

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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ISACCO JACKY SAADA,

Petitioner,

– against –

NARKIS ALIZA GOLAN,

Respondent.

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:
: **MEMORANDUM DECISION AND
ORDER**
:
: 1:18-CV-5292 (AMD) (RML)

ANN M. DONNELLY, United States District Judge:

In *Saada v. Golan*, 833 F. App’x 829, 831 (2d Cir. 2020) (“*Saada IV*”), the Second Circuit affirmed my May 5, 2020 decision ordering the return of the minor B.A.S. to Italy pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. *Saada v. Golan*, No. 18-CV-5292, 2020 WL 2128867, at *3 (E.D.N.Y. May 5, 2020) (“*Saada III*”). On June 15, 2022, the Supreme Court vacated that decision, concluding that the Second Circuit could not “mandat[e] that district courts independently ‘examine the full range of options that might make possible the safe return of a child’ before denying return due to grave risk, even if the party petitioning for the child’s return has not identified or argued for the imposition of ameliorative measures.” *Golan v. Saada*, 142 S. Ct. 1880, 1888 (2022). Because the Supreme Court did not know whether this Court “would have exercised its discretion to order B.A.S.’ return absent the Second Circuit’s rule,” the Supreme Court remanded the case to “allow the District Court to apply the proper legal standard[.]” *Id.* at 1895.

As explained below, I find that under the circumstances of this case, it is appropriate to consider, as a matter of discretion, whether the existence of ameliorative measures—in this case, the measures already implemented by the Italian courts—make it possible for B.A.S. to return

safely to Italy. Because I conclude that these measures are sufficient to ameliorate the risk to B.A.S. that I identified in 2019—specifically, being exposed to domestic violence between the petitioner and the respondent—I conclude that the petition should be granted and order that B.A.S. must be returned to Italy.¹

BACKGROUND

The record in this case is voluminous, and includes the record from a nine-day trial, multiple decisions from this Court and the Second Circuit, as well as the Supreme Court’s decision.² Accordingly, I recount the case history only to the extent necessary to explain the basis for my decision.

On September 20, 2018, the petitioner brought this case against the respondent pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, as implemented by the International Child Abduction Remedies Act, 22 U.S.C. §§ 9001 *et seq.*

In a March 22, 2019 decision, I found that B.A.S. was a habitual resident of Italy, and that while he would be subject to grave risk of harm upon repatriation arising from domestic violence between his parents, there were sufficient measures that would ameliorate the risk. *Saada v. Golan*, No. 18-CV-5292, 2019 WL 1317868, at *20 (E.D.N.Y. Mar. 22, 2019) (“*Saada P*”). In affirming in part and vacating in part my decision, the Second Circuit agreed that Italy is B.A.S.’s “habitual residence” under the Hague Convention, *Saada v. Golan*, 930 F.3d 533, 537

¹ The parties have previously attempted to settle the case, and as I noted in a previous order, their relationship appeared at times to be “commendably civil.” *Saada v. Golan*, No. 18-CV-5292, 2021 WL 1176372, at *5 (E.D.N.Y. Mar. 29, 2021) (“*Saada V*”). Accordingly, after the Supreme Court’s decision, I encouraged them to make efforts to resolve their differences, and come to a mutual agreement that would be in B.A.S.’s best interests. The Honorable Robert Levy, an able and experienced magistrate judge, held settlement conferences on July 29, 2022 and on August 16, 2022. Despite Judge Levy’s best efforts, the parties were unable to reach an agreement. (ECF No. 158.)

² After the Supreme Court issued its decision, I held an initial conference with the parties on July 12, 2022 during which the parties agreed to an expedited briefing schedule. I heard oral argument on August 10, 2022.

(2d Cir. 2019) (“*Saada II*”), but determined that certain measures could not be enforced before B.A.S. was returned to Italy. *Id.* at 542-43. Accordingly, the Second Circuit remanded the case with instructions to ensure that the measures necessary for B.A.S.’s safe repatriation could be “enforce[d] by the District Court or supported by other sufficient guarantees of performance.” *Id.* at 543. The Second Circuit noted that “the District Court can use its ‘broad equitable discretion’ to ‘request[] the aid of the United States Department of State, which can communicate directly with’ the government of Italy to ascertain whether it is willing and able to enforce certain protective measures.” *Saada II*, 930 F.3d at 542.

