No. 25-

IN THE

Supreme Court of the United States

KIRA KRISTINA ZIELINSKI,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

TOBIAS S. LOSS-EATON
JILLIAN S. STONECIPHER
KATHLEEN M. MUELLER
AVERY D. GERDES
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8427
tlosseaton@sidley.com

KNUT S. JOHNSON
Counsel of Record
BRENDAN MCDONALD
SINGLETON SCHREIBER, LLP
591 Camino de la Reina,
Suite 1025
San Diego, CA 92108
(619) 535-2929
kjohnson@singletonschreiber.com

JEFFREY T. GREEN
DANIELLE HAMILTON
THE CARTER G. PHILLIPS/
SIDLEY AUSTIN LLP
SUPREME COURT CLINIC
NORTHWESTERN PRITZKER
SCHOOL OF LAW
375 East Chicago Avenue
Chicago, IL 60611
(312) 503-1486

Counsel for Petitioner

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QUESTION PRESENTED

The International Parental Kidnapping Act criminalizes removing a child from the United States "with intent to obstruct the lawful exercise of parental rights." 18 U.S.C. § 1204. It is an affirmative defense, however, that the defendant "was fleeing an incidence or pattern of domestic violence." *Id.* § 1204(c)(2). Until this case, courts uniformly allowed defendants to assert this defense based on evidence they were fleeing domestic violence directed either at themselves *or* their children. The courts below, however, barred Petitioner Kira Zielinski from presenting evidence that she fled to Mexico with her four-year-old son because she believed he was being sexually abused by her former spouse. Deprived of her only defense, Ms. Zielinski was convicted under § 1204. The question presented is:

Whether a defendant is "fleeing an incidence or pattern of domestic violence" under § 1204(c)(2) if she is fleeing domestic violence against her child.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Kira Kristina Zielinski.

Respondent is the United States of America.

No corporate parties are involved in this case.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the U.S. District Court for the Southern District of Iowa and the U.S. Court of Appeals for the Eighth Circuit:

United States v. *Zielinski*
No. 23-3575 (8th Cir. Feb. 13 2025); and

United States v. *Zielinski*
No. 3:22-cr-30-SMR-1 (S.D. Iowa Nov. 21 2023).

No other proceedings directly relate to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Kira Zielinski respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Eighth Circuit.

OPINIONS AND ORDERS BELOW

The Eighth Circuit's panel opinion and dissent (App. 1a–8a) is reported at 128 F.4th 961. The order denying rehearing (App. 18a) is not reported but is available at 2025 WL 1063108. The district court's order precluding Ms. Zielinski's defense (App. 16a–17a) and the final judgment (App. 9a) are unreported.

STATEMENT OF JURISDICTION

The Eighth Circuit entered judgment on February 13, 2025, and denied Ms. Zielinski's timely petition for rehearing *en banc* on April 9, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1204(a) provides:

> Whoever removes a child from the United States, or attempts to do so, or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.

Section 1204(c)(2) provides:

> It shall be an affirmative defense under this section that … the defendant was fleeing an incidence or pattern of domestic violence.

And Section 1204(d) provides:

> This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980.

INTRODUCTION

This case raises an important question concerning the scope of an affirmative defense to the International Parental Kidnapping Act and the United States's international treaty obligations.

Believing her former spouse was abusing their four-year-old son, Kira Zielinski fled with her son to Mexico. When they returned to the United States nine months later, she was charged with international parental kidnapping in violation of 18 U.S.C. § 1204. Although the statute provides an affirmative defense if "the defendant was fleeing an incidence or pattern of domestic violence," *id.* § 1204(c)(2), the district court barred Ms. Zielinski from presenting evidence that she fled to protect her son. Stripped of her only defense, she was convicted and sentenced to three years in prison, the statutory maximum. The Eighth Circuit affirmed, with the panel majority concluding the statutory defense "speaks only of the *defendant's* flight from domestic violence," not "defense of a third party." App. 3a.

