in any event is not a factor that affects B.A.S.'s well-being.

well-being is a factor in my decision because B.A.S. will be under her care pending resolution of the custody dispute in Italy, *see, e.g.*, *Tsarbopoulos v. Tsarbopoulos*, 176 F. Supp. 2d 1045, 1061 (E.D. Wash. 2001) (declining to return child where the respondent had "no resources which would enable her to live in Greece"), but as explained above, the respondent's well-being is not the main focus of this proceeding. The Court should focus on ameliorative measures during the pendency of the child custody proceeding in the country of habitual residence. *See Walsh v. Walsh*, 221 F.3d 204, 219 (1st Cir. 2000) ("The undertakings [should] preserve the child's safety while the courts of th[e home] country have the opportunity to determine custody of the child[] within the physical boundaries of their jurisdiction."). "Typical undertakings concern support, housing and the child's care pending resolution of the custody contest." *Blondin IV*, 238 F.3d at 159 n.8 (citation omitted).

The respondent asserts that she "has supported her son without child support from [the petitioner] for the past year and a half" (ECF No. 103 at 22 n.13), but that she is vulnerable in Italy because she is not an Italian citizen, and because she lacks financial resources, which she claims puts B.A.S. at risk. There are obvious and significant expenses associated with an international move, including housing, utilities, food, travel and child care. (*See* ECF No. 102 at 3-5.) These expenses will be higher in the first few months of B.A.S.'s return to Italy as the respondent settles him into a new routine, secures her own employment and manages their relocation. Based on the parties' submissions (*see, e.g.*, ECF No. 102), $150,000.00 will ensure B.A.S.'s safe and comfortable return to Italy, as well as the respondent's financial independence from the

petitioner and his family.[11] The petitioner must make this payment before the respondent's return to Italy to ensure performance.

The money should alleviate the respondent's asserted concerns about her vulnerability as a non-citizen with limited Italian language skills (ECF No. 103 at 10), which are in any event somewhat overblown. The respondent, with the assistance of an attorney, has navigated the Italian legal system for the past two years. While she lived in Italy, she ran errands, went out with friends, traveled independently, and regularly sought assistance from the Italian police and Social Services. (*See* Tr. 536:6-18, 618:7-15, 1036:21-1037:19, 1042:13-18, 884:2-25.) A payment of $150,000.00 for a year of expenses will ensure the respondent's interim stability pending the Italian custody proceeding.[12]

C. B.A.S.'s Special Needs

After the trial, a representative of the New York City Department of Education and a psychologist that the respondent hired evaluated B.A.S., who is now three years old, for special needs. (See ECF Nos. 68, 91.) The most recent diagnosis was "mild Autism Spectrum Disorder" and "clinically significant difficulties in executive functioning skills" with "average non-verbal cognitive capabilities." (*See, e.g.*, ECF No. 91 at 22.) According to the respondent, B.A.S. should receive treatment in the United

---

[11] The respondent also can use this money to pay her lawyer to the extent she is not getting free representation.

[12] Moreover, the tools for obtaining legal status and a work permit are in the respondent's hands. At the Court's direction, the respondent has already contacted the Italian Embassy in the United States about her move to Italy. (ECF No. 95 at 3.)

States because Italy cannot provide him with sufficient services. (ECF No. 103 at 26.)

A grave risk of harm exists when repatriation would cause the child "real risk of being hurt, physically or psychologically." *Blondin IV*, 238 F.3d at 162. The risk of harm "must be severe," and there must be a "probability that the harm will materialize." *Souratgar,* 720 F.3d at 103. A "grave risk" of harm does not exist when repatriation "might cause inconvenience or hardship, eliminate certain educational or economic opportunities, or not comport with the child's preferences." *Blondin IV,* 238 F.3d at 162. It is the respondent's burden to show grave risk of harm by clear and convincing evidence. *Id.* at 157.

There is insufficient evidence that repatriation would cause B.A.S. grave psychological harm in light of the recent diagnoses. Based on the evidence provided by the respondent, B.A.S.'s conditions are mild, and while he has made "noticeabl[e]" progress receiving care in the United States, his continued participation in programs here is "strongly recommended" only to "maximize" his improvements. (ECF No. 103 at 25; *see also* ECF No. 91 at 22.) There is no evidence that repatriation would result in "significant regression" or marked "deterioration in [his] cognition, social skills, and self-care." *See Ermini v. Vittori*, 758 F.3d 153, 159-60 (2d Cir. 2014) (affirming grave risk of harm finding for child with severe autism whose "hope for an independent and productive life rested on his continued participation" in a specific treatment program) (internal quotation marks omitted). Moreover, the petitioner agrees that B.A.S. should be evaluated in Italy and that he will cover any costs associated with his treatment. (ECF No. 100 at 9-10.)

The Italian court overseeing the custody dispute has already directed Italian Social Services to evaluate B.A.S.

to determine the extent of his psychological or educational needs. (ECF No. 96-1 at 9.) Absent evidence that B.A.S.'s repatriation would cause him grave risk of harm, the court in his country of habitual residence is best suited to decide the scope of his future treatment. The respondent has not shown by clear and convincing evidence that B.A.S.'s special needs put him at grave risk of harm in Italy.

CONCLUSION

Accordingly, the petition is granted and B.A.S. must be returned to Italy. The Clerk of Court is respectfully directed to enter judgment in favor of the petitioner. The parties are to meet and confer regarding B.A.S.'s return to Italy and the ameliorative measures outlined in this order, including the petitioner's payment to the respondent. This order is stayed for thirty days to allow the parties time to resolve the method of B.A.S.'s return, and for the respondent to seek and obtain a decision on an expedited appeal.

SO ORDERED.

s/Ann M. Donnelly

Ann M. Donnelly

United States District Judge

Dated: Brooklyn, New York May 5, 2020

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AUGUST TERM 2018
No. 19-820-cv

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

ARGUED: JUNE 18, 2019
DECIDED: JULY 19, 2019

Before: WINTER, CABRANES, and RAGGI, *Circuit Judges*.

CABRANES, *Circuit Judge*:

Under the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention"),[1] as implemented by the International Child Abduction Remedies Act,[2] "a child abducted in violation of rights of custody must be returned to the child's country of habitual residence, unless certain exceptions apply."[3] In this appeal, we address the scope of a district court's discretion to direct that a child be returned where "there is a grave risk of harm that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."[4]

Respondent-Appellant Narkis Aliza Golan ("Ms. Golan") appeals from a final order of the United States District Court for the Eastern District of New York (Ann M. Donnelly, *Judge*) granting Petitioner-Appellee Isacco Jacky Saada's ("Mr. Saada") petition under the Hague Convention for the return of the parties' minor child, B.A.S., to Italy. On appeal, Ms. Golan challenges the District Court's conclusion that Italy is B.A.S.'s habitual residence, and its decision to grant the petition subject to certain conditions notwithstanding its determination that repatriating B.A.S. would expose him to a grave risk of harm.

We agree with the District Court's habitual-residence determination. But we conclude that the District Court erred in granting Mr. Saada's petition because the most

---

[1] The Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89 ("Hague Convention").

[2] 22 U.S.C. § 9001 *et seq.*

[3] *Abbott v. Abbott*, 560 U.S. 1, 5, 130 S.Ct. 1983, 176 L.Ed.2d 789 (2010) (internal quotation marks omitted).

[4] Hague Convention, art. 13(b).

important protective measures it imposed are unenforceable and not otherwise accompanied by sufficient guarantees of performance. Accordingly, the District Court's March 22, 2019 order is **AFFIRMED IN PART** and **VACATED IN PART**, and the cause is **REMANDED** for further proceedings concerning the availability of alternative ameliorative measures.

I. BACKGROUND

We draw the facts, which are undisputed for the purposes of this appeal, from the District Court's thorough recitation.[5]

A. The Parties' Relationship

On June 13, 2014, Ms. Golan, a United States citizen then living in New York, and Mr. Saada, an Italian citizen and resident, met at a wedding in Milan, Italy. Approximately two months later, Ms. Golan relocated to Milan and moved in with Mr. Saada. The parties were married on August 18, 2015, and Ms. Golan became pregnant shortly thereafter. The couple's first and only child, B.A.S., was born in Milan in June 2016.

Mr. Saada and Ms. Golan's "relationship was violent and contentious almost from the beginning."[6] The couple "fought frequently," and "Mr. Saada physically, psychologically, emotionally and verbally abused Ms. Golan."[7] Among other things, Mr. Saada yelled at Ms. Golan, called her names, slapped her, pushed her, pulled her hair,

---

[5] *See Saada v. Golan*, No. 18-CV-5292(AMD)(LB), 2019 WL 1317868 (E.D.N.Y. Mar. 22, 2019).

[6] *Id.* at *5.

[7] *Id.* at *4.

threw a glass bottle in her direction, and, during a conversation with Ms. Golan's brother, threatened to kill her. These incidents, many of which occurred in the presence of B.A.S., "were not sporadic or isolated . . . but happened repeatedly throughout the course of the parties' relationship."[8]

Despite the significant problems in their relationship, Mr. Saada and Ms. Golan continued living together in Milan after B.A.S. was born. They secured for B.A.S. an Italian passport, medical coverage, identification cards, and a certificate of residence, and enrolled B.A.S. in a local daycare. With the exception of several trips abroad, B.A.S. lived continuously in Milan for the first two years of his life.

In July 2018, Ms. Golan traveled with B.A.S. to the United States to attend her brother's wedding. After the wedding, Ms. Golan elected not to return to Italy and moved with B.A.S. to a confidential domestic violence shelter in New York.

B. Procedural History

In Fall 2018, Mr. Saada filed a criminal complaint against Ms. Golan and initiated civil proceedings, including custody proceedings, in Italy. He also commenced this action under the Hague Convention. In January 2019, the District Court held a nine-day bench trial at which seventeen lay and expert witnesses, including Mr. Saada and Ms. Golan, testified.

On March 22, 2019, the District Court granted Mr. Saada's petition. After a careful review of the evidence, the District Court first concluded that Italy is B.A.S.'s ha-

---

[8] *Id.* at *18 (internal quotation marks omitted).

bitual residence for the purposes of the Hague Convention. The District Court acknowledged that Ms. Golan had repeatedly expressed an intent to return to the United States, and that Mr. Saada was aware of this intent. In the District Court's view, however, the totality of the circumstances—and, in particular, Ms. Golan's conduct—"established B.A.S. as a[n] habitual resident of Italy."[9]

Next, the District Court determined that Ms. Golan had established that repatriating B.A.S. to Italy would expose him to a grave risk of harm. Specifically, the District Court concluded that exposing B.A.S. to severe and continuing domestic violence of the type documented in this action could have significant adverse effects on his psychological health and development. This conclusion was based on both undisputed expert testimony and the facts of this case, including the District Court's findings that "Mr. Saada has to date not demonstrated a capacity to change his behavior," has "minimized or tried to excuse his violent conduct," and "could not control his anger or take responsibility for his behavior."[10]

Finally, the District Court held that a suite of conditions—or "undertakings"—would "sufficiently ameliorate the grave risk of harm to B.A.S." and granted Mr. Saada's petition subject to those conditions.[11] The undertakings include, among others, requirements that Mr. Saada (1) give Ms. Golan $30,000 before B.A.S. is returned to Italy, for housing, financial support, and legal fees; (2) stay away from Ms. Golan; and (3) visit B.A.S. only with Ms. Golan's consent.

---

[9] *Id.* at *16.

[10] *Id.* at *18.

[11] *Id.* at *19.

This appeal followed.

II. DISCUSSION

On appeal, Ms. Golan challenges the District Court's conclusion that Italy is B.A.S.'s habitual residence, and its decision to grant Mr. Saada's petition subject to the enumerated undertakings. We affirm the District Court's habitual-residence determination but vacate its order insofar as it grants Mr. Saada's petition.

A. Standard of Review

In cases arising under the Hague Convention, we review a district court's factual findings for clear error and its legal conclusions—including its interpretation of the Convention and its application of relevant legal standards to the facts—*de novo*.[12] Thus, as relevant here, although "[t]he habitual residence inquiry is heavily fact dependent, . . . whether the relevant facts satisfy the legal standard is a question of law that we review *de novo*."[13]

B. Country of Habitual Residence

We take up first Ms. Golan's challenge to the District Court's conclusion that Italy is B.A.S.'s habitual residence for the purposes of the Hague Convention.

---

[12] Oza*ltin v. Ozaltin*, 708 F.3d 355, 368 (2d Cir. 2013).