On May 5, 2020, after additional briefing and an extensive examination of the ameliorative measures available in Italy, I found that “the Italian courts are willing and able to resolve the parties’ multiple disputes, address the family’s history and ensure B.A.S.’s safety and well-being.” *Saada III*, 2020 WL 2128867, at *3. Accordingly, I granted the petition and ordered that B.A.S. be returned to Italy. *Id.* at *6. On January 21, 2021, the Court of Appeals affirmed that decision in its entirety. *Saada IV*, 833 F. App’x at 831.³

On December 10, 2021 the Supreme Court granted the respondent’s petition for a writ of certiorari to “decide whether the Second Circuit properly required the District Court, after making a grave-risk finding, to examine a full range of possible ameliorative measures before reaching a decision as to whether to deny return[.]” *Golan*, 142 S. Ct. at 1891.

As explained above, the Supreme Court vacated the Second Circuit’s January 21, 2021 decision, because it found that the Second Circuit could not require district courts to consider

³ On January 25, 2021, the respondent made a Rule 60(b) motion, claiming that she had uncovered “newly discovered evidence” that required me to vacate the May 5, 2020 decision. I denied the motion in a written decision on March 29, 2021, *Saada V*, 2021 WL 1176372 at *8, and on October 18, 2021, the Second Circuit affirmed the decision. *Saada v. Golan*, No. 21-CV-876, 2021 WL 4824129, at *4 (2d Cir. Oct. 18, 2021) (“*Saada VI*”).

ameliorative measures in grave risk cases; the Supreme Court also held that district courts could consider such measures at their discretion. *See id.* at 1892. The Supreme Court remanded the case so that I could clarify whether I would have considered ameliorative measures as a matter of discretion, and to “determine whether the [ameliorative] measures in question are adequate to order return in light of [my prior] factual findings concerning the risk B.A.S.” *Id.* at 1895-96. The Court directed me to “move as expeditiously as possible to reach a final decision without further unnecessary delay.” *Id.*

MEASURES CURRENTLY IN PLACE IN ITALY

Immediately after the Second Circuit issued its decision in July 2019, I consulted with the Honorable Peter J. Messitte, Senior Judge of the United States District Court for the District of Maryland and the Representative of the United States Federal Judiciary for the International Judicial Network under the Hague Convention on the Civil Aspects of International Child Abduction, who in turn contacted the requisite authorities in Italy. I determined the extent to which ameliorative measures could be put in place and enforced in Italy, and as explained in my May 5, 2020 order, found that the Italian courts are actively involved with the parties, both of whom have obtained counsel in their ongoing custody dispute in Italy. (*See* ECF No. 151 at 1.) On December 12, 2019, the Italian court overseeing the custody dispute issued a comprehensive order imposing various measures to facilitate B.A.S.’s Italian repatriation. (ECF No. 96-1.)⁴

⁴ The delay in the Italian court’s issuance of this order was due in large part to the parties’ many disagreements about the order. At one point, the petitioner asserted that the respondent’s counsel in Italy told the Italian court that the respondent did not want an order of protection. (ECF No. 81 at 1 (“Respondent expressly stated that she has ‘no interest in the issue of restraining orders’ and does not seek such relief from the Italian court.”).) The respondent denied that this was so, but wanted the order to cover parties other than the petitioner, and also argued that any application for a protective order was premature. (ECF No. 82 at 1-2 (“Our understanding is that at the hearing of September 19, 2019, [the respondent’s Italian counsel] asserted that a restraining order would ultimately be necessary if the Child was ordered to return, but that as a procedural matter, the time for issuing such an order was not yet ripe.”).)

The Italian court noted the extensive case documentation in this Court's proceedings, as well as this Court's finding that the petitioner was physically and psychologically violent toward the respondent, sometimes in the presence of B.A.S.; the Italian court observed that the petitioner's "violent conduct, both physical and psychological" toward the respondent "also in the presence of their minor son" "constitute[d] serious harm to the physical and moral wellbeing of [the respondent] and the son." (*Id.* at 8.)

