No. 25-5067

IN THE SUPREME COURT OF THE UNITED STATES

KIRA KRISTINA ZIELINSKI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record

MATTHEW R. GALEOTTI
Acting Assistant Attorney General

JAVIER A. SINHA
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether a defendant may assert that she "was fleeing an incidence or pattern of domestic violence" for purposes of the affirmative defense to international parental kidnapping, 18 U.S.C. 1204(c)(2), based on alleged domestic violence directed at the kidnapped child.

IN THE SUPREME COURT OF THE UNITED STATES

No. 25-5067

KIRA KRISTINA ZIELINSKI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is reported at 128 F.4th 961. The order of the district court (Pet. App. 16a-17a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 13, 2025. A petition for rehearing was denied on April 9, 2025 (Pet. App. 18a). The petition for a writ of certiorari was filed on July 7, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a bench trial in the United States District Court for the Southern District of Iowa, petitioner was convicted of international parental kidnapping, in violation of 18 U.S.C. 1204(a). Pet. App. 9a. She was sentenced to 36 months of imprisonment, to be followed by one year of supervised release. Id. at 10a-11a. The court of appeals affirmed. Id. at 1a-8a.

1. Petitioner gave birth to a child in 2017. Presentence Investigation Report (PSR) ¶ 6. In 2020, petitioner and her spouse (the child's biological father) initiated marriage dissolution proceedings in Iowa state court. PSR ¶ 7. The Iowa court entered a temporary order specifying that custody of the child would alternate between petitioner and the child's father every three days. PSR ¶ 9.

In late January 2022, shortly before the "anticipated final resolution of the custody matter," petitioner filed a pro se complaint in Iowa state court alleging that the child's father was sexually abusing the child and requesting that petitioner be given "'sole custody' of" the child. PSR ¶¶ 11-12. Petitioner made similar accusations of sexual abuse to the police. PSR ¶¶ 13-14. Petitioner subsequently filed an amended pro se complaint alleging that the child was "being raped every evening in the bathtub by [the child's] father." PSR ¶ 15. A representative of the Child Protective Center in Cedar Rapids, Iowa, interviewed the child; a social worker with the state Department of Human Services (DHS)

and an Iowa City detective observed the interview. PSR ¶ 16. "Investigators concluded [the child] had been coached, and the abuse claim was unfounded." Ibid. The state court dismissed petitioner's complaint. PSR ¶ 17.

Petitioner promptly purchased a van, loaded it with some of her own and the child's belongings, and drove to Mexico with the child. PSR ¶ 19. As a result, petitioner failed to appear at scheduled hearings in the dissolution matter in late February and early March 2022. PSR ¶ 20. On March 17, 2022, the Iowa court entered a decree granting full custody of the child to the child's father. Ibid. The court found "'no credible evidence' of sexual abuse." Pet. App. 16a n.1. "Law enforcement officers, DHS investigators, and medical doctors who examined the child also uniformly agreed there was no evidence the child had been abused." Ibid.

Petitioner's attorney sent petitioner a copy of the state court's decree, which ordered petitioner to return the child forthwith. PSR ¶ 21. Petitioner nevertheless remained with the child in Mexico until November 2022, when petitioner and the child drove back to the United States. PSR ¶ 22. When petitioner was arrested at the border, she repeated her claim that the child's father "was repeatedly raping [the child]." Ibid. "[C]ustody of [the child] was temporarily transferred to authorities in Imperial County, California," but "[a]fter Imperial County officials

investigated further, [the child] was returned to [the child's father]." PSR ¶¶ 22-23.

2. A grand jury in the Southern District of Iowa indicted petitioner on one count of international parental kidnapping, in violation of 18 U.S.C. 1204(a). Indictment 1. Section 1204 provides that "[i]t shall be an affirmative defense" to the international-kidnapping crime that "the defendant was fleeing an incidence or pattern of domestic violence." 18 U.S.C. 1204(c)(2). Claiming such a defense, petitioner asserted an intent to introduce testimony from the child about the alleged abuse; testimony of "[p]re-school teachers to whom [the child had] complained about sexual abuse"; "[a]n audio tape of [the child] complaining about sexual abuse"; the child's "complaint of sexual abuse to Child Protective Services"; and the child's "complaint of sexual abuse nearly a year later at the time of [petitioner's] arrest." D. Ct. Doc. 55, at 2 (July 18, 2023).

