

No. 20-1034

IN THE
Supreme Court of the United States

NARKIS ALIZA GOLAN,

Petitioner,

v.

ISACCO JACKY SAADA,

Respondent.

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

**BRIEF OF THE NATIONAL ASSOCIATION OF
SOCIAL WORKERS ET AL. AS *AMICI CURIAE* IN
SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE*

Amici, The National Association of Social Workers; Institute on Violence, Abuse and Trauma; The National Partnership to End Interpersonal Violence Across the Lifespan; Dean Jeffrey Edleson, Ph.D.; Professor Evan Stark, Ph.D.; Luz Towns-Miranda, Ph.D.; Marie G. Rudden, M.D.; Joyanna Silberg, Ph.D.; Professor Jean Mercer, Ph.D.; Professor Megan Goslin, Ph.D. and Professor Chitra Raghavan, Ph.D., are psychologists, social workers, non-profit organizations and academics who focus on child development and the impact of abuse and trauma on children. *Amici* have an interest in the role that federal courts play in determining the safety of children and instituting measures to prevent them from suffering physical and psychological damage. *Amici* understand that clinical research shows that children exposed to domestic violence face a significant risk of suffering severe consequences, including physical, psychological and developmental issues. *Amici* also write specifically to address the potential for physical and psychological harm to children in returning a child to their country of residence after a court has already determined that the child has been exposed to domestic violence in that country and would likely suffer grave harm.¹

¹ The parties have consented to the filing of this brief. Pursuant to Supreme Court Rule 37.6, counsel for *amici* certifies that no counsel for a party authored this brief in whole or in part, and no party or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici*, its members, or its counsel made a monetary contribution to this brief's preparation or submission.

SUMMARY OF ARGUMENT

The question presented is whether district courts, upon finding there is a grave risk of harm to the child, must still consider whether potential ameliorative measures could justify sending the child back to their country of habitual residence. It is clear from scientific research, including work done by *amici* themselves, that this framework cannot stand. Courts should not be required to consider ameliorative measures, and absent such a requirement, courts should not exercise their judicial discretion to undertake the inquiry. When children are exposed to trauma and chronic domestic violence, they may suffer a wide range of negative impacts, including impairment to both physical and psychological development. The long-reaching effects of exposure to domestic violence may not be immediately apparent; the harm done to children can manifest itself years and even decades later. Therefore, it is practically impossible for court-designed ameliorative measures to effectively protect the child from further harm, especially when these measures are designed in the context of an expedited Hague Convention proceeding. The potential harm done to children by exposure to domestic violence is too complex for a court to “solve” through ameliorative measures.

At issue in this case are the interests of B.A.S., a child the Hague Convention was expressly designed to protect, and his mother, Ms. Golan, who has suffered extreme physical, sexual and psychological abuse at the hands of her husband, Mr. Saada. The decisions of the District Court and the Second Circuit, in finding that B.A.S. should be returned to Italy with

ameliorative measures in place, ignore the harsh realities of domestic violence. B.A.S. already has suffered a variety of harms as a result of being exposed to domestic violence. Returning Ms. Golan and B.A.S. to Italy will likely traumatize both parties, leading to B.A.S. suffering even greater harm. Furthermore, the ameliorative measures put in place by the District Court on remand are inadequate to mitigate the harms to B.A.S. that would result from his return to Italy; indeed, no ameliorative measure could prevent the harm from retraumatization upon returning B.A.S. to the site where his father abused his mother, nor mitigate the probability that the abuse will continue once the mother and child are repatriated.

ARGUMENT

I. B.A.S. HAS ALREADY SUFFERED PHYSICAL, MENTAL AND EMOTIONAL HARM FROM EXPOSURE TO DOMESTIC ABUSE.

There is no dispute that Mr. Saada physically, psychologically, emotionally and verbally abused Ms. Golan for years. (*See* Pet. App'x at 48a (Mar. 22, 2019 District Court Order).) Mr. Saada “yelled at Ms. Golan, called her names, slapped her, pushed her, pulled her hair, threw a glass bottle in her direction, and, during a conversation with Ms. Golan’s brother, threatened to kill her”. (Pet. App'x at 28a (July 19, 2019 2d Cir. Decision); *see also* Pet. App'x at 48a, 51a-52a (Mar. 22, 2019 District Court Order) (recounting instances of arguments and violence including incidents of Mr. Saada “slapp[ing]”, “push[ing]” and “grabb[ing]” Ms. Golan).)