That decision badly misreads the statute, produces absurd and unjust results, and conflicts with international treaty commitments. As Judge Kelly explained in dissent, "[w]hether the defendant is trying to escape domestic violence targeted toward herself or her child, the defendant is still 'fleeing' from domestic violence." App. 6a. Children are not "third parties," as the majority assumed, because "the definition of 'domestic violence' readily includes violence against children." *Id.* The Eighth Circuit's rule thus "minimizes a central

premise of the statute (the intimate connection between the defendant and her child) and adds a requirement (that the violence be directed toward the defendant), without a textual basis." *Id.*

Indeed, until the decision below, courts had no difficulty applying § 1204(c)(2) to cover fleeing to protect children. That defense sometimes failed because the jury did not credit the defendant's evidentiary showing. But defendants in other circuits have presented the defense without objection from the courts or the government until this case. The Eighth Circuit's contrary decision absurdly allows a defendant to flee with a child even if the child is in no danger, but *not* if the child is being abused—a holding that directly contravenes the statutory purpose of protecting children.

The decision below also creates tension between the International Parental Kidnapping Act and the Hague Convention on the Civil Aspects of International Parental Child Abduction—violating Congress's instruction that the statute should complement, "not detract," from the Hague Convention. 18 U.S.C. § 1204(d). While the Convention generally provides that a child should not be taken abroad in interference with a parent's custodial rights, it also recognizes that a child need not be returned to a place where he would face "a grave risk of physical or psychological harm." *Golan* v. *Saada*, 596 U.S. 666, 669 (2022). Under the decision below, by contrast, defendants face prison time for fleeing with a child to prevent just such harm.

The decision below thus endangers children, conflicts with the United States's international commitments, and departs from the approach taken in other courts—all with no textual basis. This Court's review is needed to correct that unjust result and restore the affirmative defense Congress enacted.

STATEMENT OF THE CASE

Kira Zielinski fled the United States to Mexico with her then-four-year-old child in violation of an Iowa custody order granting joint custody to both parents. When she returned to the country, Ms. Zielinski was arrested and charged with one count of international parental kidnapping under 18 U.S.C. § 1204. App. 1a.

Invoking § 1204(c)(2)'s affirmative defense, Ms. Zielinski sought to present evidence that she fled because her son was being sexually abused by her former spouse. D. Ct. ECF 93 at 4. She planned to introduce testimony from her son and two of his preschool teachers who would testify he told them about the abuse. She also sought to call witnesses from Child Protective Services who questioned the child about the abuse, and to introduce an audiotape of the child talking about the abuse. *Id.* at 6–9; D. Ct. ECF 55 at 2. The government moved to exclude this evidence. Notably, the government did not argue the evidence should be excluded because the affirmative defense applies only if abuse is directed at the parent. Instead, it argued the evidence should be excluded as unreliable hearsay. D. Ct. ECF 49 at 1, 6.

The district court *sua sponte* raised whether § 1204(c)(2) provides an affirmative defense to a defendant who fled domestic violence directed at her child, not herself. D. Ct. ECF 93 at 4–5, 17–19. After briefing, the court held "the affirmative defense is only available to a defendant who is 'fleeing an incidence or pattern of domestic violence' against himself or herself." D. Ct. ECF 65 at 1. Because Ms. Zielinski made "no contention that she was a victim of domestic violence," the court held "the affirmative defense cannot be introduced at trial." *Id.* at 2.

Deprived of the right to present her only defense, Ms. Zielinski agreed to a stipulated bench trial and was found guilty. The court sentenced her to three years in prison. App. 2a.

A divided Eight Circuit panel affirmed. The majority said "[t]he statute makes no reference to domestic violence against a third party" and "speaks only of the *defendant's* flight from domestic violence." App. 3a. "If Congress had wanted to include defense of a third party in § 1204(c)(2)," the court reasoned, "it easily could have done so." *Id.* The court also relied on policy concerns, suggesting that "child-custody proceedings provide the opportunity for a parent to present evidence of a child's abuse," and applying the affirmative defense based on child abuse would allow defendants to "relitigate" custody proceedings. *Id.* at 4a.

