

No. 22-1966-cv

In the United States Court of Appeals for the Second Circuit

In Re: In The Matter of B.A.S.

ISACCO JACKY SAADA,

Petitioner-Appellee,

–v.–

NARKIS ALIZA GOLAN,

Respondent-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
CASE No. 1:18-cv-05292 – HON. M. DONNELLY

BRIEF OF THE ORGANIZATION FOR AUTISM RESEARCH ET AL. AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT-APPELLANT NARKIS ALIZA GOLAN

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, none of the *Amici* has a parent corporation, and no publicly held corporation owns 10% or more of any of the *Amici*.

Dated: October 11, 2022

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| <i>Blondin v. Dubois</i> , 78 F. Supp. 2d 283 (S.D.N.Y. 2000), <i>aff'd</i> , 238 F.3d 153 (2d Cir. 2001) | 22 |
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| <i>Saada v. Golan</i> , No. 1:18-cv-5292, 2020 WL 2128867 (E.D.N.Y. May 5, 2020) | 2, 4, 12, 18 |
| <i>Saada v. Golan</i> , No. 1:18-cv-5292, 2022 WL 4115032 (E.D.N.Y. Aug. 31, 2022) | 2, 3, 4 |
| Other Authorities | |
| A. J. Narayan et al., <i>Risk, Vulnerability and Protective Process of Parental Expressed Emotion for Children’s Peer Relationships in Contexts of Parental Violence</i> , 44 J. Clinical Child & Adolescent Psychol. 676 (2015) | 20 |
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| Alicia F. Lieberman et al., <i>Angels in the Nursery: The Intergenerational Transmission of Benevolent Parental Influences</i> , 26 Infant Mental Health J. 504 (2005) | 20 |
| Alicia F. Lieberman et al., <i>Attachment Perspectives on Domestic Violence and Family Law</i> , 49 Fam. Court Rev. 529 (2011) | 20 |

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|---|----------------|
| Andrea Gonzalez et al., <i>Subtypes of Exposure to Intimate Partner Violence within a Canadian Child Welfare Sample: Associated Risks and Child Maladjustment</i> , 38 <i>Child Abuse & Neglect</i> 1934 (2014)..... | 14 |
| BESSEL A. VAN DER KOLK, <i>THE BODY KEEPS THE SCORE</i> 66-68 (Penguin Books, 2014) | 18 |
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| Connor M. Kerns et al., <i>Exploring Potential Sources of Childhood Trauma: A Qualitative Study with Autistic Adults and Caregivers</i> , 1 <i>Autism</i> 1 (2022) | 7, 8, 9 |
| Connor M. Kerns et al., <i>Traumatic Childhood Events and Autism Spectrum Disorder</i> , 45 <i>J. of Autism and Dev. Disorders</i> 3475 (2015) | 7, 11 |
| Daniel B. Pickar, <i>Considerations Regarding Child and Parent Neurodiversity in Family Court</i> , 60 <i>Family Court Rev.</i> 492 (2022) | 21 |
| Daniel W. Hoover, <i>The Effects of Psychological Trauma on Children with Autism Spectrum Disorders: a Research Review</i> , 2 <i>Rev. J. Autism Dev. Disorders</i> 287 (2015) | 9 |
| Einat Waizbard-Bartov et al., <i>Trajectories of Autism Symptom Severity Change During Early Childhood</i> , 51 <i>J. of Autism and Developmental Disorders</i> , 227 (2021) | 5, 6 |
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| Ella Lobregt-van Buuren et al., <i>Chapter 3: Autism, Adverse Events, and Trauma</i> , in <i>AUTISM SPECTRUM</i> | |

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| | Page(s) |
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| DISORDERS, doi: 10.36255/exonpublications.autismspectrum disorders.2021 (Exon Pub. 2021)..... | 10 |
| Emma Katz, <i>Coercive Control, Domestic Violence, and a Five-Factor Framework: Five Factors that Influence Closeness, Distance, and Strain in Mother-Child Relationships, Violence Against Women 1</i> (2019)..... | 19 |
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| Hague Conference on Private International Law, <i>Domestic and Family Violence and the Article 13 “Grave Risk” Exception in the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: A Reflection Paper</i> , Prel. Doc. No. 9 (May 2011) | 13 |
| Lauren Gravitz, <i>At the Intersection of Autism and Trauma</i> , <i>Spectrum Autism Research News</i> , https://doi.org/10.53053/VEMR8039 (Sept. 26, 2018)..... | 9, 10, 11 |
| Lisa Bolotin, <i>When Parents Fight: Alaska’s Presumption Against Awarding Custody to Perpetrators of Domestic Violence</i> , 25 <i>Alaska L. Rev.</i> 263 (2008) | 13 |
| Lynn Hecht Schafran, <i>Domestic Violence, Developing Brains and the Lifespan: New Knowledge from Neuroscience</i> , 53 <i>The Judges’ J.</i> 32 (2014) | 13, 20 |
| Martin H. Teicher et al., <i>The Effects of Childhood Maltreatment on Brain Structure, Function, and Connectivity</i> , 17 <i>Nature Reviews Neuroscience</i> 652 (2016) | 15 |
| Megan R. Holmes et al., <i>Nearly 50 Years of Child Exposure to Intimate Partner Violence Empirical Research: Evidence Mapping, Overarching Themes, and Future Directions</i> , <i>J. of Fam. Violence</i> , doi: 10.1007/10896-021-00349-3 (Jan. 12, 2022)..... | 16 |
| National Coalition for Child Protection Reform, <i>When Children Witness Domestic Violence: Expert Opinion, A Summary of Expert Testimony from the Decision of U.S. District Judge Jack Weinstein in Nicholson v. Williams, No. 00-C V2229 (E.D.N.Y. 2001)</i> , at 4 (2001)..... | 19 |