[13] *Guzzo v. Cristofano*, 719 F.3d 100, 109 (2d Cir. 2013). On June 10, 2019, the Supreme Court granted *certiorari* to resolve a split among the Courts of Appeal concerning the appropriate standard of review for habitual-residence determinations. *See Taglieri v. Monasky*, 907 F.3d 404 (6th Cir. 2018) (en banc), *cert. granted*, No. 18-935, --- U.S. ---- , 139 S.Ct. 2691, --- L.Ed.2d --- , 2019 WL 266837 (U.S. June 10, 2019). Since we affirm the District Court's conclusion that Italy is B.A.S.'s habitual residence under the least deferential standard—*de novo* review—we would necessarily affirm under the more deferential standards that other Circuits have applied.

In determining habitual residence, courts in this Circuit "inquire into the shared intent of those entitled to fix the child's residence (usually the parents) at the latest time that their intent was shared," considering both "actions" and "declarations."[14] We have observed that "[f]ocusing on intentions gives contour to the objective, factual circumstances surrounding the child's presence in a given location."[15] But we have also cautioned that, at bottom, this inquiry "is designed simply to ascertain where a child usually or customarily lives."[16]

On review, we see no error in the District Court's conclusion that Italy is B.A.S.'s country of habitual residence. We acknowledge that certain evidence, particularly the declarations of both parties concerning Ms. Golan's intent to return to the United States, supports Ms. Golan's position. But we agree with the District Court that the parties' actions tell a different story—namely, that Italy, where B.A.S. spent almost the entirety of the first two years of his life, is the country where he "usually or customarily lives."[17] Accordingly, we affirm the District Court's habitual-residence determination.

C. Undertakings

Ms. Golan also challenges the District Court's decision to grant Mr. Saada's petition notwithstanding its determination that repatriating B.A.S. would expose him to a grave risk of harm.[18] In particular, Ms. Golan contends

---

[14] *Gitter v. Gitter*, 396 F.3d 124, 134 (2d Cir. 2005).

[15] *Id.* at 132.

[16] *Guzzo*, 719 F.3d at 109.

[17] *See id.*

[18] Mr. Saada does not contest the District Court's grave-risk determination, and we do not revisit it here.

that the District Court erred in concluding that a suite of undertakings—or promises by Mr. Saada—sufficiently ameliorates the grave risk of harm to B.A.S.

We have long recognized that district courts are "vested with considerable discretion under the [Hague] Convention."[19] Thus, even where the abducting parent establishes that repatriating his or her child would expose the child to a grave risk of harm, a district court "is not necessarily bound to allow the child to remain with the abducting parent."[20] In exercising their discretion in such cases, district courts must "take into account any ameliorative measures (by the parents and by the authorities of the state having jurisdiction over the question of custody) that can reduce whatever risk might otherwise be associated with a child's repatriation."[21] Insofar as certain of these measures might be undertaken by courts in the country of habitual residence, then "the exercise of comity that is at the heart of the [Hague] Convention" requires us "to place our trust in th[ose] court[s] . . . to issue whatever orders may be necessary to safeguard children who come before [them]."[22]

---

[19] *Souratgar v. Lee*, 720 F.3d 96, 103 (2d Cir. 2013).

[20] *Blondin v. Dubois*, 189 F.3d 240, 246 n.4 (2d Cir. 1999); *see also* Hague Convention, art. 13 (permitting, but not requiring, contracting states to decline "to order the return of the child" if certain exceptions are established); U.S. Dep't of State, Hague International Child Abduction Convention; Text and Legal Analysis, 51 Fed. Reg. 10,494, 10,509 (Mar. 26, 1986) ("[A] finding that one or more of the exceptions provided by Articles 13 and 20 are applicable does not make refusal of a return order mandatory. The courts retain the discretion to order the child returned even if they consider that one or more of the exceptions applies.").

[21] *Blondin*, 189 F.3d at 248.

[22] *Id.* at 248–49.

At the same time, the jurisdiction of our district courts is not limitless. As the Eleventh Circuit has aptly observed, "reviewing courts are free to enter conditional return orders" but "retain no power to enforce those orders across national borders."[23] And in those instances in which our courts lack jurisdiction to redress non- compliance, "even the most carefully crafted conditions of return may prove ineffective in protecting a child from risk of harm."[24] We conclude that, in cases in which a district court has determined that repatriating a child will expose him or her to a grave risk of harm, unenforceable undertakings are generally disfavored,[25] particularly where there is reason to question whether the petitioning parent will comply with the undertakings and there are no other "sufficient guarantees of performance."[26]

---

[23] *Baran v. Beaty*, 526 F.3d 1340, 1350 (11th Cir. 2008); *cf. Ermini v. Vittori*, 758 F.3d 153, 168 (2d Cir. 2014) ("Once a determination properly applying the Convention to the facts at hand has been made, all other issues leave the realm of the treaty's domain. The Convention is not, and cannot be, a treaty to enforce future foreign custody orders, nor to predict future harms or their dissipation.").

[24] *Baran*, 526 F.3d at 1350; *see also Danaipour v. McLarey*, 286 F.3d 1, 21 (1st Cir. 2002) ("The court entertaining the petition must recognize the limits on its authority and must focus on the particular situation of the child in question in order to determine if the undertakings will suffice to protect the child.").

[25] *Baran*, 526 F.3d at 1350; *see also Danaipour v. McLarey*, 286 F.3d 1, 21 (1st Cir. 2002) ("The court entertaining the petition must recognize the limits on its authority and must focus on the particular situation of the child in question in order to determine if the undertakings will suffice to protect the child.").

[26] *See Walsh v. Walsh*, 221 F.3d 204, 219 (1st Cir. 2000) ("A potential grave risk of harm can, at times, be mitigated sufficiently by the acceptance of undertakings and *sufficient guarantees of performance of those undertakings*." (emphasis added)).

In this case, it is undisputed that many of the undertakings the District Court imposed are unenforceable because they need not—or cannot—be executed until after B.A.S. is returned to Italy. This includes several conditions that, under the circumstances, are essential to mitigating the grave risk of harm B.A.S. faces—namely, promises by Mr. Saada to stay away from Ms. Golan after she and B.A.S. return to Italy and to visit B.A.S. only with Ms. Golan's consent.[27] The District Court's factual findings provide ample reason to doubt that Mr. Saada will comply with these conditions.[28] And the record does not otherwise contain evidence of sufficient guarantees of performance. Under the circumstances, we are not convinced that these particular undertakings are sufficient to mitigate the undisputed grave risk of harm that B.A.S. faces if returned to Italy. Accordingly, we vacate the District Court's order insofar as it granted Mr. Saada's petition subject to the conditions enumerated therein.

D. Availability of Alternative Ameliorative Measures

Having determined that the undertakings the District Court imposed are insufficient under the circumstances presented here, we must determine whether to direct the District Court to deny Mr. Saada's petition or to remand for further proceedings concerning the availability of alternative measures. In our view, the latter course is more appropriate.

As we have previously observed, in cases of this nature, it is important for courts to consider "the [full] range

---

[27] *See* note 11 and accompanying text, *ante*.

[28] *See* note 10 and accompanying text, *ante*; *see also Saada*, 2019 WL 1317868, at *18 (recounting testimony of Mr. Saada's expert that Mr. Saada's "reliability was 'down the tube'").

of remedies that might allow *both* the return of the children to their home country *and* their protection from harm."[29] District courts have "broad equitable discretion to develop a thorough record" on potential ameliorative measures.[30] And, in our view, it is by no means inevitable that there will be *no* conditions conducive to balancing our commitment to ensuring that children are not exposed to a grave risk of harm with our general obligation under the Hague Convention to allow courts in the country of habitual residence to address the merits of custody disputes.[31]

On review, we cannot conclude that the record before the District Court would have permitted a finding that this is such a case. Accordingly, we think it appropriate to remand the cause to the District Court for further proceedings. On remand, the District Court must determine whether there exist alternative ameliorative measures that are either enforceable by the District Court or, if not directly enforceable, are supported by other sufficient guarantees of performance.

In doing so, the District Court may consider, among other things, whether Italian courts will enforce key conditions such as Mr. Saada's promises to stay away from Ms. Golan and to visit B.A.S. only with Ms. Golan's con-

---

[29] *Blondin*, 189 F.3d at 249 (emphasis in original).

[30] *Id.*

[31] *See Blondin v. Dubois*, 238 F.3d 153, 163 (2d Cir. 2001) (affirming district court's decision declining to order return and emphasizing that "*uncontested* expert testimony" established that "the children will face a recurrence of traumatic stress disorder if repatriated" (emphasis added)); *see also id.* at 162 (noting that "the authorities in [the country of habitual residence]—for reasons entirely beyond their control—cannot provide the children with the necessary protection").

sent. There is some dispute concerning whether it is appropriate for courts in the United States to condition orders of return on a foreign court's entry of an order containing similar protective measures.[32] But we do not think that international comity precludes district courts from ordering, where practicable, that one or both of the parties apply to courts in the country of habitual residence for any available relief that might ameliorate the grave risk of harm to the child.[33] So long as the purpose of such an order is to ascertain the types of protections actually available, and the district court does not condition a child's return on any particular action by the foreign court, there is little risk that this "practice would smack of coercion of the foreign court."[34]

---

[32] *Compare Danaipour*, 286 F.3d at 23 ("Conditioning a return order on a foreign court's entry of an order . . . raises serious comity concerns."), *with Baran*, 526 F.3d at 1349 ("Undertakings may take many forms, including direct orders by the reviewing court providing conditional return of the child and mirror-orders (also called safe harbor orders) requiring the petitioning parent to obtain a conditional custody order in the country of habitual residence before return of the child is ordered.").

[33] In most cases, the international comity norms underlying the Hague Convention require courts in the United States to assume that an order by a foreign court imposing protective measures will guarantee performance of those measures. *See* note 22 and accompanying text, *ante*. But, in certain circumstances, even a foreign court order might not suffice. *See Simcox*, 511 F.3d at 608 ("[U]ndertakings would be particularly inappropriate . . . in cases where the petitioner has a history of ignoring court orders."); *Walsh*, 221 F.3d at 221 (rejecting use of undertakings where petitioning parent "violated the orders of the courts of Massachusetts" and "the courts of Ireland," and there was "every reason to believe that he [would] violate the undertakings he made to the district court in this case and any barring orders from the Irish courts").

[34] *Danaipour*, 286 F.3d at 23.

Here, the District Court has already found—and the parties do not dispute—that Italian courts are authorized by Italian law to enter "criminal and civil court orders of protection" and "orders of supervised visitation during the pendency of custody proceedings."[35] Although the Italian courts have not entered any such orders to date in the matter before us, this might be attributable in part to the parties' failure to apply for relief, in the ongoing custody proceedings or otherwise. On remand, the District Court may consider whether it is practicable at this stage of the proceedings to require one or both of the parties to do so.[36] The District Court may then take into account any corresponding decision by the Italian courts in determining whether there are sufficient guarantees of performance of protective measures that will mitigate the grave risk of harm B.A.S. faces if repatriated.

This is, of course, just one of several avenues the District Court may elect to pursue. As an initial matter, the District Court can attempt to revise certain of the undertakings it imposed in a manner that would render them directly enforceable—for example, by requiring Mr. Saada to comply with the condition before B.A.S. is repatriated.[37]

In addition, as we have previously recognized, the District Court can use its "broad equitable discretion" to "request[ ] the aid of the United States Department of State,

---

[35] *See Saada*, 2019 WL 1317868, at *13.

[36] And, it almost goes without saying, the parties can petition the Italian courts to impose protective measures even without prompting by the District Court.

[37] We note, for instance, that the condition pertaining to monetary support requires Mr. Saada to act before B.A.S. returns to Italy. *See* note 11 and accompanying text, *ante*.

which can communicate directly with" the government of Italy to ascertain whether it is willing and able to enforce certain protective measures.[38] Finally, the District Court can solicit from the parties additional evidence concerning whether—and, if so, to what extent—Mr. Saada has undertaken to abide by any of the currently unenforceable conditions. We leave these matters to the informed discretion of the District Court and "trust that [it] will conduct the[ ] proceedings on remand with the same dispatch that properly characterized its initial consideration" of the petition.[39]

III. CONCLUSION

To summarize, we hold that:

(1) The District Court did not err in concluding that Italy is B.A.S.'s "habitual residence" for the purposes of the Hague Convention.

(2) In cases in which a court has determined that repatriating a child will expose him or her to "a grave risk of harm," unenforceable undertakings are generally disfavored, particularly where there is reason to question whether the petitioning parent will comply with the undertakings and there are no other sufficient guarantees of performance. Here, the District Court erred in granting the petition subject to (largely) unenforceable undertakings despite adverse factual findings concerning Mr. Saada's credibility and the absence of

[38] *Blondin*, 189 F.3d at 249.

[39] *Id.*

other sufficient guarantees of performance.

(3) Because the record before the District Court does not support the conclusion that there exist no protective measures sufficient to ameliorate the grave risk of harm B.A.S. faces if repatriated, remand for further proceedings is appropriate.