Judge Kelly dissented. The "key phrase in dispute," she noted, is "§ 1204(c)(2)'s requirement that 'the defendant was fleeing.'" App. 5a. The word "flee" means "to run away[,] often from danger or evil." *Id*. And the "definition of 'domestic violence' readily includes violence against children." *Id.* at 6a. "Whether the defendant is trying to escape domestic violence targeted toward herself or her child," then, "the defendant is still 'fleeing' from domestic violence." *Id.*

The majority's reading erroneously "collapses the requirement that the defendant be the one fleeing with the definition of domestic violence." App. 6a. Under the statutory text, "children are not necessarily third parties, as they are expressly contemplated in § 1204(c)(2)." *Id.* "If a defendant flees with a child due to domestic violence against the child, she is still fleeing an incidence or pattern of domestic violence." *Id.*

Moreover, Judge Kelly explained, the majority's reading makes little sense: "Allowing a defendant to

take her child when the defendant herself is subject to domestic violence, but not allowing a defendant to take her child when the child is the victim of domestic violence . . . minimizes a central premise of the statute"—"the intimate connection between the defendant and her child." App. 6a. Thus, Judge Kelly would have allowed Ms. Zielinski to present evidence that she was fleeing domestic violence. The court's contrary ruling "prevented her from presenting a complete defense." *Id.* at 8a (Kelly, J., dissenting).

The Eighth Circuit denied Ms. Zielinski's petition for rehearing *en banc*. App. 18a.

REASONS FOR GRANTING THE PETITION

I. The Eighth Circuit's atextual analysis forecloses a defense that other circuits have permitted.

The decision below improperly restricts the scope of § 1204(c)(2)'s affirmative defense, in conflict with the plain text and Congress's avowed purpose. In doing this, it forecloses a defense that defendants in other circuits have been able to raise.

A. Other circuits assume or implicitly hold the defense is available on these facts.

As the government has elsewhere acknowledged, other courts have "appeared amenable to the argument that [§ 1204(c)(2)'s] defense applies in cases where the child, as opposed to the [defendant], is the victim of domestic abuse." See Brief of the United States at 17, *United States* v. *Strong*, No. 23-1780 (9th Cir. Feb. 28, 2024), Dkt. 24.1. Indeed, three circuits at least implicitly hold as much.

For example, in *United States* v. *Nixon*, the defendant "presented evidence that [her former spouse] physically and sexually abused" their daughter, not herself. 901 F.3d 918, 919 (7th Cir. 2018). "The jury evidently believed" that she "had fabricated this evidence," so the defense failed on the merits. *Id.* But neither the government nor the court questioned she could have been acquitted on this basis. See App. 7 n.4 (Kelly, J., dissenting). Indeed, the Seventh Circuit made clear that violence directed at children *is* "domestic violence" under the statute. In rejecting the argument that the statute encompasses non-violent abuse, the court gave examples of conduct directed not just at spouses, but also at children. See 901 F.3d at 920 (a person would not commit "domestic violence" "by failing to provide adequate financial support for his wife or swearing at her *in a child's presence*" (emphasis added)). The court also expressed concern that allowing the defense based on non-violent abuse would "convert[ ] every child-kidnapping prosecution into a replay of the child-custody proceedings," *id.*—which makes sense only if conduct directed at children can trigger the defense in the first place.

Likewise, a defendant in the Tenth Circuit can raise an "affirmative defense that he was fleeing a pattern or incident of domestic violence against the children." *United States* v. *Rizvanovic*, 572 F.3d 1152, 1155 (10th Cir. 2009). In *Rizvanovic*, the defendant "conceded the elements of the kidnapping offense but asserted that his motivation fell within the statutory affirmative defense" because "his main reason for taking the children was to protect them and prevent their mother from hurting them." *Id.* at 1154. The jury rejected this defense, apparently based on evidence the defendant was also abusive. *Id.* The key issue on appeal was whether evidence of his own abusive conduct was relevant to

"his affirmative defense that he was fleeing a pattern or incident of domestic violence against the children." *Id.* at 1155. The court held such evidence was relevant because it called into question whether he "was actually motivated by a desire to protect his children from harm or abuse." *Id.* In other words, the key question—which the Tenth Circuit held the jury properly considered—was whether the defendant was in fact fleeing to protect his children from domestic violence.