Much of this violence took place in front of their child, B.A.S. *Id.* at 3. Indeed, B.A.S. repeatedly was exposed to his parents' violence from before he was born until his mother left Italy with him. (See Pet. App'x at 51a-52a (Mar. 22, 2019 District Court Order) (recounting the times that Mr. Saada abused Ms. Golan while she was pregnant with B.A.S).)

Both the District Court and the Second Circuit acknowledged that a child's exposure to domestic violence can have dire effects. The District Court found that 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"; these effects are "toxic and pathogenic" on the brains of developing children. (Pet. App'x at 66a (Mar. 22, 2019 District Court Order); *see also* Pet. App'x at 30a (July 19, 2019 2d Cir. Decision) (agreeing with the District Court 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").)

Amici write here to underscore the range and complexity of issues that children in these situations develop. The long-reaching effects of exposure to domestic violence are not immediately apparent; the harm done to children can manifest itself years and even decades later. Thus, from a clinician's perspective, a courtroom—particularly in the context of an expedited Hague proceeding—is ill-equipped to contend with such complicated harms and the concomitant long-term protective measures for children whose parents are seeking refuge from violence.

A. Children Suffer Lasting Psychological, Physical and Developmental Difficulties from Exposure to Domestic Violence.

When a child is exposed to violence against a caregiver, it can have the same effect as if the child were the direct target of violence. *See* Lisa Bolotin, *When Parents Fight: Alaska’s Presumption Against Awarding Custody to Perpetrators of Domestic Violence*, 25 Alaska L. Rev. 263, 270 (2008). Medical and social science research shows that domestic violence “has a far deeper impact than the immediate harm caused . . . [i]t has . . . a traumatic effect on those who witness it, particularly children”.² Hague Conference on Private International Law, *Domestic and Family Violence and the Article 13 “Grave Risk” Exception in the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: A Reflection Paper*, at 9, Prel. Doc. No. 9 (May 2011) (alteration in original); *see also* Lynn Hecht Schafran, *Domestic Violence, Developing Brains and the Lifespan: New Knowledge from Neuroscience*, 53 The Judges’ J., 32, 36 (2014) [hereinafter Schafran, *Domestic Violence, Developing Brains and the Lifespan*] (“Human brain development is a long process, and exposure to domestic violence has specific impacts on children of all ages, from infants to teens.”). Further, children do not need directly to witness such violence to experience its impact—merely being aware of the violence is enough

² Mr. Saada’s experts also agreed that witnessing domestic violence “has an effect on young children”. (Pet. App’x at 66a (Mar. 22, 2019 District Court Order).)

to trigger a traumatic response. See TARYN LINDHORST & JEFFREY L. EDLESON, *BATTERED WOMEN, THEIR CHILDREN, AND INTERNATIONAL LAW: THE UNINTENDED CONSEQUENCES OF THE HAGUE CHILD ABDUCTION CONVENTION* 107, 108-109 (NE. U. PRESS 2012) [HEREINAFTER LINDHORST & EDLESON, *BATTERED WOMEN, THEIR CHILDREN, AND INTERNATIONAL LAW*].

The traumatic effects children suffer from direct or indirect exposure to domestic violence can manifest in a variety of ways, including psychologically. Children in these circumstances can struggle with behavioral adjustment and cognitive function, as well as brain development and performance in school. Andrea Gonzalez et al., *Subtypes of Exposure to Intimate Partner Violence within a Canadian Child Welfare Sample: Associated Risks and Child Maladjustment*, 38 *Child Abuse & Neglect* 1934, 1935 (2014) [hereinafter Gonzalez et al., *Subtypes of Exposure to Intimate Partner Violence*]; see also U.S. DEP'T OF JUST., *REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE* 31 (2012), available at <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf> (finding that children who witness abuse at a young age lose up to 10 percent of their potential intelligence quotient). Clinical studies also suggest that witnessing domestic violence as a child can contribute to the development of personality disorders later in life, including borderline personality disorder and antisocial personality disorder. See Tracie O. Afifi et al., *Childhood Adversity and Personality Disorders: Results from a Nationally Representative Population-Based Study*, 45 *J. Psychiatric Res.* 814,