(4) On remand, the District Court should consider whether there exist alternative ameliorative measures that are either enforceable by the District Court or supported by other sufficient guarantees of performance.

(5) Where, as here, the safety of a minor is at risk, the District Court, if it deems practicable, may direct one or both of the parties to petition Italian courts for the imposition of any appropriate protective measures. The District Court may take into account any corresponding decision by the Italian courts in determining whether to issue an order of return.

For the foregoing reasons, the District Court's March 22, 2019 order is **AFFIRMED IN PART** and **VACATED IN PART**, and the cause is **REMANDED** for further proceedings. In the interest of judicial economy, any future appeals in this action will be referred to this panel.

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

No. 1:18-CV-5292 (AMD) (LB)

ISACCO JACKY SAADA,
Petitioner,

– against –

NARKIS ALIZA GOLAN,
Respondent.

Filed: March 22, 2019

MEMORANDUM AND ORDER

DONNELLY, District Judge.

The petitioner, Isacco Jacky Saada, brings this case against the respondent, Narkis Aliza Golan, pursuant to the Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention"), as implemented by the International Child Abduction Remedies Act ("ICARA"), 22 U.S.C. §§ 9001-9011. Mr. Saada, an Italian citizen, seeks the immediate return of his two and a half year old son, B.A.S., to Italy. He alleges that in August of 2018 Ms. Golan, the child's mother and an American citizen, wrongfully kept B.A.S. in the United States.

Mr. Saada filed this petition on September 19, 2018.[1] (ECF No. 1.) A nine day bench trial began on January 7, 2019, during which Mr. Saada called 11 witnesses, including four experts. Ms. Golan called six witnesses, including three experts.

Based on my review of the entire record, the parties' submissions and arguments, and my observations of the witnesses at trial, I conclude that the petition should be granted, subject to certain conditions to ensure the child's safety.

I do not come to this conclusion lightly. The record is clear that Mr. Saada's abuse of Ms. Golan and the parties' volatile relationship is harmful to B.A.S. But I do not act as a family court. My task is not to determine the best interests of B.A.S. or Ms. Golan, or to impose custody arrangements. Under the Hague Convention, I must determine whether B.A.S. should be returned to Italy for custody proceedings. I must first decide whether B.A.S.'s habitual residence is Italy, and if it is, whether he would be subject to grave risk of harm upon repatriation, and whether there are any measures that can ameliorate that risk. For the reasons set forth below, I find that B.A.S.'s habitual residence is Italy, that he would be subject to grave risk of harm upon repatriation, and that there are measures that can be taken to ameliorate the risk.

FINDINGS OF FACT

[1] At the Court's direction, Ms. Golan surrendered her passport, as well as B.A.S.'s passport for the pendency of the proceedings. The parties negotiated supervised visitation during the adjudication of the petition.

The 31 year old petitioner, an Italian citizen, was born and currently resides in Milan, Italy. (ECF No. 39 ¶ 1; Tr. 820:3-8.) He has worked at his father's fashion and garment manufacturing company since he was 17 years old. (Tr. 52:4-6, 820:12-20; *see also* Tr. 1053:16-19.) The 28 year old respondent, an American citizen, was born in Brooklyn, New York, and currently resides in New York. (ECF No. 39 ¶ 2.) Mr. Saada and Ms. Golan have one child, two and a half year old B.A.S., who was born in Italy and has dual Italian and American citizenship. (*Id.* ¶ 3; R-8 at 1; R-12.)

The evidence established that the parties' relationship was turbulent from its inception, characterized by loud arguments and violence, most of which was perpetrated by Mr. Saada. At trial, neither Mr. Saada nor Ms. Golan was entirely credible. Mr. Saada admitted that he was violent toward Ms. Golan, but downplayed the frequency and severity of the abuse, and at points in his testimony, excused his behavior as justified by Ms. Golan's "provocation." For her part, Ms. Golan exaggerated at points in her testimony. She was sometimes evasive and feigned confusion or failure of memory when confronted with evidence that she perceived to be unhelpful to her position.[2]

---

[2] Following the trial, the petitioner's attorney alerted the Court to Ms. Golan's postings on social media. Although the Court took steps to protect B.A.S.'s identity, given the highly personal and sensitive evidence about B.A.S. and his parents, Ms. Golan posted photographs of herself and B.A.S. on Instagram and encouraged her more than 200 followers to "follow" the trial. (ECF No. 54-1.) She included various hashtags: #judgeanndonnelly, #ellendegeneres, #michelleobama, #oprahwinfrey, #donttakemybaby, and #domesticviolencesurvivor. (*Id.* at 1-3.) One of the captions stated, "I am currently awaiting a court response by #judgeanndonnelly who is to decide whether my abuser gets to take my son back to his habitual place of birth or that perhaps we've been through enough and can stay here,

In the context of this case, however, the parties' credibility deficits were less significant because of the independent evidence—in the form of text messages, photographs, and Ms. Golan's contemporaneous recordings—of Mr. Saada's violence toward Ms. Golan, often in front of the young child who is the subject of this proceeding.

I. HABITUAL RESIDENCE

The parties met at a wedding in Milan, Italy, on June 13, 2014. (Tr. 23:21-22, 821:17-19.) They started a relationship, and on August 25, 2014, Ms. Golan moved to Milan. (Tr. 27:14-18, 195:10-15, 822:25-823:6.) At first, she stayed with Mr. Saada at one of his family's apartments, in the same building where his family lived, at Via Luigi Soderini 35, Milan, Italy.[3] (Tr. 27:19-29:3, 820:23-821:9; ECF No. 39 ¶ 4.)

The couple broke up in October of 2014, and Ms. Golan returned to New York. (Tr. 832:21-25, 835:18-20.) They reconciled about two months later, in December, and Mr. Saada came to New York to see Ms. Golan. (Tr. 835:21-836:5.) They were engaged on February 18, 2015, and lived together in Milan in an apartment away from Mr. Saada's family until September of 2015. (Tr. 44:13-19, 847:22-848:15, 856:9-15.) They were married in a religious

---

in my country where I know I'm safe and protected. Follow my story on google (saada vs. Golan)." (*Id.* at 1.) In another post, she stated, "I've remained quiet for 2 years of your life because daddy and his family have lots of money and power. Something mommy didn't have." (*Id.* at 2.)

[3] Mr. Saada's grandparents lived in an apartment on the second floor, his parents and two brothers lived in an apartment on the third floor, and his sister, her husband, and their three children lived in an apartment on the fifth floor. (Tr. 821:3-13.)

ceremony[4] on August 18, 2015, in Tel Aviv, Israel.[5] (Tr. 24:11-18, 986:23-987:6.)

The parties lived in Italy after the marriage. (Tr. 59:17-20.) Although Ms. Golan did not want to live with Mr. Saada's family, the couple moved to an apartment in the building where Mr. Saada's family lived. (Tr. 59:23-60:18, 62:2-4; *see also* Tr. 856:23-857:20.) Ms. Golan got pregnant around September of 2015. (Tr. 281:2-8.) During a 2016 trip to New York, she explored the possibility of having the baby at Coney Island Hospital, but subsequently returned to Milan. (Tr. 77:10-78:2.)

B.A.S. was born in Milan in June of 2016. (Tr. 861:22-862:1; P-59.) Mr. Saada and Ms. Golan filled out and signed various documents for B.A.S.; they got him an Italian passport, medical coverage, identification cards, and a certificate of residence.[6] (Tr. 865:1-20, 1015:5-9; P-35; P-58; P-60.) They continued to live in the same apartment, and B.A.S. received all of his medical care in Italy.[7] (Tr. 237:8-11, 1015:22-24.) In March of 2017, Ms. Golan regis-

---

[4] They never registered the marriage in any country; as a result, Ms. Golan could not work legally in Italy. (Tr. 24:17-18, 157:22-158:6, 914:17-21; R-8 at 1; R-9 at 1.)

[5] In papers opposing the petition, Ms. Golan described her marriage as "arranged" by her family. (ECF No. 20 ¶ 6.) She testified that she meant that her aunt and cousin introduced her to Mr. Saada, and she "felt a little bit pressured to get married." (Tr. 258:10-259:15.)

[6] Ms. Golan testified that Mr. Saada drove her to these places right after B.A.S. was born, and that she did not understand the paperwork that she signed. (Tr. 86:19-87:9.)

[7] Mr. Saada's sister, Jenny Saada, who lived in the family building, testified that B.A.S. had a close relationship with her three children, ages five, three, and one. (Tr. 1255:12-1256:9.)

tered B.A.S.'s birth abroad with the United States consulate in Italy without telling Mr. Saada. (Tr. 227:11-15, 231:7-17, 890:2-4; R-12.)

Before July of 2018, B.A.S. had left Italy only three times: twice to Israel, and once, with both parents, to the United States in the summer of 2017. (Tr. 96:21-97:1, 137:23-138:8, 209:15-25, 872:24-873:6, 886:17-18.)

On July 28, 2017, while she and Mr. Saada were in the United States, Ms. Golan applied for a Social Security card for B.A.S., but did not tell Mr. Saada. (Tr. 141:14-16, 889:24-890:1; R-11.) On August 15, 2017, Ms. Golan filed a custody petition in New York Family Court, Kings County seeking full custody of B.A.S. (Tr. 142:17-143:3; R-14.) The Kings County Family Court dismissed the case for lack of jurisdiction.[8] (Tr. 1425:14-21.) In any event, Ms. Golan returned to Italy, because Mr. Saada promised to change, "work on" their marriage and go to counseling. (Tr. 143:22-144:8.) Around this time, the parties enrolled B.A.S. in Scuola del Merkos, a school and daycare, in Milan. (P-88; Tr. 205:1-11.)

In January of 2018, Mr. Saada came to New York after a fight with his brother over the family business. (Tr. 918:14-22; *see also* Tr. 163:10-16, 371:14-372:2, 918:14-23; R-29.) He considered getting an apartment for himself, Ms. Golan, and B.A.S. (Tr. 374:6-18.) He also looked at boutique storefront locations, met with business contacts, and talked to Ms. Golan's brother, Eldar Golan, about going into business. (Tr. 161:22-162:15, 371:14-22, 374:6-13.) Ultimately, he decided not to move to New York because his father agreed to give him an increased share of the

[8] At some point, Ms. Golan gave Mr. Saada a copy of the custody petition, which he apparently ripped up. (Tr. 143:10-14.)

family business. (Tr. 163:24-164:6, 374:24-375:4, 918:18-25.)

On July 18, 2018, Ms. Golan and B.A.S. flew to the United States, with Mr. Saada's consent, to attend Eldar Golan's wedding. (ECF No. 39 ¶ 5; Tr. 172:8-13.) Although they were scheduled to return to Italy on August 15, 2018, Ms. Golan stayed in New York, and moved to a confidential domestic violence shelter.[9] (ECF No. 39 ¶¶ 5-6; *see also* Tr. 172:19-24, 176:9-16, 901:25-902:6; P-46.)

Ms. Golan claimed that she never agreed to live permanently in Italy or to have B.A.S. live there. (Tr. 142:14-16; *see also* Tr. 917:14-918:13.) And Mr. Saada testified that Ms. Golan "would just try all these years just to make me, make me fight with my family, take me away ... bring me to America. That was all her plan from day one." (Tr. 967:20-23.) She "always told [him] she want[ed] to move to the U.S.," she asked him "constantly" to "move to the U.S.," and her "often-expressed desire to move to the United States" was a "point of contention" in their relationship, causing frequent arguments. (Tr. 917:14-918:13; *see also* ECF No. 31 ¶ 6.) But Mr. Saada never agreed to move to the United States. (*See* Tr. 917:14-918:25.)

Ms. Golan left Milan without Mr. Saada both before and after B.A.S. was born, but until July 2018, always returned to Milan. She claimed that she returned only because Mr. Saada and his family promised that he would not assault her and that he would seek help. (*See* Tr. 41:7-13, 44:3-14, 58:23-59:18, 78:1-12, 143:22-144:10, 214:25-215:18.)

---

[9] Ms. Golan reported that she could not stay with her mother, who lives in Brooklyn. (R-296 at 27.)

On September 19, 2018, Mr. Saada filed a criminal complaint in Milan, accusing Ms. Golan of kidnapping B.A.S. (R-8 at 3.) He initiated this action the next day. (ECF No. 1.) He also commenced civil proceedings in Italy. (R-9 at 9-32.) Mr. Saada subsequently filed for sole custody of B.A.S. in Italy.[10] (Trib. Di Milano-Sezione IX Civile, 8 Novembre 2018, RG n. 51492/2018.)