Accordingly, the Italian court issued a protective order against the petitioner, in favor of the respondent and B.A.S., to be "executed immediately, as of the date of the actual return to Italy" of the respondent and B.A.S.; the protective order will be in force for one year and can be extended. (*Id.* at 11.) In addition, the Italian court appointed the Italian social services agencies to oversee multiple aspects of B.A.S.'s repatriation, including:

- "to carry out an accurate psycho-social investigation into the family unit in question and into the quality of the personal relations among the members of that unit, and the relations of each parent with the minor," and to provide "the Court with all the elements considered to be useful for the purposes of assessing the parental suitability of the parties, in terms of both the ability to understand the son's needs, and in terms of the ability to adequately guarantee the figure of the other parent, as well as identifying the regime which best meets the interests of the minor in terms of parent - child custody, placement and meetings methods;"
- "to activate in good time in favor of the minor [B.A.S.], also after psycho-diagnostic evaluations at the local Infant - Adolescent Psychology Neuropsychiatry Unit [UONPIA] with jurisdiction, all the psychotherapeutic and psychological and/or educational support interventions considered to be necessary or even just opportune;"
- "the immediate taking on of the parents through parent support interventions which help them to understand and correctly develop their parental role and to assist them in their functions, helping them to identify and share the most suitable development strategies for [B.A.S.];"
- "in collaboration with the Specialist Services of the local ATS with jurisdiction and any private professionals Mr. Saada intends to use,

after regular evaluation of his state of psychophysical wellbeing, to initiate in favor of Mr. Saada himself psychological and psychotherapeutic support initiatives, also of a cognitive behavioral and psycho-educational nature, ordering him to undergo these interventions, having acknowledged the commitment made by him in this regard;”

- “also in collaboration with the Specialist Services of the local ATS with jurisdiction, after regular evaluation of the state of psychophysical wellbeing of Narkis Aliza Golan, to initiate in her favor all and any psychological and/or psychotherapeutic support initiatives and interventions considered to be necessary;”
- Supervised visitation between the petitioner and BAS, “in the preeminent interest of the minor and only if there are no elements indicating possible harm for the minor, to regulate and schedule such meetings, accounting for the progress of the meetings and the support interventions initiated in favor of the parties and, possibly, the minor[.]”

(*Id.* at 12-13.)

The Italian court also invited the parents to work together, “in the interest of the son, with the Social Services appointed, and to comply with the indications provided by the Social Services...” The court warned the parties that if they did not comply with social services’ directives “in a manner which becomes harmful for the minor,” then “further limiting measures may be adopted in terms of the parental responsibility of one or both the parties.” (*Id.* at 13.) Finally, the court directed social services to report on its investigations “in good time and as a matter of urgency any situation of possible harm for the minor.” (*Id.*) Since the order, the Italian court has appointed a lawyer to protect B.A.S.’ interests. A hearing on the custody issue is currently scheduled for October 12, 2022 in Italy. (ECF No. 151 at 1.) There is only one

measure that has not yet been implemented—the petitioner’s \$150,000 payment to the respondent. The petitioner must make that payment before B.A.S. is returned to Italy.⁵

LEGAL STANDARD

The “core premise” of the Hague Convention is “that ‘the interests of children . . . in matters relating to their custody’ are best served when custody decisions are made in the child’s ‘country of habitual residence.’” *Monasky v. Taglieri*, 140 S. Ct. 719, 723 (2020) (quoting Convention Preamble, Treaty Doc., at 7). Accordingly, “the convention ordinarily requires the prompt return of a child wrongfully removed or retained away from the country in which she habitually resides.” *Id.* The “return requirement is a ‘provisional’ remedy that fixes the forum for custody proceedings,” so that when the child is returned, the custody determination will be made “in that forum.” *Id.* There are exceptions to the return requirement, including when return would “place [the child] at a ‘grave risk of harm’ or otherwise in ‘an intolerable situation.’” *Id.* (internal citation omitted).

Prior to the Supreme Court’s decision in this case, the rule in the Second Circuit was that in cases where a district court found a grave risk, as I did here, the court had to consider whether there were ameliorative measures that would ensure a child’s safe return to his country of habitual residence. This “atextual, categorical requirement,” the Supreme Court found, “in practice, rewrite[s] the treaty.” *Golan*, 142 S. Ct. at 1893 (quoting *Lozano v. Montoya Alvarez*, 572 U.S. 1, 17 (2014)) (alteration in original). The Court did not, however, find that it was improper for district courts to consider ameliorative measures; rather, the Court held that while a district court could not be required to undertake an ameliorative measures analysis after making a

⁵ On January 31, 2020, an Italian criminal court dismissed the charges that the petitioner initiated against the respondent in connection with B.A.S.’s removal from Italy. (ECF No. 99-1) The petitioner also signed a statement agreeing not to pursue future criminal or civil actions against the respondent and submitted it to the Italian court. (ECF No. 94-1 at 31.)