The Eleventh Circuit has similarly considered the admissibility of evidence to address an affirmative defense based on violence against the kidnapped child. In *United States* v. *Morcombe*, the defendant offered his daughter's out-of-court statements to show her "susceptibility to domestic violence when living with his ex-wife," in support of his "affirmative defense under § 1204(c)(2)." 787 F. App'x 581, 583 (11th Cir. 2019) (per curiam). The court affirmed the exclusion of these statements because, under the "text of § 1204(c)," the statements did not go to the key question underlying the affirmative defense—whether *his daughter* "had suffered domestic violence." *Id.* at 583–84.

In short, every other circuit to consider the question has at least assumed, if not implicitly held, that § 1204(c)(2)'s defense protects defendants who flee domestic violence against their children. The Department of Justice has done the same. Current Department guidance on international parental kidnapping stresses that, because of the statute's affirmative defense, "it is imperative that law enforcement fully investigate any such allegations or possibility of domestic violence in the home," including by "check[ing] whether any such reports have been filed locally *or with state child protective services*." Dep't of Just., *A Law Enforcement Guide on International Parental Kidnapping*, 26 (2018) (emphasis added), https://

ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/250606.pdf. The decision below breaks from all these authorities.

B. The statute cannot be read to deny a defense to a parent who flees to protect her child.

1. Until the district court below raised the issue *sua sponte*, neither the government nor any other court had questioned the defense's application in this situation. The statutory text is clear: "It shall be an affirmative defense under this section that . . . the defendant was fleeing an incidence or pattern of domestic violence." 18 U.S.C. § 1204(c)(2). Two elements of this sentence dictate its scope: (1) "fleeing" and (2) "domestic violence." The ordinary meaning of both terms confirms that the defense applies here.

"Fleeing," as Judge Kelly explained, ordinarily means (and meant when Congress passed the statute) "to run away from . . . danger; take flight; hasten or run for safety or protection; get safely away, make one's escape; or withdraw hastily, go away, leave." App. 5a (cleaned up). Nothing about the ordinary meaning of this term suggests one can only flee danger against yourself. See, *e.g.*, *United States* v. *Diaz*, 777 F.2d 1236, 1238 (7th Cir. 1985) (discussing whether a wife would "flee" with her husband, who faced serious criminal charges). Indeed, ordinary usage shows that parents can "flee" danger or risk to their children.[1] So

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[1] *See, e.g.*, Barbara Plett-Usher, *Pastor Mackenzie's Kenyan cult: The mother who fled Shakahola forest to save her children*, BBC (May 18, 2023), https://www.bbc.com/news/world-65635784; Jo Yurcaba *'It's not safe': Parents of transgender kids plan to flee*

(continued . . .)

while "the defendant [must] be the one fleeing," *id.* at 6a, the key textual question is: Fleeing what?

The statute answers: "domestic violence." And again, the ordinary, accepted meaning of this term encompasses violence against children, not just domestic partners. "[A]s the district court and both parties agree[d]"—and as the majority nowhere disputed—"the definition of 'domestic violence' readily includes violence against children." App. 6a (Kelly, J., dissenting) (noting that domestic violence means violence "*between members of a household*"); see also *Domestic Violence*, Oxford English Dictionary ("Violent behaviour towards a member or members of one's family or household, *esp.* violent abuse of one's spouse or partner."), https://www.oed.com/dictionary/domestic-violence_n?tl=true (last visited July 1, 2025); *United States* v. *Hayes*, 555 U.S. 415, 424 (2009) ("domestic violence" can be "committed by a … parent"). Combining the ordinary meaning of these terms thus shows Ms. Zielinski should be allowed to invoke the affirmative defense: "If a defendant flees with a child due to domestic violence against the child, she is still fleeing an incidence or pattern of domestic violence." App. 6a (Kelly, J., dissenting).