II. VIOLENCE AND ABUSE

The evidence established that Mr. Saada and Ms. Golan fought frequently, and that Mr. Saada physically, psychologically, emotionally and verbally abused Ms. Golan. He admitted that he slapped, pushed, and grabbed Ms. Golan. (Tr. 842:25-843:16, 956:16-25; *see also* R-313 at 12-13.) He estimated that he slapped Ms. Golan five or six times, pulled her hair three or four times, pushed her four or five times, threw a glass bottle during an argument, yelled, swore, and called her names.[11] (Tr. 842:25-844:15.) He also told Ms. Golan's family that he would kill her, although he said he made the threat only out of anger. (Tr. 844:18-21.) Mr. Saada admitted that he tried to restrain Ms. Golan, got "violent," was "impulsive," "los[t] control" when he got "angry," and hit Ms. Golan "to shut her up."

---

[10] Mr. Saada states in his post-trial brief that the "custody action in Milan is scheduled for April 9th." (ECF No. 59 at 37 n.23.)

[11] Mr. Saada frequently insulted Ms. Golan in front of other people, including family, friends, and at least one time, police officers. (*See, e.g.*, R-17; R-17A; R-18; R-18A; Tr. 602:20-603:3; *see also* R-20; R-20A.) He called her "animal," "bitch," "a cancer," "crazy," "dirt," "disgusting," an "escort," "fucking asshole," "garbage," "*hadia* [shit]," "lowlife," "*merda* [shit]," "piece of shit," "poison," "psychopath," "stupid," "tramp," and "whore." (*See, e.g.*, Tr. 107:9-19, 926:5-7; R-5 at 4; R-17; R-17A at 1, 12, 14; R-18; R-18A at 2; R-19; R-19A at 2; R-21; R-21A at 1; R-24; R-24A at 5.)

(Tr. 956:19-25, 967:7-12, 991:23-992:4, 1003:16-20.) He summarized their relationship this way:

> I knew when I met Narkis that she came from a broken home and she really come with the best intention the first time to Milano. I know I did a lot of mistakes, too. I'm a cheater, I get violent, I say things that I shouldn't say, maybe sometime I, in a stupid way, I took advantage—not advantage, but not—I felt comfortable doing certain things because she didn't know to, maybe to protect herself. I mean, I did a lot of bad things to Narkis. . . .

(Tr. 967:10-12.)

Mr. Saada and Ms. Golan fought "on a daily basis." (Tr. 966:6-7.) The fights often resulted in one of them leaving the house. (Tr. 966:11-15.) Mr. Saada was "sure" that B.A.S. heard "screaming and fighting and yelling." (Tr. 969:4-10.)

Although Mr. Saada was far and away the more violent, there were times when Ms. Golan fought with and yelled at him. She conceded that she scratched and kicked Mr. Saada, and verbally abused him. (Tr. 106:6-15, 223:7-25; R-5 at 5.) According to Mr. Saada, Ms. Golan slapped him a few times, scratched him about ten times, bit him about five or six times, spit in his face, kicked him, and often yelled at him. (Tr. 844:22-25, 845:3-25, 846:21-847:1.) She called him names, insulted his family, and at one point said that she wished his family would die. (Tr. 847:2-7, 847:12-13.)

There is no significant evidence that Mr. Saada was intentionally violent to B.A.S. Eldar Golan described one time that Mr. Saada put B.A.S. on his shoulder when B.A.S. was crying, and "hit him really hard on his behind." (Tr. 370:21-371:2.) Ms. Golan claimed that Mr. Saada,

while dragging her out of the apartment, also pushed B.A.S. (Tr. 156:10-21.) However, Ms. Golan frequently left B.A.S. with Mr. Saada while she ran errands, or went out with friends. (*See* Tr. 536:6-18, 618:7-15, 1036:21-1037:19, 1042:13-18.) She also testified that she wants B.A.S. and Mr. Saada to have a relationship.[12] (Tr. 302:17-22.)

A. Incidents

1. Before B.A.S.'s Birth (December of 2014 to May of 2016)

The parties' relationship was violent and contentious almost from the beginning. During a December 2014 trip to New York, Mr. Saada slapped Ms. Golan; he admitted in a subsequent text message exchange that he had "smash[ed]"[13] Ms. Golan on two other occasions—once at a hotel and once at "[M]icol['s] wedding."[14] (Tr. 34:14-35:7, 39:8-40:20; R-39.) Ms. Golan testified that Mr. Saada slapped her while they were in Israel planning their wedding, an accusation that Mr. Saada denied. (Tr. 45:14-22, 849:19-23.)

On another occasion, after Mr. Saada argued with his mother about Ms. Golan's refusal to attend Shabbat dinner, Mr. Saada screamed at Ms. Golan, "You are poison. Look what you caused me to be.... You ruined me.... What are you, an animal?" (Tr. 46:1-14, 850:20-22; R-21; R-21A.) He threw a glass bottle, which shattered against a wall behind Ms. Golan. (Tr. 46:1-14, 850:20-22; R-21; R-21 A.)

---

[12] Similarly, Mr. Saada believed that Ms. Golan was a good mother, and that she was "an able and loving parent." (Tr. 999:25-1000:4.)

[13] Mr. Saada, whose first language is Italian, testified that when he wrote "smash," he actually meant "slap." (Tr. 838:3-6.)

[14] Mr. Saada admitted the New York incident, but claimed not to recall anything at a hotel or Micol's wedding. (Tr. 938:3-939:25.)

Ms. Golan testified that he aimed for her; Mr. Saada admitted that he threw the bottle, but said that he threw it at the wall opposite Ms. Golan.[15] (Tr. 46:1-14, 850:22-24.)

Mr. Saada also admitted that he slapped Ms. Golan in June of 2015 after she threw water in his face. (Tr. 944:17-25.) In a text message to Ms. Golan's mother, Mr. Saada said he "smash[ed] [Ms. Golan's] face without thinking as [a] reaction." (R-40 at 6.)

During the parties' honeymoon in Florida, Ms. Golan looked at Mr. Saada's iPad, and discovered that before their wedding he had sex with a prostitute in London.[16] (Tr. 49:22-51:25, 851:21-852:7.) Ms. Golan left at one point, and stayed with her grandmother in New York. (Tr. 52:15-25.) According to Ms. Golan, Mr. Saada came to the house, slapped her, pulled her hair, and punched her in the face. (Tr. 56:6-20.) Eldar Golan said that the parties were "yelling and screaming" at each other, and that Mr. Saada punched Ms. Golan in the face "several times." (Tr. 366:11-22.) Mr. Saada denied the violence; he said that Ms. Golan put her hands over her ears when he tried to apologize, so he tried to remove her hands from her ears. (Tr. 852:3-854:1, 956:10-957:19.)

Ms. Golan became pregnant with B.A.S. in September of 2015. (Tr. 281:2-8.) She testified that Mr. Saada attacked her several times while she was pregnant. On one occasion, when she and Mr. Saada were in a car, she told him that she could not continue their relationship and wanted to go back to New York. (Tr. 63:1-12.) Mr. Saada became angry and said, "You want to leave me? You think

---

[15] Ms. Golan made an audio recording of this incident. (R-21; R-21A.)

[16] Mr. Saada admitted that he slept with other women, including prostitutes and "models." (R-313 at 14 n.4; Tr. 926:8-25.)

you're going to leave me? Huh?" (Tr. 63:143-64:3.) He grabbed her by the hair, and "bash[ed] [her] face against the dashboard," causing her sunglasses to cut her face. (Tr. 64:4-12; *see also* Tr. 607:13-608:4.) Mr. Saada denied that this happened. (Tr. 858:1-6.)

Another time, Mr. Saada hit Ms. Golan because she missed Passover dinner with his family. (Tr. 79:19-80:20.)

Ms. Golan described an incident of "sexual violence" during her pregnancy. While she and Mr. Saada were having consensual sex, she felt pain and asked him to stop, but he refused. (Tr. 66:13-67:6.) Ms. Golan started bleeding, and thought she was having a miscarriage. (Tr. 67:21-68:3.) She told Mr. Saada that she wanted to go to the hospital; he told her to ask his parents for permission, because they were having Shabbat dinner. (Tr. 68:4-9.) Mr. Saada's mother, Caroline Darwich, dismissed Ms. Golan's concerns: "[A]s long as you don't have chunks coming out the size of lemons, you have nothing to worry about."[17] (Tr. 68:18-20.)

Mr. Saada eventually took Ms. Golan to the hospital where a doctor diagnosed her with "ripped tissue," and released her about an hour after she arrived. (Tr. 69:2-5, 70:4-6; R-305.) As they were leaving the hospital, Mr. Saada grabbed her by her hair, pushed her down, and dragged her, something Mr. Saada admitted in a text message to Ms. Golan's mother: "When we go out of hospital [I] was d[i]stressing and [I] pull her hair ... and then

---

[17] Ms. Golan claimed that Mr. Saada's family was also verbally abusive toward her. Ms. Darwich screamed and swore at her, and even told Mr. Saada to hit her. (*See, e.g.*, R-15; R-15A; R-23; R-23A; Tr. 80:1-20, 104:15-18.) Once, after Ms. Golan missed a family dinner, Ms. Darwich told Mr. Saada to "put some sense into this madwoman you married." (R-15; R-15A at 2.) Some of these incidents were recorded on audio and video. (*See, e.g.*, R-15; R-15A; R-23; R-23A.)

[I] pull her from her jacket .. I[']m not say[i]ng was [right] to pull her hair but [it] was an accumulation of stress that she keep put[t]ing me [through]."[18] (Tr. 70:8-71:11; R-44 at 1-2.)

Mr. Saada agreed that Ms. Golan was bleeding, but denied that she complained of pain during sex or asked him to stop. (Tr. 859:4-13, 959:11-960:10.) He claimed that he asked her repeatedly if she wanted to go to the hospital, and she said she wanted to wait. (Tr. 859:10-15.) It was not until the next day at Shabbat dinner that Ms. Golan said for the first time she wanted to go to the hospital. (Tr. 859:15-20.) Mr. Saada took her to the hospital, and was "upset" that she could not wait one more hour until dinner was over, since she "wait[ed] all day" to say she wanted to go to the hospital. (Tr. 859:18-23.) Mr. Saada was "annoyed or angry" with Ms. Golan for forcing him to take her to the hospital and missing the family dinner; she could "never let [him] enjoy any moment." (Tr. 963:5-15.) Mr. Saada admitted that he pulled Ms. Golan's hair, but said that she threw herself on the ground and screamed. (Tr. 860:11-16, 963:14-25; *see also* R-44 at 1-2.) He tried to pull her up, and told her to take a cab. (Tr. 964:1-3.) In the end, she went home with him. (Tr. 964:3-5.)

Another time during Ms. Golan's pregnancy, Mr. Saada became angry with Ms. Golan and "hipped" her while they were walking down the stairs, causing her to lose her balance and fall down a few stairs. (Tr. 64:21-63:12.) Mr. Saada said that he did not push her "down the

---

[18] Ms. Golan claimed two security guards watched Mr. Saada assault her, but did nothing, something Ms. Golan attributed to Mr. Saada's "family influence" over the them. (Tr. 71:5-11, 283:20-25, 285:9-14.) Ms. Golan made a similar claim about "family influence" over the Italian authorities in her response to the petition, but no such evidence was introduced at the trial. (ECF No. 20 ¶ 69.)

step," but pushed her toward the wall. (Tr. 860:6-10, 861:16-18.)

2. After B.A.S.'s Birth (June of 2016 to July of 2018)

Shortly after B.A.S. was born,[19] Mr. Saada got angry during a Monopoly game, and while B.A.S. was in the room, hit Ms. Golan's leg with a candle, causing a bruise. (Tr. 101:19-102:19; R-27.) Mr. Saada admitted that he was angry, but denied that he hit Ms. Golan. (Tr. 843:11-12, 871:9-11.)

Ms. Golan claimed that during a religious ceremony called "pidyon haben" at their apartment, Mr. Saada pulled her into their bedroom, and slapped her in the face with both hands. (Tr. 88:3-89:13.) B.A.S., who was about a month old, was in the room in his basinet (Tr. 88:23-24.) Mr. Saada denied that this incident occurred.[20] (Tr. 867:14-19.)

About a month later, the couple took B.A.S. to Israel for a vacation. (Tr. 96:21-97:1.) Ms. Golan claimed that Mr. Saada slapped and punched her while she was breastfeeding B.A.S., and that he made contact with B.A.S. (Tr. 97:2-98:15; *see also* Tr. 606:24-607:12.) According to Ms. Golan,

---

[19] Ms. Golan claimed that Mr. Saada forced her to leave the hospital before she was ready. (Tr. 86:1-18.)

