

CLIENT ALERT

JUNE 21, 2022

U.S. Supreme Court Strengthens the Discretion of Federal Courts Under the Hague Abduction Convention

On June 15, 2022, the U.S. Supreme Court issued its decision in *Golan v. Saada*, a case concerning the Hague Convention on the Civil Aspects of International Child Abduction (“Hague Abduction Convention”).¹ The unanimous opinion was authored by Justice Sonia Sotomayor and broadens the discretion of federal trial courts in deciding whether children must be returned to their home countries in certain international custody disputes.

Adopted in 1980, the Hague Abduction Convention is an international agreement that addresses international parental child abduction and provides a process for parents seeking return of a child to their home country.² The Hague Abduction Convention requires contracting States to return a child when they have been wrongfully taken from their country of residence. A purpose of the Hague Abduction Convention process is to preserve the *status quo* that existed before the wrongful removal, while deterring parents from forum-shopping for custody disputes.

However, the Hague Abduction Convention contains an important exception to the return requirement in cases where there is a “grave risk” that returning the child to their country of residence would result in exposure to physical or psychological harm.³ The U.S. Supreme Court’s decision in *Golan v. Saada* provides that in cases where a court finds that there is such a grave risk, the court is not obligated to consider whether there are any ways to reduce that risk so that the child may be returned to the home country.

The dispute in *Golan v. Saada* was between Narkis Golan, a U.S. citizen, and Isacco Saada, an Italian citizen. In 2016, Golan gave birth to the couple’s son, known as B.A.S., in Italy and the family continued to reside there. Saada was physically abusive to Golan throughout their relationship. After travelling with the child to the U.S. to attend a wedding, Golan and the child did not return to Italy. Saada petitioned a U.S. federal district court to mandate the return of the child under the Hague Abduction Convention.

The district court found that there was a grave risk of psychological harm to B.A.S. if he were returned to Italy. However, the law of the U.S. Court of Appeals for the 2nd Circuit required the district court to consider ways to reduce that risk such that the child could

¹ *Golan v. Saada*, No. 20–1034, slip op. (Jun. 15, 2022), http://www.supremecourt.gov/opinions/21pdf/20-1034_b8dg.pdf.

² Hague Convention on the Civil Aspects of International Child Abduction (“Hague Abduction Convention”), 25 October 1980, Hague XXVIII.

³ Hague Abduction Convention, Article 13(b).

still be returned to Italy. The district court therefore ordered B.A.S. to be returned to Italy with protective measures, including supervised visitation, therapy, and parenting classes. The 2nd Circuit upheld the order returning B.A.S. to Italy.

The U.S. Supreme Court ruled that the 2nd Circuit's requirement that courts must always consider measures to reduce the risk of grave harm to be "*inconsistent with the text and other express requirements of the Hague Convention.*" Justice Sotomayor explained that the Hague Abduction Convention neither prohibits nor requires the consideration of measures to reduce that risk, leaving this to the discretion of the court deciding the case.

Curtis continues to monitor developments in cases applying the Hague Abduction Convention. Curtis attorneys have experience litigating cases under the Hague Abduction Convention and have succeeded in preventing the return of children to home countries where they would face danger. In addition to advising and litigating under the Hague Abduction Convention, Curtis has experience handling disputes involving public international law and international human rights law.

About Curtis

Established in 1830, Curtis, Mallet-Prevost, Colt & Mosle LLP is a leading international law firm headquartered in New York with 19 offices in the United States, Latin America, Europe, the Middle East and Asia. For more information about Curtis, please visit www.curtis.com.

Attorney advertising. The material contained in this Client Alert is only a general review of the subjects covered and does not constitute legal advice. No legal or business decision should be based on its contents.

Please feel free to contact any of the persons listed below if you have any questions on this important development:



Jason Wright

Partner
jwright@curtis.com
New York: +1 212 696 8833



Marija Ozolins

Associate
mozolins@curtis.com
Washington: +1 202 452 7375