At a pretrial hearing, petitioner's counsel acknowledged that most of that evidence would be inadmissible hearsay. See 7/20/23 Tr. 7-10. Petitioner's counsel agreed with the district court that "the only potentially admissible evidence [petitioner] would have is from the child." Id. at 10; see id. at 11 (agreeing with the court's statement that "the only non-hearsay evidence you have at this point, though, is potentially the testimony of a child, who was 4 when this purportedly happened, that it purportedly happened 18 months ago"). And the court expressed "pretty grave

concerns" about whether the child would be competent to testify, questioning "whether a child this young testifying about something that happened this long ago in this context, where those claims have all been rejected by every expert who interviewed this child at the time [the child] made the statements, is going to be admissible." Id. at 12, 19.

The district court, however, then excluded the evidence on the separate ground that petitioner was not entitled to "introduce evidence that she fled the country to protect [the child] from ongoing sexual abuse at the hands of the child's father." Pet. App. 16a. The court took the view that "the affirmative defense is only available to a defendant who is 'fleeing an incidence or pattern of domestic violence' against himself or herself," not against the child. Ibid. (citation omitted). And the court stated that because petitioner made "no contention that she was a victim of domestic violence," "the affirmative defense cannot be introduced at trial." Id. at 17a.

The parties then agreed to a bench trial on stipulated facts. D. Ct. Doc. 67, at 1-2 (July 31, 2023); see D. Ct. Doc. 68, at 1-5 (July 31, 2023) (stipulated facts). The district court found petitioner guilty and sentenced her to 36 months of imprisonment, to be followed by one year of supervised release. D. Ct. Doc. 70, at 1-4 (Aug. 2, 2023); Pet. App. 9a-11a.

3. The court of appeals affirmed. Pet. App. 1a-8a.

The court of appeals adopted the district court's view that Section 1204(c)(2)'s affirmative defense for "'fleeing an incidence or pattern of domestic violence'" does not apply if the "domestic violence" is "against a third party." Pet. App. 2a-3a (citation omitted). The court noted that "[t]he statute makes no reference to domestic violence against a third party" and instead "speaks only of the defendant's flight from domestic violence." Id. at 3a. And the court expressed the concern that a contrary interpretation would "allow[] defendants to 'convert every child-kidnapping prosecution into a replay of the child-custody proceedings, in which the defendant would try to relitigate the domestic-relations case.'" Id. at 4a (brackets and citation omitted).

Judge Kelly dissented. Pet. App. 5a-8a. On her reading of the statute, "the definition of 'domestic violence' readily includes violence against children," and "[w]hether the defendant is trying to escape domestic violence targeted toward herself or her child, the defendant is still 'fleeing' from domestic violence." Id. at 6a.

ARGUMENT

Petitioner renews her contention (Pet. 6-18) that "fleeing * * * domestic violence" for purposes of an affirmative defense to international parental kidnapping, 18 U.S.C. 1204(c)(2), includes domestic violence against the kidnapped child as well as domestic violence against the defendant herself. Although the

government agrees that is the better interpretation of the statute, certiorari is unwarranted on the facts of this case because any error was harmless. Accordingly, petitioner would not be entitled to relief even if the question presented were resolved in her favor. Alternatively, the Court could grant the petition for a writ of certiorari, vacate the judgment of the court of appeals, and remand for further consideration in light of the government's position in this brief.

1. The court of appeals erred in concluding that "domestic violence" in 18 U.S.C. 1204(c)(2) includes only violence against the defendant herself. The International Parental Kidnapping Crime Act of 1993, Pub. L. No. 103-173, 107 Stat. 1998 (18 U.S.C. 1204), as amended, makes it an offense to "remove[] a child from the United States, or attempt[] to do so, or retain[] a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights." 18 U.S.C. 1204(a). The statute provides three affirmative defenses. 18 U.S.C. 1204(c)(1)-(3). One of those affirmative defenses is that "the defendant was fleeing an incidence or pattern of domestic violence." 18 U.S.C. 1204(c)(2). The statute does not define "domestic violence." In context, that affirmative defense is best understood to at least encompass violence against either the defendant or the kidnapped child.