817-821 (2011); *see also* NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE, CHILDREN EXPOSED TO INTIMATE PARTNER VIOLENCE 6 (2002), available at http://vawnet.org/sites/default/files/materials/files/2016-09/NRC_Children.pdf [hereinafter CHILDREN EXPOSED TO INTIMATE PARTNER VIOLENCE] (finding that the impairment of cognitive development can lead to other difficulties, including issues with emotions, learning, and general behavior).

In addition to psychological harm, exposure to domestic violence can have negative physical effects on children. These effects include “increased risk for inflammation, heart disease and respiratory difficulties in adult life”. Candice L. Odgers & Sara R. Jaffee, *Routine Bersus Catastrophic Influences on the Developing Child*, 34 *Ann. Rev. Pub. Health* 29, 30 (2013) [hereinafter Odgers & Jaffee, *Influences on the Developing Child*]. Further, young children exposed to domestic violence are more likely to develop problems with sleeping and may experience eating disorders. *See* CHILDREN EXPOSED TO INTIMATE PARTNER VIOLENCE 6-7. A large study found that adverse childhood experiences, including growing up in a household where their mothers were treated violently, “have a strong, graded relation” with children’s adult health, including “hepatitis, heart disease, fractures, diabetes, obesity, alcoholism, occupational health, and job performance”. Vincent J. Felitti, *The Relation Between Adverse Childhood Experiences and Adult Health: Turning Gold into Lead*, 6 *Permanente J.* 44, 46 (2002) [hereinafter Felitti, *Relation Between Adverse Childhood Experiences and Health*]. The effect of exposure to domestic violence impacted “adult health a half-

century” after the adverse experience. *Id.* at 45. These negative effects can occur even where the child was exposed to domestic violence at a very young age. See Odgers & Jaffee, *Influences on the Developing Child* at 35 (finding that the negative effects of childhood trauma can be found even when children experience the trauma “during the prenatal period”).

Many experts echo the idea that the consequences of exposure to domestic violence at a young age are devastating. These experts have found that there is a “powerful relation between our emotional experiences as children and our adult emotional health, physical health, and major causes of mortality in the United States.” Felitti, *Relation Between Adverse Childhood Experiences and Health* at 44. Thus, the impact of exposure to domestic violence on children is a complex web involving the relationship between mental and physical health which, if not treated as such, can lead to “troubling treatment failure”. *Id.* at 46.

B. B.A.S. Is Particularly Vulnerable and Already Exhibits Evidence of Trauma.

The record in this case brings to life the effects that exposure to domestic violence can have on a young child and the heightened vulnerability that developmental delays can create. As expert evaluations make clear, B.A.S. already exhibits signs that he is particularly vulnerable to trauma. First, Dr. Stephanie Brandt, an expert retained by Ms. Golan, found that B.A.S. is an “at risk” child who is “more vulnerable to additional stressors of any kind” due to the fact he is “very delayed in his development along a number of lines”. (App’x at 27

(Expert Report of Dr. Stephanie Brandt.) Dr. Brandt also concluded that B.A.S. “clearly demonstrate[d] the typical signs and symptoms of exposure to domestic violence that occur in very young children”. *Id.* In fact, the District Court acknowledged B.A.S.’s developmental delays, noting that Dr. Brandt “diagnosed B.A.S. with a severe developmental delay in his speech and language development”.³ (Pet. App’x at 67a (Mar. 22, 2019 District Court Order).) Moreover, after the District Court trial, a Department of Education representative evaluated B.A.S. and found he had “clinically significant difficulties in executive functioning skills”. (Pet. App’x at 23a (May 5, 2020 District Court Order).) These developmental delays mean that B.A.S. is particularly susceptible to further trauma in the event he is returned to the site where he was exposed to domestic violence, as well as any further abuse that occurs upon repatriation.