“grave risk” finding, the court could consider such measures at its discretion. *Id.* at 1892.

Indeed, though noting that the inquiries into grave risk and ameliorative measures are distinct, the Court observed that “the question whether ameliorative measures would be appropriate or effective will often overlap considerably with the inquiry into whether a grave risk exists,” and that the district court “may find it appropriate to consider both questions at once.” *Id.*

If a district court elects to consider ameliorative measures upon making a “grave risk” finding, that discretionary inquiry must be guided by “legal principals and other requirements set forth in the Convention and ICARA.” *Id.* at 1893. First, the court must “prioritize the child’s physical and psychological safety.” *Id.* Second, the court must “abide by the Convention’s requirement that courts addressing return petitions do not usurp the role of the court that will consider the underlying custody dispute.” *Id.* at 1894. Third, the ameliorative measures determinations “should not cause undue delay in resolution of return petitions.” *Id.* at 1895. Furthermore, “a district court exercising its discretion . . . should address ameliorative measures raised by the parties or obviously suggested by the circumstances of the case[.]” *Id.* at 1893.

Observing that this Court “has ample evidence before it from the prior proceedings and has made extensive factual findings concerning the risks at issue[.]” the Supreme Court directed me to “determine whether the measures in question are adequate to order return in light of [the] factual findings concerning the risk to B.A.S., bearing in mind that the Convention sets as a primary goal the safety of the child.” *Id.* at 1896.

DISCUSSION

The Supreme Court remanded the case because it did not know whether I would have made the same decision had this Circuit not required district courts to consider ameliorative measures after finding a grave risk of harm. *Id.* at 1895. The simple answer to the Supreme Court’s question—whether I would have considered ameliorative measures even if the Second

Circuit’s rule did not require it—is that I would have done so, albeit in the context of the grave risk inquiry. As the Supreme Court recognized, “the question whether ameliorative measures would be appropriate or effective will often overlap considerably with the inquiry into whether a grave risk exists In many instances, a court may find it appropriate to consider both questions at once.” *Id.* at 1892. Were this case to come before me today, I would have considered these questions together, because ameliorative measures are “obviously suggested by the circumstances of the case.” *Id.* at 1893.⁶

The Supreme Court did not, as the respondent claims, find that the return order “violate[d] each of the Supreme Court’s requirements for considering ameliorative measures, and therefore cannot stand.” (ECF No. 154 at 2.) Nor did the Court “vacate” or otherwise disturb the evidentiary findings that informed my decision. On the contrary, the Court noted the “ample evidence” and the “extensive factual findings” in this case. *Golan*, 142 S. Ct. at 1896. After careful consideration of that record, I find that the protective order and the \$150,000 payment from the petitioner to the respondent prioritize and ensure B.A.S.’s physical and psychological safety. Furthermore, by considering the protective order and the monetary payment I have neither usurped the role of the Italian court that will make the underlying custodial determinations in this dispute or caused any undue delay in the resolution of this return petition. Accordingly, pursuant to the “legal principles and other requirements set forth in the Convention and the ICARA[,]” I conclude that the measures at issue are adequate to protect B.A.S., even in

⁶ While the Second Circuit’s framework required district judges to consider ameliorative measures after a finding of grave risk, district courts were still required to consider whether those measures could remedy the grave risk of harm. *See Blondin v. Dubois*, 189 F.3d 240, 248 (2d Cir. 1999) (“For this reason, it is important that a court considering an exception under Article 13(b) take into account any ameliorative measures (by the parents and by the authorities of the state having jurisdiction over the question of custody) *that can reduce whatever risk might otherwise be associated with a child’s repatriation.*” (emphasis added)).

light of my conclusion that exposing B.A.S. to the petitioner's violence toward the respondent posed a grave risk of harm to B.A.S.

