

No. 26-164

In the Supreme Court of the United States

A.A. AND F.A., PETITIONERS

v.

JOSHUA MAST AND STEPHANIE MAST,
RESPONDENTS

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA*

**BRIEF OF JOHN R. BASS, FORMER U.S. AMBASSADOR
TO AFGHANISTAN; DONNA A. WELTON, FORMER
ASSISTANT CHIEF OF MISSION AT THE U.S. EMBASSY
IN KABUL; AND LIEUTENANT COLONEL ROSEMARY M.
REED, U.S. ARMY (RET.), AS AMICI CURIAE IN SUPPORT
OF PETITIONERS**

JOSHUA M. WESNESKI
Counsel of Record
CRYSTAL L. WEEKS
LEAH DESKINS
YOUSSEF ZIYADI
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Suite 600
Washington, DC 20036
(202) 682-7000
joshua.wesneski@weil.com

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INTEREST OF *AMICI CURIAE*¹

Ambassador John R. Bass served as United States Ambassador to Afghanistan from December 2017 to January 2020. As the President's personal representative to the Afghan government, Ambassador Bass

¹ Counsel provided respondents notice of *amici curiae*'s intention to file this brief at least 10 days prior to the due date. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

oversaw and approved all U.S. government operations and actions in-country other than U.S. military operations under the commander of U.S. forces. He led the country team, comprising the U.S. government departments and agencies working in-country during Baby Doe's recovery, the initial family-tracing effort, and the entry of the November 2019 Virginia custody and interlocutory adoption orders. His service in Afghanistan, together with his prior assignments as Ambassador to Turkey and Georgia and as Executive Secretary of the Department of State, and his subsequent assignments as Under Secretary of State for Management and Acting Under Secretary of State for Political Affairs, gives him firsthand understanding of how the United States coordinates across agencies, engages host governments, and addresses sensitive matters implicating foreign sovereignty, U.S. military operations, and children separated from their families abroad.

Ambassador Donna A. Welton served as Assistant Chief of Mission (ACOM) at the U.S. Embassy in Kabul from August 2019 to August 2020. She later served as U.S. Ambassador to Timor-Leste and held other senior diplomatic and defense-policy assignments, including as Deputy Chief of Mission and Chargé d'Affaires in Finland, Acting Deputy Assistant Secretary for Programs and Operations in the Department of State's Bureau of Political-Military Affairs, and Acting Director for Southeast Asia in the Office of the Secretary of Defense (Policy). As ACOM in Kabul, Ambassador Welton participated directly in the diplomatic and interagency process concerning Baby Doe's care and reunification. Ambassador Welton was the lead representative from the State Department liaising with Afghanistan's Ministry of Labor and Social Affairs (MOLSA), the International

Committee of the Red Cross (ICRC), and U.S. military officials regarding the disposition of Baby Doe.

Lieutenant Colonel (LTC) Rosemary M. Reed, U.S. Army (Ret.), led the U.S. Forces-Afghanistan J9 civil-military operations section from July 2019 through June 2020. In Baby Doe's case, LTC Reed served as the Department of Defense's primary point of contact with MOLSA, the ICRC, the U.S. Embassy, and military components working to locate Baby Doe's family and arrange interim care. She remained directly involved in the interagency process throughout Baby Doe's time in Defense Department custody and witnessed her February 2020 transfer to MOLSA for family reunification.²

Amici have a strong interest in ensuring that state-court proceedings do not disrupt U.S. military and diplomatic operations, undermine commitments to foreign governments made through official U.S. channels, or impair efforts to reunify children separated from their families abroad.³ Drawing on their respective roles in these events and decades of public service, *amici* file this brief to explain the serious consequences that followed because the U.S. officials responsible for Baby Doe's care and reunification received neither timely nor meaningful notice of the Virginia proceedings. In their judgment, the procedural mechanism through which the extraordinary events of this case were allowed to unfold is

² Ambassador Welton and LTC Reed submitted declarations in the proceedings below describing their respective personal involvement in Baby Doe's care and reunification. Pet. App. 196a-202a, 281a-88a.

