

**SUPREME COURT
OF THE UNITED STATES**

IN THE SUPREME COURT OF THE UNITED STATES

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NARKIS ALIZA GOLAN,)
 Petitioner,)
 v.) No. 20-1034
ISACCO JACKY SAADA,)
 Respondent.)
- - - - -

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NARKIS ALIZA GOLAN,)

Petitioner,)

v.) No. 20-1034

ISACCO JACKY SAADA,)

Respondent.)

- - - - -

Washington, D.C.

Tuesday, March 22, 2022

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:00 a.m.

1 APPEARANCES:

2

3 KAREN R. KING, ESQUIRE, New York, New York; on behalf
4 of the Petitioner.

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10 the Respondent.

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P R O C E E D I N G S

(10:00 a.m.)

CHIEF JUSTICE ROBERTS: Justice Thomas is unable to be present today but will participate in consideration and decision of the case on the basis of the briefs and the transcript of oral arguments.

We'll hear argument this morning in Case 20-1034, Golan versus Saada.

Ms. King.

ORAL ARGUMENT OF KAREN R. KING

ON BEHALF OF THE PETITIONER

MS. KING: Mr. Chief Justice, and may it please the Court:

The Hague Convention provides that a court is not bound to return a child once the grave risk exception is met. The district court here, after finding grave risk to this child, was operating under an incorrect rule of law, that is, the Second Circuit's requirement that courts must examine the full range of potential ameliorative measures and return the child if at all possible.

That requirement should be overturned for four reasons. It's not found in the text of

1 the convention or its implementing legislation.
2 It runs counter to the convention's purposes and
3 framework, which emphasize expeditious
4 proceedings, the safety of the child, and not
5 getting entangled in custody matters. It's
6 contrary to the long-standing views of the State
7 Department. And no other signatory nation has
8 adopted that interpretation of this treaty.

9 If this Court agrees with us, what
10 remains is how best to resolve this case. In
11 our view, a reversal is warranted. It was three
12 years ago today that the district court made its
13 grave risk finding. Safe and swift resolution
14 then would have allowed the child to remain in
15 the U.S. in the interim while the custody
16 proceedings deal with the complex family issues
17 at this -- in this case, including the
18 implications of Mr. Saada's sustained and
19 horrific abuse.

20 But the district court was forced by
21 the Second Circuit to take a lengthy detour,
22 which entangled itself in custody matters,
23 forced the parties to obtain an Italian court
24 order without investigating the effectiveness of
25 that order.

1 That process and the results are
2 inconsistent with the convention. At once, far
3 too long, far too entangled, and at the same
4 time not robust and not protective enough. The
5 child here is almost six years old. He has
6 spent the vast majority of his life in legal
7 limbo. Reversal provides the safe and swift
8 closure he deserves.

9 I welcome the Court's questions.

10 CHIEF JUSTICE ROBERTS: Your position
11 is that the district court should not have been
12 required to consider ameliorative efforts,
13 right?

14 MS. KING: That's correct, Your Honor.

15 CHIEF JUSTICE ROBERTS: But would it
16 be necessarily an abuse of discretion if he
17 chose to do so?

18 MS. KING: It depends on the manner in
19 which that consideration might take place. Our
20 position is that the discretion to consider
21 ameliorative measures is provided by the
22 convention but is also limited by the
23 convention.

24 So, if consideration of ameliorative
25 measures takes too long or entangles the court

1 in custody matters or is -- is somehow
2 inconsistent with the convention on other
3 grounds, that would be an abuse of discretion.

4 CHIEF JUSTICE ROBERTS: Okay. But, if
5 it was something pretty, you know, cut and dry
6 and very simple, I mean, the -- the grave risk
7 is that, you know, his house is next -- next to
8 a nuclear waste dump, and he says, well, I'm --
9 I'm moving in two weeks, you know, here's the
10 agreement. That is an ameliorative condition
11 that the judge can take into account?

12 MS. KING: Well, it -- it depends on
13 the stage of the case. At the grave risk
14 determination phase, the -- the judge can
15 certainly take into account whatever evidence
16 the parties submit to -- to the court.

17 After determining that a grave risk
18 exists and you move to a remedy stage and
19 consider ameliorative measures, in the case
20 where the grave risk is straightforward and
21 simple, easy to identify and easy to resolve,
22 then, certainly, it makes sense that the court
23 does have discretion to consider the easy
24 solutions and to consider return subject to
25 those solutions, but that is in the discretion

1 of the court.

2 JUSTICE KAGAN: The way you just
3 framed the inquiry, Ms. King, is like, well,
4 first, we decide whether there's a grave risk,
5 and then we see whether there's anything that we
6 can do about it.

7 But is it -- is that necessarily the
8 right way to frame the -- the -- the issue? I
9 mean, how do you decide really whether there's a
10 grave risk without thinking about ameliorative
11 measures at -- at that stage? I mean, is this
12 really a two-step inquiry, or should we think
13 about ameliorative measures in order to
14 determine whether there's a grave risk?

15 MS. KING: Well, Justice Kagan, I
16 acknowledge that there is some overlap in the
17 inquiry here because both address risk, but the
18 grave risk analysis is separate from an
19 ameliorative measures analysis because the grave
20 risk analysis, which is provided for by the
21 convention itself, is simply identifying whether
22 or not the circumstances that exist now to which
23 the child would be returned present a grave risk
24 of exposure to psychological or -- or physical
25 harm.

1 Once that is determined, then the
2 district court should have the discretion to
3 decide whether or not it is possible to consider
4 or even preferable to consider ameliorative
5 measures to then address the risk.

6 If you combine the two, you run the
7 risk of making this trial extremely lengthy and
8 wading into issues that a Hague expedited
9 proceeding should not be wading into. So it
10 should be kept as two separate inquiries.

11 CHIEF JUSTICE ROBERTS: Well --

12 JUSTICE BREYER: The --

13 CHIEF JUSTICE ROBERTS: -- just very
14 briefly, it seems to me that if you separate the
15 two inquiries, that's what's going to lengthen
16 the process. If you say the grave risk here is
17 that he's going to live next to a nuclear waste
18 dump and some -- he says I'm leaving, well,
19 that's fine. But, if you have to go through an
20 entirely separate analysis and say don't tell me
21 whether there's ameliorative measures or not,
22 don't tell me if you're going to move or not
23 because that comes later, that seems to be
24 something that's going to delay it.

25 MS. KING: Well, if there's no grave

1 risk at all, then you wouldn't even reach that
2 second stage. And in the vast majority of
3 cases, the parties are not going to be able to
4 satisfy the very high evidentiary burden that
5 ICARA places on parties to satisfy the grave
6 risk exception. It has to prove by clear and
7 convincing evidence.

8 So there's no need to even get into
9 this hypothetical world of what ameliorative
10 measures are -- are necessary. I mean, I -- I
11 acknowledge that there may be some cases where
12 it's so obvious and so discrete and simple that
13 the court may, in the course of -- of having the
14 trial, think about ameliorative measures. And,
15 certainly, the parties can always propose
16 measures and -- and make evidentiary
17 submissions.

18 But I don't think, as a matter of
19 principle and process, it makes sense to combine
20 the two because that would entangle the court in
21 a very lengthy process in every case, which is
22 exactly what we don't want to happen --

23 JUSTICE BREYER: But is there a --

24 MS. KING: -- in an expedited
25 proceeding.

1 JUSTICE BREYER: Look, this is a
2 problem that I had, exactly what's been
3 articulated, and then I began to think -- and
4 tell me if I'm right, because I am a layperson
5 here, you are the expert -- that.

6 ameliorative measures wasn't the right
7 words, that what happened was better words were
8 undertakings. See. The father who was in the
9 foreign country was a risk to the child either
10 because he beat up the wife or maybe he -- he
11 attacked the child. I don't know. And then the
12 judge would say here: Well, give us a promise
13 and maybe backed up by some money or a bond or
14 something.

15 And then undertakings didn't seem the
16 right word because undertakings could have
17 included not just I promise but also because
18 they get some kind of a foreign lawyer or judge
19 to say he has to follow these undertakings and
20 we'll watch it. So now it's undertakings plus.

21 And then we get to a new word for it
22 called ameliorative measures. Now, if what I've
23 said is correct, I understand the confusion. I
24 don't know how to write it still, because my
25 first reaction when a layperson reads those

1 words ameliorative measures is to say, hey, if
2 there are ameliorative measures, what's the
3 risk? And, if there's not, well, then there's a
4 risk. So, of course, they're going to consider
5 this when they consider whether there's a risk.

6 Now -- now do you see how confused I
7 am?

8 MS. KING: Yeah, the terminology --

9 JUSTICE BREYER: Now can you
10 straighten me out in a minute or two?

11 MS. KING: -- is certainly confusing
12 in this space.

13 JUSTICE BREYER: But have I got it
14 sort of right or not?

15 MS. KING: Well, different courts use
16 these change -- words interchangeably, which is
17 really the -- the problem in doing --

18 JUSTICE BREYER: Are we talking
19 basically about undertakings or undertakings
20 plus?

21 MS. KING: Undertakings are promises I
22 think of the Petitioner below himself. So he
23 may make promises.

24 JUSTICE BREYER: But undertakings
25 plus, he makes some promises and then we get to

1 try to make them enforceable.

2 MS. KING: Well, yeah, what the Second
3 Circuit then required was trying to overlay on
4 top of that some guarantee of performance. And
5 that's where we ended up on this path of trying
6 --

7 JUSTICE BREYER: Of ameliorative.
8 Okay.

9 MS. KING: -- to figure out something
10 --

11 JUSTICE BREYER: So the answer is,
12 Judge, you're the trial judge. You look in
13 these things when you think they're useful and
14 you don't when you think they're not.