If more were needed, the absurdity of the Eighth Circuit's rule is further evidence that the court misread the statutory text. See *Nixon* v. *Mo. Mun. League*, 541 U.S. 125, 138 (2004) (the Court "will not construe a statute in a manner that leads to absurd or futile results"). Under the decision below, a mother who takes

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their states as GOP bills loom, NBC News (Apr. 19, 2021), https://www.nbcnews.com/feature/nbc-out/it-s-not-safe-parents-transgender-kids-plan-flee-their-n1264506; Emma Green, *The Pandemic Has Parents Fleeing From Schools—Maybe Forever*, The Atlantic (Sept. 13, 2020), https://www.theatlantic.com/politics/archive/2020/09/homschooling-boom-pandemic/616303/.

her son to another country to escape violence against *herself* is not a criminal—even if the son unquestionably faces no danger from staying with his father, who has lawful custody. But if she takes her son abroad to protect *him* from violence instead of herself, she is a criminal. That makes no sense. In the first situation, the law humanely recognizes forcing parents to choose between preserving their own safety and staying with their children is asking too much. App. 4a; *id.* at 5a–6a (Kelly, J., dissenting). In the second situation, the parent's actions are at least as understandable—she is taking her son not only because she cannot bear to part from him, but also to preserve his physical safety. Since Congress deemed the first situation non-criminal, the text would have to be far clearer to criminalize the second. Cf. Charles Dickens, *Oliver Twist* ("If the law supposes that … the law is a ass—a idiot.").

2. The Eighth Circuit's contrary reasoning is wrong from top to bottom. The court's entire textual analysis begs the question by assuming the statute's existing language does not already encompass violence against children. The court thus framed the question as whether "§ 1204(c)(2) encompasses those situations where a *third party* alone suffers domestic violence and the defendant aids the *third party* in escaping that violence." App. 2a (emphases added). But children are not "third parties" under the statute. They are both the focus of the statutory scheme and potential victims of "domestic violence" as the term is ordinarily used. The majority never disputed that point or even addressed it.

In turn, it does not matter that "[t]he statute makes no reference to domestic violence against a third party." App. 3a. By using the phrase "domestic violence," the statutory defense already encompasses fleeing violence against children. Nor does it matter

that Congress might have found other ways to clarify children were within § 1204(c)(2)'s sweep. See *id.* (speculating about such formulations). As this Court has made clear, "the mere possibility of clearer phrasing cannot defeat the most natural reading of a statute." *Caraco Pharm. Lab'ys, Ltd.* v. *Novo Nordisk A/S*, 566 U.S. 399, 416 (2012). In any event, the majority's observation is properly turned around—if Congress wanted to *narrow* the ordinary meaning of "domestic violence," it easily could have. App. 8a (Kelly, J., dissenting). But "nothing about § 1204(c)(2) requires the domestic violence to be targeted toward the defendant." *Id.* at 6a.

In truth, the Eighth Circuit's rule rests less on the statute itself and more on policy concerns. Relying on the Seventh Circuit's *Nixon* decision, the majority said applying the defense in fleeing-to-protect-children cases would turn "every child-kidnapping prosecution into a replay of the child-custody proceedings." App. 4a. Since "child-custody proceedings provide the opportunity for a parent to present evidence of a child's abuse," the panel mused, those proceedings must necessarily have considered and rejected the domestic-violence allegations a defendant would offer to support the affirmative defense. See *id.* Permitting the defense would thus, in the majority's view, allow the defendant to "relitigate" custody. *Id.*

But "policy concerns cannot trump the best interpretation of the statutory text." *Patel* v. *Garland*, 596 U.S. 328, 346 (2022). And in any event, these concerns are badly misplaced.

To start, § 1204 applies even when no custody proceedings are implicated—for example, when the defendant and the abuser are still married and living together. See App. 7a (Kelly, J., dissenting). There is no indication Congress meant to deprive fleeing spouses

in this all-too-common situation of an affirmative defense based on a concern arising only in some subset of other cases.

Moreover, even where prior custody proceedings have occurred, they may not have addressed the issues the defense will implicate. For example, child-abuse concerns can arise after custody proceedings are over. If a couple was awarded joint custody when their child was two, with no signs of abuse by either parent, the existence of that custody decision is no reason to deny an affirmative defense to a parent fleeing to protect the child from abuse that started when he was six.