³ *Amici* appear solely in their personal capacities. They do not speak for the United States, the Departments of State or Defense, the U.S. Army, or NATO.

repeatable and presents a recurring threat to U.S. interests.

SUMMARY OF ARGUMENT

Amici offer the firsthand perspective of U.S. officials who directed or implemented the family-reunification process at the center of this case. They agree with the factual account set out in the United States’ amicus brief to the Supreme Court of Virginia, Pet. App. 136a-78a, because they lived it.⁴ They know firsthand why U.S. officials decided to transfer Baby Doe to Afghan officials for reunification, and what information the Virginia court lacked when it entered the initial custody and adoption orders without notice to the United States, which then had physical custody of the child.

That experience gives *amici* a unique perspective on the consequences of the decision below. When U.S. forces recover a child during an armed conflict, decisions concerning the child’s care and placement implicate military operations, host-country sovereignty, and diplomacy between national governments. Timely and meaningful notice to the United States and those actually caring for the child is therefore essential before a court enters an order altering the child’s legal status. Without it, courts lack the information they need, and responsible officials cannot protect the sovereign, operational, and humanitarian interests entrusted to them. No such notice was provided here.

The decision below warrants review for three reasons.

⁴ Following a change in administrations, the United States withdrew the brief. Pet. App. 305a. Its withdrawal letter identified no factual error in the brief.

First, the absence of notice left the courts with an incomplete and inaccurate factual record. The Masts obtained the initial custody and adoption orders through material misrepresentations and omissions concerning Baby Doe’s status, family, and Afghanistan’s jurisdiction. Had responsible U.S. officials—including *amici*—received notice, they could have corrected the record before the courts acted.

Second, the *ex parte* orders bypassed—and were later used to undo—the United States’ military and diplomatic process. That process reflected coordination among U.S. military and diplomatic officials, the Afghan government, and the ICRC. Mast had no authority to act for the United States or to displace that inter-agency decision through private litigation. Yet he obtained an adoption order without disclosing the reunification decision or the fact that petitioners were raising Baby Doe, and later used that order to separate her from petitioners after inducing them to travel to the United States through emergency evacuation channels. Pet. 10-12; Pet. App. 146a-47a.

Third, the decision threatens harm beyond this case. By condoning an order used to undo an official U.S.-Afghan reunification process, the decision undermines confidence in commitments made through official diplomatic channels and weakens the Nation’s ability to insist on reciprocal safeguards abroad. It also leaves open a repeatable procedural path by which private litigants can disrupt future military, diplomatic, and humanitarian operations without notice to responsible officials or the child’s caretakers.

The petition should be granted.

ARGUMENT**I. A Lack of Notice Deprived the Judicial Body of a Complete and Accurate Record**

Notice is the means by which decisive facts are subjected to adversarial testing before a court acts. That safeguard is especially important in proceedings that determine a child's custody or permanently alter her legal status. See *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 28 (1981); *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965). Without adequate notice, the facts offered by an interested party are never vetted and may, in fact, be materially misrepresented (or simply false). That is what happened here.

A. Officials With Access to Information on Baby Doe's Status Were Never Notified of the Adoption Proceedings

1. When the initial custody and interlocutory adoption orders issued, the Defense Department had physical custody of Baby Doe. U.S. forces had recovered her from the battlefield in September 2019 and subsequently brought her to Bagram Airfield for treatment. During that period, *amicus* LTC Reed's office—the "J9" civil-military operations section—coordinated the military command's work concerning Baby Doe's care and reunification with the U.S. Embassy, the Afghan government (primarily MOLSA), the ICRC, and other organizations. As the Defense Department's principal point of contact for family tracing and interim care, LTC Reed kept senior military and Embassy officials apprised of the child's condition and was best positioned to provide current information about Baby Doe's status. Pet. App. 281a-84a. In practical terms, LTC Reed was

the appropriate official to consult for the most up-to-date information about Baby Doe. *Ibid.*