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| | Page(s) |
|---|----------------|
| NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE, CHILDREN EXPOSED TO INTIMATE PARTNER VIOLENCE 6 (2002), <i>available at</i> http://vawnet.org/sites/default/files/materials/files/2016-09/NRC_Children.pdf | 14, 15 |
| Nirit Haruvi-Lamdan et al., <i>PTSD and Autism Spectrum Disorder: Co-Morbidity, Gaps in Research, and Potential Shared Mechanisms</i> , Psychological Trauma: Theory, Research, Practice, and Policy, doi: 10.1037/tra0000298 (May 2017) | 10 |
| Nirit Haruvi-Lamdan, <i>Autism Spectrum Disorder and Post-Traumatic Stress Disorder: An Unexplored Co-Occurrence of Conditions</i> , 24 Autism 884 (2020)..... | 10 |
| Ofer Golan et al., <i>The Comorbidity Between Autism Spectrum Disorder and Post-Traumatic Stress Disorder is Mediated By Brooding Rumination</i> , 26 Autism 538 (2022) | 7 |
| Robert S. Pynoos et al., <i>A Developmental Psychopathology Model of Childhood Traumatic Stress and Intersection with Anxiety Disorders</i> , 46 Biol. Psychiatry 1542 (1999) .. | 16, 17, 21 |
| S.H. Kim et al., <i>Variability in Autism Symptom Trajectories Using Repeated Observations From 14 to 36 Months of Age</i> , 57 J. of the Am. Acad. of Child Adolescent Psychiatry 837 (2018)..... | 6 |
| TARYN LINDHORST & JEFFREY L. EDLESON, BATTERED WOMEN, THEIR CHILDREN, AND INTERNATIONAL LAW: THE UNINTENDED CONSEQUENCES OF THE HAGUE CHILD ABDUCTION CONVENTION 107 (Ne. U. Press 2012) | 13 |
| Tracie O. Afifi et al., <i>Childhood Adversity and Personality Disorders: Results from a Nationally Representative Population-Based Study</i> , 45 J. Psychiatric Res. 814 (2011) | 14 |
| U.S. DEP’T OF JUST., REPORT OF THE ATTORNEY GENERAL’S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE 31 (2012), <i>available at</i> http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf | 14 |
| Vincent J. Felitti, <i>The Relation Between Adverse Childhood Experiences and Adult Health: Turning Gold into Lead</i> , 6 Permanente J. 44 (2002)..... | 15 |

TABLE OF AUTHORITIES

(continued)

| | Page(s) |
|--|----------------|
| Virginia Carter Leno et al., <i>Exposure to Family Stressful Life Events in Autistic Children: Longitudinal Associations with Mental Health and the Moderating Role of Cognitive Flexibility</i> , 26 <i>Autism</i> 1656 (2022) | 9 |
| Rules | |
| Fed. R. App. P. 29(a)(4)(E)..... | 1 |

IDENTITIES AND INTEREST OF *AMICI CURIAE*¹

Amici, the Organization for Autism Research; the National Association of Social Workers; the Leadership Council on Child Abuse & Interpersonal Violence; Professor Evan Stark, Ph.D.; and Dean Jeffrey Edleson, Ph.D. are psychologists, sociologists, social workers, non-profit organizations, and academics who focus on child development, including the challenges experienced by children on the autism spectrum and/or the impact of abuse and trauma on children. *Amici* have an interest in protecting children and measures to prevent them from suffering physical and psychological damage. *Amici* understand that clinically, children exposed to domestic violence face a risk of suffering traumatic effects, including physical, psychological, and developmental issues, and this risk is even greater for children diagnosed with autism spectrum disorder. *Amici* write to address the potential for harm to children—particularly those on the autism spectrum, like B.A.S.—posed by removing the children from safe and stable environments to return them to locations where they were exposed to domestic violence.

¹ Pursuant to Fed. R. App. P. 29(a)(4)(E), counsel for *amici* state that no counsel for a party authored this brief in whole or in part, and no person, party, or party's counsel, other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to this brief's filing.

PRELIMINARY STATEMENT

This case is about a child diagnosed with autism (“B.A.S.”) who witnessed his father severely and chronically abuse his mother in Italy. The district court ordered him to leave the stable environment and routines that have since been established for him in the United States over the last several years, and to return to the site of that abuse. That decision is an abuse of discretion.