And even if prior custody proceedings *have* addressed abuse allegations, the affirmative defense—whatever its scope—necessarily means those proceedings will not always be conclusive. In suggesting otherwise, the panel seemed to believe custody proceedings would address and resolve allegations of abuse against children, but not against spouses. See *id.* That is wrong. Many courts recognize "spousal abuse [is] always contrary to the children's best interests," *Sears* v. *Sears*, 479 P.3d 767, 774 (Wyo. 2021), "so domestic abuse factors into custody determinations," even if the abuser was "never harmful to the children," *In re Marriage of Johnson*, 974 N.W.2d 811 (Iowa Ct. App. 2022) (table); *Blankenship* v. *Blankenship*, 489 S.E.2d 756, 762 (W. Va. 1997). Thus, it is equally possible a defendant will flee a "pattern of domestic violence" *against herself* that the custody court did not credit—but she is still entitled to present the defense in a federal criminal prosecution. The same should be true for parents who flee to protect children.

Beyond that, the panel simply misunderstood *Nixon*'s concerns. As Judge Kelly explained (and as noted above), the question in *Nixon* was whether the defense applied not only to violence directed at spouses

or children, but also to "a wide array of emotional or financial abuse" directed at them. App. 7a (Kelly, J., dissenting). Given the breadth and vagueness of the inquiry the *Nixon* defendant proposed, expanding the defense to encompass her situation would have "directly" presented "the risk of relitigating parental fitness." *Id.* *Nixon* did not suggest the defense should or even could be construed to exclude actual violence against children—rather, it said the opposite. 901 F.3d at 920.

3. The Eighth Circuit's decision also contravenes the "venerable principle" that "statutes imposing penalties are to be construed strictly against the government and in favor of individuals." *Bittner* v. *United States*, 598 U.S. 85, 101-02 (2023). At a minimum, "any fair reader of this statute would be left with a reasonable doubt" as to whether it allows the government to prosecute and imprison a parent who flees the United States to protect her child from domestic violence. *Snyder* v. *United States*, 603 U.S. 1, 20 (2024) (Gorsuch, J. concurring). In that situation, "ambiguities about the breadth of a criminal statute should be resolved in the defendant's favor." *United States* v. *Davis*, 588 U.S. 445, 464 (2019); see also, e.g., *Cleveland* v. *United States*, 531 U.S. 12, 25 (2000) ("ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.").

The Eighth Circuit, however, did the opposite. By adopting a narrow construction of the affirmative defense, the court of appeals effectively broadened the scope of the international parental kidnapping statute. See Steffen Seitz, *The Rule of Lenity and Affirmative Defenses*, 102 Wash. U. L. Rev. 427, 447 (2024) (interpreting the scope of an affirmative defense "is essentially the same as interpreting the scope of a criminal statute. No matter how one frames the interpretative

project, the effect is the same: the court draws the boundary between what it legal and illegal."). Its ruling thus fails to provide "fair notice of the law" and violates the "plain principle that the power of punishment is vested in the legislative, not in the judicial department." *Davis*, 588 U.S. at 464–65.

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Ms. Zielinski sought the chance to prove that she fled with her son to protect him from sexual abuse. Correctly construed, the statute entitled her to that chance. The decision below thus deprived her of "a meaningful opportunity to present a complete defense." *Holmes* v. *South Carolina*, 547 U.S. 319, 324 (2006).

C. The decision below frustrates Congress's instruction that the statute complement the Hague Convention.

The decision below also warrants review because it wrongly places § 1204 in tension with the Hague Convention, which it was enacted to supplement.

Congress passed § 1204 to complement the Hague Convention by ensuring equivalent protections apply regardless of the country-of-flight's status: A parent could evade the convention "by retaining the child in a . . . non-signatory country," but could still be subject to criminal liability because the statute "makes it a federal offense to remove or retain children abroad with the intent to obstruct parental rights, regardless of whether the destination country is a signatory to the Hague Convention." *United States* v. *Houtar*, 980 F.3d 268, 274 & n.2 (2d Cir. 2020) (citing H.R. Rep. No. 103-390, at 3 (1993)). Congress thus instructed in the statute itself that it "not detract from" the Convention. 18 U.S.C. § 1204(d).