On the diplomatic side, Ambassador Bass, as Chief of Mission, led the Embassy and the interagency country team responsible for U.S. civilian operations in Afghanistan during this period. This included leading U.S. government engagement with the government of Afghanistan, the United Nations, and other governments to mitigate the impact of unintended consequences—including civilian casualties—stemming from U.S. military operations. He assigned Ambassador Welton to lead the Embassy's coordination with Afghan authorities and U.S. military counterparts (including LTC Reed) as the family tracing unfolded. In that role, Ambassador Welton helped ensure that the Embassy understood MOLSA's child-protection responsibilities, monitored the information MOLSA and the ICRC developed about Baby Doe's family, and elevated Afghanistan's formal request for transfer to senior State Department and military officials. Pet. App. 196a-202a. As a result, any meaningful inquiry into Baby Doe's status, Afghanistan's position, or the ongoing family-tracing process should have included Ambassador Welton.

By October 2019, potential relatives from the area where Baby Doe was found had contacted the ICRC and were being vetted. Pet. App. 286a-87a. At an October 23 meeting called by Ambassador Welton and attended by representatives of the military command, the U.S. Embassy, MOLSA, and the ICRC, the participants agreed that the family trace would continue and that Baby Doe would remain in military care while it did. *Ibid.* Just days later, Mast sought custody of Baby Doe in Virginia state court.

Although Mast had attended the October 23, 2019 meeting and was therefore aware that the United States was in physical custody of Baby Doe and that family tracing was underway, he did not provide the United States with notice of the proceedings, including the petition, a hearing date, or an opportunity to respond. Pet. 6-7; Pet. App. 141a-43a.

2. Due process requires notice “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and *afford them an opportunity to present their objections.*” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (emphasis added). General awareness of a related matter is insufficient. See *City of New York v. N.Y., New Haven & Hartford R.R. Co.*, 344 U.S. 293, 296-97 (1953); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983). The Masts have argued at times that some federal employees may have heard about the pending adoption proceedings in bits and pieces prior to December 2020 when the final adoption order issued. See Pet. App. 175a n.9, 308a, 312a, 316a. But none of those communications apprised the individuals or officers actually responsible for Baby Doe’s well-being of a pending custody or adoption proceeding in Virginia.

The distinction between fragmented awareness and formal notice has particular force when the entity to be notified is the United States. Only authorized officials can formulate and present the Government’s position in court, cf. 28 U.S.C. 516-517, and there are clear rules governing how to provide notice, see Fed. R. Civ. P. 4(i). Adherence to proper procedures is crucial. In *amici*’s experience, military commands and diplomatic missions assign responsibility for inquiries related to judicial or administrative proceedings so that officials empowered

to act can assemble the facts, coordinate affected agencies, and authorize a response. An officer in a different military unit or State Department office who by happenstance learns some information about an issue affecting an operational or diplomatic interest of the United States does not acquire authority to decide whether the United States should appear or to speak for a military command, the Chief of Mission, the Departments of State and Defense, or the United States. Nor is there any expectation that such an officer will even *recognize* the political or diplomatic implications of the proceeding such that they would escalate the matter to the appropriate officers.

Because of this, the communications the Masts have cited as evidence of notice to the United States are demonstrably insufficient. On November 7, 2019—the day *after* the custody order issued—Mast emailed a military attorney about the order. Pet. App. 142a. Not only did Mast fail to communicate with someone authorized to act on the information, he also did not provide the petition or hearing notice. More crucially, Mast represented that the order did not affect the Afghan government’s decision and would matter only if Afghanistan later waived jurisdiction over Baby Doe. *Ibid.* Thus, the email did not merely fail to alert the United States that the order would later be used to interfere with the reunification process; it affirmatively conveyed the opposite. Cf. *Lankford v. Idaho*, 500 U.S. 110, 122-27 (1991) (holding that earlier notice that a death sentence was legally available was inadequate after the State’s formal representation that it would not recommend that sentence).

On November 12—after both November orders had issued—the Embassy’s Consul General circulated an inquiry based on information from U.S. Citizenship and

Immigration Services suggesting that a U.S. court had issued a custody order. Pet. App. 287a. LTC Reed received that inquiry and responded that she had been “unaware of any such custody order.” *Ibid.* A U.S. Forces-Afghanistan legal officer with general awareness of the order described it as contingent on an unsuccessful family trace and an Afghan waiver. Pet. App. 287a-88a. Neither communication disclosed that an interlocutory adoption order had already issued.

In February 2020, the Masts sued the United States to block the transfer of Baby Doe. Pet. App. 113a, 143a, 307a. The United States received notice of *that* lawsuit and participated in the proceeding. But even then, the Masts concealed the truth. The Masts disclosed only the custody order from November 6, 2019, not the later interlocutory adoption order from November 10, 2019. Indeed, they told the district court that they did not intend to adopt Baby Doe—another representation that would ultimately be proven false. Pet. 8-9; Pet. App. 136a, 143a-44a, 307a-22a. Tellingly, the federal district court concluded that the Defense Department “should have been formally served with and provided notice” of the custody proceeding and, on that basis, denied the Masts any relief. Pet. App. 322a-23a.

B. Adequate Notice Could Have Corrected the Record

The failure to provide notice to the United States prevented *amici* and others with access to the truth from correcting the unambiguously false representations made by the Masts to the Virginia court.

Specifically, in November 2019, the Masts represented to the Virginia court that Baby Doe was a stateless orphan whose living relatives had not been located; that the Afghan government had declined custody and would waive jurisdiction “in a matter of days”; that they

exercised physical care and custody over her; and that urgent medical needs required immediate adoption-related relief. Pet. App. 112a-13a, 141a-43a, 182a-86a. Every one of those representations was false. *Amici* knew firsthand that *before* November 2019, Baby Doe’s next of kin had already contacted the ICRC; the Afghan government had never waived jurisdiction or expressed an intent to do so; the Masts at that point had never had physical custody of Baby Doe; and U.S. medical personnel had concluded Baby Doe was “healthy and not in need of continuous medical care.” Pet. App. 141a-43a, 283a-87a.

The custody court also purported to rely on “[m]ilitary documents” produced by the Masts. Pet. App. 142a n.3. The United States later explained that the documents were not authorized for use in the proceedings, were not authenticated, and did not represent the Federal Government’s position. *Ibid.* Again, though, the United States had no opportunity to clarify that point while the custody proceedings were pending.

By the time of the December 2020 final-adoption proceeding, the facts were even further from what the Masts were representing. By then, the Afghan government had identified and verified Baby Doe’s next of kin, affirmatively asserted jurisdiction, granted custody under Afghan law, and formally requested her transfer. Pet. App. 139a-45a, 196a-202a, 281a-88a. After consultation among senior State and Defense officials, the United States honored that request, and petitioners had been raising Baby Doe for approximately nine months. Pet. App. 113a-14a, 139a-41a, 145a-46a, 199a-202a. By then, the district court had also denied the Masts’ attempt to block the transfer, noting that Afghanistan had not waived jurisdiction and that the Defense

Department should have received notice of the custody proceeding. Pet. App. 113a-14a, 307a-22a.

The Masts' failure to provide notice to the United States and the responsible officers deprived the Virginia court of the opportunity to learn the true facts. The final order relied on recommendations from the local department of social services and the guardian ad litem, even though neither the department's representatives nor the guardian ad litem had met Baby Doe. Pet. App. 114a. It repeated the earlier findings that Baby Doe was "orphaned," "stateless," and of "[u]nknown" nationality, and declared that no further consent or notice was required. Pet. App. 187a-91a. Years later, when apprised of the truth, the judge who entered the final order confirmed that the undisclosed facts went to "the very foundation of this court taking any action, at all." Pet. App. 207a. With "nobody on the other side," he had understood the case to involve "an orphan with no family" in severe medical need. Pet. App. 211a-12a.

The lack of adequate notice to the United States therefore resulted in a completely inaccurate factual record that irreparably tainted every aspect of the custody and adoption proceedings. This case is a paradigmatic example of why due process requires a minimum level of notice to interested parties.

II. The *Ex Parte* Orders Bypassed—and Were Used to Undo—the Authorized Reunification Process

The inaccurate factual record described above did more than produce *ex parte* orders. It enabled a service member acting in his private capacity—without institutional authority and contrary to his command's express direction—to bypass and ultimately undo the authorized military, diplomatic, and interagency process that

had reunited Baby Doe with her Afghan family. By enabling the Virginia adoption order to stand, the decision below effectively condones the Masts' conduct, thus permitting state-court orders obtained without notice to displace the United States' considered judgment in a sensitive foreign-affairs matter.

A. The Reunification Decision Reflected Authorized Military, Diplomatic, and Interagency Judgment

After the family-tracing process succeeded, the State Department, in consultation with the Department of Defense, determined that the proper course was to comply with MOLSA's request and transfer Baby Doe to the next of kin whom MOLSA had located. Pet. App. 200a. That decision was shared in an official communication to the U.S. Embassy in Kabul from Secretary Pompeo directing the transfer on February 25, 2020. Pet. App. 201a. The cable observed that MOLSA had concluded Baby Doe was an Afghan citizen and that Afghanistan had not waived jurisdiction over the child. Pet. App. 201a-02a. Two days later, on February 27, 2020, both LTC Reed and Ambassador Welton witnessed Baby Doe's transfer to the care of two MOLSA representatives who then reunited her with her family. *Ibid.*

That process and ultimate judgment were consistent with the legal and policy framework governing U.S. operations in Afghanistan. The Defense Department's *Law of War Manual* directs that "[a]ll appropriate steps shall be taken to facilitate the reunion of families temporarily separated" by armed conflict. U.S. Dep't of Def., *Law of War Manual* § 17.10.1 (June 2015, updated July 2023). The bilateral security agreement then in force between the United States and Afghanistan likewise committed U.S. forces to "respect the Constitution and laws of Afghanistan." Security and Defense Cooperation

Agreement Between the United States of America and the Islamic Republic of Afghanistan, Afg.-U.S., art. 3.1, Sept. 30, 2014, T.I.A.S. No. 15-101. Those commitments align with the broader international-law framework governing children separated from their families during conflict, which prioritizes protection, family tracing, and respect for the child’s home-country authorities over unilateral private action. See, *e.g.*, Hague Conference on Private International Law, *Information Note—Children Deprived of Their Family Environment Due to the Armed Conflict in Ukraine: Cross-Border Protection and Intercountry Adoption* (Mar. 16, 2022), <https://assets.hcch.net/docs/0f9c08e9-75d0-4497-8ca0-12c595aa6845.pdf> (“[Armed conflict] should not be used as a justification for expediting intercountry adoptions, or for circumventing or disregarding international standards and essential safeguards for safe adoption.”).

The reunification decision also served important diplomatic interests. The State Department concluded that honoring Afghanistan’s request would “properly recognize Afghanistan’s sovereignty” and “avoid any perception that the U.S. Government was holding an Afghan child against the will of her extended family and the Government of Afghanistan.” Pet. App. 140a-41a, 200a-01a. The transfer occurred just two days before the United States signed the Doha agreement concerning the withdrawal of U.S. and allied forces and a parallel joint declaration with the Afghan government concerning the peace process.⁵ At that sensitive juncture,

⁵ See Agreement for Bringing Peace to Afghanistan Between the Islamic Emirate of Afghanistan Which Is Not Recognized by the United States as a State and Is Known as the Taliban and the United States of America, Feb. 29, 2020, <https://2017-2021.state.gov/wp-content/uploads/2020/02/Signed-Agreement->

preserving confidence in commitments made through official U.S. channels—and avoiding the very perception the State Department had identified—was especially important for two overarching reasons.

First, it was critical to the protection of thousands of U.S. military service members, contractors, and other U.S. government personnel serving in Afghanistan from retribution by members of the Afghan security forces if the latter understood, or misperceived, the U.S. to be abducting Afghan children from their lawful families.

Second, it was vital to reinforcing the surety of U.S. government commitments to the Afghan government amid sensitive negotiations to finalize parallel understandings between the United States and the Taliban (to enable the departure of all U.S. military forces from Afghanistan) and between the United States and the Afghan government (to sustain security and civilian assistance essential to the government’s viability following the envisioned departure of U.S. forces).

The *ex parte* orders bypassed that institutional judgment.

B. Mast Had No Authority to Speak for the United States or to Supplant the Authorized Process

In *amici*’s experience, military commands and diplomatic missions depend on preserving the distinction between private conviction and institutional authority. Access to information, participation in deliberations, or strongly held views do not confer authority to decide for

02292020.pdf; see also Joint Declaration Between the Islamic Republic of Afghanistan and the United States of America for Bringing Peace to Afghanistan, Afg.-U.S., Feb. 29, 2020, <https://2017-2021.state.gov/wp-content/uploads/2020/02/02.29.20-US-Afghanistan-Joint-Declaration.pdf>.

the institution, commit it to a course of action, or speak in its name.

That distinction is embedded in military structure. This Court has recognized the military’s “hierarchical structure of discipline and obedience to command.” *Chappell v. Wallace*, 462 U.S. 296, 300 (1983); see also *Parker v. Levy*, 417 U.S. 733, 743 (1974). Marine Corps doctrine similarly explains that the chain of command “fixes authority and responsibility at each level while at the same time distributing them broadly throughout the force; each commander has designated authority and responsibility in a given sphere.” U.S. Marine Corps, *Command and Control* 2-25 (Marine Corps Doctrinal Publication 6, 1996), as amended by Change 1 (Apr. 4, 2018). These principles channel initiative through assigned roles and fix responsibility for institutional decisions.

Mast had no authority under the chain of command or the body of law and regulations governing U.S. diplomatic and consular operations to intervene and decide Baby Doe’s fate. He encountered Baby Doe during a brief, temporary assignment at Bagram Airfield and attended the October 23 meeting. Pet. App. 111a, 141a. He had no command responsibility for her care or transfer, no assigned role in the diplomatic consultations that followed, and no authority to formulate or officially communicate the position of the Defense Department, the State Department, or the United States. Pet. 5-7; Pet. App. 111a-12a, 141a.

Mast’s command was explicit about his lack of authority. Shortly after the October 23 meeting, his superior excluded him from further “deliberations or decision-making regarding the child” because he had “diverged from [the Defense Department’s] position” that the United States should work with Afghanistan to

identify Baby Doe's next of kin and was "attempting to interfere inappropriately in decision-making regarding the child." Pet. App. 141a. Whatever Mast's personal views, they were not the judgment of his command or the position of the United States.

Yet through private litigation, Mast effectively substituted his own judgment for that of the United States and undid the results of a reunification process that had been carefully coordinated and executed by numerous policymakers, diplomats, and military personnel, including *amici*. In August 2021, when the security situation in Afghanistan deteriorated, Mast arranged the evacuation of petitioners and Baby Doe with the assistance of federal employees who lacked knowledge of the child's history. Pet. App. 146a. In communications with U.S. personnel, Mast represented that Baby Doe was his "daughter per both Afghan and U.S. court orders," did not disclose that the Afghan government had placed her with the relatives it had identified, and described petitioners only as a "Pashtun Couple" accompanying the child. *Ibid.* On September 3, 2021, the Masts presented the final adoption order to federal personnel at Fort Pickett, Virginia, who likewise lacked knowledge of the preceding events. The Masts were thus permitted to leave with Baby Doe over petitioners' objections, and petitioners have not seen Baby Doe since. Pet. 10-12; Pet. App. 146a-47a.

III. The Decision Below Undermines U.S. Credibility and Threatens Recurring Harm Far Beyond This Case

The facts of this case are extraordinary,⁶ and *amici* remain profoundly shocked and disturbed by what the Masts were ultimately able to pull off. By reinstating an order that was used to reverse a reunification decision reached and implemented through official U.S. military and diplomatic channels, the decision below undermines confidence that commitments made through those channels will be honored in the future and weakens the Nation's ability to insist on reciprocal safeguards abroad. And *amici* agree with petitioners (Pet. 36) that the Masts' scheme offers a blueprint for future abuse of the system. The consequences of the Virginia Supreme Court's decision thus extend far beyond this case.

A. The Result Here Undermines Confidence in U.S. Commitments

U.S. operations abroad depend on foreign governments and humanitarian partners having confidence that commitments made through official U.S. channels will be honored and fulfilled.⁷

⁶ See generally Rozina Ali, *How Did This Man Think He Had the Right to Adopt This Baby?*, N.Y. Times Mag. (Nov. 10, 2022), <https://www.nytimes.com/2022/11/10/magazine/afghanistan-orphan-baby-1.html>.

⁷ See generally Peter F. Cowhey, *Domestic Institutions and the Credibility of International Commitments: Japan and the United States*, 47 Int'l Org. 299, 299-300 (1993); Ctr. for Army Lessons Learned, U.S. Army, *Commander and Staff Guide to Multinational Interoperability* iii, 1 (2020), <https://api.army.mil/e2/c/downloads/2023/01/31/3dadfaa2/20-12.pdf> (identifying mutual trust and confidence as essential to multinational operations).

Here, after interagency consultation, the State Department concluded that honoring Afghanistan’s request would respect Afghan sovereignty and avoid the perception that the United States was holding an Afghan child against the wishes of her family and government—a perception that, in light of prior insider attacks by Afghan security-force members following perceived U.S. affronts to Afghan religious beliefs, could have increased the threats faced by U.S. military personnel in-country. See Pet. App. 200a-01a.⁸ The United States then communicated and implemented that decision through official military and diplomatic channels, in coordination with Afghan officials and ICRC personnel. Pet. App. 201a-02a.

Yet a service member acting in his private capacity later used a state-court order to reverse the result of that government-to-government process. From a foreign partner’s perspective, U.S. officials agreed to and carried out a course of action, only for an American court order—entered without participation by the child’s actual caretakers or the institutions responsible for her care and transfer—to be used to undo it. In *amici*’s experience, such an episode can erode confidence in U.S. assurances and make future military, diplomatic, and humanitarian coordination more difficult.

⁸ See also, e.g., Ernesto Londoño, *Many Insider Attacks in Afghanistan Stem from Personal Motives, Data Suggest*, Wash. Post (Dec. 19, 2012), https://www.washingtonpost.com/world/national-security/many-insider-attacks-in-afghanistan-stem-from-personal-motives-data-suggest/2012/12/18/86e515ea-4957-11e2-ad54-580638ede391_story.html (quoting a draft Army handbook stating that many insider altercations occurred because foreign troops “lack empathy for Muslims and/or cultural norms, resulting in a violent reaction” from Afghan troops).

That outcome also weakens the United States’ ability to demand reciprocal safeguards abroad. When an American court leaves in place a one-sided order permanently altering a foreign child’s family relationships, even though the child’s actual caretakers received no notice and home-country authorities had no opportunity to participate, the United States has less credibility when it calls on foreign governments to afford the same basic safeguards before taking comparable action affecting American children abroad. See *Abbott v. Abbott*, 560 U.S. 1, 15 (2010) (recognizing that a U.S. court’s interpretation of an international child-abduction treaty may affect foreign states’ reactions and the “State Department’s ability to reclaim children abducted from [the United States]”).

B. The Same Procedural Mechanism Can Disrupt Future Overseas Operations

U.S. forces and diplomats will continue to encounter children separated from their families during armed conflict, evacuations, and humanitarian crises. When they do, reuniting those children with their families is a top priority,⁹ and one that can persist long after an

⁹ E.g., Steven Williams, *ISAF Docs Struggle to Save Scores of Children in Afghanistan*, U.S. Marine Corps (July 22, 2010), <https://tinyurl.com/5n9y7yus> (describing a setting in which Afghan children received medical care provided by U.S. and British military forces); Erin Lasley, *62nd AW Remembers Operations Babylift, New Life*, 62d Airlift Wing History Office (May 27, 2020), <https://tinyurl.com/dz6crt9h> (discussing Operations Babylift and New Life in Vietnam); Angela Parady, *Soldiers Help Build Community Relations in Kosovo*, U.S. Army (Nov. 2, 2012), <https://tinyurl.com/2enf7n72> (discussing peacekeeping efforts in Kosovo); Joe McFadden, *Hurlburt Field Medics Continue to Save Lives in Haiti*, U.S. Air Force (Jan. 26, 2010), <https://tinyurl.com/48mz356d>

immediate crisis has passed. After the fall of Kabul in 2021, for example, the United States undertook a years-long effort to reunite Afghan minors separated from their parents during the noncombatant evacuation operations.¹⁰

The combination of worldwide U.S. operations and modern litigation makes similar clashes between state-court family-law proceedings and federal operations readily foreseeable. As this case illustrates, a litigant abroad can initiate a proceeding in the litigant's State of residence even when the child, her caretakers, and the responsible federal personnel are overseas. Electronic filing and remote proceedings reduce the geographic barriers that might once have slowed such a case. State procedures also permit emergency family-law relief without advance notice in specified circumstances. See, e.g., Ariz. R. Fam. Law P. 48; Cal. R. Ct. 5.151(a)-(b), (d)-(e).

Children displaced by war are especially vulnerable to such proceedings. Their identities and family relationships may initially be uncertain; family tracing may take time; their caretakers may live thousands of miles from the forum, may not speak English, and may have

(discussing U.S. Air Force support provided in the wake of a Haitian earthquake); Robert Vanderpool, *Looking Back: Operation RESTORE HOPE—OSI Operations in Somalia*, Office of Special Investigations (Dec. 21, 2022), <https://tinyurl.com/jnh9f534> (discussing Operation Restore Hope carried out in Somalia); U.S. Marine Corps, *Marine Security Guard's Story of Seoul During Beginning of Korean War* (Oct. 14, 2015), <https://tinyurl.com/3znawbyu> (discussing the evacuation of the U.S. Embassy in Seoul during the Korean War).

¹⁰ See U.S. Dep't of State, *Department of State Advances Reunification of Unaccompanied Afghan Minors with Updated Parolee Form* (Oct. 3, 2023), <https://tinyurl.com/4e9uvzup>.

no reason to monitor an American court docket; and the responsible U.S. and home-country institutions may not learn of the proceeding until the resulting order is presented as final. Those circumstances magnify the risks of concealment and one-sided decision-making—the very risks notice and adversarial process are designed to check.

The decision below thus leaves a repeatable path by which a private litigant can obtain and later deploy a state-court order to disrupt an authorized U.S. military, diplomatic, or humanitarian process before the child’s actual caretakers and the responsible U.S. and home-country institutions have an opportunity to respond. This Court’s review is warranted before that mechanism is used again.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

JOSHUA M. WESNESKI
Counsel of Record
CRYSTAL L. WEEKS
LEAH DESKINS
YOUSEF ZIYADI
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Suite 600
Washington, DC 20036
(202) 682-7000
joshua.wesneski@weil.com
Counsel for Amici Curiae

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