Under the Hague Convention on the Civil Aspects of International Child Abduction, a court may decline to order the return of a child to the child’s country of habitual residence if such return would “put the child at a grave risk of physical or psychological harm.” *Golan v. Saada*, 142 S. Ct. 1880, 1887 (2022). The district court found such a grave risk of harm to B.A.S. in the form of “exposure to violence between [Mr. Saada, his father] and [Ms. Golan, his mother].” *Saada v. Golan*, No. 1:18-cv-5292, 2020 WL 2128867, at *2 (E.D.N.Y. May 5, 2020); *see also Saada v. Golan*, No. 1:18-cv-5292, 2019 WL 1317868, at *18 (E.D.N.Y. Mar. 22, 2019) (“Ms. Golan established by clear and convincing evidence that returning the child to Italy would subject the child to a grave risk of harm.”). But the district court also found that this grave risk to B.A.S. can be ameliorated and that the child should be returned to Italy. *Saada v. Golan*, No. 1:18-cv-5292, 2022 WL 4115032, at *5-7 (E.D.N.Y. Aug. 31, 2022). In doing so, the district court has ignored the serious harm that a return to the site of his mother’s abuse, *itself*, would inflict upon B.A.S.

The district court also relied on stale evidence from 2019 (half a lifetime ago for B.A.S., now 6 years old) in assessing the risk of harm to B.A.S. and the sufficiency of the proposed ameliorative measures. The district court ordered B.A.S.’s return despite being presented with facts suggesting that B.A.S.’s circumstances have changed significantly since 2019, including that his autism has become more severe, a fact that significantly increases the gravity of the risk of harm to B.A.S. posed by a return to Italy. In failing to consider more timely evidence, the district court failed to prioritize the needs of the child and abused its discretion.

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY FAILING TO CONSIDER B.A.S.’S RECENT AUTISM DIAGNOSIS.

On remand from the Supreme Court, Ms. Golan informed the district court that B.A.S.’s circumstances have changed since the court issued its 2020 return order. Letter in Response to the Court’s July 12, 2022 Order, *Saada v. Golan*, No. 1:18-cv-5292 (E.D.N.Y. July 25, 2022), ECF 154 [hereinafter Letter Response]. In particular, she highlighted multiple recent evaluations diagnosing B.A.S. with autism spectrum disorder (“ASD”). *Id.*, at *4. She specifically noted several serious behavioral and developmental issues exhibited by B.A.S.:

[B.A.S.] has significant special needs (including a detailed Individualized Education Plan), and has been diagnosed with autism spectrum disorder by multiple evaluators. He has substantial speech delays and significant developmental irregularities. A psychological evaluation

within the past year found, *inter alia*, difficulty relating to others, low levels of adaptability, unpredictability, and poor responses to new things; his poor fluid reasoning (*i.e.*, the capacity to problem-solve) and functional skills (*i.e.*, the ability to care for oneself in daily life) are ranked with the lowest 1% of his peers – the lowest possible score.

Id. These facts stand in stark contrast to the single, stale evaluation of B.A.S. from 2019, which characterized the child—then, three years of age—as exhibiting “mild” autism. *Saada*, 2020 WL 2128867, at *5-6. Yet, in ordering that B.A.S.—now, six—be returned to Italy, the district court declined to conduct an evidentiary hearing to consider or understand the impact of B.A.S.’s more current ASD diagnosis. This current diagnosis has immense impact on (1) the magnitude of the grave risk of harm to B.A.S. that returning him to Italy poses, and (2) the availability and effectiveness of ameliorative measures to mitigate this specific risk. Instead, the court continued to rely upon the facts presented *in 2020*, including the stale 2019 evaluation that described B.A.S. as exhibiting “mild autism.” *Saada*, 2022 WL 4115032, at *6 (referring to “B.A.S.’s diagnosis of mild autism” from 2019, and stating that “I considered this issue when the respondent raised it on remand in 2020, and concluded that the respondent had not shown by clear and convincing evidence that repatriation would cause B.A.S. grave psychological harm”).

A. The District Court’s Assumption that the Severity of B.A.S.’s Autism Symptoms Remains Unchanged Since 2019 Contradicts Current Research.

The district court abused its discretion in relying upon an outdated evaluation from 2019 to characterize the *current* severity of B.A.S.’s ASD. This abuse of discretion is particularly acute given that Ms. Golan presented the court with facts suggesting that the severity of B.A.S.’s ASD has *increased* in the intervening three years since the 2019 evaluation. Letter Response, *supra*, at *4. Current clinical research shows that “early childhood is a period of substantial brain growth with the potential for enormous plasticity.” Einat Waizbard-Bartov et al., *Trajectories of Autism Symptom Severity Change During Early Childhood*, 51 J. of Autism and Developmental Disorders, 227, 229 (2021). The court’s apparent assumption of unchanging ASD severity throughout early childhood, which the court did nothing to test, flouts this prevailing scientific understanding.

