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Harm to Children Cannot be 'Ameliorated': Good Progress Since the Golan Decision, but More Needs to be Done

By: Valentina Shaknes and Nicole Fidler| July 28, 2025

On June 15, 2022, the United States Supreme Court unanimously held that when a court finds, in cases under the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention"), that returning a child to their country of habitual residence would expose the child to a "grave risk" of harm, such court may refuse the return without considering whether "ameliorative measures" could mitigate the risk. *Golan v. Saada*, 596 U.S. 666 (2022).

In its decision, the Supreme Court recognized the inherent limitations of such ameliorative measures, especially in cases involving child abuse, serious neglect, and domestic violence. Importantly, the Court acknowledged that "the Convention sets as a primary goal the safety of the child."

This article reviews U.S. federal courts' treatment of ameliorative measures in the three years since the *Golan* decision, finding that *Golan* has mostly acted as a much-needed check on the courts' willingness to return children to unsafe conditions. However, some courts appear to rely on ameliorative measures as a way of avoiding a grave risk finding, which is problematic given the limited protective value of ameliorative measures once the child is returned.

Overview of the Hague Convention and the Evolution of Ameliorative Measures

The Hague Convention is a multinational treaty signed by the United States and over 100 other countries.

It requires all members to promptly return a child "wrongfully" removed by one parent without the consent of the other parent to the member state where the child habitually resided. *Hague Convention on the Civil Aspects of International Child Abduction*, Oct. 25, 1980, T.I.A.S No. 11,670, 1343 U.N.T.S 89.

The Convention, however, expressly allows the new country's court to refuse the return to the habitual residence country if such return would result in a "grave risk" of exposing the child "to physical or psychological harm or otherwise place the child in an intolerable situation."

In the United States, most grave risk cases arise in the context of domestic violence, when one parent flees the resident country with the child in search of safety. *See, e.g.,* Olivia Gentile, *Nowhere in the World to Run: The International Law Ripping Mothers from Their Children*, The 19th (Jun. 17, 2025) (between 2022 and 2024, 77% of U.S. Hague cases were filed by fathers against mothers, and 79% of the respondent-mothers accused the petitioner-fathers of abuse).

The U.S. implementing statute for the Hague Convention, the International Child Abduction Remedies Act ("ICARA"), places a high burden of proof on the parent asserting the grave risk defense, requiring that the defense be established by clear and convincing evidence. *See* 22 U.S.C. § 9003(e)(2)(A) (2018).

Prior to the Supreme Court's decision in *Golan*, some U.S. federal circuit courts had imposed an additional burden after a finding of grave risk, requiring the parent objecting to return to prove

that no ameliorative measures could be put into place to ensure adequate protection of the child in her country of habitual residence.

Such ameliorative measures include consideration of whether the habitual residence's judicial system can protect the child, as well as the imposition of certain undertakings by the parent seeking the child's return, such as providing financial assistance and a place to live for the mother and child. *See, e.g., Blondin v. Dubois,* 189 F.3d 240, 248 (2d Cir. 1999) (even after a finding that grave risk of harm exists, some courts require a determination whether "any ameliorative measures (by the parents and by the authorities of the [home] state … can reduce whatever risk might otherwise be associated with a child's repatriation.").

Because this added requirement is not found in the text of the Hague Convention itself, and because of enforcement and implementation problems, several federal circuit courts explicitly declined to impose this additional consideration of ameliorative measures, which led to a circuit split.

The Second, Third and Sixth Circuits required the consideration of such measures, while the Seventh and Eleventh Circuits explicitly declined to do so.

In *Golan v. Saada*, the Supreme Court resolved the circuit split, siding with the latter group of circuits and holding that the Convention "does not impose[] a categorical requirement on a court to consider any or all ameliorative measures before denying return once it finds that a grave risk exists." 596 U.S. 677-78.

"Under the Convention and ICARA, district court's discretion to determine whether to return a child where doing so would pose a grave risk to the child includes the discretion whether to consider ameliorative measures that could ensure the child's safe return."

Moreover, the court specifically recognized that ameliorative measures would not be appropriate and should not be considered in cases of physical, psychological or sexual abuse of a child, and in situations involving serious neglect or domestic violence, noting that these risks to the child's safety "cannot be readily ameliorated.".

Judicial Approach to Ameliorative Measures Post-'*Golan*'

In the three years since *Golan*, there have been 15 cases in which U.S. federal courts have found the existence of grave risk of harm. Domestic violence and/or child abuse formed the basis of the findings in 13 of those cases, with the other two addressing war in the country of habitual residence.