I. Ameliorative Measures Obviously Suggested by Circumstance

At the outset, the respondent argues that I should not consider ameliorative measures at all because neither party suggested them; according to the respondent, I only considered them because of the Second Circuit's rule. (ECF No. 154 at 3.) Accepting the respondent's claim that neither party raised the prospect of ameliorative measures, the Supreme Court held that a district court exercising its discretion should "address ameliorative measures raised by the parties or obviously suggested by the circumstances of the case." *Golan*, 142 S. Ct. at 1893. The circumstances of this case "obviously suggest" the ameliorative measures already in place. Given the particular nature of the risk to B.A.S.—exposure to domestic violence rather than violence at the hands of the petitioner—I find that those measures can adequately protect B.A.S. in Italy. The details of those measures, as well as their existence, are part of the "extensive" factual record in this case. If the Supreme Court deemed it inappropriate to consider these facts, it surely would have said so. Indeed, it would make no sense at this point—when the Italian courts have undertaken significant steps to protect B.A.S. and the respondent—to ignore the "months of intercession and the implementation of protections by the Italian courts." *Saada V*, 2021 WL 1176372, at *5.

II. Prioritizing B.A.S.'s Safety

a. The Italian court's protective order ameliorates the grave risk of harm to B.A.S.

As the Supreme Court observed, a district court may decline to consider ameliorative measures if "it is clear that they would not work because the risk is so grave." *Golan*, 142 S. Ct. at 1894. The Court cited sexual abuse of a child as such a situation, as well as physical abuse, psychological abuse, and serious neglect. *Id.* None of these risks are present in this case. There

was no evidence that the petitioner was abusive or violent to B.A.S., or that he neglected him. As explained in previous orders, the respondent frequently left B.A.S. with the petitioner when she lived in Italy. *Saada I*, 2019 WL 1317868, at *4. She also testified that she wants B.A.S. to have a relationship with his father.⁷ *Id.* at *18 n.37. The social worker who supervised the petitioner’s visits with B.A.S. during the trial testified that B.A.S. and the petitioner “seemed happy together, that their relationship appeared to be loving, and that B.A.S. did not seem to be at all afraid of Mr. Saada.” *Id.* at *11. Dr. Alberto Yohananoff, the expert psychologist who “provided the clearest and most objective evaluation of the parties’ relationship, and the potential risks to B.A.S.” also observed that the petitioner cared for B.A.S. *Id.* at *12.

The grave risk to B.A.S. was the domestic violence between his parents, almost all of it perpetrated by the petitioner. Dr. Yohananoff described the deleterious effects that exposure to domestic violence can have even on young children. In this case, however, Dr. Yohananoff believed that the risk would be mitigated as long as the petitioner’s visits with B.A.S. were supervised, and if the petitioner got “parental coaching and psychoeducational training.” *Id.* The record establishes that the petitioner has sought and received therapy in Italy. (ECF No. 99-3 at 3-4.)⁸ And visitation with B.A.S. will be supervised in Italy. (ECF No. 96-1 at 13.) It is also significant that the petitioner and the respondent will no longer be living together; “eliminating the element of proximity will reduce the occasions for violence.” *Saada I*, 2019 WL 1317868, at *19; *see also Saada IV*, 833 F. App’x at 833 (“These measures, if effective, will

⁷ The petitioner also testified that the respondent was an “able and loving parent.” *Saada I*, 2019 WL 1317868, at *4 n.12.

⁸ Between September 2019 and January 2020, the petitioner participated in 28 cognitive-behavioral therapy sessions with Dr. Daniela Gusella. Dr. Gusella worked with the petitioner on developing strategies to functionally manage his negative emotions, reduce his impulsive behavior arising from anger and increase his tolerance for stressful situations and negative experiences. (ECF No. 99-3 at 3-4.)

ensure that Saada and Golan are not in the same place. This separation in turn, protects B.A.S. from any trauma that would result from abuse that Saada might perpetrate against Golan if they were together, and therefore ameliorates the grave risk of harm of B.A.S.”).

The Italian courts have instituted robust measures that will ensure B.A.S.’s safety, as well as the respondent’s. The respondent will have sole custody of B.A.S. The court’s order of protection, in favor of the respondent and B.A.S., becomes effective as soon as B.A.S. arrives in Italy, is effective for a year and can be renewed. (ECF No. 96-1 at 11.) Any violation of that order would jeopardize the petitioner’s custody case. *Saada III*, 2020 WL 2128867, at *4 (“The Italian court, like any court, expects litigants to comply with its directives and is fully capable of imposing sanctions on litigants who flout its orders. If the petitioner is foolish enough to disobey court orders, he will risk losing not only custody of B.A.S., but any rights of visitation or access.”).

There is, moreover, no evidence that the petitioner has violated any court orders. *See Golan*, 142 S. Ct. at 1891 (“The Second Circuit affirmed, concluding that the District Court did not clearly err in determining that Saada likely would comply with the Italian protective order, given his compliance with other court orders and the threat of enforcement by Italian authorities of its order.”). Indeed, in the four years that I have presided over this case, the petitioner has abided by my orders, and complied with all the terms of supervised visitation when he was in this country.

Further, as directed by the Italian courts, Italian social services agencies will be closely involved with the petitioner, the respondent and B.A.S. (*See* ECF No. 96-1 at 11-13.) Social services will monitor the family, evaluate both parties and B.A.S., and report their findings to the Italian court so that the court can make an informed custody determination. (*Id.*) As the order

demonstrates, the Italian court is also acutely aware of the need to safeguard B.A.S.'s physical and psychological well-being. B.A.S. also has his own lawyer, who will act in B.A.S.'s interests. (ECF No. 151 at 1.) Finally, the petitioner will give the respondent \$150,000, a substantial sum that will enable the respondent to establish herself in Italy and provide for B.A.S.'s heightened educational needs.

b. The disruption resulting from my granting of the petition does not constitute grave risk of harm.

Citing B.A.S.'s diagnosis of mild autism and the treatment he is receiving in the United States, the respondent argues that returning B.A.S. to Italy for the custody determination is not in his best interest, because it will disrupt his treatment and “expose him to potential post-traumatic stress based on the dramatic change in his surroundings.” (ECF No. 154 at 2.)

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. *Saada III*, 2020 WL 2128867, at *6 (“Based on the evidence provided by the respondent, B.A.S.'s conditions are mild, and while he has made ‘noticeabl[e]’ progress receiving care in the United States, his continued participation in programs here is “strongly recommended” only to “maximize” his improvements.”); *see also id.* (“There is no evidence that repatriation would result in ‘significant regression’ or marked ‘deterioration in [his] cognition, social skills, and self-care.’” (citing *Ermini v. Vittori*, 758 F.3d 153, 159-60 (2d Cir. 2014) (affirming grave risk of harm finding for child with severe autism whose “hope for an independent and productive life rested on his continued participation” in a specific treatment program) (internal quotation marks omitted))). Moreover, as I also noted in 2020, “[t]he Italian court overseeing the custody dispute has already directed Italian Social

Services to evaluate B.A.S. to determine the extent of his psychological or educational needs.”
Id. at 6.

It is true that disruption is one of the regrettable consequences of removing a child from his country of habitual residence, as the respondent did in this case. “A removing parent must not be allowed to abduct a child and then—when brought to court—complain that the child has grown used to the surroundings to which they were abducted. Under the logic of the Convention, it is the abduction that causes the pangs of subsequent return.” *Lukic v. Elezovic*, No. 20-CV-3110, 2021 WL 804384, at *3 (E.D.N.Y. Mar. 3, 2021) (quoting *Friedrich v. Friedrich*, 78 F.3d 1060, 1068 (6th Cir. 1996)).⁹ If it is not in B.A.S.’s best interest to remain in Italy—which is unquestionably an issue for the court determining custody to decide—the Italian court will award the respondent custody in the United States. *See Friedrich*, 78 F.3d at 1068.

As I have explained before at length, the grave risk of harm to B.A.S. comes from a single source—the violence between his parents. That risk, while serious, can be readily mitigated by keeping his parents apart. Because both the protective order and the \$150,000 payment are designed to ensure the respondent and the petitioner remain separate, they properly prioritize B.A.S.’s physical and psychological safety.

III. Deference to the Custodial Court

a. The protective order does not usurp the role of the custodial court.

The respondent asserts that I improperly enmeshed myself in “custodial issues” by “orchestrating” the proceedings that led to the issuance of the protective order. (ECF No. 154 at

⁹ The respondent also claims that returning to Italy will “destabilize and re-traumatize” her. (ECF No. 154 at 2.) The “Article 13(b) inquiry is not whether repatriation would place the respondent parent’s safety at grave risk, but whether so doing would subject the child to a grave risk of physical or psychological harm.” *Souratgar v. Lee*, 720 F.3d 96, 104 (2d Cir. 2013). In any event, the Italian court order accounts for the respondent’s concerns.

3.) According to the respondent, “in directing the parties to seek an order from the Italian custody court,” I “usurped the role of the that court” in violation of the Supreme Court’s directive. (ECF No. 157 at 2 n.1.) The record refutes this characterization. Nothing in the ameliorative measures in any way adjudicates custody of B.A.S., or suggests how the Italian courts should resolve that question. As the Italian court’s order makes plain, that court will ultimately determine the question of custody.

The Supreme Court held that “a court ordering ameliorative measures in making a return determination should limit those measures in time and scope to conditions that would permit safe return, without purporting to decide subsequent custody matters or weighing in on permanent arrangements.” *Golan*, 142 S. Ct. at 1894. To the extent that the respondent is claiming that merely contacting the International Judicial Network under the Hague Convention constitutes improper involvement in custody issues, her argument is plainly meritless. These communications are consistent with the protocol for Hague Convention cases. “The role of the Hague Network Judge is to receive and, where necessary, channel incoming judicial communications and initiate or facilitate outgoing communications.” *See generally Direct Judicial Communications*, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (2013), <https://assets.hcch.net/docs/62d073ca-eda0-494e-af66-2ddd368b7379.pdf>.

Nor have I made any decisions regarding custody, or suggested any such decision to the Italian courts.¹⁰ As I have explained at multiple points during this litigation, including in my 2019 decision: “My task is not to determine the best interests of B.A.S. or Ms. Golan, or to impose custody arrangements.” *Saada I*, 2019 WL 1317868, at *1. Instead, “I must determine

¹⁰ As the docket reflects, the parties were fully apprised of the content of the Court’s contacts with the Italian Central Authority and the Italian Ministry of Justice, which the Court initiated before the Second Circuit’s mandate issued. The Representative of the United States Federal Judiciary for the International Judicial Network under the Hague Convention facilitated those contacts.

whether B.A.S. should be returned to Italy for custody proceedings.” *Id.* In short, the custody determination, as well as considerations of B.A.S.’s “best interests,” will be made by the Italian court, as outlined in its comprehensive order.

Characterizing the record as stale, the respondent also maintains that I cannot determine whether the ameliorative measures already in place are sufficient to protect B.A.S. without “tak[ing] evidence concerning B.A.S.’s current circumstances, including his substantial social, psychological, and educational needs stemming from his autism, in order to understand the risk that returning him to Italy would pose.” (ECF No. 154 at 4.) As an initial matter, new evidentiary proceedings are not necessary because the most relevant portions of the record to the inquiry at hand—the ameliorative measures—are not stale. The protective order, though it was executed in 2019, is purely prospective; it does not take effect until the day B.A.S. returns to Italy and will remain in place for one year. (ECF No. 96-1 at 11.) Similarly, there is no reason that my prior finding that the proposed \$150,000 payment “will ensure B.A.S.’s safe and comfortable return to Italy, as well as the respondent’s financial independence from the petitioner and his family” is any less valid today than it was in 2020. *See Saada III*, 2020 WL 2128867, at *5.

More fundamentally, in seeking new evidentiary proceedings, the respondent is asking me to make determinations that are the province of the court determining custody, a point the respondent concedes elsewhere in her brief. (ECF No.154 at 4 (“Only the separate custody court, with its expertise in family law issues, is properly placed to address these numerous issues.”).) These complicated “economic, cultural, religious, psychological, financial, medical, and physical issues” must be resolved by custodial courts in the child’s country of habitual residence, which in this case is Italy. *Monasky*, 140 S. Ct. at 723.

Separately, the respondent posits that “there is great uncertainty about [the petitioner’s] conduct over the last two years,” and speculates that his “psychological and behavioral issues have not improved and may have worsened.” (ECF No. 157 at 3.) The respondent offers no factual support for this allegation, other than to note that “Mr. Saada has chosen to have virtually no contact with B.A.S.” (*Id.*) The significance of the petitioner’s lack of communication, to the extent that it is accurate, is something that the Italian court can consider in determining the question of custody.¹¹

b. The Italian court is entitled to comity.