Recent clinical studies establish that children with ASD may demonstrate substantial changes in symptom severity over time. *See, e.g., id.* at 227 (finding that almost half of 125 participants, initially assessed at approximately three years of age and then again at approximately six years of age, exhibited a change in autism severity over time, with 28.8% showing decreased severity and 16.8% showing increased severity over time). One study evaluating ASD severity in 149 toddlers who had been referred for autism evaluation found that 27% of the toddlers

experienced increasing severity levels over time. S.H. Kim et al., *Variability in Autism Symptom Trajectories Using Repeated Observations From 14 to 36 Months of Age*, 57 J. of the Am. Acad. of Child Adolescent Psychiatry 837 (2018). Similarly, a study of autism symptom severity in a group of young people over a nine-year period found a noticeable change in severity levels for more than half of the participants, with 29% exhibiting increased symptom severity over time. Elizabeth Pellicano et al., *Patterns of Continuity and Change in the Psychosocial Outcomes of Young Autistic People: A Mixed-Methods Study*, 48 J. of Abnormal Child Psychology 301 (2020).

Notably, children who exhibit increasing autism severity over time are typically those who, as toddlers, were initially evaluated as having the lowest severity levels. Waizbard-Bartov, *supra*, at 233; Kim, *supra*. B.A.S. squarely fits within this category. He was evaluated with “mild autism” at three years of age. Now, as a six-year-old, he exhibits more severe symptoms. The district court abused its discretion by ordering return without considering additional evidence on B.A.S.’s current health, especially in light of the serious risks of harm highlighted by the research below.

B. B.A.S.’s Autism Diagnosis Places Him at Enhanced Risk for Trauma Exposure.

Children with ASD experience trauma at much higher rates than neurotypical children. *See, e.g.*, Jessica L. Peterson, *Trauma and Autism Spectrum Disorder:*

Review, Proposed Treatment Adaptations and Future Directions, 12 *J. of Child & Adolescent Trauma* 529, 529 (2019) (noting “up to a three-fold increased risk of trauma exposure as compared to their typically developing peers”); Ofer Golan et al., *The Comorbidity Between Autism Spectrum Disorder and Post-Traumatic Stress Disorder is Mediated By Brooding Rumination*, 26 *Autism* 538, 539 (2022).

There are two reasons for these higher rates of trauma in children with ASD. First, children with autism experience traditionally assessed sources of trauma—including physical, sexual, and emotional abuse, neglect, severe injury and illness, as well as bullying—at above-average rates. Connor M. Kerns et al., *Exploring Potential Sources of Childhood Trauma: A Qualitative Study with Autistic Adults and Caregivers*, 1 *Autism* 1, 9 (2022) [hereinafter Kerns (2022)]. Second, individuals with ASD, in comparison with the general population, experience a broader and/or different range of life experiences as traumatic. *See, e.g.*, Freya Rumball et al., *Experience of Trauma and PTSD Symptoms in Autistic Adults: Risk of PTSD Development Following DSM-5 and Non-DSM-5 Traumatic Life Events*, 13 *Autism Rsch.* 2122, 2123 (2020); Connor M. Kerns et al., *Traumatic Childhood Events and Autism Spectrum Disorder*, 45 *J. of Autism and Dev. Disorders* 3475, 3480 (2015) [hereinafter Kerns (2015)]; Kerns (2022), *supra*, at 1. For example, everyday events such as haircuts and fire alarms have been described by those with autism as “sources of long-lasting psychological injury.” Kerns (2022), *supra*, at 9.

The prevalence of trauma experienced by individuals with ASD in response to disruptions to their environment and daily routines bears particular relevance for B.A.S. *See, e.g.*, Kerns (2022), *supra*, at 8; Rumball, *supra*, at 2123. Because one of the characterizing features of ASD—restricted and repetitive behaviors and interests—commonly takes the form of “insistence on sameness, or difficulty with changes in routine[,] [m]inor changes to routine may be perceived as highly distressing for an individual with ASD, such that even a slight change of schedule . . . might result in heightened levels of anxiety.” Peterson, *supra*, at 531 (internal citations omitted). Here, the district court ordered—without considering any current evidence on B.A.S.’s condition—an uprooting to a foreign country, which will surely cause far more than a “slight change of schedule.”

Thus, in failing to consider B.A.S.’s current ASD diagnosis and ordering the child’s return to Italy, the district court abused its discretion by ignoring the grave risk of harm that the move *itself* poses to B.A.S. As Ms. Golan told the district court, returning B.A.S. to Italy will result in substantial disruptions to B.A.S.’s environment and routine, including transforming his surroundings, ending his current therapy services, removing him from friends and family, and introducing him to a different culture and a language he does not speak. Letter Response, *supra*, at *2, 4-5. For a child like B.A.S., such disruptions alongside an ASD diagnosis are likely to cause severe trauma and have a destabilizing effect on the child. *See, e.g.*,

Lauren Gravitz, *At the Intersection of Autism and Trauma*, Spectrum | Autism Research News, <https://doi.org/10.53053/VEMR8039> at *2 (Sept. 26, 2018). Indeed, a sudden move to Italy, given B.A.S.’s current development and circumstances, has the potential to traumatize him as much as the domestic violence perpetrated by his father, which the district court has already found constitutes a grave risk of harm. *See, e.g., id.*, at *4; Kerns (2022), *supra*, at 8.

C. Exposure to Perceived Traumas Will Increase B.A.S.’s Risk for Regression and Emergence of Other Mental Health Problems.