II. RETURNING B.A.S. TO THE SITE OF ABUSE WOULD RETRAUMATIZE BOTH HIM AND MS. GOLAN, WITH SERIOUS CONSEQUENCES FOR B.A.S.

If forced to return to Italy, research shows that B.A.S. will suffer further harm. Returning to the site of domestic violence risks retraumatizing B.A.S. He could also suffer from secondary trauma based on his mother’s experience in returning to the same location. Additionally, there is a high likelihood that B.A.S. will

³ The District Court again acknowledged B.A.S.’s special needs on remand, finding that he was diagnosed with “mild Autism Spectrum Disorder”. (Pet. App’x at 23a (May 5, 2020 District Court Order).)

be exposed to further violence if returned to Italy. While the District Court did find that returning B.A.S. to Italy would “subject the child to a grave risk of harm”, the Court overlooked that there is also a unique harm derived from returning the child to the location of the initial abuse. (Pet. App’x at 80a (Mar. 22, 2019 District Court Order). *See also* Pet. App’x at 15a (May 5, 2020 District Court Order) (finding that “[t]he grave risk of harm to B.A.S. is exposure to violence between the petitioner and the respondent”).) Because repatriation to the site of violence is a harm in itself, ameliorative measures put in place by the District Court—no matter how comprehensive—cannot protect the child from further harm.

A. The Psychological Distress from Returning to the Site of Abuse Would Likely Retraumatize B.A.S.

Relocating B.A.S. to the site of his father’s abuse of his mother would likely remind him of the trauma he experienced there and lead to a reoccurrence of traumatic effects, as well as a manifestation of new problems. At trial, the District Court heard testimony from Ms. Golan’s expert Dr. Tronick, who explained that even in the absence of continued violence, there is a strong chance that re-exposing the child to the negative environment where violence occurred could “trigger a reaction on the part of the child”. (Tr. 660:2-14 (Jan. 9, 2019).) Even if B.A.S. has positive associations with the country and city where he was born, these memories are “superseded by associations with the traumatic experience(s)”. Robert S. Pynoos, et al., *A Developmental Psychopathology Model of Childhood Traumatic Stress and Intersection with*

Anxiety Disorders, 46 *Biol. Psychiatry* 1542, 1545-46 (1999). These negative associations can lead the child to a state of “renewed traumatic anxiety”. *Id.* at 1545. In fact, the Second Circuit has recognized this risk, saying that a child returning to the site of abuse “would almost certainly suffer a recurrence of their traumatic stress disorder”. *Blondin v. Dubois*, 238 F.3d 153, 160 (2d Cir. 2001).

This risk remains even though B.A.S. was exposed to domestic violence at a very young age. Studies show that even though negative effects of exposure to violence may not “manifest until school age” they are still a very real risk. Gonzalez et al., *Subtypes of Exposure to Intimate Partner Violence*, 1941. See also Megan Holmes, *The Sleeper Effect of Intimate Partner Violence Exposure: Long-Term Consequences on Young Children’s Aggressive Behavior*, 54 *J. of Child Psychol. and Psychiatry* 986, 991 (2013) (finding that “the more frequently children were exposed [to domestic violence] between birth and 3 years, the more aggressive behavior problems were exhibited 5 years later”).

Even if B.A.S. does not return to the exact home where he was exposed to domestic violence, B.A.S. would nevertheless be reminded of the trauma he endured because much of Mr. Saada’s abuse of Ms. Golan occurred in public.⁴ That the initial trauma was not limited to one room or building makes it even more likely that the locale itself will remind

⁴ Mr. Saada abused Ms. Golan in a variety of locations, including in a car, at a wedding, in Central Park and in front of other people. (Pet. App’x at 48a n11, 50a, 51a-52a, 59a (Mar. 22, 2019 District Court Order).)

B.A.S. of his exposure to domestic violence. B.A.S. will likely be reminded of his trauma by the sights, smells and feel of the city where he was traumatized. Thus, relocation to Italy—no matter the mitigating circumstances—would place B.A.S. at risk of further harm from retraumatization.