15 MS. KING: We certainly agree that the
16 district court should have had discretion to
17 look at things when it seemed appropriate or
18 perhaps even reject the entire concept because
19 the very act of walking the path of considering
20 hypothetical full range, full panoply of
21 ameliorative measures is -- is simply too
22 burdensome in this --

23 JUSTICE BREYER: Of course not.

24 MS. KING: -- proceeding.

25 JUSTICE BREYER: But, of course, it

1 does make sense if they have an ongoing -- like
2 the EU does it within the EU, you know, because
3 they all know there are courts in the other
4 countries and they have family courts in other
5 countries. And the family courts in other
6 countries, if they are going to deal with it,
7 they can deal with it.

8 MS. KING: Right. Justice Breyer, I
9 think that's -- that's exactly our point here.
10 The United States is only a signatory and has
11 only adopted the 1980 convention. The EU
12 countries are part of Brussels 2A. Other
13 countries have adopted the 1996 convention. And
14 the United States did not ratify that.

15 So we are working only within the
16 framework of the 1989 --

17 JUSTICE SOTOMAYOR: Counsel --

18 JUSTICE ALITO: I have --

19 JUSTICE SOTOMAYOR: I'm sorry.

20 JUSTICE ALITO: Go ahead.

21 JUSTICE SOTOMAYOR: Counsel, I would
22 like to go back to the question the Chief
23 started with, what's an abuse of discretion?

24 Assume, as I do, that there are two
25 goals to the convention, not one. It's not just

1 a speedy proceeding. It is an intent to return
2 a child to its habitual residence. That's a --
3 its number one priority.

4 Its second priority is to protect the
5 child if there is grave danger, but if the
6 convention insisted that a child shouldn't be
7 returned, it would have said don't return the
8 child if it's a grave danger. But, instead, it
9 gives the district court discretion.

10 So, to me, that means that you have to
11 keep the first goal in mind as well. You can't
12 just eliminate it when you find the grave
13 danger. Do you agree with that?

14 MS. KING: We certainly agree that the
15 convention vests discretion with the court --

16 JUSTICE SOTOMAYOR: All right. Let's
17 stop with that question there. Maybe the Second
18 Circuit went too far in saying the district
19 court has to look at every possible ameliorative
20 measure, even those not raised by the party.
21 That seems contrary to the adversarial system.
22 Generally, we depend on judges to rely on what
23 the parties present.

24 MS. KING: That's right.

25 JUSTICE SOTOMAYOR: We don't make the

1 judge a litigant by looking for things.

2 So assume we say, you know, that
3 Second Circuit rule is too extreme. What if a
4 district court judge said: You know something,
5 yes, there's an ameliorative measure like he can
6 move away and we can wait two weeks and he would
7 do it, but I really don't want to bother waiting
8 those two weeks. I don't care whether it would
9 fix the problem or not.

10 You seem to be using the word
11 "discretion" to say, if the measures are
12 proposed, the judge never has to explain what
13 they think or, no matter what they think, we
14 have to uphold it --

15 MS. KING: Well, Justice Sotomayor --

16 JUSTICE SOTOMAYOR: -- or even any
17 delay whatsoever is enough of a reason not to do
18 it. That seems contrary to the concept that
19 there should be a reason for what you do and
20 that the reason should be based in the evidence
21 and that you shouldn't just say I don't want to.
22 You should give a reason.

23 MS. KING: We certainly were not
24 implying that it's unfettered discretion with no
25 limitations and that you cannot give a reason

1 and reject submissions by the parties.

2 I think, in that circumstance, it
3 falls back to reasoned judgment as the judge
4 treats any evidentiary submission by the parties
5 below. And there has to be reasoned
6 consideration and some reasoning for the -- the
7 decision that follows.

8 But I do want to clarify that the
9 hierarchy you posed of prioritizing return of
10 the child and only secondary consideration of
11 the safety of the child, I think, is incorrect.
12 The convention has multiple goals and multiple
13 purposes. Safety is, I think, the preeminent
14 one. The interests of the children are cited as
15 the paramount interest in the preamble to the
16 convention, expeditious proceedings, which we
17 all acknowledge is definitely a goal, and return
18 of the child is a goal, but there are
19 exceptions.

20 And the very existence of the
21 exception, the grave risk exception here, shows
22 that that goal is not without limitations. It's
23 not at all costs, as this Court has recognized
24 before. And there are certain values and
25 principles that are more important than prompt

1 return.

2 JUSTICE SOTOMAYOR: Thank you.

3 JUSTICE ALITO: I have a -- sort of a
4 threshold problem in understanding this statute
5 and the way the parties and the Solicitor
6 General have interpreted it.

7 Article 13(j) says that a requested
8 state is not bound to order the return of the
9 child who would otherwise have to be returned if
10 there is a grave risk, right?

11 MS. KING: Correct.

12 JUSTICE ALITO: So are there
13 circumstances in which you think a district
14 court could order the return of the child who
15 would be at grave risk?

16 MS. KING: I think that would become
17 an abuse of discretion unless there were some
18 extraordinarily unusual circumstances. But I
19 think --

20 JUSTICE ALITO: Yeah, I mean, just to
21 say it's an abuse of discretion doesn't really
22 answer the question for me.

23 What -- under what -- under what
24 circumstances would it not be an abuse of
25 discretion to do that? Under what circumstances

1 would it be permissible for an individual
2 district judge to say it's been proven by clear
3 and convincing evidence that there would be a
4 grave risk; nevertheless, send the child back?

5 MS. KING: If -- if there were some
6 balancing of grave risk and there was --

7 JUSTICE ALITO: And what?

8 MS. KING: -- a demonstration that
9 there is more grave risk in the present country
10 versus the return country. I think it would be
11 an extraordinary circumstance. And our position
12 would be it would be an abuse of discretion in
13 -- in the regular course.

14 JUSTICE ALITO: All right. Well, that
15 sounds like basically a categorical rule that
16 you can't do it, which is not what Article --

17 MS. KING: I think --

18 JUSTICE ALITO: -- 13(j) says.

19 MS. KING: -- given the, you know,
20 different interests of the convention, which
21 places child safety as the paramount interest,
22 returning a child after finding that there's
23 clear and convincing evidence of grave risk is
24 -- is fundamentally antithetical to the
25 convention and, therefore, an abuse of

1 discretion.

2 JUSTICE ALITO: Okay. I think that's
3 a strong argument. I think it would have to be
4 based on something other than the convention
5 itself. It would have to be based on the way
6 the United States chooses to interpret the --
7 the convention. That could be done by statute.

8 But, since the statute doesn't address
9 this, could it not be done by the courts in the
10 case law interpreting it?

11 MS. KING: Well, ICARA implements the
12 treaty and adopts the provisions of the treaty,
13 and I think that includes putting safety of the
14 child as the -- as the primary goal in -- in
15 interpreting the treaty and -- and -- and
16 handling these Hague cases.

17 JUSTICE ALITO: Well, do you see my
18 problem? I'm stuck on the idea that every one
19 of the district judges in the United States has
20 the discretion to decide whether I'm going to
21 return this child to the country where the -- of
22 habitual residence, despite the fact that it's
23 been shown that there would be a grave risk
24 there?

25 MS. KING: I -- I definitely think

1 that would be an abuse of discretion. And if it
2 makes sense --

3 JUSTICE ALITO: So there have to be
4 standards about when that would be done. I
5 don't know when. When -- when would that be
6 appropriate? You don't think there are any
7 circumstances?

8 MS. KING: We don't think there are.

9 JUSTICE ALITO: Okay. So then it's
10 pretty much a categorical rule. And if it's
11 going to be a categorical rule, then doesn't
12 that lead you to something like what the Second
13 Circuit has done? Maybe they've gone too far,
14 but to develop standards that have to be met,
15 such as providing ameliorative conditions in
16 that country so that the child would not be at
17 grave risk?

18 MS. KING: I mean, ultimately, we have
19 competing goals in the operation of the
20 convention and the Second Circuit in trying to
21 satisfy this ameliorative measures exercise,
22 which by itself is not -- by the way, is not in
23 the convention or ICARA, so this is already off
24 on a -- on a tangent. But that process cannot
25 apply for all cases because then you end up with

1 a delay situation. You may not be able to
2 satisfy --

3 JUSTICE ALITO: Right. Their -- their
4 standards might not be the right standards, but
5 do you dispute the fact that they -- do you
6 dispute the proposition that it was entire --
7 it's entirely appropriate for them or for us to
8 develop standards?

9 MS. KING: If the standards --

10 JUSTICE ALITO: Or are we just
11 supposed to say --

12 MS. KING: No --

13 JUSTICE ALITO: -- abuse of
14 discretion? Every district judge just does
15 whatever the judge wants?

16 MS. KING: It is entirely appropriate
17 to develop standards that are consistent with
18 the convention and that come from the
19 convention's own requirements and limitations.

20 And Congress has also done that in
21 ICARA --

22 JUSTICE ALITO: Right.

23 MS. KING: -- by setting higher
24 evidentiary standards.

25 JUSTICE ALITO: And standards designed

1 to make sure that the child is not sent back if
2 there is a grave risk. If there's a grave risk,
3 with or without -- even with any ameliorative
4 conditions that could be put in appropriately
5 without undue -- unduly delaying the proceeding
6 or getting into custody determinations in the
7 country of habitual residence, then the child
8 cannot be sent back?

9 MS. KING: We certainly agree with a
10 standard that prevents sending children back to
11 situations where they are at grave risk of harm.