B.A.S.’s autism diagnosis does more than just increase his risk of exposure to traumatic events. It also predisposes him to many mental health problems that may emerge in response to his experience of such traumas, heightening his risk of grave harm as compared to neurotypical children. *See, e.g., Virginia Carter Leno et al., Exposure to Family Stressful Life Events in Autistic Children: Longitudinal Associations with Mental Health and the Moderating Role of Cognitive Flexibility*, 26 *Autism* 1656, 1664 (2022). In particular, ASD predisposes a child to the development of posttraumatic stress disorder (“PTSD”) in response to trauma. *See, e.g., Daniel W. Hoover, The Effects of Psychological Trauma on Children with Autism Spectrum Disorders: a Research Review*, 2 *Rev. J. Autism Dev. Disorders* 287, 293 (2015); A.S. Al Abed et al., *Autism Spectrum Disorder is a Risk Factor for PTSD-Like Memory Formation*, doi: 10.1101/2021/01/18/427217, at *1 (Feb. 1, 2021Jan. 19, 2021); Rumball, *supra*, at 2122; Nirit Haruvi-Lamdan, *Autism*

Spectrum Disorder and Post-Traumatic Stress Disorder: An Unexplored Co-Occurrence of Conditions, 24 *Autism* 884, 891 (2020). Indeed, recent studies have shown that “the incidence of PTSD among those with ASD may be significantly higher compared to typically developing (TD) individuals.” Golan, *supra*, at 539; *see also* Rumball, *supra*, at 2123 (noting that recent research has identified significantly elevated rates of PTSD in individuals with ASD (45%), as compared with neurotypical individuals (4.5%)). The district court’s return order failed to consider how B.A.S.’s autism will increase his medical risk if exposed to traumatic events upon return to Italy.

At the same time, those with ASD are at an increased risk of underdiagnosis and undertreatment of PTSD symptoms arising from exposure to trauma. Ella Lobregt-van Buuren et al., *Chapter 3: Autism, Adverse Events, and Trauma*, in *AUTISM SPECTRUM DISORDERS*, doi: 10.36255/exonpublications.autismspectrumdisorders.2021 (Exon Pub. 2021). This risk may be because PTSD is known to manifest in individuals diagnosed with autism in unexpected ways, including by exacerbating autistic traits. Gravitz, *supra*, at *4; *see also* Nirit Haruvi-Lamdan et al., *PTSD and Autism Spectrum Disorder: Co-Morbidity, Gaps in Research, and Potential Shared Mechanisms*, *Psychological Trauma: Theory, Research, Practice, and Policy*, doi: 10.1037/tra0000298 (May 2017) (noting that once PTSD has appeared in a child with ASD it “may exacerbate certain ASD features and

symptoms” because the child “may turn to maladaptive coping strategies, such as repetitive behaviors and social avoidance, as a means of escaping [the] negative affect” associated with the PTSD).

Even once diagnosed with PTSD, children with autism take significantly longer to show improvement compared to their neurotypical peers. Gravitz, *supra*, at *6. “[A]utistic children can be so keyed into the present, and so tied to routine, that they have a difficult time participating in treatment that intensifies their anxiety in the moment, even when they know it might help in the long run.” *Id.* at *5-6. This prevailing clinical understanding, of course, assumes that the effects of trauma-induced PTSD may be reversible. But chronic exposure to trauma can actually result in permanent neurological changes that may lead to “psychiatric, cardiac, metabolic, immunological, and gastrointestinal illness later in life.” Kerns (2015), *supra*, at 3476. And the district court’s return order failed to consider any such permanent changes that may flow from B.A.S.’s current condition and the trauma of sending him overseas.

II. THE DISTRICT COURT ABUSED ITS DISCRETION BY FAILING TO CONSIDER THE FULL RANGE OF HARMS TO WHICH B.A.S. WILL BE EXPOSED BY A RETURN TO THE SITE OF HIS MOTHER’S ABUSE.

Returning B.A.S. to Italy also poses a separate and similarly grave risk of retraumatizing B.A.S. by returning him to the site of his mother’s abuse.

It is undisputed that throughout their time together in Italy, “Mr. Saada physically, psychologically, emotionally, and verbally abused Ms. Golan.” *Saada*, 2019 WL 1317868, at *4. As this Court previously noted, Mr. Saada “yelled at Ms. Golan, called her names, slapped her, pushed her, pulled her hair, threw a glass bottle in her direction, and, during a conversation with Ms. Golan’s brother, threatened to kill her.” *Saada v. Golan*, 930 F.3d 533, 537 (2d Cir. 2019). B.A.S. was present for much of this abuse.

As the district court acknowledged, such exposure to domestic violence can have serious negative and lasting effects on a child. *Saada*, 930 F.3d at 538; *Saada*, 2019 WL 1317868, at *11-12, 18. On that basis, the District Court found in its May 2020 order that returning B.A.S. to Italy would subject him to “[a] grave risk of harm . . . [in the form of] exposure to violence between [Mr. Saada] and [Ms. Golan].” *Saada*, 2020 WL 2128867, at *2. Notably, however, in neither its May 2020 order nor the order at issue here did the District Court consider the unique harm posed simply by returning B.A.S. to the site where his father abused his mother in front of him, which may itself trigger a relapse of that past trauma’s effects on the child.

A. B.A.S.’s Early Exposure to Domestic Violence Likely Traumatized Him and May Lead to Lasting Psychological, Physical, and Developmental Difficulties.

Exposure to violence against a caregiver can have the same damaging effects on a child as if the child himself were the direct target of the violence. *See* Lisa

Bolotin, *When Parents Fight: Alaska’s Presumption Against Awarding Custody to Perpetrators of Domestic Violence*, 25 Alaska L. Rev. 263, 270 (2008). Domestic violence “has a far deeper impact than the immediate harm caused . . . [i]t has . . . a traumatic effect on those who witness it, particularly children.” Hague Conference on Private International Law, *Domestic and Family Violence and the Article 13 “Grave Risk” Exception in the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: A Reflection Paper*, at 9, Prel. Doc. No. 9 (May 2011) (alteration in original); see also Lynn Hecht Schafran, *Domestic Violence, Developing Brains and the Lifespan: New Knowledge from Neuroscience*, 53 The Judges’ J. 32, 36 (2014) (“Human brain development is a long process, and exposure to domestic violence has specific impacts on children of all ages, from infants to teens.”). Notably, mere *awareness* that domestic violence has occurred may trigger a traumatic response in a child—without that child ever even directly witnessing the violence. See TARYN LINDHORST & JEFFREY L. EDLESON, *BATTERED WOMEN, THEIR CHILDREN, AND INTERNATIONAL LAW: THE UNINTENDED CONSEQUENCES OF THE HAGUE CHILD ABDUCTION CONVENTION* 107, 108-109 (Ne. U. Press 2012). Here, of course, these responses may be stronger—B.A.S. was not merely aware of the abuse; he very often witnessed it.

The trauma experienced by children exposed (either directly or indirectly) to domestic violence can manifest itself in many ways. For instance, such trauma may

impact brain development, and affected children may struggle with behavioral adjustment, cognitive function, and performance in school. Andrea Gonzalez et al., *Subtypes of Exposure to Intimate Partner Violence within a Canadian Child Welfare Sample: Associated Risks and Child Maladjustment*, 38 *Child Abuse & Neglect* 1934, 1935 (2014); *see also* U.S. DEP'T OF JUST., REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE 31 (2012), *available at* <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf> (finding that children who witness abuse at a young age lose up to 10 percent of their potential intelligence quotient); NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE, CHILDREN EXPOSED TO INTIMATE PARTNER VIOLENCE 6 (2002), *available at* http://vawnet.org/sites/default/files/materials/files/2016-09/NRC_Children.pdf [hereinafter CHILDREN EXPOSED TO INTIMATE PARTNER VIOLENCE] (finding that impaired cognitive development can lead to other difficulties, including issues with emotions, learning, and behavior in general). Witnessing domestic violence as a child can also contribute to later development of various personality disorders, including borderline personality disorder and antisocial personality disorder. *See* Tracie O. Afifi et al., *Childhood Adversity and Personality Disorders: Results from a Nationally Representative Population-Based Study*, 45 *J. Psychiatric Res.* 814, 817-21 (2011). Furthermore, young children exposed to domestic violence are more

likely to develop sleep problems and eating disorders. *See* CHILDREN EXPOSED TO INTIMATE PARTNER VIOLENCE, *supra*, at 6-7.

Childhood exposure to domestic violence is also known to negatively affect physical health. Children exposed to domestic violence are at “increased risk for inflammation, heart disease and respiratory difficulties in later life.” Candice L. Odgers & Sara R. Jaffee, *Routine Versus Catastrophic Influences on the Developing Child*, 34 *Ann. Rev. Pub. Health* 29, 30 (2013). Notably, one study found that adverse childhood experiences, including witnessing domestic violence, “have a strong, graded relation” with later adult health, including with respect to rates of “hepatitis, heart disease, fractures, diabetes, obesity, [and] alcoholism.” Vincent J. Felitti, *The Relation Between Adverse Childhood Experiences and Adult Health: Turning Gold into Lead*, 6 *Permanente J.* 44, 46 (2002). These negative effects can occur even when childhood exposure occurs at a young age. *See* Odgers & Jaffee, *supra*, at 35 (finding that even trauma experienced “during the prenatal period” can negatively affect children). Furthermore, clinical research has demonstrated that the effects on the brain from childhood exposure to trauma may be irreversible. Martin H. Teicher et al., *The Effects of Childhood Maltreatment on Brain Structure, Function, and Connectivity*, 17 *Nature Reviews Neuroscience* 652, 653 (2016) (noting that “[a]lterations in specific regions (for example, the adult hippocampus or the anterior cingulate cortex (ACC)) and pathways (such as the corpus callosum)

have been consistently associated with childhood maltreatment across laboratories and populations”); Megan R. Holmes et al., *Nearly 50 Years of Child Exposure to Intimate Partner Violence Empirical Research: Evidence Mapping, Overarching Themes, and Future Directions*, J. of Fam. Violence, doi: 10.1007/10896-021-00349-3, at *8 (Jan. 12, 2022) (“[C]hildren who experience IPV during early and sensitive development windows (e.g., infancy, early childhood) may have compromised neurodevelopment that can shape their adjustment trajectories across the lifespan, and across a variety of developmental domains.”).

B.A.S. likely already suffers from the negative effects of the trauma he experienced from witnessing his father abuse his mother. *See, e.g., Saada*, 2019 WL 1317868, at *4. Returning B.A.S. to the site of that abuse will only exacerbate such issues.

B. Returning B.A.S. to the Site of Abuse Poses a Grave Risk of Retraumatizing Him.

Returning B.A.S. to the site where his father repeatedly abused his mother will likely remind him of the trauma he experienced while there, triggering a state of “renewed traumatic anxiety.” Robert S. Pynoos et al., *A Developmental Psychopathology Model of Childhood Traumatic Stress and Intersection with Anxiety Disorders*, 46 *Biol. Psychiatry* 1542, 1545 (1999). Ms. Golan’s expert, Dr. Edward Tronick, testified that even in the absence of continued violence, there is a strong chance that re-exposing B.A.S. to the negative environment where violence

occurred could “trigger a reaction on the part of the child.” Transcript, at 660:2-14, *Saada v. Golan*, No. 1:18-cv-5292 (Jan. 9, 2019). Notably, this Court has recognized this type of risk, stating that a child returning to the site of abuse “would almost certainly suffer a recurrence of their traumatic stress disorder.” *Blondin v. Dubois*, 238 F.3d 153, 160 (2d Cir. 2001). Such retraumatization is likely, even if B.A.S. has any positive associations with the country and city where he was born, because such memories would be “superseded by associations with the traumatic experience(s).” Pynoos, *supra*, at 1545-1546.

Furthermore, because much of Mr. Saada’s abuse of Ms. Golan occurred in public, even if B.A.S. does not return to the exact home where the domestic violence occurred, he will still be reminded of the trauma he endured while in Italy. *See* 2019 WL 1317868, at *5, 9-10 (noting that Mr. Saada abused Ms. Golan in a variety of locations, including in a car, at a wedding, in a park, and in front of other people). B.A.S. will likely be reminded of his trauma—and retraumatized—by the sights, sounds, smells, and feel of the locale where he was traumatized. Thus, relocation to Italy, itself, would place B.A.S. at risk of further harm from retraumatization. And, as explained above, B.A.S.’s ASD diagnosis only increases the gravity of this risk. The district court wholly failed to take any of this into consideration.

C. B.A.S. Will Likely Experience Secondary Trauma Based on the Psychological Distress to His Mother From Returning to the Site of Her Abuse.

Because Ms. Golan has indicated that “she intends to return to Italy with B.A.S. if the Court orders his repatriation,” *Saada*, 2020 WL 2128867, at *2, B.A.S. is also at risk of experiencing secondary trauma based on the heightened traumatic stress symptoms such a return will likely induce in Ms. Golan. After returning to the place where they were abused, domestic violence victims often suffer from further psychological and physical damage, including flashbacks. *See* BESSEL A. VAN DER KOLK, *THE BODY KEEPS THE SCORE* 66-68 (Penguin Books, 2014). Dr. Stephanie Brandt, an expert retained by Ms. Golan, testified that returning to Italy with B.A.S. would “certainly re-traumatize her.” Transcript, *supra*, at 586:5-7.

Where a child’s primary caregiver is suffering from the effects of domestic violence, the child too absorbs those effects, suffering further harms himself. Christine R. Ludy-Dobson & Bruce D. Perry, *The Role of Healthy Relational Interactions in Buffering the Impact of Childhood Trauma*, in *WORKING WITH CHILDREN TO HEAL INTERPERSONAL TRAUMA: THE POWER OF PLAY* 30 (Eliana Gil ed., 2010). Thus, if B.A.S. and Ms. Golan are forced back to an environment where Ms. Golan will be retraumatized, B.A.S.’s response may mimic his mother’s, in

addition to the effects of his own retraumatization.² National Coalition for Child Protection Reform, *When Children Witness Domestic Violence: Expert Opinion, A Summary of Expert Testimony from the Decision of U.S. District Judge Jack Weinstein in Nicholson v. Williams, No. 00-C V2229 (E.D.N.Y. 2001)*, at 4 (2001) (noting the importance of a consistent relationship between a child and his or her primary caregiver).