B. The Psychological Distress of Ms. Golan’s Returning to the Site of Her Abuse Will Have Detrimental Effects on B.A.S.

If the judgment below is not reversed, repatriation also risks exposing B.A.S. to secondary trauma based on his mother’s experience of heightened traumatic stress symptoms if she returns to Italy to care for him. (Pet. App’x at 15a (May 5, 2020 District Court Order) (“The respondent has made it clear that she intends to return to Italy with B.A.S. if the Court orders his repatriation.”).) Studies show that when domestic violence victims return to the place where they were abused, they often suffer from further psychological and physical damage, including flashbacks and reliving their experiences in real time. *See* BESSEL A. VAN DER KOLK, *THE BODY KEEPS THE SCORE* 66-68 (Penguin Books, 2014). Dr. Brandt testified that if Ms. Golan were to return to Italy with B.A.S., the return would “certainly re-traumatize her”.⁵ (Tr. 586:5-7 (Jan. 9, 2019).)

⁵ The effects of Ms. Golan’s abuse are well documented. Dr. Brandt recounted that during their interviews she saw several instances of Ms. Golan experiencing “panic attacks associated with revisiting and recounting her experiences in Italy”. (App’x at 27 (Expert Report of Dr. Stephanie Brandt).)

Further, it has been “well established globally in [domestic violence] research that it is important for children living with [domestic violence] to have a positive relationship” with the primary caregiver who has not perpetrated violence. Emma Katz, *Coercive Control, Domestic Violence, and a Five-Factor Framework: Five Factors that Influence Closeness, Distance, and Strain in Mother-Child Relationships*, *Violence Against Women* 1, 2 (2019). If parents are experiencing fright and trauma, it can interfere with their children forming a secure attachment. See Alicia F. Lieberman et al., *Attachment Perspectives on Domestic Violence and Family Law*, 49 *Fam. Court Rev.* 529, 530 (2011); A. J. Narayan et al., *Risk, Vulnerability and Protective Process of Parental Expressed Emotion for Children’s Peer Relationships in Contexts of Parental Violence*, 44 *J. Clinical Child & Adolescent Psychol.* 676 (2015); Alicia F. Lieberman et al., *Angels in the Nursery: The Intergenerational Transmission of Benevolent Parental Influences*, 26 *Infant Mental Health J.* 504 (2005). Research demonstrates that “having a close attachment with a nurturing parental figure supports healthy brain development and, in cases like these [where children have been exposed to domestic violence], can restore brain health.” Schafran, *Domestic Violence, Developing Brains and the Lifespan*, 35. Without a secure attachment to their primary caregiver, children become “more vulnerable to future stressors and less capable of benefiting from the healthy nurturing supports that might help buffer stressors or trauma later in life”. CHRISTINE R. LUDY-DOBSON & BRUCE D. PERRY, *THE ROLE OF HEALTHY RELATIONAL*

Dr. Brandt also diagnosed Ms. Golan with severe post-traumatic stress disorder (PTSD). *Id.*

INTERACTIONS IN BUFFERING THE IMPACT OF CHILDHOOD TRAUMA, IN WORKING WITH CHILDREN TO HEAL INTERPERSONAL TRAUMA: THE POWER OF PLAY 30 (Eliana Gil ed., 2010).

Children who are raised by a primary caregiver who suffers from the effects of domestic violence absorb those effects and in turn suffer further harms. *Id.* This means that if B.A.S. and Ms. Golan are forced back into an environment where Ms. Golan will be retraumatized, B.A.S.'s response to the new environment could mimic his mother's response. National Coalition for Child Protection Reform, *When Children Witness Domestic Violence: Expert Opinion, A Summary of Expert Testimony from the Decision of U.S. District Judge Jack Weinstein in Nicholson v. Williams, No. 00-C V2229 (E.D.N.Y. 2001)* 4 (2001) (noting the importance of a consistent relationship between a child and his or her primary caregiver). Thus, B.A.S. is all but guaranteed to suffer from his mother's retraumatization.⁶