[20] Ms. Golan's brother, Eldar Golan, visited the couple at least once in Milan, and also saw them on their trips to New York. He communicated with both, and socialized with Mr. Saada. Eldar was in Milan for B.A.S.'s bris in June of 2016, and stayed with Ms. Golan and Mr. Saada. (Tr. 367:17-368:1.) At one point, B.A.S. was crying; Mr. Saada put him on his shoulder, and "began to hit him really hard on his behind," and explained that he was "teaching [him] how to be a man." (Tr. 370:19-371:2.) Mr. Saada denied that he ever hit, spanked, or pushed B.A.S. (Tr. 897:4-898:5.)

the baby refused to eat for some time after the incident; she also developed a condition in her breast. (Tr. 98:16-25.) Mr. Saada denied the accusation. (Tr. 870:6-11.)

Ms. Golan also testified about an argument with Ms. Darwich, Mr. Saada's mother. Ms. Darwich wanted her to celebrate an upcoming holiday, but Ms. Golan told her that she had already made plans for that day, "asked her to respect me," and left the building. (Tr. 105:1-5.) When she returned, Mr. Saada was waiting outside. (Tr. 105:6-9.) He angrily demanded that she apologize to Ms. Darwich. (Tr. 105:9-20.) He then grabbed Ms. Golan by the hair, pushed her down, dragged her, and punched and kicked her while Ms. Darwich watched from her apartment balcony. (Tr. 105:2-106:5; *see also* Tr. 871:12-872:21.) Mr. Saada admitted that he was angry because Ms. Golan was not sufficiently respectful to his mother. (Tr. 969:24-970:5.) After initially claiming that Ms. Golan "thr[e]w herself in the ground," and "scream[ed] like crazy," he admitted that he pushed Ms. Golan, and "maybe" pulled her hair. (Tr. 871:12-872:21.)

Ms. Golan claimed generally that Mr. Saada forced her to have sex "a lot," and that there were times when she asked him to stop, and he refused; on at least one occasion, B.A.S. was in the bed with them. (Tr. 66:9-67:6, 92:18-93:5, 107:20-111:18.) On one occasion Mr. Saada threw her on the bed, grabbed her crotch, and demanded, "Who owns you, huh? Who owns you?" (Tr. 108:18-109:16.) He pressed his thumbs on her throat until she blacked out, and raped her.[21] (Tr. 109:19-111-1.) Mr. Saada denied this

[21] Ms. Golan described another incident of forcible sex, right after B.A.S. was born, that caused her internal stitches to rip. (Tr. 92:2-93:5; *see also* Tr. 609:11-13.)

accusation, and insisted that he never raped or sexually assaulted Ms. Golan. (Tr. 868:17-19.)

Ms. Golan took B.A.S. to visit her father in Israel in the spring of 2017; Mr. Saada stayed in Milan because his grandfather was very sick. (Tr. 209:13-210:8, 212:15-213:13, 872:24-873:11.) At one point, Mr. Saada asked Ms. Golan to come back to Italy so he could be with B.A.S. while his grandfather was dying. (Tr. 874:15-21.) Ms. Golan told Mr. Saada she was not coming back. (Tr. 227:5-10,874:22-875:8.) Mr. Saada wrote to Ms. Golan, "I wish u fucking die." (R-304 at 7.) In a later text message attempting to explain his behavior, he said he was "desperate" and "treat[ing] everyone like shit." (*Id.* at 24.) He also wrote, "I don't want to abuse u." (*Id.* at 13.)

Mr. Saada's grandfather died on April 22, 2017, while Ms. Golan and B.A.S. were still in Israel. (Tr. 874:6-12.) They returned to Italy four days later. (Tr. 214:11-20, 875:9-12.) Ms. Golan claimed that she returned because Mr. Saada and his family promised that Mr. Saada would change. (Tr. 214:21-215:2.)

On April 29, 2017, Mr. Saada's family hosted family and friends for the last day of Shiva. (Tr. 876:11-17, 877:4-8.) At one point, Mr. Saada's father said something that upset Ms. Golan, and she left with B.A.S. (Tr. 876:20-877:3.) Later that day Mr. Saada and Ms. Golan had an argument about keys, and Ms. Golan called the police.[22]

---

[22] This was not the first time that Ms. Golan called the Milan police to the Saada residence. She was out one night while her son was with a babysitter; she learned that Mr. Saada's father had taken B.A.S., who was asleep, up to his apartment on the third floor. (Tr. 268:2-269:1.) Ms. Golan said that she could not reach Mr. Saada's parents by phone, so she called the police instead; she wanted the police to tell the parents "to notify [her] before taking the child" because she was "afraid of them." (Tr. 268:9-13, 269:22-24.)

(Tr. 877:9-878:17.) She also threatened to call her mother, and Mr. Saada twisted her arm. (Tr. 112:5-11.) Ms. Darwich arrived at some point, and directed Mr. Saada to record Ms. Golan as she called the police.[23] (Tr. 878:11-17.)

Ms. Darwich then called her best friend, and asked her to send her attorney husband, Paolo Siniscalchi, because "[i]t's already the third time she called the police on us." (Tr. 878:2-7.) The police arrived and interviewed the parties separately. (Tr. 881:15-20.) Mr. Siniscalchi also arrived, directed everyone to calm down, and told them, "[T]his is not a game." (Tr. 881:21-24.) Mr. Saada asked the police not to involve Social Services; one of the officers responded that it was his responsibility to do so. (Tr. 882:15-20.)

Ms. Golan recorded a portion of the parties' interaction with the police, and Mr. Siniscalchi translated some of the conversation between Ms. Golan and the officers. (*See* R-17; R-17A.) At one point, Ms. Golan told the police that Mr. Saada did not hit her that day, but assaulted her when she was pregnant with B.A.S. (R-17; R-17A at 15-16.) The police asked if Ms. Golan wanted to go to a hotel. (R-17; R-17A at 17.) She initially said that she "want[ed] to take [her] son and ... go to a hotel," but later said, "We can work something out," and "I don't want to take my son away from [Mr. Saada] and I don't want him to take my son away from me." (R-17; R-17A at 16-18.) Ms. Golan did not want the police to arrest Mr. Saada; she wanted them to tell him not to hit her and to "warn him not to do it again." (Tr. 233:8-10.) The police ultimately referred the case to Milan Social Services. (*See* R-5.)

---

[23] Because Ms. Golan frequently recorded Mr. Saada, Ms. Darwich told him "Do the same. Now she's saying that you're beating her up, take the phone and record her." (Tr. 878:11-17.)

Social Services began an investigation in the fall of 2017, and representatives interviewed Mr. Saada and Ms. Golan separately about five or six times and together about ten times. (Tr. 884:2-25.) In a December 20, 2017 report, Social Services noted "highly concerning issues ... which are connected to the dynamics of the conflict existing between the two parents, and which also culminate in reciprocal acts of violence, both physical and psychological, as also recognized by both" Mr. Saada and Ms. Golan. (R-5 at 7.) The report cites Mr. Saada's "scarce awareness of the consequences of said conflicts on his family unit," and his tendency to "blame Ms. Golan entirely;" "even when recounting serious events, he minimizes the effects that they have on himself and the family relationships." (*Id.*) Moreover, Mr. Saada was "not very capable to comprehend that his behavior, even if not directed at the child, has a negative consequence on [the child's] development." (*Id.* at 4.)

The report also specified that social workers offered to place Ms. Golan in a safe house, but that she "declared she was feeling capable of keeping under control anything that might happen and manifested her difficulties in trying to concretely modify the status quo."[24] (R-5 at 7.) Social Services noted the "significant role ... played by the presence and proximity of Mr. Saada's extended family, which appears not to represent a resource in terms of marital conflict mediation but rather a reason for further discord." (*Id.*)

The report also commented on the financial aspects of the couple's relationship. "The financial issue seems to be a decisive factor in [Ms. Golan's] choices. . . ." (*Id.* at 5.)

---

[24] Ms. Golan claimed that she declined the safe house because she did not know if she could take B.A.S. with her. (Tr. 319:15-20.)

Ms. Golan stated that she "would leave [Mr. Saada] only if [she] was sure that [B.A.S.] could maintain the same lifestyle." (*Id.*) Ms. Golan had "neither a valid Permit to Stay nor financial autonomy," and therefore "could not be free, unrestricted from her husband and his family," and Mr. Saada kept her from gaining financial and legal independence. (*See, e.g.*, R-5 at 5; R-306.3; R-306.3A at 8; Tr. 157:22-158:8, 382:8-13.)

In the final session with Social Services, "both husband and wife said they had recently found a balance in their relationship, due to mutual commitment and also probably due to the involvement of a third party (Social Services and Judicial Authority)." (R-5 at 7.) Nevertheless, Social Services concluded that "the family situation entails a developmental danger for the [child]," and requested that the Judicial Authority "issue an order for the protection" of the child requiring psycho-diagnostic analysis of the parties, educational intervention, and "couple psychotherapy."[25] (*Id.* at 8.)

In May of 2017, Ms. Golan recorded Mr. Saada screaming at her to "get out of the fucking car" while she and B.A.S. were in the back seat. (Tr. 136:3-137:22; R-24; R-24A at 4-5.) At trial, Mr. Saada admitted that he screamed and cursed at Ms. Golan. (Tr. 989:5-15.)

In the middle of August 2017, during their trip to the United States, Ms. Golan and Mr. Saada were in Central Park with B.A.S. (Tr. 137:23-138:19, 889:7-16.) Ms. Golan told Mr. Saada that she could not find B.A.S.'s Italian passport, and asked him to sign a form so that B.A.S. could get a United States passport. (Tr. 138:13-21, 228:22-

[25] Ms. Golan testified that she went to Social Services with Elena Gemelli, a translator, and asked about the status of her case, but that "[t]hey brushed [her] off." (Tr. 153:24-154:19.)

229:9, 887:5-888:25; R-13 at 2.) According to Ms. Golan, Mr. Saada refused to sign the application, twisted her arm, and threatened to "destroy" her if she called the police.[26] (Tr. 138:13-139:2; 140:23-141:3; R-13 at 2.)

Ms. Golan did go to a police precinct in Brooklyn the next day, August 13, 2017, and told an officer that Mr. Saada threatened to "destroy" her, and reminded her that he "ha[d] money," that she "ha[d] nothing," and that his father could "buy the police." (Tr. 139:9-16; R-13 at 2.) Ms. Golan did not report any physical attack. (*See* R-13.) She completed a form with pre-printed questions, and checked "Yes" to questions that asked whether Mr. Saada had threatened to kill her or her child, strangled or choked her, and beaten her while pregnant. (*Id.* at 2.) She checked "No" for the question "Is there reasonable cause to suspect a child may be the victim of abuse, neglect, maltreatment or endangerment?" (*Id.*) According to Ms. Golan, the officer said that Mr. Saada would be arrested if he hit her while they were in New York.[27] (Tr. 233:22-23.)

Mr. Saada agreed that he and Ms. Golan argued in Central Park about the passport application, but said that Ms. Golan left the park. (Tr. 889:7-8, 889:13-14.) Ms. Golan called him a few hours later, and threatened to report him for kidnapping B.A.S. unless he brought B.A.S. to the hotel. (Tr. 889:15-21.) Mr. Saada said that he did not twist her arm.[28] (*See* Tr. 889:7-21.)

---

[26] B.A.S. never got a United States passport. (Tr. 140:23-141:3, 888:24-25.) Ms. Golan found his Italian passport before they returned to Italy. (Tr. 229:13-23.)

[27] The police did not question or arrest Mr. Saada. (Tr. 233:16-234:9.)

[28] Mr. Saada, Ms. Golan, and B.A.S. were scheduled to go to Jamaica with Ms. Golan's mother. (Tr. 229:10-12.) Ms. Golan decided to

In addition to filing the police report, Ms. Golan filed a custody petition in New York Family Court in August of 2017. (Tr. 142:17-143:3; R-14.) She also sent two recordings to her best friend, Mario Kravchenko—one was the audio recording of Mr. Saada throwing the glass bottle against a wall, and the other was the video recording, taken in a car, of Mr. Saada yelling at Ms. Golan while B.A.S. was in the back seat. (R-25; R-26; Tr. 624:5-8.)

Ms. Golan testified that on September 6, 2017, Mr. Saada twisted her arm and head-butted her. (Tr. 146:24-147:15.) She went to the emergency room, and got an X-ray and CAT scan for the lump that had formed on her forehead. (Tr. 145:25-146:15, 146:24-147:16; R-37 at 3.) In a message to a friend, Ms. Golan said that she was "scared," but could not tell medical personnel that she was afraid to go home because they would "send social services." (R-48 at 12.) Mr. Saada denied head-butting her or twisting her arm. (Tr. 885:18-23.)

According to Ms. Golan, after Milan Social Services completed its investigation at the end of 2017, she and Mr. Saada continued to argue, and Mr. Saada continued to be violent. Ms. Golan testified that during an argument after a Shabbat dinner Mr. Saada tried to drag her out of their apartment while B.A.S. was holding her leg. (Tr. 156:6-13.) Mr. Saada pushed B.A.S. with one hand while he dragged Ms. Golan with the other, and B.A.S. fell. (Tr. 156:10-21.) Mr. Saada denied this accusation. (Tr. 897:22-898:3.)