This Court usually interprets undefined statutory terms according to their ordinary meaning at the time of enactment. See,

e.g., Wisconsin Central Ltd. v. United States, 585 U.S. 274, 277 (2018). Most dictionaries around the time Section 1204 was enacted in 1993, however, did not specifically define "domestic violence." See, e.g., Webster's Third New International Dictionary (3d ed. 1993) (no definition); The American Heritage Dictionary of the English Language (3d ed. 1992) (same); Black's Law Dictionary (6th ed. 1990) (same). And later dictionary definitions did not universally agree about whether it encompasses violence against a child. Compare, e.g., Black's Law Dictionary 1564 (7th ed. 1999) ("Violence between members of a household, usu[ally] spouses; an assault or other violent act committed by one member of a household against another."), with, e.g., The American Heritage Dictionary of the English Language 534 (4th ed. 2000) ("Violence toward or physical abuse of one's spouse or domestic partner."); cf. Antonin Scalia & Brian A. Garner, Reading Law 419 (2012) (explaining that "[d]ictionaries tend to lag behind linguistic realities" and that "to ascertain the meaning of a term in an 1819 statute, it is generally quite permissible to consult an 1828 dictionary").

And Congress itself subsequently used the term in both senses in different contexts. In 1994, for example, Congress defined a new crime of "interstate domestic violence" that encompassed only violence against a "spouse or intimate partner." Safe Homes for Women Act of 1994, Pub. L. No. 103-322, Tit. IV, Subtit. B, § 40221(a), 108 Stat. 1926 (enacting 18 U.S.C. 2261); see 18 U.S.C. 2261(a)(1) ("spouse, intimate partner, or dating partner"). But

two years later, Congress defined a "misdemeanor crime of domestic violence" for purposes of a criminal prohibition on firearm possession to include crimes involving violence "committed by a current or former spouse, parent, or guardian of the victim." Treasury, Postal Service, and General Government Appropriations Act, 1997, Pub. L. No. 104-208, Tit. VI, § 658(a), 110 Stat. 3009-371 (enacting 18 U.S.C. 921(a)(33)) (emphases added); cf. Battered Women's Justice Project et al. Amici Br. 13-14 (listing other statutes).

Given that the term "domestic violence" was and is linguistically broad enough to encompass violence against children in the household, whether the term should take that broader meaning therefore depends on context. And the statutory context here supports a broader reading, extending at least to where the victim is the kidnapped child. Section 1204(c)(2) provides an affirmative defense to the crime of parental kidnapping, and it would be perverse for Congress to have absolved a parent for kidnapping her child when she acts to protect herself from domestic violence but not when she acts to protect the child from such violence. See Pet. App. 6a (Kelly, J., dissenting). The court of appeals emphasized that the statute "speaks only of the defendant's flight from domestic violence," id. at 3a, suggesting that a defendant cannot be said to "flee" violence directed at someone else. But at least in the context of parental kidnapping, a parent is "fleeing" domestic violence when the violence is directed at her

child, she rescues that child to escape the violence, and the two flee together.

2. Certiorari is nonetheless unwarranted because, on the particular facts and circumstances of this case, any error was harmless. Accordingly, petitioner would not be entitled to relief from her conviction even if the question presented were resolved in her favor, making this case an unsuitable vehicle in which to review that question.

Petitioner presented insufficient evidence to sustain her proposed affirmative defense. Petitioner has identified the evidence she would rely on in support of her domestic-violence defense as "testimony from [the child] and two of [the child's] preschool teachers who would testify [the child] told them about the abuse"; testimony from "witnesses from Child Protective Services who questioned [the child] about the abuse"; and "an audiotape of [the child] talking about the abuse." Pet. 4; see D. Ct. Doc. 55, at 2. But petitioner herself acknowledged below that all of that testimony and evidence, with the possible exception of the child's testimony, would be inadmissible hearsay. 7/20/23 Tr. 7-11. And even the child's testimony was not obviously admissible.

The district court expressed "pretty grave concerns" about whether the child would be competent to testify, given the child's young age at trial, the child's age when the alleged abuse took place, and the time since the supposed abuse. 7/20/23 Tr. 19; cf.

Greyhound Lines, Inc. v. Wade, 485 F.3d 1032, 1036 (8th Cir. 2007) ("Competency of a witness is reviewed for abuse of discretion."). And even if the child's testimony were admissible, the exclusion of that testimony -- and concomitant denial of her affirmative defense -- would be harmless given the particular facts and circumstances of this case. Cf. Crane v. Kentucky, 476 U.S. 683, 690-691 (1986) (erroneous exclusion of testimony subject to harmless-error analysis).

When interviewed by the Child Protective Center, the child repeated the claims of abuse just as petitioner had described it -- but also stated that the child was not sure "if [the child] was actually right" and that "[the child] might be wrong." PSR ¶ 16. "Investigators concluded [the child] had been coached, and the abuse claim was unfounded." Ibid. Petitioner's claims of abuse accordingly "have all been rejected by every expert who interviewed this child at the time [the child] made the statements." 7/20/23 Tr. 12; see id. at 11-13.