⁶ Further, should B.A.S. for some reason become separated from Ms. Golan upon their return to Italy, for example when visiting with Mr. Saada's family, research indicates that this separation would further exacerbate the effects B.A.S. experiences from his exposure to domestic violence. National Coalition for Child Protection Reform, *When Children Witness Domestic Violence: Expert Opinion, A Summary of Expert Testimony from the Decision of U.S. District Judge Jack Weinstein in Nicholson v. Williams, No. 00-CV2229 (E.D.N.Y. 2001)* at 2 (2001). And separation from the primary caregiver can make the domestic abuse even more traumatic because the child "is terrified that a parent might not be OK, may be injured, may be vulnerable. . . . They feel that they should somehow be responsible for the parent and if they are not with the parent, then it's their fault". *Id.* at 4.

C. B.A.S. Will Likely Suffer the Effects of Continued Violence.

There is substantial evidence that Mr. Saada will not stop abusing Ms. Golan if she returns to Italy with B.A.S. Research shows “ending the relationship doesn’t end physical violence by the husband”. JEFFREY L. EDLESON ET AL., NATIONAL INSTITUTE OF JUSTICE FINAL REPORT, MULTIPLE PERSPECTIVES ON BATTERED MOTHERS AND THEIR CHILDREN FLEEING TO THE UNITED STATES FOR SAFETY: A STUDY OF HAGUE CONVENTION CASES, 184-85 (Nov. 2010). In one study, repatriating the child led to some form of continuing physical harm for seven of the twelve women and children studied, including harm from exposure to further acts of domestic violence.⁷ *Id.* at 187. If B.A.S. is exposed to further violence against his mother, whether physical or psychological, it could retraumatize him and further impact his already-fragile psychological, physical, and developmental state, as described *supra*.

⁷ There is substantial evidence that perpetrators of intimate partner violence often abuse their children, too. See LINDHORST & EDLESON, BATTERED WOMEN, THEIR CHILDREN, AND INTERNATIONAL LAW at 104-105 (“Domestic violence can be inflicted primarily on the partner, but research on child abuse has found that in approximately one-half of families in which a partner is physically violent to the spouse . . . the children in the household are also physically or sexually abused”).

III. THE ADEQUACY OF AMELIORATIVE MEASURES FOR DOMESTIC VIOLENCE SITUATIONS SHOULD NOT BE DECIDED BY COURTS DURING HAGUE CONVENTION PROCEEDINGS.

Courts are ill-equipped to contend with the “complex trauma” resulting from a child’s exposure to domestic violence. And because the responses to this specific type of trauma are so varied—encompassing psychological, developmental and physical harms—and long-lasting, it is nearly impossible to identify all the potential harms that a child in this precarious situation may face. Indeed, some experts advocate for identifying a new diagnosis, Developmental Trauma Disorder. *See* Bessel A. van der Kolk, *Developmental Trauma Disorder: A new, rational diagnosis for children with complex trauma histories*, 35 *Psych. Annals*. 401, 405 (May 2017). Courts cannot—and should not—be expected to keep up with significant diagnostic changes in child psychology and clinicians’ evolving understanding of child trauma, particularly in attempting to determine how to best protect a child facing repatriation to the site of domestic violence. Thus, courts’ limited ability to protect children from such wide-ranging harms militates against repatriating children.

Even with the benefit of clinical experts, the expedited nature of Hague Convention proceedings⁸

⁸ *See* Hague Convention on the Civil Aspects of International Child Abduction, Art. 11 (providing for requests for “statement[s] of the reasons for the delay” where proceedings exceed six weeks); 22 U.S.C. § 9001(a)(4) (providing procedures for “prompt” determinations).