In early 2018, Mr. Saada and Ms. Golan went to a wedding. (Tr. 167:3-7, 898:6-12; ECF No. 20 ¶ 77.) According to Ms. Golan, Mr. Saada dragged her into a bathroom,

---

stay in the United States with B.A.S., and Mr. Saada went on the trip with Ms. Golan's mother. (Tr. 230:9-16, 337:23-338:6.)

locked the door, and slammed her head against a wall after she became upset with him for "flirting and dancing and touching other girls inappropriately." (Tr. 167:8-24; *see also* Tr. 608:5-11.) He told her that her jealousy meant that she did not "understand" how much he "fucking love[d]" her. (Tr. 167:11-168:2.) Mr. Saada agreed that they attended the wedding, but denied any violence; he said that he and Ms. Golan shared a romantic kiss next to a bathroom. (Tr. 898:13-23.)

At some point in 2018, Ms. Golan sought legal help from an Italian lawyer. (Tr. 171:21-172:5.) In July of 2018, Mr. Saada found a letter from the lawyer, and confronted Ms. Golan about it while they were driving on a highway with B.A.S. in the back seat.[29] (Tr. 170:14-171:3; *see also* Tr. 840:1-2.) Ms. Golan claimed that Mr. Saada, driving at a high speed, grabbed and twisted her crotch area, and said, "Who owns you? Who owns you?" (Tr. 170:14-171:6; *accord* Tr. 608:17-18.) Ms. Golan bit his hand, and he punched her in the face. (Tr. 171:7-12.)

Mr. Saada agreed that they were arguing in the car, but said that it was Ms. Golan who initiated the attack on him; she scratched, hit and slapped him. (Tr. 840:1-5, 992:16-17.) In an effort to defend himself, he pushed her away; he did not "know where [his] hand was going." (Tr. 840:6-7, 841:7-17, 990:1-13.) He admitted that he "slapped her to shut her up," and that he hit her "more than once," but did so only because she was scratching him and biting his arm while he was driving. (Tr. 991:24-992:21.) According to Mr. Saada, the incident was "very dangerous," and could have "ma[d]e an accident and my son die, too." (Tr. 991:24-993:7; R-19; R-19A at 3.)

---

[29] Ms. Golan testified that Mr. Saada was also angry about missing a tennis lesson. (Tr. 170:23-24.)

Ms. Golan brought B.A.S. to the United States in July of 2018 so that she could attend the wedding of her brother, Eldar Golan. (Tr. 172:8-13, 1005:14-18.) During that time, she and Mr. Saada, who was still in Milan, communicated only sporadically.[30] (Tr. 173:1-5.) But Mr. Saada was in regular contact with Ms. Golan's brother. (*See* Tr. 174:9-11, 381:10-19.) In one call to Eldar, Mr. Saada said that if Ms. Golan came back to Italy, she would "be leaving in a pine box" or he would "drive her into a mental ward."[31] (Tr. 386:9-11; *see also* Tr. 386:25-387:1.) Eldar Golan recorded one conversation, in which Mr. Saada said the following:

> So, what she tells you, she come to you, and tell you that I beat her up, yea, maybe I beat her up. I apply the . . . pressure that I can but she put you in the situation where you have to defend yourself. She is a psychopath, and you can laugh here, and you can think that I'm lying but this is the truth. . . . I smash her means not that I beat her up, I kill her. I smash her to shut her fucking ugly mouth, the–the curse, and the things she do. And then she come to you, and cry like she is a—like she is a small dog abandoned, but it's not like this. She, uh, behaves like an evil. She say the worst thing in the world that make the person crazy. . . . So it's not that I beat up because I am violent, it's not that I beat up every day. . . . I think if you were in my position, you was beating her up a hundred time more. . . .

---

[30] According to Ms. Golan, Mr. Saada blocked her from contacting him on his phone. (Tr. 173:1-5.)

[31] Ms. Golan testified that Mr. Saada had previously threatened that "the only way out of this marriage is in a coffin." (Tr. 353:22-354:4.)

(R-19; R-19A at 2-3.)

In another call that Eldar Golan recorded, Mr. Saada threatened that he would make sure Ms. Golan had no money if she returned to Milan. (R-20; R-20A at 2-5.) He refused to help her get legal status or find a place to live in Italy, saying, "[I]f she make a request, they going to give her an apartment, a crappy one, and . . . full of Arabs and all the N—ers." (R-20; R-20A at 4.)

Days later, Ms. Darwich left a voice message for Ms. Golan admitting that Mr. Saada had "a problem—a lot of problem." (R-306.2; R-306.2A at 2.) Ms. Golan left her a voice message:

> [Y]ou're the only person that can help me – help us. You know, Jacky listens to you.... So please help me. Because I'm standing here, and I'm afraid to come back. And this is always like this. It's always been like this. Every time I come here, he fights with me.

(R-306.3; R-306.3A at 10.)

Ms. Darwich responded in a voice message that it was Ms. Golan who "must change," that she "must be *Eishet Chayil* [a woman of valor] and take the situation and make him happy. If not, I don't think there is another solution. I'm sorry to say. . . ." (R-306.5; R-306.5A at 2.)

B. Diane Hessemann's Testimony

During the adjudication of this petition, licensed social worker Diane Hessemann supervised visits between Mr. Saada and B.A.S. Ms. Hessemann testified that B.A.S. and Mr. Saada seemed happy together, that their relationship appeared to be loving, and that B.A.S. did not

seem to be at all afraid of Mr. Saada.[32] (Tr. 1106:12-16, 1110:21-23, 1112:14-15.)

C. Expert Testimony and Submissions

1. Risk of Harm

The parties called four experts in the area of domestic abuse and its effects on children.

Dr. Alberto Yohananoff, a psychologist with 25 years of experience and training in forensic evaluation, testified for Mr. Saada, as did Dr. Peter Favaro, a licensed psychologist with over 30 years of experience, who reviewed the reports submitted by Ms. Golan's experts. Dr. Yohananoff conducted four clinical interviews with Mr. Saada for a total of 11 hours, and two hours of observation of interactions between Mr. Saada and B.A.S. (R-313 at 3.) Dr. Favaro did not evaluate the parties or B.A.S. (Tr. 1360:21-1361:2.)

Dr. Stephanie Brandt, an adult and child psychiatrist with over 30 years of experience who has testified in other Hague Convention cases, testified for Ms. Golan, as did Dr. Edward Tronick, a developmental and licensed clinical psychologist who has done research and written articles and books, including on the organization of adult-infant interactions and the risk factors for infants and parents. Dr. Brandt conducted four clinical interviews with Ms. Golan for a total of seven and a half hours, and two additional clinical interviews with Ms. Golan and B.A.S. together. (R-296 at 2.) Dr. Tronick did not evaluate the parties or B.A.S. (Tr. 650:2-651:4.)

---

[32] Ms. Hessemann also saw Ms. Golan when she dropped B.A.S. off. At one point, Ms. Golan accused Ms. Hessemann of accepting dresses from Mr. Saada as a form of bribery. (Tr. 1126:11-1128:20.)

Each expert had impressive credentials, and all were essentially credible. They agreed that domestic violence can have a significant effect on a child, even if the child is not the target of the violence. Dr. Tronick testified that exposure to domestic violence has immediate effects on young children's cognitive, social, and emotional development and their ability to "regulate stress." (Tr. 631:6-11.) It also has physiologic effects and both immediate and long-term effects on the brain structure and organization. (Tr. 631:12-15.) In Dr. Tronick's view, exposure to domestic violence could have particularly severe effects on a child as young as B.A.S. because of the stage of brain development at that age. (*See* Tr. 631:3-15.) Continued exposure or re-exposure to domestic violence, whether directed at the child or witnessed by the child, has a cumulative effect on the child and increases the likelihood of later effects. (Tr. 631:19-23.) According to Dr. Brandt, exposure to domestic violence can result in "a known high risk for the development of serious long-term mental and even medical consequences," and she described the "toxic and pathogenic effect" on children and their brains. (R-296 at 4.) Drs. Yohananoff and Favaro agreed that domestic violence has an effect on young children. (Tr. 1197:14-15, 1362:8-11.)

The experts also agreed that exposure to Mr. Saada's undisputed violence toward Ms. Golan—including verbal, emotional, psychological, and physical abuse—posed a significant risk of harm to B.A.S. (*See* Tr. 1210:4-8, 1213:3-11, 1220:14-19, 1235:20-1236:14; R-313 at 22; *accord* Tr. 575:17-20; R-296 at 4-10.) Dr. Yohananoff testified that Mr. Saada could not control his anger or his behavior, or take responsibility for its effect on B.A.S. (Tr. 1197:23-25, 1219:10-1220:19.) Dr. Yohananoff believed Mr. Saada was "motivated in the evaluation to vindicate himself," was not "completely honest," and was "likely underreporting" his

abuse of Ms. Golan; Mr. Saada's "impulsive behavior, emotional reactivity, poor tolerance frustration, difficulties thinking through the consequences of his behavior, questionable judgment and a potential for explosive anger when confronted with stressful situations" could have an adverse effect on B.A.S. (Tr. 1213:12-1214:24; R.313 at 7, 22.) Dr. Yohananoff acknowledged that Mr. Saada's trial admissions of behavior that he denied in pre-trial interviews meant that his reliability was "down the tube." (Tr. 1215:8-17.)

Drs. Yohananoff and Brandt parted company on the question of ameliorative measures should B.A.S. return to Italy.[33] Dr. Brandt took the position that there were no measures that could protect B.A.S. given Mr. Saada's history of violence not to B.A.S., but to Ms. Golan. (Tr. 593:10-594:12.) Dr. Yohananoff, on the other hand, thought that any risk would be mitigated if Mr. Saada's visits with B.A.S. were supervised, and if Mr. Saada got parental coaching and psychoeducational training. (Tr. 1202:8-1204:2, 1245:12-19.)[34]

---

[33] Dr. Brandt believed that B.A.S. was an "at risk" child who was less resilient or adaptive and thus particularly susceptible to stress due to his exposure to domestic violence. (Tr. 423:3-23.) She diagnosed B.A.S. with a severe developmental delay in his speech and language development, but acknowledged that the cause was not necessarily the child's exposure to domestic violence. (R-296 at 12-13; Tr. 579:22-580:1.)

[34] Dr. Brandt diagnosed Ms. Golan with post-traumatic stress disorder as a result of Mr. Saada's abuse. (R-296 at 10-11.) Dr. Yohananoff did not think Dr. Brandt could conclusively find that Mr. Saada caused Ms. Golan's PTSD, since Ms. Golan experienced "significant trauma" as a child. (Tr. 1199:20-1200:15.) Drs. Brandt and Yohananoff also disagreed about whether there was sufficient data to conclude that Mr. Saada engaged in a persistent pattern of severe abuse. Dr. Brandt characterized Mr. Saada's violence as a "very long-

In my view, it was Dr. Yohananoff who provided the clearest and most objective evaluation of the parties' relationship, and the potential risks to B.A.S. As part of his evaluation, he not only interviewed Mr. Saada, he consulted collateral sources and made use of psychological testing. Dr. Brandt relied only on her interviews of Ms. Golan and her observations of B.A.S., and on Ms. Golan's account of her experience.

She was also more of an advocate for Ms. Golan than an objective evaluator. She appeared to accept everything Ms. Golan said at face value, without consulting any independent sources.[35] Dr. Yohananoff was far more detached in his evaluation of Mr. Saada; he did not hesitate to point out areas of concern nor was he defensive when confronted with Mr. Saada's testimony, which varied from the statements he made when Dr. Yohananoff interviewed him.

2. Italian Legal System

Two experts testified about the Italian legal system's approach and capacity to handle cases of domestic violence.

Mr. Saada called Cinzia Calabrese, an Italian civil lawyer specializing in family law who has practiced for 34

---

standing pattern" of intimidation and control, while Dr. Yohananoff did not think there was enough information "to firmly establish a persistent pattern of domestic abuse." (Tr. 440:19-441:6, 1187:13-15, 1196:21-1197:4.)

[35] For example, Dr. Brandt believed that Ms. Golan's behavior that seemed misleading or manipulative was not actually intentionally misleading or manipulative, but rather the result of childhood trauma; she noted that Ms. Golan was aware that her "vague, out-of-sequence, or ... incomplete narrative[s]" can appear manipulative. (R-296 at 11-12, 40.)

years in Milan and is president of the AIAF Lombardia "Milena Pini," an Italian organization of lawyers specializing in family and minor issues. Ms. Calabrese described the structural protections in place for domestic violence victims, which include criminal and civil court orders of protection, orders of supervised visitation during the pendency of custody proceedings, and appointments of expert psychologists and psychiatrists to evaluate parent-child relationships and domestic violence allegations in custody proceedings. (Tr. 1284:5-25, 1287:14-1289:18, 1291:5-21.) Ms. Calabrese also discussed the free legal services available at a specialized department for victims of family and sexual violence in Milan's public prosecutor's office. (Tr. 1285:12-18, 1286:8-15; *accord* Tr. 804:11-805:2.)