The respondent also challenges, as she did at trial, the Italian courts’ ability to adjudicate the custody case in a way that protects B.A.S. (ECF No. 154 at 3-4.) As the Second Circuit found in affirming the May 2020 decision, “the existing Italian protective order and ongoing involvement of the Italian courts with this case provides sufficient assurance that Saada will not approach Golan in Italy.” *Saada IV*, 833 F. App’x at 833. One of the foundational premises of the Hague Convention is international comity and respect for the tribunals of contracting nations. *Id.* (“In most cases, the international comity norms underlying the Hague Convention require courts in the United States to assume that an order by a foreign court imposing protective measures will guarantee performance of those measures.”); *Diorinou v. Mezitis*, 237 F.3d 133, 142 (2d Cir. 2001) (“In particular, we have observed that comity is at the heart of the Convention.” (internal quotations marks and citations omitted)); *see also Navani v. Shahani*, 496 F.3d 1121, 1128-29 (10th Cir. 2007) (“The Hague Convention rests implicitly upon the principle that any debate on the merits of . . . custody rights, should take place before the competent

¹¹ As explained in the May 5, 2020 order, the petitioner’s alleged refusal to grant the respondent a “get”—a religious divorce—is not a factor that affects B.A.S.’s well-being. *See Saada III*, 2020 WL 2128867, at *4 n.10.

authorities in the State where the child had its habitual residence prior to its removal.” (internal quotation marks and citations omitted)). Based on the record before me, and as I have previously determined, the actions and decisions of the Italian tribunal are entitled to respect and comity. *Saada III*, 2020 WL 2128867, at * 3 (“The Italian courts are willing and able to enforce the conditions necessary to protect B.A.S. in Italy.”).

Indeed, the best evidence of Italy’s ability to adjudicate the parties’ disputes is the comprehensive decision of the Italian court, which addresses every aspect of the parties’ relationship, and most importantly, recognizes the need to protect B.A.S. (*See generally* ECF No. 96-1.) Moreover, the expert testimony at trial established “the structural protections in place for domestic violence victims, which include criminal and civil court orders of protection, orders of supervised visitation during the pendency of custody proceedings, and appointments of expert psychologists and psychiatrists to evaluate parent-child relationships and domestic violence allegations in custody proceedings[,]” as well as “the free legal services available at a specialized department for victims of family and sexual violence in Milan’s public prosecutor’s office.” *Saada I*, 2019 WL 1317868, at *13.¹²

IV. Avoiding Undue Delay

The litigation in this case has gone on for years, punctuated by multiple filings, disputes between the parties and court proceedings. As the Supreme Court observed, however, that delay has already occurred and “cannot be undone.” *Golan*, 142 S. Ct. at 1895. The ameliorative measures in this case will occasion no additional delay, because nothing in Italy remains to be

¹² The respondent’s expert at trial, who appears to be representing the respondent in the Italian proceedings, testified about shortcomings in Italy’s system, but acknowledged that similar shortcomings existed in other countries, including the United States. *Saada I*, 2019 WL 1317868, at *13.

done; indeed, the only outstanding ameliorative measure is the petitioner's payment of \$150,000 to the respondent.¹³

¹³ At this juncture, it is the respondent who wishes to add further "unnecessary delay" to "a proceeding that has already spanned years longer than it should have," *Golan*, 142 S. Ct. at 1895-96, by attempting to relitigate the subject of both B.A.S.'s autism diagnosis and the capacity of the Italian court system to protect the victims of domestic violence. The respondent has already raised both of these points, and I have adjudicated each in turn. *Saada III*, 2020 WL 2128867, at * 6; *see id.* at *4 ("Based on the expert testimony presented at trial, I concluded that the Italian legal system is capable of handling domestic violence cases involving children.").

CONCLUSION

For the reasons explained above, I have determined that the ameliorative measures before me are more than adequate to ensure B.A.S.'s safe return to Italy. I would not grant this petition if I thought B.A.S. would face a grave risk of harm upon return. My conclusion is based on the "ample evidence" and "extensive factual findings" on the record. By ordering return, I am exercising my discretion to the best of my ability pursuant to the legal principles announced by the Supreme Court.

Accordingly, the petition is granted and B.A.S. must be returned to Italy. The Clerk of Court is respectfully directed to enter judgment in favor of the petitioner. The parties are to meet and confer regarding B.A.S.'s return to Italy and the ameliorative measures outlined in this order, including the petitioner's payment to the respondent. This order is stayed for thirty days to allow the parties time to resolve the method of B.A.S.'s return, and for the respondent to seek and obtain a decision on an expedited appeal.

SO ORDERED.

s/ Ann M. Donnelly

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
August 31, 2022