make an adequate assessment of a child's needs and potential mitigating circumstances impossible. From a clinician's perspective, diagnosing the manifestations of complex trauma in order to develop a plan to protect the child from further harm upon return is a lengthy, time-consuming process. See Judith A. Cohen, M.D. & Michael S. Scheeringa, M.D., *Post-traumatic Stress Disorder Diagnosis in Children: Challenges and Promises*, 11 *Dialogues in Clinical Neuroscience* 1, 96 (2009) (finding that accurately diagnosing and treating children with PTSD is very "time-consuming [and] difficult"). Clinical practitioners say that "[c]onducting a thorough assessment of children with complex trauma does not occur in a single session or a series of early sessions but is an ongoing process . . . [c]linicians are continually gaining more information through all phases and reassessing how to intervene." Frances S. Waters, *Assessing and Diagnosing Dissociation in Children: Beginning the Recovery*, in *EMDR THERAPY AND ADJUNCT APPROACHES WITH CHILDREN* 129, 132 (Springer Pub. Co., 2016). This assessment is an ongoing process, which unfolds over weeks and months as a clinician understands aspects of the environment that will support or hinder a child's recovery from trauma, and it is often complicated—and extended—where, as here, the child has experienced a complex trauma like domestic violence. See Frances S. Waters, *When Treatment Fails with Traumatized Children . . . Why?*, in 6 *J. Trauma and Dissociation* 1, 4 (2005) ("Traumatized children usually present a perplexing picture of a myriad of symptoms").

Developing a plan safely to reintroduce a child to a parent who has abused the child’s primary caregiver is an equally complicated and time-consuming process. Practitioners assess the whole family to make specific findings on each parent’s individual capacity to care for the child. In situations where the child has been exposed to chronic domestic violence, the safest option in a Hague Convention proceeding, given these time constraints, is to end the inquiry after a finding of grave harm to the child.

That courts are asked to confront the availability of protections and resources in foreign countries—especially on an expedited timeline—makes this inquiry all the more difficult. When practitioners endeavor to reintroduce children to the site of past trauma, they rely on a wide array of community stakeholders—schools, therapists, family members and more—to ensure a child is supported. See Megan R. Holmes et al., *Nearly 50 Years of Child Exposure to Intimate Partner Violence Empirical Research: Evidence Mapping, Overarching Themes, and Future Directions*, *J. Fam. Violence*, 1, 9 (2022), <https://link.springer.com/article/10.1007%2Fs10896-021-00349-3> (“Research has demonstrated that comprehensive healing from the trauma of [intimate partner violence] exposure is best facilitated when targeted services are coordinated at all levels of a child’s social ecology including home-, school-, shelter-, medical-, and community-based programming and interventions.”).

This effort requires collaborative communication and observation of any changes in the child’s behavior and demeanor to identify signs of re-traumatization. This “cross-system coordination can be challenging”,

but is the best way to handle a child who has been exposed to domestic violence. *Id.* By contrast, courts in Hague Convention proceedings are not able to knit together a holistic, protective approach that would serve as the child's best defense from further harms. And, even if they were able to achieve that goal, ameliorative measures are frequently ignored by the abuser once the mother and child have been repatriated.⁹ In the absence of the court's reach to the country of repatriation, the child will almost certainly suffer.

**IV. THE AMELIORATIVE MEASURES
CONSIDERED BY THE DISTRICT COURT
ARE NOT SUFFICIENT TO MITIGATE
THE POTENTIAL HARM TO B.A.S. FROM
RETURNING TO THE SITE OF ABUSE.**

The ameliorative measures considered by the District Court do not address the harm B.A.S. will suffer from being retraumatized, even if— against the

⁹ Studies have shown that ameliorative measures are not enforced upon return to the country of habitual residence. See Reunite Research Unit, Int'l Child Abduction Centre, *The Outcomes for Children Returned Following an Abduction*, 31 (Sept. 2003) [hereinafter Reunite Research Unit, *The Outcomes for Children Returned Following an Abduction*] (“Undertakings were broken in 66.6%” of cases”). See also LINDHORST & EDLESON, *BATTERED WOMEN, THEIR CHILDREN, AND INTERNATIONAL LAW* at 133-134 (finding that in all four Hague convention cases where “undertakings were agreed to by the parties in the US courts, none of those agreements were carried out in the country by the left-behind parent”).

odds—they are successful at preventing Mr. Saada from abusing Ms. Golan further.¹⁰