Ms. Golan called Elena Biaggioni, a criminal lawyer who chairs a network of domestic violence organizations in Italy and is Vice President of the Center for the Elimination of Violence Against Women in Trento, Italy. Ms. Biaggioni represents victims of domestic violence in criminal proceedings; her civil matters, which account for about five percent of her work, are limited to juvenile courts. (*See* Tr. 676:20-677:9, 775:21-25.) Ms. Biaggioni spoke in generalities about the flaws in the Italian legal system and its ability to protect domestic violence victims. (*See, e.g.*, Tr. 686:25-687:18, 692:22-694:9, 714:4-716:12; R-295 ¶¶ 58-59.) She acknowledged, however, that other countries, including the United States, also had some of these shortcomings. (*See* Tr. 720:13-721:9, 774:19-775:20, 807:13-808:4; *see also* Tr. 761:5-10.) According to Ms. Biaggioni, Italian courts are dismissive of a victim's custody petitions, and courts often award custody to abusive fathers, sometimes at the expense of children's safety or without sufficient protections surrounding visitation. (R-295 ¶¶ 94-95; *see also* Tr. 713:15-19.) She noted that the European Court of Human Rights, the Council of Europe,

and the United Nations have criticized Italian courts and prosecutors for "systemic failures" to protect victims of domestic violence. (*See, e.g.*, R-295 at 392-400, 478, 482-83, 613-32; *see also* R-295 at 52-120; Tr. 711:23-712:7; *accord* Tr. 1299:10-14.)

In my view, Dr. Calabrese provided a clearer picture of the structure of the Italian legal system and the tools available to domestic violence victims in Italy. Although Dr. Biaggioni credibly testified about certain shortcomings in the Italian legal system, she spoke in broad terms, citing anecdotal evidence, but few specifics. She acknowledged that other countries also had flaws in their systems, including the United States. In any event, both experts agreed that orders of protection are available to domestic violence victims, and I credit Dr. Calabrese's testimony about the Italian legal system's ability to handle domestic violence cases involving children.

3. Domestic Violence Services in Milan

Elena Antonucci, an obstetrician and gynecologist, testified about a specialized hospital for domestic violence victims in Milan. The hospital center has psychologists, social workers, doctors, and lawyers to assist victims of domestic violence, and provide free legal advice. (Tr. 1018:23-1019:6.) The center also trains health professionals and law enforcement. (Tr. 1019:11-13.) Ms. Golan's expert, Ms. Biaggioni, acknowledged that these services "go beyond the traditional and necessary medical assistance," and include psychological and social counseling for victims of domestic abuse. (Tr. 798:16-799:4.)

CONCLUSIONS OF LAW

The Hague Convention is intended to " 'protect children internationally from the harmful effects of their

wrongful removal by establishing procedures to ensure their prompt return to the State of their habitual residence,' so that the 'rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.' " *Souratgar v. Lee*, 720 F.3d 96, 101-02 (2d Cir. 2013) (*quoting Abbott v. Abbott*, 560 U.S. 1, 32 n.6 (2010) and *Chafin v. Chafin*, 133 S. Ct. 1017, 1021 (2013)). The Convention is particularly focused on instances of "unilateral removal or retention of children by those close to them, such as parents, guardians, or family members." *Gitter v. Gitter*, 396 F.3d 124, 129 (2d Cir. 2005) (citation omitted). The Convention's remedy is repatriation, which "is designed to preserve the status quo in the child's country of habitual residence and deter parents from crossing international boundaries in search of a more sympathetic court." *Souratgar*, 720 F.3d at 102 (internal quotations omitted). Both the United States and Italy are contracting states to the Convention. *Ermini v. Vittori*, 758 F.3d 153, 156 (2d Cir. 2014).

When a child is wrongfully removed from his or her country of habitual residence by one parent, the other parent may commence a proceeding to repatriate the child to the country of habitual residence. *Souratgar*, 720 F.3d at 102. "The decision concerning repatriation shall 'not be taken to be a determination on the merits of any custody issue.' " *Id.* (quoting *Blondin v. Dubois ("Blondin I")*, 189 F.3d 240, 245 (2d Cir. 1999)); *see also Mota v. Castillo*, 692 F.3d 108, 112 (2d Cir. 2012) ("[T]he Convention's focus is simply upon whether a child should be returned to her country of habitual residence for custody proceedings.").

A petitioner bringing a Hague Convention action for the wrongful retention of a child must show that (1) the child was "habitually resident" in one contracting state

and was retained in another contracting state; (2) the retention breached the petitioner's custody rights under the law of the contracting state of habitual residence; and (3) the petitioner was exercising those rights at the time of retention or would have been exercising those rights but for the retention. *Gitter*, 396 F.3d at 130-31; *Hofmann v. Sender*, 716 F.3d 282, 291 (2d Cir. 2013). The petitioner must prove these elements by a preponderance of the evidence. *Gitter*, 396 F.3d at 131 (citing 42 U.S.C. § 11603(e)(1)(A), now codified at 22 U.S.C.§ 9003(e)(1)(A)).

If the petitioner establishes that the child's retention was wrongful, "the child *must be returned*" unless the respondent can establish one of the four defenses to a Hague Convention petition. *Souratgar*, 720 F.3d at 102 (emphasis in original) (quoting *Blondin I*, 189 F.3d at 245); *see also* 22 U.S.C. § 9001(a)(4). Of particular relevance to this case is the defense of grave risk of harm; the respondent raising this defense must show by clear and convincing evidence that "there is a grave risk that [the child's] return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation." Convention, art. 13(b); 22 U.S.C. § 9003(e)(2)(A). "Subsidiary facts may be proven by a preponderance of the evidence." *Souratgar*, 720 F.3d at 103.

District courts have "considerable discretion" under the Hague Convention. *Id.* (quoting *Blondin I*, 189 F.3d at 246 n. 4.). Indeed, even if the respondent establishes one of the "narrow" defenses, " 'the district court is not necessarily bound to allow the child to remain with the abducting parent' " *Id.*

I. HABITUAL RESIDENCE

The parties agree that Ms. Golan removed B.A.S. from Italy with Mr. Saada's consent, that she retained him in

the United States without Mr. Saada's consent, in breach of Mr. Saada's "rights of custody," as defined in Article 5(a) of the Hague Convention, under Italian law, and that Mr. Saada was exercising those rights when Ms. Golan kept B.A.S. in the United States. (ECF No. 39 ¶¶ 5, 8.) Mr. Saada must prove that Italy was the child's habitual residence at the time Ms. Golan kept him in the United States.

Mr. Saada argues that B.A.S. spent his entire life in Italy, making Italy his habitual residence at the time Ms. Golan refused to bring him back to Italy. (ECF No. 59 at 20, 26.) Ms. Golan counters that B.A.S. never had a habitual residence on the theory that his parents did not share a settled intent that the child would be raised in Italy. (ECF No. 58 ¶ 8.)

In most Hague Convention cases, "determining the child's country of habitual residence is a threshold issue," because the laws of the country of habitual residence "determine the custody rights recognized by the Convention." *Guzzo v. Cristofano*, 719 F.3d 100, 108 (2d Cir. 2013) (citing Convention, art. 3). The Convention does not define "habitually resident," but the Second Circuit instructs courts to make the following inquiries:

> First, the court should inquire into the shared intent of those entitled to fix the child's residence (usually the parents) at the latest time that their intent was shared. In making this determination the court should look, as always in determining intent, at actions as well as declarations. Normally the shared intent of the parents should control the habitual residence of the child. Second, the court should inquire whether the evidence unequivocally points to the conclusion that the child has acclimatized to the new location and thus has acquired a new habitual residence, notwithstanding any conflict with the parents' latest shared intent.

Gitter, 396 F.3d at 134. "In the easy case," the parents agree on the child's habitual residence; in most Hague Convention cases, the parents do not agree on the issue. *Id.* at 133. "It then becomes the court's task to determine the intentions of the parents as of the last time that their intentions were shared," which "is a question of fact in which the findings of the district court are entitled to deference." *Id.* The habitual residence inquiry requires consideration of "the unique circumstances of each case." *Holder v. Holder*, 392 F.3d 1009, 1016 (9th Cir. 2004).

I conclude that Italy was B.A.S.'s habitual residence at the time Ms. Golan kept him in the United States. B.A.S. was born in Italy and lived there until the summer of 2018 when Ms. Golan brought him to the United States. The parties' only shared residence was in Italy, where they lived for more than a year before B.A.S. was born, and it became B.A.S.'s home as well. He went to preschool in Italy, his doctors were there, as was his extended family. Before Ms. Golan brought him to the United States, B.A.S. had left Italy only three times, for short trips. *See Holder*, 392 F.3d at 1020 ("[I]f a child is born where the parents have their habitual residence, the child normally should be regarded as a habitual resident of that country.").

Ms. Golan asks me to find that B.A.S. had no habitual residence; she argues that she and Mr. Saada never shared a settled intent that Italy would be B.A.S.'s habitual residence, that she conditioned her own residence in Milan on Mr. Saada's promise to change, a promise he did not keep, and that she and B.A.S. lived in Italy only because Mr. Saada exercised coercive control over her.

Ms. Golan cites her longstanding wish to return to the United States as evidence that she and Mr. Saada had no shared intent regarding B.A.S.'s habitual residence. The

record shows that she expressed a desire to return to the United States from the beginning of her marriage, well before B.A.S. was born. However, in determining the question of shared intent, "the court should look, as always in determining intent, at actions as well as declarations." *Gitter*, 396 F.3d at 134. Ms. Golan's actions show that she intended that Italy be B.A.S.'s habitual residence. She established a home with Mr. Saada in Milan, and continued to live there with him after B.A.S. was born. Ms. Golan participated in decisions about B.A.S.'s life in Milan. She and Mr. Saada enrolled him in school, got him a pediatrician, and secured various forms of Italian identification for him. *Cf. Guzzo*, 719 F.3d at 104-05 (parents agreed mother would have custody of child and child would attend school in New York, mother home-schooled the child in English, and child was insured through Medicaid and received primary medical treatment in the United States). While Ms. Golan might have hoped to move to the United States, her actions established B.A.S. as a habitual resident of Italy.

The record is equally clear that Mr. Saada never shared her wish to move to the United States. He took no action to get himself established in the United States, and did not agree to any of the steps that Ms. Golan wanted to take with respect to B.A.S.; he would not agree to get B.A.S. a United States passport, and did not know that Ms. Golan had tried to get B.A.S. a Social Security card, that she had registered his birth with the United States Consulate, or that she had considered giving birth at Coney Island Hospital.

I do not agree that Mr. Saada's trip to New York in January of 2018 was an agreement to change B.A.S.'s habitual residence. The trip—which stemmed from a business dispute with his brother—was merely exploratory;

Mr. Saada looked into possible business and living arrangements in New York, but never committed to moving, and never looked into schools or doctors for B.A.S. Within a couple of weeks, he had patched up his relationship with his brother, and decided to stay in Italy. He never agreed to move B.A.S. to the United States.

See Guzzo, 719 F.3d at 104. Moreover, Mr. Saada did not deceive Ms. Golan into establishing Italy as B.A.S.'s residence. *See Gitter*, 396 F.3d at 135 (father secretly established residence in Israel while telling his wife that the move was only temporary).

I am not persuaded that Ms. Golan's agreement to live in Italy was solely conditioned on Mr. Saada's promise to change his behavior. There is no evidence that Mr. Saada agreed that Ms. Golan could move with B.A.S. if he did not meet this condition. *See Gitter*, 396 F.3d at 135 (parties agreed to move to Israel on a conditional basis).

I also reject Ms. Golan's claim that she and B.A.S. remained in Italy only because Mr. Saada exercised coercive control over her. Of course, "coerced residence is not habitual residence within the meaning of the Hague Convention." *Application of Ponath*, 829 F. Supp. 363, 368 (D. Utah 1993). Mr. Saada was without a doubt physically aggressive toward Ms. Golan; they fought on a daily basis, fights that often ended in violence, almost always perpetrated by Mr. Saada. The record does not, however, establish that Mr. Saada "so dominated decisions and controlled information" to the point where Ms. Golan did not know that he planned to keep B.A.S. in Italy. *See Tsarbopulos v. Tsarbopulos*, 176 F. Supp. 2d 1045, 1055 (E.D. Wash. 2001) (father hid his intent to move the family permanently to Greece from the United States, and mother did not share that intent). Nor did Mr. Saada keep Ms. Golan prisoner in Italy. While she relied on him and his

family for financial support, she had a degree of independence. She spent time with friends in Milan and travelled internationally by herself and with B.A.S. She sometimes refused to attend family gatherings, and made use of the legal system; she called the police about Mr. Saada and his family, and frequently recorded or otherwise memorialized Mr. Saada's attacks. Given this record, I do not agree that Ms. Golan's will was overborne so that she did not intend B.A.S. to be habitually resident in Italy.