The Iowa court noted that "there was 'no credible evidence' of sexual abuse." Pet. App. 16a n.1. "Law enforcement officers, DHS investigators, and medical doctors who examined the child also uniformly agreed there was no evidence the child had been abused." Ibid. And after investigating the matter, county officials in California returned the child to the father. PSR ¶¶ 22-23. The record as a whole, therefore, shows that petitioner could not have discharged her burden to prove that the child was a victim of

domestic violence. Cf. Smith v. United States, 568 U.S. 106, 112 (2013) (remarking the traditional rule that criminal defendants bear the burden to prove affirmative defenses).

3. Petitioner suggests (Pet. 6-9) that the decision below conflicts with decisions of the Seventh, Tenth, and Eleventh Circuits. But as the court of appeals in this case observed (Pet. App. 2a n.2), none of the decisions petitioner identifies squarely confronted the question presented.

In United States v. Nixon, 901 F.3d 918 (2018), the Seventh Circuit rejected the claim that a mere "belief" that one parent was abusing a child is sufficient to constitute "real domestic violence," as Section 1204(c)(2) requires. Id. at 920. In United States v. Rizvanovic, 572 F.3d 1152 (2009), the Tenth Circuit found no abuse of discretion in the district court's permitting the government to cross-examine the defendant about his own alleged abuse of his children, given his claim that he kidnapped the children to "protect" them from abuse. Id. at 1155 (citation omitted). And in United States v. Morcombe, 787 Fed. Appx. 581 (2019) (per curiam), cert. denied, 589 U.S. 1186 (2020), the Eleventh Circuit found no abuse of discretion in the district court's excluding hearsay statements by the defendant's child. Id. at 585.

Although those three cases happened to involve alleged domestic violence directed at the children, the parties and courts appeared to simply assume that Section 1204(c)(2) encompasses such

a circumstance without expressly addressing the issue. None of the decisions (particularly the unpublished Eleventh Circuit decision) would bind those courts were they to confront the issue directly. Furthermore, each case was decided against the defendant, meaning that petitioner has not identified any appellate precedent confronting a situation in which a defendant asserted the defense based on abuse of the kidnapped child and obtained relief on that basis. And if the issue arises again in the Eighth Circuit, that court will have the opportunity to correct its reasoning, taking into account the views expressed in this brief.

4. Although plenary review is unwarranted for the reasons set forth above, this Court could, in the alternative, grant the petition for a writ of certiorari, vacate the judgment below, and remand (GVR) for further consideration in light of the government's position in this brief. See Lawrence v. Chater, 516 U.S. 163, 167 (1996) (per curiam) (recognizing the Court's power to GVR in light of "positions newly taken by the Solicitor General"). Some Members of this Court have sometimes expressed opposition to that practice where, as here, the court of appeals' judgment is correct. See, e.g., Myers v. United States, 587 U.S. 981 (2019) (Roberts, C.J., dissenting, joined by Thomas, Alito, and Kavanaugh, JJ.) (objecting to a GVR where the "Eighth Circuit made some mistakes in its legal analysis, even if it ultimately reached the right result"); Nunez v. United States, 554 U.S. 911 (2008) (Scalia, J.,

dissenting, joined by Roberts, C.J., and Thomas, J.) ("I continue to resist GVR disposition when the Government, without conceding that a judgment is in error, merely suggests that the lower court's basis for the judgment is wrong."); Lawrence, 516 U.S. at 179 (Scalia, J., dissenting, joined by Thomas, J.) (objecting to a "no-fault V&R practice"). But this Court has a well-established practice of issuing GVR orders in analogous circumstances. See, e.g., Myers, supra (No. 18-6859); see also, e.g., Stampe v. United States, 142 S. Ct. 1356 (2022) (No. 21-6412); Santos v. United States, 587 U.S. 1012 (2019) (No. 18-7096); Franklin v. United States, 586 U.S. 1189 (2019) (No. 17-8401); Close v. United States, 583 U.S. 802 (2017) (No. 16-9461). Although simply denying certiorari is the preferable course, a GVR would not be inconsistent with the Court's practice.

CONCLUSION

The petition for a writ of certiorari should be denied. In the alternative, the Court could grant the petition for a writ of certiorari, vacate the judgment below, and remand for further consideration in light of the government's position in this brief.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

MATTHEW R. GALEOTTI
Acting Assistant Attorney General

JAVIER A. SINHA
Attorney

NOVEMBER 2025