A. The District Court Did Not Weigh Expert Concerns About the Potential to Retraumatize B.A.S.

The District Court found that while “returning B.A.S. to Italy would expose him to physical or psychological harm”, B.A.S. could safely be returned to Italy with the measures the Court put in place. (Pet. App’x at 77a (Mar. 22, 2019 District Court Order).) After remand, the District Court again found that the measures it put in place would be “sufficient to ameliorate the grave risk of harm resulting from [B.A.S.’s] parents’ violent relationship”. (Pet. App’x at 20a (May 5, 2020 District Court Order).) However, the District Court’s conclusions ignore that simply revisiting the site of abuse risks B.A.S.’s retraumatization. As discussed *supra*, Dr. Tronick testified that “even when there’s no . . . violence going on” there is a high probability that being repatriated

¹⁰ Clinical research shows that most abusers violate these conditions; and once the violation occurs, a judge in the United States is powerless to sanction the party who violated the sanctions or enforce the conditions as the violator and the victims will no longer be in the United States. Merle H. Weiner, *Int’l Child Abduction and the Escape from Domestic Violence*, 69 *Fordham L. Rev.* 593, 677 (2000). This inability to enforce conditions means that most abusers will agree to the ameliorative measures only to violate them once back in their home country, with no consequences. See Reunite Research Unit, *The Outcomes for Children Returned Following an Abduction*, 31 (finding that, in a survey of cases imposing conditions on abusers, that every condition related to violence was broken).

could “trigger a reaction on the part of the child”. (Tr. 660:2-14 (Jan. 9, 2019).) The District Court did not properly consider evidence about the harm repatriation could cause B.A.S.¹¹ Due to this harm, no ameliorative measures could adequately protect B.A.S. See Robert S. Pynoos et al., *A Developmental Psychopathology Model of Childhood Traumatic Stress and Intersection with Anxiety Disorders*, 46 Biol. Psychiatry 1542, 1545-46 (1999) (explaining that traumatic reminders contribute to renewed traumatic anxiety and avoidant behavior).

B. Courts Have Held that Ameliorative Measures Are Insufficient to Protect the Child from the Trauma of Re-exposure.

Other courts have held that ameliorative measures are insufficient to protect the child from the trauma of re-exposure to the environment where the abuse took place. In *Elyashiv v. Elyashiv*, the court found that even the “mere return of the children to Israel would trigger their post-traumatic stress disorders”, meaning that the ameliorative measures imposed could not protect the children. 353 F. Supp. 2d 394, 409 (E.D.N.Y. 2005). Similarly, in *Blondin v. Dubois*, the court found that removing the children

¹¹ As part of that harm, the District Court did not adequately weigh the likelihood that the ameliorative measures put in place by the District Court are not enough to stop further violence from occurring. See Roxanne Hoegger, *What If She Leaves?: Domestic Violence Cases Under the Hague Convention and the Insufficiency of the Undertakings Remedy*, 18 Berk. Women’s L.J. 181, 199 (2003) (“Th[e] safety and enforcement issues are serious bars to making undertakings viable solutions.”).

from the “secure environment in which they now live” could set back their recovery by “causing a recurrence of the traumatic stress disorder they suffered”. 78 F. Supp. 2d 283, 295 (S.D.N.Y. 2000) (“Blondin III”), *aff’d*, 238 F.3d 153, 160 (2d Cir. 2001) (“Blondin IV”). *See also Davies v. Davies*, No. 16 CV 6542 (VB), 2017 WL 361556, at *21 (S.D.N.Y. Jan. 25, 2017), *aff’d*, 717 F. App’x 43 (2d Cir. 2017) (finding that “there are no ameliorative measures that could reduce the grave risk” to the point where the child would no longer “be exposed to a grave risk of psychological harm”); *Reyes Olguin v. Cruz Santana*, No. 03 CV 6299 JG, 2005 WL 67094, at *11 (E.D.N.Y. Jan. 13, 2005) (concluding that the child would “be severely traumatized if he were returned”).

The logic these courts employed is also applicable here. B.A.S. and Ms. Golan should not be forced to return to Italy even if there are ameliorative measures in place; nothing a court in the United States orders can prevent the psychological harm that likely would befall B.A.S. upon returning to Italy, the site where he witnessed his father’s violent abuse of his mother.

CONCLUSION

For the above reasons, the *Amici* respectfully submit that the Court should reverse the judgment below.

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Respectfully Submitted

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