At the same time, it has been “well established globally in [domestic violence] research that it is important for children living with [domestic violence] to have a positive relationship” with the primary caregiver, like Ms. Golan, who has not perpetrated violence. Emma Katz, *Coercive Control, Domestic Violence, and a Five-Factor Framework: Five Factors that Influence Closeness, Distance, and Strain in Mother-Child Relationships*, *Violence Against Women* 1, 2 (2019). In particular, “having a close attachment with a nurturing parental figure supports

² On the other hand, if B.A.S were separated from Ms. Golan—either upon both of their returns to Italy (e.g., when visiting with Mr. Saada’s family) or because Ms. Golan, for some reason, needed to remain in/return to the United States—such separation would further exacerbate the effects that B.A.S. experiences from his exposure to domestic violence. National Coalition for Child Protection Reform, *When Children Witness Domestic Violence: Expert Opinion, A Summary of Expert Testimony from the Decision of U.S. District Judge Jack Weinstein in Nicholson v. Williams, No. 00-CV2229 (E.D.N.Y. 2001)*, at 2 (2001). In particular, separation from the primary caregiver can make the domestic abuse even more traumatic because the child “is terrified that a parent might not be OK, may be injured, may be vulnerable They feel that they should somehow be responsible for the parent and if they are not with the parent, then it’s their fault.” *Id.* at 4.

healthy brain development and, in cases like these [where children have been exposed to domestic violence], can restore brain health.” Schafran, *supra*, at 35. But a parent’s renewed fright or trauma may interfere with the ability of their children to form a secure attachment with them. See Alicia F. Lieberman et al., *Attachment Perspectives on Domestic Violence and Family Law*, 49 Fam. Court Rev. 529, 530 (2011); A. J. Narayan et al., *Risk, Vulnerability and Protective Process of Parental Expressed Emotion for Children’s Peer Relationships in Contexts of Parental Violence*, 44 J. Clinical Child & Adolescent Psychol. 676 (2015); Alicia F. Lieberman et al., *Angels in the Nursery: The Intergenerational Transmission of Benevolent Parental Influences*, 26 Infant Mental Health J. 504 (2005). Without a secure and reliable attachment to their primary caregiver, children become “more vulnerable to future stressors and less capable of benefiting from the healthy nurturing supports that might help buffer stressors or trauma later in life.” Ludy-Dobson & Perry, *supra*, at 30.

III. NO AMELIORATIVE MEASURE CAN PREVENT THE TRAUMATIZING AND DESTABILIZING EFFECTS A MOVE TO ITALY WILL HAVE ON B.A.S.

Critically, the expert literature demonstrates that the risk of traumatization and destabilization to B.A.S. posed by a sudden move back to the site of his mother’s abuse will exist irrespective of any ameliorative measures that any court may attempt to implement. The move *itself* will cause the harm.

As explained above, this harm to B.A.S. will take the form of trauma from two distinct sources: (1) trauma connected with the child’s autism diagnosis and arising from sudden changes to his environment and routine, and (2) trauma from requiring him to revisit the site of his mother’s abuse. *See, e.g.,* Rumball, *supra*, at 2123; Pynoos, *supra*, at 1545. Nothing can ameliorate these sources of trauma.

With respect to B.A.S.’s ASD, “the need for sameness in [] environment [exists separately from and] may supersede the need for sameness of routine”; efforts to reduce the disruption to his daily routine caused by a sudden move to Italy, like replicating his daily schedule of activities in Italy, will likely fall flat. Daniel B. Pickar, *Considerations Regarding Child and Parent Neurodiversity in Family Court*, 60 Family Court Rev. 492, 497 (2022) (noting that in situations involving parental divorce/separation and shared custody, “even if routines in two homes are coordinated and come close to mirroring each other, the ASD child may still be stressed merely transitioning to a different physical environment”). The only way to prevent a disruption to B.A.S.’s environment is to allow him to remain in New York—the only safe, consistent home he has known with the only caregiver he has known—during the pendency of the custody proceedings. *See, e.g., Ermini v. Vittori*, 758 F.3d 153, 159-60 (2d Cir. 2014) (affirming denial of Hague petition for return of a child with autism, where return would risk “significant regression” and “severely disrupt and impair his development”).

Aside from inducing ASD-specific trauma, a sudden move to Italy—the location where B.A.S. witnessed his father abuse his mother—risks further retraumatizing B.A.S, by reminding him of what he previously experienced there—simply through his reexperience of the environment. *See supra* Section II.B. Multiple courts have recognized this type of retraumatization and acknowledged that ameliorative measures are insufficient to protect against it. In *Elyashiv v. Elyashiv*, for example, the court found that the “mere return of the children to Israel would trigger their post-traumatic stress disorders,” such that ameliorative measures could never protect them. 353 F. Supp. 2d 394, 409 (E.D.N.Y. 2005). Similarly, in *Blondin v. Dubois*, the court found that removing the children from the “secure environment in which they now live” could set back their recoveries by “causing a recurrence of the traumatic stress disorder they suffered.” 78 F. Supp. 2d 283, 295 (S.D.N.Y. 2000), *aff’d*, 238 F.3d 153, 160 (2d Cir. 2001). And B.A.S.’s autism diagnosis will only increase the gravity of this risk of harm by increasing both the likelihood that B.A.S. is retraumatized and the severity of the effects of that retraumatization.

CONCLUSION

For the reasons set out above, the Court should reverse the District Court's order and remand with directions to deny Mr. Saada's petition.

Dated: October 11, 2022

Respectfully submitted,

by /s/ Timothy S. Durst

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limit of Fed. R. App. P. 29(a)(5) and Local Rule 29.1(c) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 5,218 words. I certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365, version 2202, in 14-point Times New Roman font. I further certify that no privacy redactions are required under this Court's Policies and Procedures.

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