12 CHIEF JUSTICE ROBERTS: Justice
13 Breyer, anything further?

14 Justice Alito?

15 Justice Kagan?

16 Justice Gorsuch?

17 JUSTICE KAVANAUGH: Can you just
18 briefly summarize why you think a remand would
19 be problematic as compared to a reversal?

20 MS. KING: So this case has been
21 progressing for three-and-a-half years at this
22 point. A remand would require more process
23 because there needs to be a reevaluation of the
24 current circumstances. A lot has happened in
25 the last two years since the -- the last return

1 order.

2 And that process alone, in the same
3 way that we object to the -- the categorical
4 sort of Second Circuit mandatory rule in the
5 first place, that process alone is damaging to
6 the child and inconsistent with the convention.

7 It's certainly a possible outcome
8 here, a possible remedy, but we think, on
9 balance, there is a safe and swift remedy
10 available to this Court and for this child, and
11 it would serve the child's interests and be
12 consistent with the convention to take that
13 remedy now and end this, rather than send it
14 back for a third bite at the apple.

15 JUSTICE KAVANAUGH: Thank you.

16 JUSTICE BREYER: You're -- you're
17 thinking -- maybe I will ask a question I think
18 might be a problem. Judges in different
19 countries, there's a child in front of them.
20 The child is facing harm if they send him away.
21 And the judge is going to think whatever he
22 says, or she, hey, I've got this child here in
23 my country and I know that child is safe and
24 I'll be damned if I'm going to send him to some
25 other place that I don't even know about. Okay?

1 So there will be a tendency to keep
2 the child here. And I think what the Second
3 Circuit wants to say is remember the overall
4 purpose of this -- that treaty. It's trying to
5 stop kidnappings. And remember that. And try
6 and overcome your natural instinct, but pay
7 attention to it, but, but, but -- okay.

8 We, of all the courts, know least
9 about it. Family courts know about it. We
10 don't. You know about it. Federal courts
11 don't. Okay. What words do you suggest that we
12 write in this opinion which I think recognize
13 the motivating problems and -- and would try to
14 do what the Second Circuit is trying to do but
15 may be overkill?

16 What -- you're the expert. What words
17 would you like, if we can, to deal with the
18 problem I sketched?

19 MS. KING: Well, we would suggest that
20 after a grave risk finding, courts have
21 discretion to deny the petition for return or to
22 grant it subject to ameliorative measures. But
23 consistent with the convention, any
24 discretionary consideration of ameliorative
25 measures must be expeditious, it must not

1 entangle the court in custody matters, and any
2 measures imposed must be limited, enforceable,
3 and effective at protecting the child.

4 And just speaking to your point,
5 Justice Breyer, of the -- the court's instinct
6 to want to protect the child, these are cases
7 where the mother, in this case, has already
8 demonstrated by a very high evidentiary
9 threshold clear and convincing evidence that the
10 child is at risk of harm.

11 And in those types of cases,
12 protecting the child is a worthwhile instinct,
13 keeping in mind that the Hague process is an
14 interim measure. It's a temporary resolution to
15 keep the child, while the custody courts, the
16 courts that have expertise and time to deal with
17 these complicated, very difficult issues -- they
18 are the ones that can move forward.

19 And the irony in this case is, because
20 of this detour, this child has not had that type
21 of custody hearing. And if this case had ended
22 three years ago, we wouldn't be here today. And
23 we think that the case should end today as well.

24 CHIEF JUSTICE ROBERTS: Justice
25 Barrett, anything further?

1 JUSTICE BARRETT: I do. Am I correct
2 that the vast majority of these grave risk cases
3 are ones involving domestic abuse or no?

4 MS. KING: There are certainly grave
5 risk cases of -- of all types. There is -- the
6 majority of them these days is now involving
7 domestic abuse, but only a very, very small
8 percentage get to the level of proving grave
9 risk by clear and convincing evidence. I'm
10 referring to the number of cases that raise the
11 grave risk defense.

12 JUSTICE BARRETT: Right. It just
13 seems to me that that's a much different case
14 for ameliorative measures than, say, the nuclear
15 plant next door that the Chief posited at the
16 outset. That would be a very -- pretty
17 straightforward move, and then there would be no
18 more grave risk, whereas I think you get into
19 the complexity of the financial support payments
20 and the -- the undertaking or restraining order,
21 however it should be categorized, in these
22 domestic abuse cases that pose maybe a unique
23 circumstance?

24 MS. KING: That's right, Justice
25 Barrett. I think that the nature of the grave

1 risk in a domestic violence case is extremely
2 complicated, and it gets into mental health
3 issues, psychological, very detailed family
4 issues, and it would be very difficult to
5 resolve that in an expedited proceeding, much
6 less try to resolve that thinking about what
7 it's like in a foreign country.

8 The coercive control elements. It's
9 not just about physical abuse. It involves
10 emotional, psychological, verbal, and all the
11 types of abuse that you alluded to.

12 JUSTICE BARRETT: So, as we're
13 tiptoeing up and talking about the discretion of
14 a district court, it almost seems like what
15 you're suggesting is that in cases of domestic
16 abuse, ameliorative measures are not almost ever
17 going to be acceptable if you've proven the
18 grave risk?

19 MS. KING: We're not seeking a
20 categorical rule. It really depends on the
21 nature of the grave risk --

22 JUSTICE BARRETT: But a proceed --

23 MS. KING: -- and the circumstances.

24 JUSTICE BARRETT: -- with great
25 caution kind of rule?

1 MS. KING: Certain -- certainly, the
2 courts below, some of the circuits, have -- have
3 advised to proceed with caution and that there
4 should be great hesitation to try to solve this
5 type of complicated problem in an expedited
6 proceeding. And we agree with that.

7 JUSTICE BARRETT: Thank you.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel.

10 Mr. Liu.

11 ORAL ARGUMENT OF FREDERICK LIU
12 FOR THE UNITED STATES, AS AMICUS CURIAE,
13 SUPPORTING VACATUR

14 MR. LIU: Thank you, Mr. Chief
15 Justice, and may it please the Court:

16 The Second Circuit requires courts to
17 consider the full range of ameliorative measures
18 in every case involving a finding of grave risk
19 under Article 13(b). That mandatory rule has no
20 basis in the text of the convention, and,
21 indeed, Respondent hasn't identified any country
22 in the world that has held that the convention
23 imposes such a rule.

24 The convention instead leaves
25 consideration of ameliorative measures to the

1 discretion of the courts. And ICARA, which
2 Congress implemented -- enacted to implement the
3 convention, leaves that discretion undisturbed.
4 The Second Circuit's rule wrongly supplanted
5 that discretion in this case.

6 Accordingly, this Court should do what
7 it usually does when lower courts have
8 misunderstood the scope of their discretion. It
9 should vacate and remand for further
10 proceedings.

11 I welcome the Court's questions.

12 CHIEF JUSTICE ROBERTS: Well, one of
13 the problems here, as Ms. King pointed out, is
14 the delay. And you're sending it back after how
15 -- how many years has this been going on?

16 MR. LIU: Three-and-a-half years.

17 CHIEF JUSTICE ROBERTS: Three-and-a-
18 half years, under a convention that is designed
19 to get this resolved quickly, for obvious --
20 obvious reasons. And you want there to be more
21 proceedings. What -- what do you think is going
22 -- going to happen on remand that is going to
23 put the district court in any different position
24 than it's in now?

25 MR. LIU: Well, we think the Second

1 Circuit's mandatory rule may well have distorted
2 the district court's analysis of the sufficiency
3 of the ameliorative measures in this case.

4 Under the Second Circuit's rule, which
5 is articulated at Petition Appendix 14a and 81a,
6 the district court had to order return "if at
7 all possible." That "if at all possible"
8 standard, in our view, places too heavy a thumb
9 on the scales in favor of return.

10 It essentially renders denial of
11 return a highly disfavored remedy, despite the
12 convention's objective of protecting the child
13 from grave harm.

14 And so, if this Court were to reject
15 the Second Circuit's rule and remove that thumb
16 from the scales, the district court may well
17 evaluate the sufficiency of ameliorative -- of
18 the ameliorative measures differently on -- on
19 remand.

20 CHIEF JUSTICE ROBERTS: Yeah, I am not
21 sure that touched on my main concern, which was
22 the additional delay that further proceedings
23 cause.

24 MR. LIU: Oh. Well -- well, the
25 convention doesn't pursue any of its objectives

1 at all costs, not even the objective of prompt
2 adjudication. The convention also cares about
3 protecting children from the grave risk of harm.

4 And we think the court that's in the
5 best position to evaluate whether this child
6 should be sent back in the face of a grave risk
7 of harm is the district court. That's because
8 the inquiry is highly fact-intensive and the
9 district court is the court that has the closest
10 and deepest understanding of the record.

11 JUSTICE GORSUCH: Counsel, if I can
12 follow up. My concern is similar to the Chief
13 Justice's, and I think Justice Kavanaugh touched
14 on it.

15 The district court initially held, I
16 think, a nine-day bench trial and found a grave
17 risk and -- and -- and refused return before he
18 -- the court -- she was reversed by -- I think
19 by the court of appeals.

20 So why -- why isn't that entirely
21 appropriate, if we agree with everything you've
22 said about the law, why isn't that the
23 appropriate conclusion in this case and
24 reversal, therefore, warranted? Because the
25 court did nine days. I mean, you say it should

1 be thoughtful, and it was thoughtful. It was
2 supposed to be quick. It was quick. And here
3 we are three-and-a-half years later.

4 MR. LIU: Well, I think the fact of
5 the matter is that Respondent has gotten two
6 bites at the apple at proving up ameliorative
7 measures.

8 JUSTICE GORSUCH: Now we have a third?

9 MR. LIU: Well, my point is that
10 Petitioner in contrast has had zero chance to
11 ask for a favorable exercise of discretion --

12 JUSTICE GORSUCH: Petitioner is happy
13 with the first judgment of the district court.
14 I'm pretty sure about that.

15 MR. LIU: Well, no, Petitioner --
16 Petitioner lost the first time at the district
17 court.

18 JUSTICE GORSUCH: At the court of
19 appeals, but the Petitioner, it was a grave risk
20 finding at the district court.

21 MR. LIU: There was a grave risk
22 finding, and then the district court --

23 JUSTICE GORSUCH: That was it.

24 MR. LIU: -- the district court, under
25 the Second Circuit's mandatory rule --

1 JUSTICE GORSUCH: Yeah.

2 MR. LIU: -- felt bound to then
3 consider --

4 JUSTICE GORSUCH: But, if we -- if we
5 say no, if -- maybe I'm -- I'm sorry if I'm not
6 being clear, but if we say that the Second
7 Circuit's rule is inappropriate --

8 MR. LIU: Correct.

9 JUSTICE GORSUCH: -- right, and the
10 district court after a nine-day trial found
11 grave risk, why doesn't that lead to a reversal
12 and -- and at least allow the parties in this
13 case to move on with their lives?

14 MR. LIU: If the Court thinks that the
15 proper exercise of discretion in this case in
16 the face of a finding of grave risk is to deny
17 return, then that is a perfectly acceptable
18 result. I am certainly not going to fight it.

19 The only reason why we think a vacatur
20 and remand is appropriate is because we think,
21 after a finding of grave risk, there is room for
22 discretion for the district court to analyze
23 whether or not there's grave risk.

24 Now, of course, here, after the
25 district court's initial ruling, which -- which

1 denied return in the face of ameliorative
2 measures that were ultimately found to be
3 insufficient, there has been this Italian court
4 order that's entered the picture.

5 We think it would be perfectly
6 acceptable for the court now to consider, as it
7 did in the -- its most recent decision, the
8 effect of that order on ameliorating risk.

9 But the key point for us --

10 JUSTICE GORSUCH: But, if I understand
11 it, that -- that Italian order came about as a
12 result of the self-directed inquiry that the
13 district court did on remand on its own motion.

14 MR. LIU: Absolutely. And -- and we
15 -- we agree that when the Second Circuit in the
16 initial appeal found the original set of amel --
17 amel -- ameliorative measures insufficient --

18 JUSTICE GORSUCH: I have trouble with
19 it too.

20 MR. LIU: -- I have a lot of trouble
21 with it -- the Second Circuit should have done
22 one of two things. It should have simply denied
23 return, as I think Your Honor is suggesting.

24 JUSTICE GORSUCH: Which is what he did
25 the first time -- she did the first time.

1 MR. LIU: Well, no, the first time she
2 -- she ordered return because she thought the
3 first set of ameliorative measures were
4 sufficient.

5 But, if the Second Circuit was right
6 that those measures were insufficient, what the
7 Second Circuit should have done was one of two
8 things: either simply deny return, or remand
9 the case for the district court to exercise its
10 discretion on whether to deny return.

11 What it should not have done is
12 mandate that the district court engage in
13 another round, another full examination of
14 whatever ameliorative measures exist, including
15 measures that Respondent had never even
16 proposed.

17 That added nine more months to the
18 proceedings that had already lasted 10 months.
19 And while it's true that we cannot undo the
20 procedural implications of the Second Circuit's
21 rule, that is, we can't go back in time and put
22 us back to where we were a couple years ago,
23 what the Court can do in our view is undo the
24 substantive implications, which is to vacate the
25 judgment below and at least send it back for the

1 district court to take a fresh look at this in
2 light of the right standard.

3 JUSTICE KAGAN: Well --

4 JUSTICE GORSUCH: Thank you.

5 JUSTICE KAGAN: -- Mr. Liu, I guess
6 two questions. I mean, suppose we were to send
7 it back and say, no, the Second Circuit rule is
8 wrong, and you had discretion.

9 Number one, and this relates to
10 Justice Alito's question, could she then use her
11 discretion? Notwithstanding that the court had
12 found grave risk, could it nonetheless say, yes,
13 we're going to send the child back because there
14 are sufficient ameliorative measures? So the
15 first question is, could she make that order
16 without abusing discretion?

17 And I guess the second question is you
18 -- you know the record better than I do, and
19 you've read the various opinions more closely
20 than I have. Do you think that the district
21 court -- like, what do you think that the
22 prospects are that the district court would want
23 to do that?

24 I mean, once the Second Circuit rule
25 is taken away, do you think that there's really

1 any chance that the district court would have
2 said, yes, under my discretion, I think that
3 these ameliorative measures are sufficient so as
4 to send the child back?

5 MR. LIU: So, as to your first
6 question, Justice Kagan, we think it's possible
7 for the district court on remand to conclude
8 that return is appropriate in light of what the
9 district court views to be the sufficiency of
10 the measures. And that would not be an abuse of
11 discretion if the Court thought those measures
12 were, indeed, sufficient under a proper
13 understanding of the law.

14 As to your second question, I think
15 the record is, frankly, unclear what the
16 district court would do. This is a district
17 court that initially found -- this is Petition
18 Appendix 80a -- that this particular Respondent
19 has to date exhibited no capacity to change his
20 behavior.

21 And the Second Circuit on appeal, that
22 was the very reason the Second Circuit found the
23 first set of measures insufficient, because the
24 Second Circuit itself concluded that there was
25 ample reason to doubt whether Respondent would

1 comply with those conditions.

2 I think, once this Court -- if this
3 Court were to remove the thumb on the scales,
4 it's possible the district court would feel,
5 frankly, less pressure to conclude that return
6 was appropriate in light of these measures and
7 may well think that, although there are some
8 indications going both ways on whether
9 Respondent would or would not comply, it's
10 simply not worth the gamble to send the child
11 back.

12 I think it's that sort of
13 discretionary judgment that the discretion --
14 that the convention and ICARA leave to the
15 district court in a case like this. And because
16 the district court is most familiar with the
17 facts in the record, a remand would be
18 appropriate.

19 JUSTICE ALITO: Can I ask you the
20 questions that I asked Ms. King? To start out
21 with, does the United States think that there
22 are any circumstances in which it would be
23 lawful for a district judge to send a child back
24 to the country of habitual residence, despite a
25 finding that the child would be at grave risk?

1 MR. LIU: We do. The -- the
2 circumstance is limited, I think, to cases where
3 the risk of the child staying in the country
4 where the Hague Convention proceedings are
5 taking place is equally as grave or even graver.

6 I suppose that that's a very small set
7 of situations, but I certainly cannot rule it
8 out. And I think that's why, from the
9 explanatory report to the State Department's
10 original analysis of this convention in 1986,
11 we've always said, and everyone has always said,
12 that there is discretion left in the -- in the
13 judicial authority to send the child back even
14 in the face of risk.

15 JUSTICE ALITO: Okay. That's a very,
16 very narrow set of cases then, a very small set
17 of cases, as you just acknowledged.

18 MR. LIU: I agree.

19 JUSTICE ALITO: And would it be fair
20 to say that in this country that would be even
21 narrower than it might be in all of the
22 signatory nations?

23 MR. LIU: I -- I'm fairly confident
24 that's true, yes.

25 JUSTICE ALITO: So you're pretty close

1 to a categorical rule, if there's a grave risk,
2 the child can't be set back -- sent back.
3 However, ameliorative measures goes -- they go
4 to the issue of whether there would be a grave
5 risk.

6 MR. LIU: Right.

7 JUSTICE ALITO: Right?

8 MR. LIU: Well, I think -- I -- I
9 think there's --

10 JUSTICE ALITO: So the only question
11 that's left is how deeply can the court in one
12 of these proceedings get into the issue of
13 ameliorative measures. If it's something
14 simple, like moving away from a -- a toxic waste
15 dump, that's one thing, but if it --

16 MR. LIU: Right.

17 JUSTICE ALITO: -- if it gets into the
18 sorts of things that are generally done by
19 family courts in determining -- in issuing
20 protective orders, custody determinations,
21 visitation rights, that sort of thing --

22 MR. LIU: We --

23 JUSTICE ALITO: -- are they completely
24 off the board? Are they possibly -- are -- are
25 they things that can be considered provided it

1 can be done expeditiously? What if they're
2 already in place?

3 MR. LIU: Well, we think that a
4 district court's consideration of ameliorative
5 measures should be entrusted to the court's
6 sound judgment, as many issues are under the
7 convention, and then reviewable for an abuse of
8 discretion.

9 Now I think there's a big difference,
10 though, between the general abuse of discretion
11 standard and the Second Circuit's rule, and I
12 think the line is crossed with the Second
13 Circuit's rule because it is not simply applying
14 a general back -- generally applicable
15 background abuse of discretion standard, the
16 sort of appellate standard Congress certainly
17 had in mind when it enacted ICARA and granted
18 the courts jurisdiction.

19 Rather, the Second Circuit's rule is a
20 convention-specific rule that I think crosses
21 the line into implementing the -- the
22 convention, which is not a role that in this
23 country we entrust to courts. That is a role
24 that belongs to Congress only.

25 And so, when Congress enacted ICARA

1 against the background of general principles of
2 appellate review, it empowered courts to police
3 the discretion that lower courts are going to be
4 exercising and to --

5 JUSTICE ALITO: Well, what -- well,
6 what I get from your answer so far is that the
7 Second Circuit went too far in limiting the
8 discretion of the district court. But is it
9 inappropriate for a court of appeals that may
10 see a number of these cases -- I don't know how
11 many there are. There are not that many, I
12 don't believe. But, if they -- you know, if
13 they see a series of them, they have to have
14 some standards in determining --

15 MR. LIU: Right.

16 JUSTICE ALITO: -- whether there was
17 an abuse of discretion here and not an abuse of
18 discretion there. So the idea of their working
19 out standards to structure the exercise of
20 discretion is not inappropriate.

21 MR. LIU: It's not --

22 JUSTICE ALITO: It's not just, well,
23 the district court can do whatever the district
24 court wants so long as the court says this and
25 that and the other.

1 MR. LIU: Correct. And in -- and in
2 Part B of the United States' brief in this case,
3 we've tried to map out a basic framework for
4 thinking about these cases, sort of a procedural
5 reasonableness side of things having to do with
6 when arguments need to be considered and then a
7 -- a substantive reasonableness side of things,
8 which has to go with exercises of judgment, like
9 the hypothetical you gave about sending a child
10 back in the face of a grave risk.

11 We think those sorts of general
12 principles are fine, and they reflect, I think,
13 what Congress anticipated courts doing when
14 Congress gave courts jurisdiction to consider
15 cases under the convention and to decide cases
16 in accordance with the convention.

17 Where the Second Circuit's rule goes
18 awry is that it sets up a rigid rule that, I
19 think, can only be understood as an
20 implementation of the treaty that it has no
21 power to do.

22 CHIEF JUSTICE ROBERTS: Just one
23 question, Mr. Liu. It seems to me that we're in
24 a very unfortunate position because we have a
25 very unrepresentative record, and we're trying

1 to develop a rule that applies in more
2 representative cases.

3 You know, this thing says -- this --
4 this convention, and the statute, says we're
5 supposed to act -- district courts are supposed
6 to act expeditiously. But what they mean -- and
7 a lot of times, when we're told to move
8 promptly, you know, that means two years instead
9 of four -- but, here, it says we -- the judge is
10 supposed to reach a decision within six weeks,
11 and if he doesn't, he or she doesn't, you know,
12 he's got to explain it to the central authority
13 about why it's taking so long.

14 MR. LIU: Right.

15 CHIEF JUSTICE ROBERTS: And what
16 consideration of ameliorative conditions after a
17 determination of grave risk means in that
18 context, it has to be -- I mean, everybody in
19 these cases wants desperately to make sure they
20 get the right answer, but that means you've got
21 to kind of move fast and loose to get it done in
22 time.

23 And that sounds bad with respect to
24 the person -- the child's grave risk
25 possibility, but, on the other hand, as Justice

1 Breyer pointed out, the -- the other side, it's
2 kidnapping.

3 So how are we supposed to take all of
4 those things, how are the district courts
5 supposed to take all of those things into
6 account within six weeks? It's not like a case
7 like this where you get -- you contact the
8 Italian authorities. They say we're going to do
9 this. You go through all that. That's not how
10 it's supposed to happen.

11 Now Justice Alito is asking about
12 whether there should be a categorical rule, and
13 that certainly would speed things up, and maybe
14 that makes a lot of sense.

15 MR. LIU: Well, we think our abuse of
16 discretion standard will speed things up, just
17 like the rule this Court announced in Monasky,
18 because it will -- it will at least speed up the
19 appeal by -- by allowing courts of appeals to
20 really not need to take as deep of a -- of a
21 look as they otherwise would under de novo
22 review.

23 But to the question about how district
24 courts can handle this, although we agree with
25 Petitioner that the grave risk inquiry is

1 analytically distinct from the ameliorative
2 measures inquiry, we don't think those two
3 inquiries need to happen, in terms of timing,
4 one after another.

5 A district court can sequence them so
6 that they're happening at the same time, just as
7 you would hear a trial about the elements of an
8 offense along with defenses at the same time.
9 All of those things can happen together.

10 And district courts, in the cases
11 we've seen, have been -- have proved quite
12 capable of hearing -- of holding very prompt
13 hearings where live witnesses are called in, the
14 parents will testify, sometimes the child will
15 be interviewed in camera. And -- and -- and so
16 we've seen district courts be able to move
17 expeditious -- expeditiously in cases like this.

18 CHIEF JUSTICE ROBERTS: Justice
19 Breyer, anything further?

20 Justice Alito?

21 JUSTICE SOTOMAYOR: Yes. I'm
22 borrowing a page from questioning of one of my
23 colleagues usually. Tell me how to write this
24 for the district court in this case.

25 MR. LIU: Sure.

1 JUSTICE SOTOMAYOR: This district
2 court was guided by the principle, erroneous
3 according to you --

4 MR. LIU: Right.

5 JUSTICE SOTOMAYOR: -- that, if at all
6 possible, the child must be returned. So how do
7 we tell the district court judge it's not merely
8 a possibility? What is it?

9 MR. LIU: Well, I think that --

10 JUSTICE SOTOMAYOR: What -- what is
11 the issue that you have to be addressing?

12 MR. LIU: I think the overarching
13 issue is whether, in the face of a finding of
14 grave risk, there are countervailing
15 considerations that nevertheless render return
16 appropriate.

17 Now, granted, that is a broad
18 standard, but I think it avoids what the Second
19 Circuit's rule does, which is to put a thumb on
20 the scales one way or the other on return or
21 denying return.

22 And I think what the opinion could say
23 is, District Court, please re- -- take another
24 look at the sufficiency of these measures and
25 other considerations that might weigh against

1 return in light of the fact that there is no
2 thumb on the scales.

3 CHIEF JUSTICE ROBERTS: Justice Kagan?

4 JUSTICE KAGAN: Mr. Liu, would you
5 clarify something for me? Because I think I'm a
6 little bit confused because different people are
7 using this term "grave risk" in different ways,
8 sometimes to mean the preliminary determination
9 before consideration of ameliorative measures
10 and sometimes maybe to mean the final
11 conclusion, like, even with ameliorative
12 measures, there's still a grave risk.

13 So when -- when you said -- I think it
14 was to Justice Alito maybe, when you said it
15 would be extraordinary to send a child home if
16 there was a finding of grave risk, I mean, that
17 -- on one view, that means, like --

18 MR. LIU: Right.

19 JUSTICE KAGAN: -- oh, you can find
20 all the ameliorative measures in the world and
21 it would still be extraordinary. On another
22 view, you only meant grave risk after --

23 MR. LIU: I meant --

24 JUSTICE KAGAN: -- the ameliorative
25 measures were considered.

1 MR. LIU: -- in that context --
2 correct. In -- in that response, I meant only
3 grave risk after considering ameliorative
4 measures and their effect on the grave risk.

5 JUSTICE KAGAN: Okay. And -- and --
6 and if we were to try to figure out some
7 standards on the -- on this view that's like,
8 wow, tell every district court judge in America
9 you have all the discretion you want about how
10 to consider ameliorative measures, and I -- you
11 know, write -- write me a paragraph, along the
12 lines of Justice Sotomayor's question, what --
13 what standards does the State Department, does
14 the U.S. Government think would be appropriate?
15 I mean, what -- what -- what should guide the
16 district court's discretion in the U.S.
17 Government's view?

18 MR. LIU: Well, we think there are --
19 to draw a contrast with the Second Circuit's
20 view, there are four categories of cases where a
21 court could reasonably decline to consider
22 ameliorative measures.

23 One category is where the parties
24 simply haven't raised any. Another category is
25 where the measures clearly have no chance of

1 working. Another category is where the measures
2 would usurp the role of the child custody court
3 in the court -- in the country of habitual
4 residence. And a fourth is where consideration
5 of the measures would unduly prolong the
6 proceedings.

7 Those are instances where a court
8 could reasonably conclude that it's just not
9 worth the candle to go through and consider
10 ameliorative measures. But there are going to
11 be other cases that don't fall within those four
12 buckets where it's going to be perfectly
13 appropriate and, indeed, the best and most sound
14 exercise of judgment to consider the measures
15 that the parties had put before them.

16 Maybe they've already obtained the
17 order, the protective order, so there -- there's
18 no concern about a delay in the proceedings.
19 Maybe that order is -- is -- well, because it
20 was already issued, doesn't raise any concerns
21 at all about whether it usurped the -- the role
22 of the court oversees.

23 And -- and so there are certainly
24 instances where we would -- we would encourage
25 and have no problem with courts considering

1 ameliorative measures, so long as they -- they
2 -- they abide by the other objectives of the
3 convention and prompt adjudication avoiding
4 venturing into the merits of the underlying
5 dispute.

6 CHIEF JUSTICE ROBERTS: Justice
7 Gorsuch?

8 JUSTICE KAVANAUGH: Do you agree with
9 the statement that the Petitioner makes at page
10 17 of the brief that says "ameliorative measures
11 will almost never be appropriate in the context
12 of domestic violence"?

13 MR. LIU: We think that's probably too
14 strong. I think we would avoid any sort of
15 categorical statement about domestic violence
16 cases and whether the measures would be
17 sufficient.

18 The fact of the matter is even
19 domestic violence cases vary in terms of their
20 facts and circumstances. And I think it would
21 be kind of com -- you know, making the same
22 error to then put a thumb on the scale in the
23 other direction in domestic violence cases.

24 So I -- I would just -- I would just
25 be cautious about any sort of categorical

1 statement about domestic violence cases.

2 JUSTICE KAVANAUGH: Won't those cases,
3 though, tend to have the kinds of conditions
4 that you were talking about as saying, I think,
5 that ameliorative measures will be unlikely to
6 work, it'll take a while, it's difficult to
7 ensure it's going to work, usurping the role of
8 the custody, those --

9 MR. LIU: Yeah.

10 JUSTICE KAVANAUGH: -- it seems like
11 those are going to be present in -- in most, and
12 -- and they said almost never, not never.

13 MR. LIU: I think those -- those
14 circumstances may well be present in a fair
15 number of domestic violence cases. And I think
16 it's true that domestic violence cases raise
17 those concerns more than other types of cases.

18 I -- I would just be wary about
19 setting up any sort of general presumption.

20 JUSTICE KAVANAUGH: Well, what about,
21 just to add to that, this is supposed to be a
22 temporary determination as well. This is not
23 the final determination. This is just kind of a
24 holding pattern until we get the custody
25 determination, to pick up on the Chief Justice's

1 points.

2 And when you combine that with what I
3 think you've acknowledged about the domestic
4 violence cases, it seems difficult to -- to
5 think that ameliorative measures will be able to
6 be assessed, determined in that kind of quick
7 period, and why would you want to in a temporary
8 -- when it's just a temporary hold?

9 MR. LIU: I think those are all fair
10 points. I think a district judge who adopted
11 that sort of reasoning would be on pretty solid
12 ground.

13 I -- I -- the reason why I'm holding
14 back is because these cases are so different
15 factually that I -- I don't want to say anything
16 that would suggest there's a rigid rule going
17 the other way in these sorts of cases.

18 JUSTICE KAVANAUGH: I appreciate it.
19 Thank you.

20 CHIEF JUSTICE ROBERTS: Justice
21 Barrett?

22 JUSTICE BARRETT: So I think my
23 sticking point is the same one that others have
24 asked you. It's difficult to figure out how to
25 write this paragraph.

1 In your answer to Justice Kagan, I
2 mean, I understand why the United States doesn't
3 want to box itself in to a particular thing, but
4 it, frankly, wouldn't give district courts that
5 much guidance.

6 And you were talking about not putting
7 a thumb on the scale because at risk of falling
8 into the error that the Second Circuit may have
9 fallen into. But it did more than have a thumb
10 on the scale. I mean, it had a categorical
11 rule.

12 And I don't see anything in the United
13 States' position that would prevent -- Justice
14 Alito talked about each court of appeals
15 developing standards to guide the exercise of
16 discretion. I don't see anything in what the
17 United States has proposed that would prevent a
18 thumb on the scale one way or another.

19 You know, in -- in my discretion, I am
20 generally going to use extreme caution, as I
21 suggested to Ms. King, before imposing
22 ameliorative measures in a domestic violence
23 case. That seems to me like those are the kinds
24 of things that shape discretion.

25 And as Justice Kavanaugh said, it

1 seems like in these complex domestic
2 violence-type cases, all of the risks that
3 you're talking about would be present.

4 So would it really be so bad if we
5 tried to -- if we send it back, offer something
6 in the way of guidance, even if it is simply to
7 say, yes, district courts have discretion that
8 should be exercised consistent with ICARA and
9 the Hague Convention; however, given these
10 concerns and how they are often present in
11 domestic violence cases, use caution before
12 going forward with them in that context?

13 MR. LIU: I think so long as there's a
14 substantial caveat that there may be other cases
15 even in the domestic violence context where
16 ameliorative measures are appropriate, that that
17 would be fine.

18 You know, the United States is in a
19 position where we have children, of course,
20 abducted from foreign countries who are here,
21 but we are also in a situation where we have
22 children from the United States abducted to
23 other countries.

24 And there may be allegations of
25 domestic violence in those cases, and we want

1 the judges abroad to also take into account the
2 specific circumstances of each case and -- and
3 -- and be sensitive to how those differences may
4 or may not make ameliorative measures in that
5 case an appropriate remedy.

6 So -- so we -- I -- I -- I would
7 simply, you know, make sure that I got across
8 that the United States is on both sides of -- of
9 -- of -- of the issue of whether the child is
10 incoming or outgoing.

11 JUSTICE BARRETT: That's very helpful.
12 Thank you, Mr. Liu.

13 CHIEF JUSTICE ROBERTS: Thank you,
14 counsel.

15 Mr. Min.

16 ORAL ARGUMENT OF RICHARD MIN

17 ON BEHALF OF THE RESPONDENT

18 MR. MIN: Mr. Chief Justice, and may
19 it please the Court:

20 The convention's text, context, and
21 purpose require that reasonable ameliorative
22 measures be considered when adjudicating these
23 complex family abduction cases.

24 To refuse to consider measures that
25 might allow for the safe return of children back

1 to their home country would be an abuse of
2 discretion and would violate the purpose of the
3 convention, which is built on a system of mutual
4 trust between signatory nations.

5 This approach supported by the Hague
6 Conference ensures consistent results here in
7 the United States and expectations for U.S.
8 children abducted abroad by providing courts
9 clear guidance on how to evaluate this
10 exception.

11 The lower court here took into
12 consideration the unique facts of this case and
13 of this family.

14 Specifically, the limiting provisional
15 order in this case addressed the grave risk of
16 harm to this child, which was caused by
17 potential exposure to domestic violence between
18 the parties.

19 The return order helps to -- to deter
20 future abductions, which Congress has found to
21 be harmful to children, while also protecting
22 the interests of this child, ensuring that the
23 custody dispute takes place in Italy, his home
24 country.

25 The core premise of the convention is

1 that the interests of children in matters
2 relating to their custody are best served when
3 custody decisions are made in the country of
4 habitual residence.

5 Ultimately, the treaty is not about
6 who should have custody but, rather, where those
7 decisions should be made.

8 The Italian courts have already issued
9 orders protecting this child, and they have
10 scheduled -- scheduled a hearing in June to
11 address issues of custody.

12 As this Court found in *Abbott*, there
13 is no reason to doubt the ability of other
14 contracting states to carry out their duty to
15 make decisions in the best interest of children.

16 Further, as this Court found in
17 *Monasky*, domestic violence should be an issue
18 fully adjud -- fully explored in the custody
19 adjudication upon the child's return.

20 The Court should, therefore, affirm
21 the order directing the immediate return of
22 B.A.S. back to Italy.

23 I'm happy to entertain any questions.

24 CHIEF JUSTICE ROBERTS: This
25 ameliorative conditions doctrine, rule, it has

1 no basis in the convention or the statute,
2 right, and by which I mean it's not a concept
3 that the statute or the convention refers to?
4 Grave risk is all that we're talking about,
5 right?

6 MR. MIN: Yes, but we believe that
7 it's inherent and implicit in the text of the
8 convention, meaning that grave risk, the Article
9 13(b) grave risk inquiry, necessitates an
10 analysis of the future risk of harm to the
11 child, including any potential mitigating
12 factors.

13 This is an approach that the United
14 States themselves supported in the Blondin
15 second appeal. On page 21 of their amicus
16 brief, they said -- and they supported the
17 Blondin II language, saying it supported that
18 past abuse should not constitute a finding of
19 grave risk of harm without the additional
20 finding that there's a likelihood of and no
21 adequate option to prevent future abuse upon
22 return, which means that to find a grave risk of
23 harm, you must find there's no way to protect
24 the child upon return.

25 CHIEF JUSTICE ROBERTS: Well, but by

1 creating ameliorative conditions as sort of a
2 separate concept, it's almost like you're adding
3 a subsection to -- to 13. It does have the
4 potential, and maybe the -- I don't want to say
5 inevitable, but the likelihood of extending the
6 -- the proceedings.

7 It's -- it's one thing if you just
8 factor it into determining whether there's a
9 grave risk. It's another thing if you say,
10 okay, you've got grave risk. Now what kind of
11 conditions can we impose? Because, once you do
12 that, you're talking about ameliorative
13 conditions that are added as the process goes
14 on.

15 You know, oh, you -- you think it's
16 risky that there's this? Okay, here's what
17 we're going to do. Or this? This is what we're
18 going to do. As opposed to things that are -- I
19 mean, that could be factored into the grave risk
20 concerns as part of the same process. It's a
21 bad thing that, you know, the child is in this
22 situation or this is going to affect him or
23 where the education is going to be or whatever,
24 and in the process of debating that, simply say,
25 well, this is what we're going to do, this can

1 happen, but not sort of extend it as a whole
2 separate inquiry.

3 MR. MIN: Well, we agree that it
4 should be a one-step process and the analysis
5 should be done in the same stage. However, we
6 also believe that, pursuant to the language of
7 Article 13 and 18 of the convention, that the
8 court has discretion to return a child even with
9 a grave risk finding in place.

10 That discretion, as Justice Alito
11 mentioned earlier, would reasonably only occur
12 if there were sufficient ameliorative measures
13 in place to return a child. We agree that,
14 absent measures to protect a child, it would be
15 highly unusual to direct a return of the child
16 after a grave risk finding.

17 However, there are certain
18 circumstances where they may -- that might be
19 appropriate, such as if the abducting parent is
20 creating the situation of grave risk in the home
21 country, such as refusing to obtain an order of
22 protection or refusing to seek some sort of
23 relief that might protect the child. The court
24 may in that circumstance decide that, balancing
25 the factors, one, to deter future abductions,

1 they will not sanction behavior of abducting
2 parents who do not cooperate in efforts to
3 protect the child upon return and, therefore,
4 return the child notwithstanding a grave risk
5 finding.

6 But the United States' position again
7 in the Blondin II amicus brief -- or the -- the
8 Blondin amicus brief talked about the fact that
9 the system is built on mutual trust and
10 cooperation. Ultimately, the purpose of the
11 convention is to believe that the foreign courts
12 can protect children. It will lead to
13 consistent results here and abroad.

14 JUSTICE BREYER: I'm afraid of writing
15 anything. You see the problem? It seems to me
16 that why isn't the -- the right group to write
17 something -- there are bureaus and there are
18 people who have this as their profession. We're
19 not a family court, and any word we write is
20 capable of being used in a context, in a case
21 where it does not belong. Okay?

22 So, when you say let's put our thumb
23 -- that's what Justice Barrett said -- yeah,
24 okay, that seems like the best possible
25 approach. And even there, I'm not certain of

1 what thumb and what those words should be.

2 A family court judge has the hardest
3 judge, in my opinion, in this system. And --
4 and so what do we say? I take it you agree that
5 what the Second Circuit said must be wrong. I
6 mean, there will be cases where there is nothing
7 to be said about undertakings and you shouldn't
8 go into it, Judge, or you're going to be here
9 for five years, and the child shouldn't be sent
10 back to Afghanistan because they're bombing
11 every five minutes. And I can make up some
12 other country if I need to.

13 And, you know, so -- so it can't be an
14 absolute rule in my opinion, but go ahead,
15 answer that. Tell me why it has to be.

16 MR. MIN: Well, there is a --

17 JUSTICE BREYER: Why should we write
18 something and what those words should be in your
19 opinion?

20 MR. MIN: To clarify, there is a
21 distinction between consideration and
22 implementation of ameliorative measures.
23 Consideration, as the case law suggests in the
24 Second Circuit, can be instantaneous. A court
25 can say: Well, a child was abducted from

1 Afghanistan. I've considered if there's
2 anything we can do to protect the child. I
3 don't believe there is anything because the
4 entire country is being bombed, using Your
5 Honor's example.

6 That is consideration. That is what
7 the Second Circuit's rule has implemented. The
8 Second Circuit case law is very clear that they
9 have not remanded cases historically to -- for
10 failure to consider all available ameliorative
11 measures. The full panoply, as the United
12 States and as Petitioner believes the rule
13 states.

14 The application of the rule is that
15 the court examines the record put before them,
16 considers some very readily accessible and
17 easily available ameliorative measures, which
18 the United States has supported, and in that
19 limited purpose considers normal protective
20 measures, such as orders of protection, whether
21 or not supervised visitation can be put in
22 place.

23 For example, the medical cases, as
24 part of grave risk, is very illuminating to use
25 as an analogy. In the Ermini case -- in the

1 Ermini case and I believe the Aidan case in the
2 Second Circuit, the abducting parent was
3 required to show that there was no medical
4 treatment available in the home country before
5 the court could find that there was grave risk
6 of harm.

7 This is precisely our argument, that
8 connected to the grave risk inquiry, one must
9 show that the child cannot be protected or
10 cannot be treated in the home country. It's not
11 sufficient to show, well, the child can get
12 medical treatment in the United States; we don't
13 have to worry about what's available in the
14 other country. They must engage in some sort of
15 analysis of what is possible and appropriate in
16 the home country before --

17 JUSTICE GORSUCH: So, Mr. Min, I just
18 want to see if you agree with Mr. Liu, and he
19 gave us at least four things that he thought we
20 could -- we could get our hands around when it
21 comes to ameliorative measures. And I
22 understand your point that we have to determine
23 whether there's a grave risk in the home country
24 and medical conditions.

25 But he said you don't have to consider

1 measures that are not raised by the parties,
2 one. Two, you -- you don't have to -- you don't
3 have to pursue things that were not -- that are
4 not -- that are obviously not workable. Three,
5 you don't have to consider measures that would
6 usurp local authority. And, four, he said, you
7 can -- you don't have to consider measures if it
8 would prolong proceedings significantly.

9 Do you disagree with any of those?

10 MR. MIN: Yes. Starting from the
11 first one, the United States in their own brief
12 suggested that the courts can sua sponte
13 consider available --

14 JUSTICE GORSUCH: No. Of course, it
15 can, but it doesn't have to, is -- is, I
16 believe, as I understood Mr. Liu, that -- that
17 it's not required to. It wouldn't be an abuse
18 of discretion if it failed to consider sua
19 sponte measures on its own.

20 And -- and that may be the fundamental
21 problem with the Second Circuit's approach,
22 right? Is -- is that it -- it seems to suggest
23 the district court had to go out and investigate
24 measures on its own, as Justice Sotomayor
25 suggested.

1 So, again, those four things, any
2 problem with any of them? That one doesn't
3 count.

4 MR. MIN: Well, we believe that the
5 Hague Conference in their guide to good practice
6 has stated that the courts must consider
7 available and readily accessible ameliorative
8 measures. And we agree that would be the
9 appropriate --

10 JUSTICE GORSUCH: So available would
11 be presented by the parties, and readily
12 accessible would, I think, track what -- what
13 Mr. Liu said in things -- it could throw out
14 things that were obviously not workable, that
15 that wouldn't be an abuse of discretion.

16 So I haven't heard anything that --
17 from you and I haven't read anything in your
18 brief that I recall that -- that disagrees with
19 these, at least these four things. What would
20 you say?

21 MR. MIN: Well, I think, if the
22 parties did not present an option such as moving
23 away from the nuclear plant and if the court
24 considered that as a very easily accessible and
25 readily available ameliorative measure, the

1 court would have a duty to consider something
2 that is very knowable in those circumstances --

3 JUSTICE GORSUCH: On its own?

4 MR. MIN: Yes, on its own, because --

5 JUSTICE GORSUCH: Okay. Let's say we
6 disagree with that, and we -- you know, we don't
7 normally have, as Justice Sotomayor says, an
8 inquisitorial justice system. It's an
9 adversarial one in this -- this country. Then
10 what?

11 MR. MIN: Well, the United States has
12 supported judges reaching out to the
13 international network of Hague judges. And we
14 should remember that Congress has promoted or
15 says that there should be uniform interpretation
16 internationally of this convention, which means
17 that it should work not only for the United
18 States courts but also international courts and
19 that courts all around the world should apply
20 the provisions of the convention fairly
21 uniformly.

22 So the United States has supported
23 courts and district judges reaching out to the
24 international network of Hague judges. We agree
25 that that should be something that courts

1 consider in cases of grave risk of harm.

2 We also believe that the presumption
3 should be in all cases that the home country can
4 protect children. That is the system that this
5 convention is built on. And inherent in that
6 system would be an acknowledgment that most
7 countries have orders of protection, custody
8 courts that can supervise children, that these
9 are things that courts should sua sponte
10 consider before rejecting the efficacy of these
11 measures.

12 Now, again, the simple fact that they
13 consider this, even if it is just a fleeting
14 thought, is sufficient. And the Second Circuit
15 case law does not require that they do anything
16 further than that.

17 On the second point, we agree,
18 obvious, readily accessible, available remedies
19 is what the court should be mandated to
20 consider. The Second Circuit language in case
21 law, as inartfully as it might be drafted,
22 again, in practice, is not applied the way that
23 Petitioner and the United States paints it.

24 It is more restrictive, meaning that
25 they do defer to the district court's analysis

1 of the record and proposals. The Davies case,
2 which occurred a year before this case in the
3 Second Circuit, the district court denied the
4 return to French St. Martin after ameliorative
5 measures and undertakings were proposed. The --
6 on remand, the Second Circuit did not -- on
7 appeal, the Second Circuit did not remand for
8 failure -- failure to consider the full panoply
9 of ameliorative measures, for failure to
10 consider all theoretical ameliorative measures.
11 They simply affirmed stating the -- the district
12 court considered the record put forth before
13 them, considered available ameliorative
14 measures, and agreed that the child should not
15 be returned.

16 CHIEF JUSTICE ROBERTS: Counsel, I'm
17 sorry, I'm about 90 seconds behind you. But you
18 said that the consideration can be fleeting. It
19 doesn't have to be terribly involved.

20 How would you describe the
21 consideration in this case? Certainly far
22 beyond fleeting, right, quite elaborate,
23 ongoing, getting the international --
24 international courts involved?

25 MR. MIN: Yes.

1 CHIEF JUSTICE ROBERTS: So -- so would
2 you at least acknowledge that the depth of
3 consideration went far beyond what would be true
4 in the normal case?

5 MR. MIN: Well, in this case the
6 parties, again, proposed substantial
7 ameliorative measures during the evidentiary
8 portion of this case.

9 It was only after the Second Circuit
10 remand that the court engaged in further
11 analysis and trying to convert the mostly
12 undertakings and ameliorative measures into more
13 enforceable orders.

14 Of course, to some extent the analysis
15 or evaluation of ameliorative measures is a
16 process that would take time, of course, but the
17 United States themselves in, again, in the
18 Blondin amicus brief, criticize the grave risk
19 process which required expert testimony, and
20 said that it would result to delays and
21 prolonging cases.

22 In -- in my experience, it is grave
23 risk analysis itself that often leads to long
24 delays in the adjudication of these cases.

25 There's -- very rarely do grave risk

1 cases get resolved within six weeks. They
2 require expert testimony. They require the
3 analysis of the foreign country's mechanism and
4 legal system.

5 In this case, Petitioner put their
6 case on first because they were trying to
7 substantiate the exception.

8 And in their case, they called an
9 Italian legal expert who criticized Italy and
10 also criticized the U.S. system for protecting
11 domestic violence. And they also called two
12 experts on -- on grave risk of harm.

13 So simultaneous with that evidence
14 being adduced, the question of ameliorative
15 measures was also presented. So that there is
16 no real time delay that would be created by
17 considering ameliorative measures. And
18 certainly one must consider the overarching
19 purpose of the convention, which is to return
20 children back to their home country.

21 Ultimately the question that I have
22 heard from several Justices is about the rule
23 that should be provided to courts in these types
24 of cases.

25 And we believe that, very simply, the

1 Court must consider all evidence of ameliorative
2 measures that have been presented to them by
3 either party during the course of proceedings,
4 that it is Petitioner, or the abducting parents'
5 burden to overcome the presumption that the
6 courts in the system in the home country are
7 capable of protecting children.

8 And that that presumption may be
9 overcome by evidence stating that they have
10 either attempted to secure protection, and were
11 denied that protection, which would -- can lead
12 a district court to conclude that that country
13 cannot protect that child, or by producing some
14 sort of evidence through experts or other means
15 about the deficiencies in that legal system.

16 JUSTICE SOTOMAYOR: Counsel, not in my
17 experience, but I have followed some of these
18 cases with care.

19 If a court decides I'm not altogether
20 sure about whether the abuse occurred or, if the
21 abuse occurred, it occurred in the manner that
22 the Petitioner says -- not the Petitioner, that
23 the Respondent says -- I think that that issue
24 is one that should be looked at more closely by
25 the court making the custody decision. I need

1 to rule expeditiously in this case.

2 So given my deep uncertainty, I'm not
3 sure I'm going to make a grave risk finding or
4 I'm going to find there may be a risk but I'm
5 not sure of its extent, I think these measures
6 are enough to return the child, what mechanism
7 is there for a court to do that?

8 MR. MIN: So, Hague cases are often
9 described as summary proceedings.

10 JUSTICE SOTOMAYOR: Right.

11 MR. MIN: There are several rules that
12 allow for expeditious proceedings, such as the
13 requirement that documents not have to be
14 authenticated to be produced as evidence.

15 We believe that a mandatory
16 consideration will speed up resolution of these
17 cases. First, it gives clear guidance to -- to
18 district court judges --

19 JUSTICE SOTOMAYOR: No, I --

20 MR. MIN: -- how to evaluate.

21 JUSTICE SOTOMAYOR: -- I understand
22 all of that, counsel.

23 MR. MIN: The summary judgment --

24 JUSTICE SOTOMAYOR: The assumption
25 here has been that there has been a grave risk

1 finding, but, as I indicated, especially in
2 domestic abuse cases, they're -- they're messy.
3 And who is abusing whom and to what extent and
4 under what circumstances is always at issue.
5 Okay?

6 What legal mechanism is there for a
7 court who is unsure, I don't want to make a
8 grave risk finding because I think that that
9 really belongs to the custody court, I'm on the
10 margin. Could, without that finding, a court
11 say I'm going to return you?

12 MR. MIN: Yes. We believe that
13 through summary judgment motions and processes,
14 that if there is a mandatory consideration of
15 ameliorative measures, that the left-behind
16 parent can put forth evidence that taking the
17 abducting parent's allegations at their extreme,
18 which is what the United Kingdom does in their
19 analysis, taking their allegations at face
20 value, there are sufficient ameliorative
21 measures that would still protect the child,
22 then they do not have to go through the thorough
23 analysis and evidence-gathering to figure out
24 whether the allegations are then themselves
25 true.

1 And this is something that the Hague
2 Conference has talked about in their guide to
3 good practice. And so that would in effect
4 speed up these cases considerably.

5 JUSTICE BREYER: I mean, why can --
6 what about saying that -- I'm looking for the
7 thumb -- not say it quite in those words. After
8 all, the U.K. is talking about a special treaty
9 that includes the EU countries where they know
10 the courts have these particular things, maybe.

11 But just say the question is
12 difficult, has to do with whether there really
13 will be a grave risk or whether there won't be a
14 grave risk, and we would recommend or it's quite
15 possible the district court is free to consult
16 the guidance of experts on the subject, for
17 example, the March 9th, 2020 statement issued by
18 the Child Abduction Convention guide by the
19 permanent bureau of the Hague Conference,
20 whatever it is, we cite that. But we don't tell
21 them they have to do it.

22 We just say, in an appropriate case,
23 the judge is free, of course, to consider the
24 views of those who work in this field, such as.

25 Now, we don't have to say too much and

1 they'll do it, you know, I mean, so what about
2 something like that, and not in every case but
3 in an appropriate case?

4 MR. MIN: Again, we believe, and we
5 agree with the United States that discretion
6 should be guided by sound legal principles and
7 the large objectives of the convention.

8 We believe that it would be an abuse
9 of discretion for a court to fail to consider
10 very reasonable and accessible and available
11 ameliorative measures in cases where they may
12 help the return of the child back to the home
13 country.

14 Again, if they -- if it's an extreme
15 case where an abductor has violated and shown a
16 propensity to violate court orders in the past,
17 where the abducting parent has sought orders of
18 protection and sought the refuge of police in
19 the home country and they have not offered their
20 assistance back home, in those types of cases
21 the court can easily consider and say: I've
22 thought about how we can protect this child,
23 none of them I think will work, and they can
24 move on to their final decision.

25 We do not believe that the mandatory

1 consideration adds any more time because, if
2 they believe that it could assist in returning
3 the child, and implemented that, then it would
4 take the same time whether it was discretionary
5 or mandatory, and it would take the same time if
6 they denied the implementation of the
7 ameliorative measures.

8 Again, the consideration versus
9 implementation is an important distinction. A
10 lot of the concerns here are about implementing
11 ameliorative measures. But even if we concede
12 or even if we accept that ameliorative measures
13 are discretionary, the implementation of them
14 will, of course, take some time.

15 Now, in this case when Ms. Golan
16 actually sought the order of protection, in
17 December 2019, she obtained it one week later.
18 So there really was no delay in obtaining the
19 necessary ameliorative measures to protect this
20 child in this case, and oftentimes there will
21 not have to be.

22 If this Court does not have any
23 further questions, we certainly would urge this
24 Court to affirm the return of B.A.S.

25 As I stated in my opening statement,

1 the Italian courts are ready to adjudicate the
2 best interests of this child. They have a
3 hearing scheduled in June. They have appointed
4 an attorney for the child to represent the
5 child's interest.

6 They have issued orders that
7 substantially protect the interests of this
8 child and reduce any risk to this child below
9 the threshold grave risk of harm.

10 CHIEF JUSTICE ROBERTS: Anything
11 further?

12 Thank you, counsel.

13 MR. MIN: Thank you.

14 CHIEF JUSTICE ROBERTS: Rebuttal, Ms.
15 King?

16 REBUTTAL ARGUMENT OF KAREN R. KING
17 ON BEHALF OF THE PETITIONER

18 MS. KING: Yes, thank you.

19 To start with the Italian proceeding,
20 all that's happened in Italy is more placeholder
21 dates, the same that's happened in the last
22 three years since that case was filed. The only
23 substantive action taken in the Italian
24 proceeding was the one that was put in place at
25 the request of this U.S. district court, going

1 through the parties and forcing the parties to
2 apply for a particular order.

3 I want to go back to the notion of an
4 exception. This is the fifth Hague case that
5 this Court has heard in 12 years. And in each
6 of its prior opinions, it identified the grave
7 risk exception as an example of where return is
8 not required because it is the plain reading of
9 the convention. There is no obligation to
10 return, no heavy thumb on the scale towards
11 return, once grave risk is proven. And the
12 exception exists for a reason.

13 And this is the first case where a
14 mother has proven the grave risk exception by
15 the exceedingly high evidentiary standard in
16 this country, by clear and convincing evidence.

17 And so if we go back the three years
18 to March 22nd of 2019, when the district court
19 made that grave risk finding, I just want to
20 note that that finding was never even appealed.
21 It stands to this day, all of those findings of
22 horrific violence, of the character failings of
23 Mr. Saada, and of the harm, psychological and
24 physical harm, to the young child in this case.

25 But everything that followed from that

1 is infected by the Second Circuit's mandatory
2 requirement to exhaustively consider and try to
3 find a way to send the child back. And Mr. Min
4 says that ameliorative measures was part of the
5 trial. And that's not exactly true, although
6 they were mentioned in the trial. There was not
7 a detailed factual finding about ameliorative
8 measures.

9 It came up after -- or in the middle
10 of closing arguments. At the end of closing
11 arguments is when the district court said, oh,
12 by the way, can you please propose some
13 ameliorative measures?

14 And at that time, the ameliorative
15 measures proposed by Mr. Saada were a bunch of
16 promises, essentially. And even the Second
17 Circuit agrees that those promises are not
18 reliable, are not consistent with the
19 convention's requirement to try and protect the
20 children.

21 And at the end of the day, the Second
22 Circuit's rule then required a -- another bite
23 at the apple, so to speak, and forced the
24 district court then to engage in this
25 nine-and-a-half-month process that I think we

1 can all recognize as being improper under the
2 convention's requirements.

3 The procedural and substantive defects
4 with that ultimate process are -- are too
5 ingrained for us to send this back. If the
6 defect is it took too long, the remedy shouldn't
7 be, well, give them more time to try again.

8 If the defect is the district court
9 should not have entangled itself with custody
10 matters, the remedy should not be to accept the
11 protective order now and allow the parties to
12 engage with it.

13 Because there's a safe and swift
14 resolution, we -- we urge a reversal.

15 CHIEF JUSTICE ROBERTS: Thank you,
16 counsel.

17 The case is submitted.

18 (Whereupon, at 11:21 a.m., the case
19 was submitted.)

20

21

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