The Eighth Circuit's rule ignores that instruction by interpreting the statute in a way that conflicts with the Convention's "primary goal"—protecting "the safety of the child." *Golan*, 596 U.S. at 684. Under the Convention, "a court is not bound to order a child's return" to his home country if "return would put the child at a grave risk of physical or psychological harm." *Id.* at 669. Thus U.S. courts routinely refuse to return a child to an abusive situation. See *id.*; *Danaipour* v. *McLarey*, 286 F.3d 1, 15 (1st Cir. 2002) (refusing to return child on evidence the child was sexually abused); *Ermini* v. *Vittori*, 758 F.3d 153, 165 (2d Cir. 2014) (similar); *Baran* v. *Beaty*, 526 F.3d 1340, 1346 (11th Cir. 2008) (similar).

The Eighth Circuit's rule conflicts with this principle by denying any defense when a parent flees specifically to protect a child. Even in a situation where the Hague Convention would allow the child to remain abroad, the decision below would make a criminal of his mother for bringing him there in the first place. The decision below thus violates both Congress's instruction that § 1204 not detract from the Convention and the "canon that a statute should be interpreted in compliance with international law." *Samantar* v. *Yousuf*, 560 U.S. 305, 320 n.14 (2010) (citing *Murray* v. *Schooner Charming Betsy,* 6 U.S. (2 Cranch) 64, 118 (1804)).

II. The question presented is important.

International parental kidnappings are not uncommon. Between 2009 and 2019, the U.S. State Department reported over 10,000 children abducted from the United States by parents. See Cong. Rsch. Serv., R46553, *International Parental Child Abduction (IPCA): Foreign Policy Responses and Implications*, 1 (Sept. 29, 2020), https:// www.congress.gov/crs-product/R46553. Between 2017 and 2019, the United

States was involved in 717 outgoing abduction cases under the Hague Convention. And, it is commonplace that "[t]he motivation to abduct may [ ] be an attempt to protect the child from a parent who is perceived to molest, abuse, or neglect the child." Dep't of Just., *Parental Abduction: A Review of the Literature*, 3 (2001), https://www.ojp.gov/pdffiles1/ojjdp/190074.pdf. In any other circuit, these parents would have the chance to prove that motivation. But in the Eighth Circuit, they are now criminals without a defense.

The Court should take this opportunity to correct the decision below. Until now, defendants had no reason to doubt they could at least raise an affirmative defense if they fled to protect their children. But the Eighth Circuit's rule, which the government endorsed on appeal, may alter charging and plea-bargaining decisions, chilling defendants from pursuing this defense in other circuits too. At worst, the decision below will force parents to choose between leaving a child with an abusive parent or facing criminal liability. The well-documented, lasting effects of domestic violence on children counsel against letting this issue linger. See, *e.g.*, Terese Glatz et al., *Physical Violence in Family Sub-Systems: Links to Peer Victimization and Long-Term Emotional and Behavioral Problems*, 34 J. Fam. Violence 423, 424 (2019).

III. This case is an excellent vehicle.

This case squarely presents the question whether a defendant can rely on § 1204(c)(2) when fleeing domestic violence directed at a child, rather than herself. This purely legal issue was pressed and passed upon at each stage of litigation. It was also dispositive—Ms. Zielinski had no other defense to liability, so her inability to present the affirmative defense doomed her to conviction and incarceration. And the decision below

addresses only this issue. If the Eighth Circuit misconstrued the statute, the judgment below must be vacated and the case remanded so Ms. Zielinski can present the evidence she originally proffered.

CONCLUSION

For these reasons, the petition should be granted.

Respectfully submitted,

TOBIAS S. LOSS-EATON
JILLIAN S. STONECIPHER
KATHLEEN M. MUELLER
AVERY D. GERDES
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8427
tlosseaton@sidley.com

KNUT S. JOHNSON
Counsel of Record
BRENDAN MCDONALD
SINGLETON SCHREIBER, LLP
591 Camino de la Reina,
Suite 1025
San Diego, CA 92108
(619) 535-2929
kjohnson@singletonschreiber.com

JEFFREY T. GREEN
DANIELLE HAMILTON
THE CARTER G. PHILLIPS/
SIDLEY AUSTIN LLP
SUPREME COURT CLINIC
NORTHWESTERN PRITZKER
SCHOOL OF LAW
375 East Chicago Avenue
Chicago, IL 60611
(312) 503-1486

Counsel for Petitioner

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