In short, the parties' last shared intent was to have B.A.S. live in Italy. Thus, Italy was the child's habitual residence at the time Ms. Golan kept him in the United States.[36]

II. GRAVE RISK OF PHYSICAL OR PSYCHOLOGICAL HARM

The next step in the analysis is to determine whether the respondent established one of the affirmative defenses to wrongful retention. Ms. Golan asserts one affirmative defense—"grave risk of harm." Specifically, she argues that returning B.A.S. to Italy would expose him to physical or psychological harm. I agree that Ms. Golan has met her burden in this regard.

A. Grave Risk of Harm

Article 13(b) of the Convention provides that "a grave risk of harm" from repatriating the child to the country of habitual residence arises "in cases of serious abuse or neglect, or extraordinary emotional dependence, when the

---

[36] I do not address the second *Gitter* inquiry—whether "the child has acclimatized to the new location and thus has acquired a new habitual residence"—because the respondent does not assert, and the evidence does not support, that B.A.S.'s habitual residence changed to the United States.

court in the country of habitual residence, for whatever reason, may be incapable or unwilling to give the child adequate protection." *Souratgar*, 720 F.3d at 103 (internal quotations omitted). According to the Second Circuit, "[t]he potential harm to the child must be severe, and the level of risk and danger required to trigger this exception has consistently been held to be very high." *Id.* (internal quotations omitted). The grave risk determination includes both "the magnitude of the potential harm" and "the probability that the harm will materialize." *Id.* The grave risk exception "is to be interpreted narrowly, lest it swallow the rule." *Id.* The respondent must prove grave risk of harm "by clear and convincing evidence." 22 U.S.C. § 9003(e)(2)(A).

The Second Circuit instructs courts considering this question to take care to differentiate between "those situations where repatriation might cause inconvenience or hardship, eliminate certain educational or economic opportunities, or not comport with the child's preferences," and "situations in which the child faces a real risk of being hurt, physically or psychologically, as a result of repatriation." *Blondin v. Dubois ("Blondin II")*, 238 F.3d 153, 162 (2d Cir. 2001). The former situations are not considered grave risks of harm; the latter are. *Id.*

The grave risk of harm need not take the form of direct physical abuse to the child. A history of spousal abuse "though not directed at the child, can support the grave risk of harm defense, as could a showing of the child's exposure to such abuse." *Id.* (internal quotations and citations omitted); *see also Ermini*, 758 F.3d at 164–65 (spousal abuse can establish a grave risk of harm to the child in certain circumstances). "[A] sustained pattern of physical abuse and/ or a propensity for violent abuse" that poses "an intolerably grave risk to the child" can establish

the exception to the preference for repatriation. *Souratgar*, 720 F.3d at 104 (internal quotations omitted).

However, the history of domestic violence is relevant only "if it seriously endangers the child." *Souratgar*, 720 F.3d at 103-104. "The Article 13(b) inquiry is not whether repatriation would place the respondent parent's safety at grave risk, but whether so doing would subject the child to a grave risk of physical or psychological harm." *Id.* at 104. "Sporadic or isolated incidents" of physically disciplining the child, "or some limited incidents aimed at persons other than the child, even if witnessed by the child" are generally not grave risks of harm. *Id.*

There is no dispute that Mr. Saada was violent— physically, psychologically, emotionally, and verbally—to Ms. Golan, or that B.A.S. was present for much of it. Mr. Saada admitted that he slapped Ms. Golan, pulled her hair, pushed her, and yelled at her. These were not "sporadic or isolated incidents" or "some limited instances," but happened repeatedly throughout the course of the parties' relationship. The pattern is corroborated by contemporaneous texts, in which Mr. Saada described what he did, and his attempts to explain it away, as well as audio and video recordings. There are particularly chilling recordings in which Mr. Saada is screaming and swearing at Ms. Golan, often while B.A.S. was there. And although he disputed Ms. Golan's account of how it started, Mr. Saada also admitted a physical altercation with Ms. Golan while B.A.S. was in the car and while Mr. Saada was driving at a high speed.[37]

---

[37] I do not agree that B.A.S. was himself the target of violence. There were isolated incidents of possible abuse—the overly aggressive "spanking" that Eldar Golan described, Ms. Golan's claim that Mr. Saada inadvertently hit B.A.S. when he meant to hit Ms. Golan, and an episode in which Mr. Saada pushed B.A.S. *See Souratgar*, 720

Nor is there any dispute that a child who is exposed to domestic violence, even though not the target of abuse, could face a grave risk of harm. Dr. Tronick explained that domestic violence disrupts a child's cognitive and social-emotional development, and affects the structure and organization of the child's brain. Dr. Brandt described the "toxic and pathogenic effect" on children and their brains. Dr. Favaro testified that the presence of domestic violence has an effect on children, and Dr. Yohananoff testified that domestic violence—Mr. Saada's violence toward Ms. Golan—poses a risk to B.A.S. Similarly, Italian Social Services concluded that "the family situation entails a developmental danger" for B.A.S.

The evidence makes it equally clear that Mr. Saada has to date not demonstrated a capacity to change his behavior. During his testimony, Mr. Saada minimized or tried to excuse his violent conduct. His own expert said that Mr. Saada had in all likelihood lied about the frequency and severity of his abuse, that his reliability was "down the tube," and that he could not control his anger or take responsibility for his behavior, which was also evidenced by the fact that he frequently abused Ms. Golan in front of other people—his family and even hospital employees.

Accordingly, Ms. Golan established by clear and convincing evidence that returning the child to Italy would subject the child to a grave risk of harm.

F.3d at 104. It is significant that Ms. Golan did not see Mr. Saada as a threat to B.A.S.; she frequently left B.A.S. with Mr. Saada while she ran errands or socialized with friends. She also said that she wants Mr. Saada to have a relationship with B.A.S.

III. UNDERTAKINGS OR AMELIORATIVE MEASURES

Having found that repatriation poses a grave risk of harm to B.A.S., I must consider whether there are "any ameliorative measures (by the parents and by the authorities of the state having jurisdiction over the question of custody) that can reduce whatever risk might otherwise be associated with the child's repatriation." *Blondin I*, 189 F.3d at 248. In other words, I consider whether there are any measures that could protect B.A.S. "while still honoring the important treaty commitment to allow custodial determinations to be made—if at all possible—by the court of the child's home country." *Id.*

Thus, I consider "the range of remedies that might allow *both*" the child's return and his protection from harm pending a custody determination in the child's country of habitual residence. *Id.* at 249 (emphasis in original). "In cases of serious abuse, before a court may deny repatriation on the ground that a grave risk of harm exists under Article 13(b), it must examine the full range of options that might make possible the safe return of a child to the home country."*Blondin II*, 238 F.3d at 163, n.11. To that end, I directed the parties to propose ameliorative measures that could achieve this goal.

Ms. Golan takes the position that there are no steps that would protect B.A.S., and no way to ensure that Mr. Saada would comply with them.[38] (ECF No. 58 at 96-101.) I disagree. First, Ms. Golan and Mr. Saada will no longer

[38] Ms. Golan supplied a list of undertakings with the understanding that she was not forfeiting her claim that no undertakings could ensure B.A.S.'s safety.

be living together, and eliminating the element of proximity will reduce the occasions for violence.[39] Second, Mr. Saada has agreed to take certain steps before B.A.S. comes back to Italy. In my judgment, those steps would ameliorate the grave risk to B.A.S. posed by Mr. Saada's abusive behavior to Ms. Golan.

Mr. Saada testified that he would stay away from Ms. Golan if she were to return to Italy, and give her money, before B.A.S. returns to Italy, for her own apartment and for expenses for her and B.A.S. until the Italian courts address the custody issues. (Tr. 909:11-910:3.) In his post-trial submission, Mr. Saada confirmed that he would agree to the following undertakings: (1) give Ms. Golan $30,000, before B.A.S. returns, for housing without restrictions on location in Italy, financial support, and legal fees until the Italian courts address those issues; (2) mutual agreement to stay away from Ms. Golan until the Italian courts address this issue;[40] (3) pursue dismissal of criminal charges against Ms. Golan relating to her abduc-

---

[39] I reject Ms. Golan's claim that Mr. Saada and his family have some power over Italian law enforcement officials. Ms. Golan cites the police response to her call in April of 2017, but in my view, the police response was appropriate. It led to the Social Services investigation, and subsequent series of sessions that Social Services conducted with the parties. Nothing in the record suggests that Mr. Saada ignored or violated any orders or directives. The involvement of family friend and attorney Paulo Siniscalchi did not affect the way the police handled the investigation. The police did not arrest Mr. Saada, but Ms. Golan admitted that she did not want him arrested; she wanted the police to warn him not to hit her again.

[40] Mr. Saada also acknowledged that he could "only exercise visitation with the child upon [Ms. Golan's] consent" "[u]ntil there is an order of the Italian courts stating otherwise, ... although [he] ha[s] equal rights of custody." (ECF No. 59 at 37 n.23.)

tion of B.A.S.; (4) begin cognitive behavioral therapy in Italy; and (5) waive any and all rights to legal fees or expenses under the Hague Convention and ICARA for the prosecution of this action. (ECF No. 59 at 39.)

Ms. Golan proposed similar undertakings: that Mr. Saada drop and promise not to pursue any criminal or civil actions against Ms. Golan in Italy based on the abduction of B.A.S.; that he pay for relocation expenses, child support, housing, transportation, and legal expenses; that there be orders of protection; that he give Ms. Golan full temporary custody of B.A.S. pending the custody determination in Italy; therapeutic services for both Mr. Saada and Ms. Golan; agreements about the use of evidence in this case for the Italian custody proceeding; and a sworn statement setting forth the process for Ms. Golan to obtain legal status and working papers in Italy, including the measures Mr. Saada will take to ensure that Ms. Golan gets legal status and working papers in a timely manner.

The proposed undertakings sufficiently ameliorate the grave risk of harm to B.A.S. upon his repatriation to Italy. By giving Ms. Golan sufficient funds for housing and expenses for the duration of the custody proceedings and agreeing to mutual orders of protection, Mr. Saada has reduced the risk that B.A.S. would be subjected to harm upon his return to Italy. Ms. Golan can return to Italy with B.A.S. and have enough money for an apartment that she chooses, without Mr. Saada or his family knowing of its location, during the course of the Italian custody proceedings.

* * *

As one court has observed, "[t]hese cases are always heart-wrenching, and there is inevitably one party who is

crushed by the outcome. [Courts] cannot alleviate the parties' emotional trauma, but at a minimum [courts] can hope to provide them and their child[ ] with a prompt resolution so that they can escape legal limbo." *Holder*, 392 F.3d at 1023. This case is no different.

CONCLUSION

The Court concludes that B.A.S. was a habitual resident of Italy when Ms. Golan kept him in the United States, and that B.A.S. would be subject to grave risk of harm upon repatriation to Italy. Mr. Saada has agreed to the following undertakings: (1) he will give Ms. Golan $30,000 before B.A.S. is returned to Italy for housing accommodations without restriction on location in Italy, financial support, and legal fees; (2) he will stay away from Ms. Golan until the Italian courts address this issue; (3) he will pursue dismissal of criminal charges against Ms. Golan relating to her abduction of B.A.S.; (4) he will begin cognitive behavioral therapy in Italy; and (5) he waives any and all rights to legal fees or expenses under the Hague Convention and ICARA for the prosecution of this action. In addition, Mr. Saada is to provide the full record of these proceedings, including trial transcripts, court filings, exhibits, undertakings, expert reports, and decisions of this Court to the Italian court presiding over the custody proceeding. Mr. Saada is to provide a sworn statement with the measures he will take to assist Ms. Golan in obtaining legal status and working papers in Italy. Mr. Saada must also drop any current civil actions against Ms. Golan in Italy based on the abduction of B.A.S., and must not pursue any future criminal or civil actions against her in Italy based on the abduction. Based on these undertakings and conditions, which the Court concludes sufficiently ameliorate the risk of harm to B.A.S. upon repatriation, the petition is granted.

The parties are directed to appear for a conference on Friday, March 29, 2019, at 10:30 a.m. in Courtroom 4G North to establish the timing and circumstances for B.A.S.'s return to Italy.

SO ORDERED.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 20-1544

Isacco Jacky Saada,
Petitioner-Appellee,

v.

Narkis Aliza Golan,
Respondent-Appellant.

Filed: January 14, 2021

ORDER

Appellant, Narkis Aliza Golan, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk