

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 FOR DOMESTIC VIOLENCE
SURVIVORS AS *AMICI CURIAE*
SUPPORTING PETITIONER**

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QUESTION PRESENTED

Whether, upon finding that return to the country of habitual residence places a child at grave risk, a district court is required to consider ameliorative measures that would facilitate the return of the child notwithstanding the grave risk finding.

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INTEREST OF *AMICI CURIAE*¹

Amici are mothers and primary caregivers who fled their abusers in search of safety for themselves and their children. They have firsthand experience with how perpetrators of domestic violence assert control and manipulate their victims.

Based on this experience, *amici* believe that the decision below ignores the realities of domestic violence. They contend that where primary caregivers and their children flee to escape domestic violence, ameliorative conditions cannot mitigate the danger of returning a child to the abuser and should not be considered when deciding whether to return survivors and their children to those situations. And they contend that, in many cases, abusers use these very same conditions to continue asserting control over their victims.

Amici submit this brief to illuminate and contextualize why ameliorative conditions are ineffective. They urge the Court to consider their narratives, which show that where domestic violence forces primary caregivers to flee with their children, no set of conditions on paper can guarantee a safe return.

A full list of *amici* is included as Appendix A.²

¹ No counsel for a party authored this brief in whole or in part, and no entity or person, other than amici curiae and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

² Given the sensitivity surrounding cases of domestic violence, certain *amici* have authorized the use of parts of their names or their initials only.

INTRODUCTION AND SUMMARY OF ARGUMENT

When domestic violence is so severe that it forces primary caretakers to flee their homes for foreign countries in search of peace and safety, the Hague Convention's grave-risk exception is one of the only lifelines upon which survivors can rely to protect their children from being returned to the very person who created the grave risk of harm.

The Second Circuit's approach—which returns a child to an abuser so long as the abuser makes particular court-ordered promises that, in the court's view, mitigate a prior grave risk finding—guts that lifeline. Under that approach, courts may return a child if an abuser promises, for example, to pay the primary caretaker, to provide her with an apartment nearby, or to consent to a visitation schedule or protective order entered by the abuser's home country.

Amici come forward to explain why this approach overlooks the realities of domestic abuse in three ways. First, in *amici's* experience, abusers are unlikely to comply with court orders and are far more likely to use court-ordered ameliorative measures as additional ways to exert control over their victims. Second, *amici* contend that even where abusers fulfill court-ordered promises, those promises, no matter how sound on paper, cannot mitigate the harm to children that stems from removing them from the protection of their primary caregiver and reintroducing an abuser. Third, foreign authorities have been, in *amici's* experience, unwilling to enforce U.S. court orders (which the U.S. has no jurisdiction

to enforce abroad), including those pursuant to which survivors' children (and survivors themselves) are sent back to these abusive environments.

Amici implore the Court to consider their firsthand accounts of domestic violence, reject the Second Circuit's ameliorative-measure framework, and stabilize the Hague Convention's grave-risk safehold for domestic violence survivors.

ARGUMENT

I. RELYING ON COURT-ORDERED AMELIORATIVE MEASURES TO MAKE AN ABUSIVE ENVIRONMENT SAFE OVERLOOKS KEY CHARACTERISTICS OF DOMESTIC ABUSERS.

A. Abusers' controlling and manipulative patterns render ameliorative conditions ineffective.

Domestic abuse is “a pattern of power and control exerted” by an abuser “to isolate and restrict” the victim. Megan E. Adams, *Assuring Financial Stability for Survivors of Domestic Violence: A Judicial Remedy For Coerced Debt in New York's Family Courts*, 84 BROOK. L. REV. 1387, 1395 (2019). Accordingly, the “primary characteristic” of domestic abuse is “coercive control.” *Id.*

In many instances, for example, abusers control their victims by forcing them to cut ties with families, friends, and communities. Survivor Chandler Stump, for instance, suffered severe isolation after she moved to Barcelona to be with her now ex-husband and abuser. Although she had job opportunities and friends in Barcelona, her abuser convinced her to

move with him to a small village of around 300 people outside of Girona, Spain. He did everything he could to cut her off from other people:

We both had no contacts there. I had no car; he had the only car. And when some friends wanted to come visit, he refused to pick them up from the train station or arrange a time for them to come. My ex-husband was the type of person who doesn't want to waste his time on what he deems "useless friendships." So he would blacklist the people he didn't want in my life because they weren't useful to him. He controlled whether or not I spent time with friends.³

Another survivor, Andrea Wainer, who fled from Singapore to Connecticut to find safety for their five children, similarly explained how her abuser exerted control by keeping her isolated:

Because we kept moving, I wouldn't have very close friends. And there was always a threat in the background that if I say something negative about him, it will impact his work and our kids. So I had to maintain a façade. There was no anchor.

The same was true for survivor Jacquelyn Graham, who fled from Chile to Texas with her son to escape their abuser's pervasive control and manipulation:

³ Each story shared in this brief has been provided by *amici* in interviews, and each storyteller has authorized publication of the stories here. Stories have been edited for length and spelling.

Every place we moved, every time I've gotten some sort of support system, he'd move us again. He didn't like me giving attention to anyone but him.

Likewise, in *amici's* experience, domestic abusers also maintain control and manipulate their victims by robbing their financial independence. Ms. Stump, for example, explained:

My ex-husband was very controlling with money. For the longest time, the bank account was only in his name. He made 90% of the decisions on what we spent money on, even though I was the primary breadwinner.

When domestic abuse is so severe, the abuser's control often begins years before the victim realizes what is happening. That was true for survivor Breffni Wahl, who came to realize her ex-husband designed their entire marriage to force her to become liable for his gambling debt:

Our relationship was all games. I later learned that my husband had a terrible gambling problem and had racked up over \$750,000 in gambling debts. Looking back, I think the marriage was all part of a scheme.

Moreover, Ms. Wahl's abuser was so controlling that he hid her passport so she couldn't travel or pursue work as a flight attendant:

My passport was taken off of me. He wanted to control me. I couldn't go back and do any flight attendant work. I couldn't travel.

Thus, while the specific ways abusers maintain control vary, their efforts frequently permeate the

victims' entire lives. They isolate victims from their friends and family, and deprive victims of transportation, money, and other means to escape their abuse. And it is difficult to craft conditions that capture the nuances of the many ways in which abusers maintain control, like blacklisting the victim's friends. Thus, where survivors and their children are forced to flee domestic violence, it is highly unlikely that any suite of court-ordered conditions will mitigate the grave risk of harm that stems from returning a child (and often by extension, the primary caregiver) to someone with such controlling tendencies.

B. Abusers' refusal to keep promises and respect the law renders ameliorative conditions ineffective.

Ameliorative measures rely on abusers' willingness and capability to follow them. But abusers' demonstrated unwillingness and/or inability to keep their promises and respect the law renders ameliorative conditions cold comfort to survivors and their children. As Ms. Graham remarked, "he promised to love, honor, and protect. Look how well he fulfilled that particular promise."

Many of *amici's* abusers regularly violated court orders. For instance, Ms. Wahl's husband succeeded on a Hague petition in Ireland to have Ms. Wahl and their daughter returned to the United States on the condition that he would pay Ms. Wahl \$1,000 when she landed. They returned to the United States. She has yet to see that money.

Ms. Wainer reported similar noncompliance. After she fled to Connecticut from Singapore with her five

children, her abuser brought a Hague petition to order them returned. They settled the case with court-ordered conditions of return, including that the abuser would not “flick, slap, spank, push, or hit” the children, that he would pay for the children’s medical care, and that he would return their belongings upon arrival. He flouted those conditions, as well as others, immediately:

The conditions looked wonderful on paper. Then we returned to Singapore and it was a complete disaster. As soon as we landed, he hit the kids. He didn’t pay for child support so I was living in a foreign country with zero money. I couldn’t feed the kids. He cut off medical. I have a child with special needs and he cut off medical care, so that child came undone. It was very difficult to get by.

H. Shiga’s abuser similarly failed to comply with court-ordered conditions. After Ms. Shiga left her Italian husband and moved to the United States to keep herself and their son safe from severe psychological abuse, Ms. Shiga’s abuser brought and succeeded on a Hague petition to return their son to Italy. The court entered a temporary custody order for Ms. Shiga and her abuser to share custody of their child upon return. That order meant nothing, and their son was quickly kept alone with his father for far longer than the court had deemed safe:

As soon as he got that order, as soon as he knew I was coming to Italy, he went back on his agreement. . . . Every time my son went with his father, he kept him longer. There were times when I waited three hours at the

train station; he never brought him, and would say, “Oh I’ll bring him tomorrow.” I’m literally at the train station waiting for my son, and he’s saying I’m not bringing him. This happened every month, every single time, over and over again. There’s nothing that’s holding him to following any of the orders. I don’t know how else to say that.

Survivor Adrienne Pugh describes her abuser’s similar disregard for the law. Ms. Pugh’s abuser’s status as a convicted felon and the terms of their divorce settlement agreement doubly forbid him from keeping guns at his house. Yet their young son has reported seeing guns at his house at least twice. And at least once, he had access to the gun:

When our son was four years old, he said, “Dad showed me his gun. It’s silver.” And when our son was seven years old, he came home and said he saw a gun on the bathroom counter. People like him try to test the boundaries to see what they can get away with. There’s no honor in a piece of paper for him.

And Ms. Graham’s abuser has likewise showed a repeated unwillingness to follow court orders: when they were in Chile, he abducted their son in violation of custody and visitation orders—twice. After the first time, the court granted Ms. Graham full custody but left visitation rights intact. Yet again, he ignored the second order and again abducted their son to the southern part of the country.

Thus, *amici* contend that abusers’ proven unwillingness and/or inability to heed court orders renders ameliorative conditions ineffective. In

amici's experience, the pattern of abuse is so deep-seated that abusers are unlikely to change their behaviors at all, let alone because a piece of paper tells them to do so, especially where that piece of paper comes from a U.S. court and relies upon a foreign court for enforcement. *See supra* Part III. Returning children to their abusers based on abusers' promises to fulfill particular conditions discounts the reality that abusers flout court orders, the law, and their promises.

C. Return conditioned on ameliorative measures provides abusers an additional way to punish victims' efforts by re-asserting control through stronger means.

Most troubling, in cases of pervasive domestic abuse, a caregiver's escape often enrages the abuser and motivates him to further punish. In many cases, that punishment takes the form of re-establishing control by manipulating court-ordered conditions. In effect, then, ameliorative conditions become another tool for an abuser to control and coerce their victims: Victims rely on their abusers to carry out promises, and abusers manipulate those promises to double down on their control over the victims.

In Ms. Wainer's experience, for example, even when her abuser technically carried out his obligations under their Hague settlement agreement, he did so in a way that was itself abusive:

He paid for the kids' school like he was supposed to but he didn't pay for uniforms or transportation to school. He sent us to live in an isolated area with the prior tenants'

furniture, which had dust mites, a broken roof, a ceiling caved in over the bathtub, and mold so bad it would be illegal in the United States. A court order doesn't mean anything to him. When he's given a court order, he thinks what am I going to do to make it look like I'm following it but actually do the opposite? It's not a barrier at all.

Following their divorce settlement agreement, Ms. Pugh's abuser similarly tried to maintain control by carrying out the terms in manipulative ways. For instance, their custody agreement gave Ms. Pugh primary custody over their son, with her abuser getting custody every other weekend starting at 6:00 p.m. on Fridays. Ms. Pugh enrolled their son in tee-ball, which went from 5:15 p.m. to 6:15 p.m. on Fridays. After seeking to hold Ms. Pugh in contempt (and losing) for the tee-ball, her abuser showed up at games at 6:00 p.m. on the dot, escorted by a police officer, to yank their son out of the dugout. Ms. Pugh eventually pulled their son from the team.

Ms. Pugh's abuser also tried to undermine the terms of her restraining order. The order gave her sole use of their previously shared home. So Ms. Pugh's abuser changed the locks, turned off the electricity and water, and had his parents remove all electronics. She had to call a locksmith to get into her own house. Moreover, the order prohibited her abuser from contacting her. So he contacted her family members and instructed his friends to contact her on his behalf.

Ms. Wahl's case is another example. The court granted her abuser's Hague petition to return their

daughter to the United States from Ireland on the condition that he would provide an apartment for them. He used that condition to torment her:

The apartment had bullet holes in the windows, an oven that didn't work, and windows that didn't close. And here I had a toddler on the second floor. The effect of the control is traumatic, even now.

Ms. Shiga's abuser likewise twisted court-ordered ameliorative conditions to punish her after the court returned their son to Italy. He promised, for example, to allow Ms. Shiga to video conference with their son daily. But video calls became just another mechanism for him to exercise control:

Video calls to see my son were put in the order but my ex used that to his advantage. The calls have been used to control and monitor me. I'm not able to see my son, and I can't hear him either. But I can see and hear my ex. And he can always see me. That's every day—I have to see him every day.

Thus, even when abusers purport to follow court-ordered conditions, they often use those conditions to punish primary caregivers' efforts to escape and to re-establish control through even stronger and more destructive means. An order requiring a return of child (which often entails the return of the child's primary caregiver, too) that is conditioned on the abuser's promises therefore exacerbates—not ameliorates—the danger that forced a caregiver to flee with her child in the first place. Indeed, by relying on abusers' promises, ameliorative conditions perpetuate survivors' reliance on the abusers,

enshrine abusers' access to their victims, and bolster abusers' arsenal of control methods.

II. RELYING ON COURT-ORDERED AMELIORATIVE MEASURES TO MAKE AN ABUSIVE ENVIRONMENT SAFE OVERLOOKS THE PERVASIVE AND INHERENT HARM THAT CHILDREN FACE IN THOSE ENVIRONMENTS.

Ameliorative measures, however sound in theory, do not prevent the dangers children consistently face when they are ordered to return to an abusive environment. In cases of domestic violence, it is often the primary caregiver who, along with the child, flees abuse. Removing children from the protection of their primary caregiver and reintroducing them to an environment that created a grave risk of harm perpetuates their exposure to myriad injuries, often with long-lasting effects. As Ms. Pugh explained, returning children to an abuser—no matter how tailored the ameliorative conditions look on paper—is a dangerous choice: “My son will either turn out like my ex-husband or he will be a victim.”

Children exposed to domestic violence (directed toward either themselves or their primary caregiver) frequently experience serious physical and psychological injuries starting at a very young age. Ms. Shiga's son, for instance, was only fifteen months old when he began exhibiting concerning symptoms after visits with his father:

My son consistently had a completely shocked look on his face even though he's normally very expressive and responsive. He normally didn't throw tantrums, but he immediately started

having those kinds of outbursts. Things just got progressively more drastic as visitation continued. He began to suffer from sleep disruption, bouts of screaming, and nightmares. He was always a very comfortable sleeper before.

Ms. Shiga noted how her son's body language would change when he would see his father: "[He] would turn so he wouldn't face his dad. It was a physical expression of distrust." A mental health professional diagnosed their infant son with depression and anxiety.

Ms. Graham's son was similarly harmed by the abusive environment in which he grew up:

[My son] had lived in a fight-or-flight situation since he was born. His thyroid was overactive and produced additional adrenal responses, so he was always hyperactive . . . When I realized that my inability to leave my abuser had caused a serious medical condition . . . [it] was a terrible day.

Separating children from their primary caregiver and reintroducing them to the environment that created a grave risk of harm thus exacerbates their injuries, often with long-lasting effects. Ms. Stump's 18-month-old son, for example, returned from court-ordered visits with his father with bruises on his right arm, as well as symptoms of post-traumatic stress disorder:

My son was screaming and clawing at me to avoid going back to his father. I have a voice recording of his reaction. It took several months for him to be OK going to his father.

In October [2021], he came home with another mysterious bruise on his arm. And the next time my ex came to pick him up, my son ran away from the door and said he didn't want to go back. When I took him to the forensic doctor, they suspected child abuse and we ended up opening a criminal case against my ex.

As Ms. Stump further explained:

My son refuses to eat. He will purposefully pee himself or pee on the floor because it's the only way he can control things in his life. His life is so chaotic; he goes from house to house every two to three nights. He has no sense of belonging in either one house.

Likewise, after the court ordered survivor Valerie Ronchin's children to live with their father, they suffered further physical and psychological injury:

If the children are separated from their primary care parent, of course they were going to be psychologically damaged. One of my children has an anxiety disorder; she's anxious because she lives with my ex-husband instead of me. My ex doesn't understand the children. He's abusing them without even knowing he's abusing them. He doesn't listen to them. My kids would complain that they were hungry and he wouldn't cook for them. He would tell them to eat popcorn for lunch. With me, they had three meals a day.

Moreover, as a way of maintaining control, abusers often convince their children to distrust their primary caregivers. That mind game not only

perpetuates the cycle of control explained above, *see supra* Part I, but also further harms children by preventing them from developing meaningful relationships with a safe and loving parent. For instance, when Ms. Wainer initially filed for divorce to protect herself and her children from their abuser, a social worker observed that the children had a “secure attachment with their mother.” But by the time Ms. Wainer’s 16-year-old daughter was returned to her years later, she was already conditioned to distrust her, which severely strained the mother-daughter relationship and harmed their daughter’s ability to function normally:

My daughter was 16 years old when I got her back. She hadn’t been to a doctor in four years. My ex had pulled her out of school and put her in an Orthodox Jewish school even though we’re not religious. She started failing. So my ex took her out of that school and put her in German school, where she failed. So when she comes here, she’s truant, she’s wild, she’s had no medical attention. She’s in 11th grade and she still doesn’t know what the SATs are. And my ex threatened her and scared her so much, she didn’t speak to me for eight months. All of my kids are alienated...[They] think I’m evil. Just getting my daughter to exist in a normal way took me three months.

In *amici*’s experience, ameliorative measures do not mitigate the potentially devastating consequences of returning children to the environments that created a grave risk of harm. An abuser will likely abuse again—and exposed children suffer both physical and psychological injuries that damage their

development and relationships indefinitely. When primary caregivers and their children flee pervasive domestic abuse, even the most perfectly crafted written conditions cannot mitigate the realistic risk that children will continue to suffer upon return.

III. RELYING ON COURT-ORDERED AMELIORATIVE MEASURES TO MAKE AN ABUSIVE ENVIRONMENT SAFE OVERLOOKS THE REALITY THAT FOREIGN AUTHORITIES MAY BE UNWILLING OR UNABLE TO TAKE DOMESTIC VIOLENCE SERIOUSLY.

Ameliorative conditions mean little without an enforcement mechanism. But in *amici*'s experience, foreign authorities are often unwilling to enforce conditions ordered by an American court, even where the American court requires the order to be entered abroad. Just because an American court has written down conditions for an abuser to follow does not mean foreign authorities can or will honor and enforce them. Indeed, foreign authorities can change or lift the order immediately upon return, and there is no way to ensure protection beyond American soil.

In Ms. Wainer's case, for example, a Connecticut federal court imposed ameliorative measures that prohibited her husband from engaging in any acts of violence against Ms. Wainer or their children, required him to return their belongings from storage upon their arrival in Singapore, and limited him to supervised visitation. Her husband violated each of these measures. In many cases, Ms. Wainer could not afford representation to pursue these violations in a Singaporean court. On the one instance she managed

to get before a judge—going as far as to seek a restraining order—she received no help: “The court in Singapore did not believe me.”

More generally, foreign authorities abroad often view mothers who flee with their children to escape domestic abuse as “abductors” and the abusers—natives before those very courts—as “victims.” When mothers then try to enforce court-ordered conditions in the foreign country from which they fled in the first place, authorities in those countries often discredit their stories and ignore their cries for help. For example, police in Spain ignored Ms. Stump, even after she filed a police report documenting evidence of domestic violence, including a forensic doctor’s analysis, voice recordings of her son’s pleas for help, and photos indicating physical abuse:

[Spanish authorities] don’t take me seriously. They say things like “women just want custody” and “maybe the bruises are even the mom’s fault.” I wasn’t believed and was made out to be a manipulator. The justice system on a local level is very patriarchal and in favor of the father.

Although Ms. Stump’s divorce agreement stipulated that both parents had to agree on their son’s healthcare decisions, when Ms. Stump and her ex-husband took a dispute over vaccination to the Spanish courts, the local government lawyer insisted that Ms. Stump could not be trusted because “she came from a country that disregarded vaccine recommendations.” Her ex-husband won exclusive rights to determine which vaccines their son would receive and when.

Bethany Ryczek faced similar hurdles in Italy. After she and her husband separated, for instance, she found a video camera that he had hidden in her bedroom in order to spy on her, as well as a device he used to track her WiFi activity. She immediately notified the Italian police but they refused to intervene:

They asked if I was still married, and when I said yes, they said, “Well, then, it’s OK because he’s your husband.”

Fearing for her family’s safety, she filed charges under Italy’s “Codice Rosso” (Code Red) law, which the national government had implemented specifically to combat the high rates of violence against women in the country. The law required action from Italian authorities in a matter of hours. But they did nothing for over three months, during which time Ms. Ryczek was forced to quarantine in her home:

I was at a mental breaking point. I was also being evicted, but I couldn’t leave the house because all of the evidence was still there. I was crying and begging them to do something because I felt like I was going to lose my mind . . . It’s a patriarchal society. They put laws in place because women are dying and they don’t follow those laws themselves. The system doesn’t allow people to help you.

Ms. Ryczek fared no better before the Italian courts:

The judge’s language toward me was flippant. There is no enforcement, especially not with foreigners. If my son had been forced to go

back to Italy, I would not go back myself because that country wouldn't protect me. The judge's language and demeanor was all about my son's Italian citizenship, [and disregarded] his American citizenship. The judge was very annoyed and disrespectful toward my custody order. She made a point of saying that Americans shouldn't be deciding the custody of that child. That's the attitude.

Even Ms. Ryczek's attempts to protect her son's health and ensure proper living conditions for him fell on deaf ears:

My son was constantly getting sick (multiple burst eardrums & smelling of mold) when he came back from visiting his father. I eventually discovered his father was living in an illegal basement room of someone's villa, and then I refused to allow overnights there. So my ex took my son from daycare. I involved the police who went to the "house" and, after a few hours of investigating it, concluded that it had heat and so even though it didn't meet the code standards for legal housing, there was nothing they could do. Italy does not have laws in place regarding proper shelter for children as long as they are with a parent. The officer in charge took me aside and advised me to get a court order for custody as soon as possible (which he then agreed could take months) and told me there was absolutely nothing they could do to protect my son until then. It is now two years later and I still have no legal paperwork from an Italian court nor orders.

Ms. Shiga likewise faced similar enforcement challenges when she returned to Italy with her son pursuant to a Hague return order. When her abuser immediately assaulted her at the airport, the police then succumbed to his framing of her as a child abductor who had taken their child from Italy:

My Italian wasn't good enough to explain this complex situation, and my ex had all of these legal papers and went with the police into a closed room and he convinced them that he was granted exclusive custody.

Ms. Shiga's abuser unilaterally took custody of their son. When she tried to obtain a police report documenting her assault as part of her efforts to get her son back, the police told her it was "a family matter" and "threw their hands up in the air":

They said they didn't see anything, and when I told them that they needed three or four officers to get my ex away from me . . . they said, "If you really want to see your son, go to your house and get him." I told them if this is what my ex would do in public with the police actually present, imagine what he'd do in private. But they did nothing.

And when Ms. Shiga notified an Italian court that her ex kept their son for fourteen days in violation of a U.S. custody order, the judge echoed that "it wasn't a big deal and that [she] could just go to the house and get him." Ms. Shiga reflected:

Because the American courts said that our son was to be returned, I am looked at as this horrific person. It doesn't help that I'm a

foreigner—I'm given less time [with my son] than I would have if I were an Italian mother.

Amici thus urge the Court to consider that even when survivors and their children return to a foreign country armed with ameliorative measures ordered by a U.S. court, there is little guarantee that foreign authorities will respect or enforce those measures. Cultural norms often prevent them from taking survivors seriously and from providing these vulnerable caretakers the protections that a U.S. court has ordered are required to ameliorate a grave risk of harm to their children. Court-ordered conditions are therefore insufficient to mitigate the significant risk of harm that stems from ordering children to return to an abusive environment.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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APPENDIX

**APPENDIX A
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