Of the 13 domestic violence and/or child abuse cases, only one court imposed ameliorative measures. This outlier decision is likely because it was first decided in 2020, before *Golan*, and it continued only because of the repeat appeals. *See Radu v. Shon*, 20-CV-00246-TUC-RM, 2022 U.S. Dist. LEXIS 150304 (D. Ariz. Aug. 19, 2022*)*. Given its extensive pre-*Golan* history, this case, therefore, is not indicative of the post-*Golan* paradigm.

A close examination of the remaining 12 cases shows that, consistent with the Supreme Court's direction, courts have considered ameliorative measures only when "raised by the parties or obviously suggested by the circumstances of the case," and have declined to impose measures that are unworkable, complicated, prolong the case, and/or do not prioritize the safety of the child. *Golan*, 596 U.S. at 679, 680-82.

For example, *Braude v. Zierler* denied a petition for return to Canada after finding grave risk due to petitioner's untreated mental health issues, history of domestic violence, possession of child pornography, and the children's adjustment to New York. *See* No. 22-CV-03586, 2022 U.S. Dist. LEXIS 135406 (N.D. Cal. Aug. 1, 2022), *24-25, aff'd, No. 22-16543, 2023 U.S. App. LEXIS 14578 (9th Cir. June 7, 2023).

The court considered eight ameliorative measures proposed by the petitioner, including no contact with the respondent, mental health treatment, and compliance with all of the Canadian social services' visitation conditions.

The *Braude* court acknowledged that while it should consider ameliorative measures proposed

by a party, such consideration "must 'prioritize the child's physical and psychological safety.'"

Here, the court found the proposed measures did not prioritize the children's safety because they failed to address petitioner's lack of mental health treatment, his history of aggression and coercive control, and his pedophilia.

A recent case from the Southern District of New York, *Mene v. Sokola,* similarly declined to impose ameliorative measures after considering petitioner's proffered testimony about the Polish legal system's ability to protect the children.

It should be noted, however, that the *Mene* court incorrectly stated that it was *required* to consider ameliorative measures. No. 22 Civ 10333, 2024 U.S. Dist. LEXIS 167855 *61 (S.D.N.Y. Sept. 17, 2024) ("the court must take into account any ameliorative measures…that can reduce whatever risk might otherwise be associated with [] repatriation.'").

The Supreme Court's decision in *Golan* flatly rejected this now-defunct Second Circuit requirement. *See Golan*, 596 at 670 ("The Second Circuit's categorical requirement to consider all ameliorative measures is inconsistent with the text and other express requirements of the Hague Convention.").

Other courts have similarly treated ameliorative measures with caution and given limited consideration to measures explicitly proposed by petitioner. *See Moreno v. Escamilla,* No. 23-cv-15736, 2024 U.S. Dist. LEXIS 205985, at *26 (N.D. Ill Nov. 12, 2024) (rejecting petitioner's argument that Mexico's legal system could adequately protect the children); *Watts-Farmer v. Cortes*, No. Civil Action-22-4601 (KMW-SAK), 2023 U.S. Dist. LEXIS 76751 (D.N.J. Apr. 30, 2023) (omitting consideration of ameliorative measures); *Morales v. Sarmiento*, Civil Action No. 4:23-CV-00281, 2023 U.S. Dist. LEXIS 99734, at *39 (S.D.Tex. June 8, 2023) (declining to impose ameliorative measures where petitioner failed to propose any, and finding "obvious" measures to protect the children inadequate); *Nisbet v. Bridger,* No. 3:23-cv-00850-IM, 2023 U.S. Dist. LEXIS 190589, at *34 (D. Or. Oct. 24, 2023) (rejecting petitioner's suggestion that the children live in Scotland with a nanny or friend, as "unworkable" and an impermissible intrusion into "long-term arrangements"); *Garner v. Harris*, 641 F. Supp. 3d 343 (E.D. Tex. 2022) (rejecting petitioner's sole proposed ameliorative measure– that the children live with their older brother in the United Kingdom –as unworkable); *Staggers v. Timmerman*, 746 F. Supp. 3d 635 (S.D. Iowa 2024) (examining affirmative defenses despite petitioner's failure to establish a prima facie case, finding grave risk, and foregoing consideration of ameliorative measures); *Watson v. Watson*, Case No: 8:22-cv-2613-WFJ-TGW, 2023 U.S. Dist. LEXIS 24080 (M.D. Fla. Feb. 13, 2023) (same).

While this is significant progress, there is still room to curtail the reliance on and consideration of ameliorative measures. Importantly, *Golan* does not require courts to request ameliorative measure suggestions from the parties, yet some courts still do so. *See Golan*, 596 U.S. at 679.

For example, in *Delgado v. Marquez*, the court unnecessarily invited the petitioner to file proposed ameliorative measures. *See* No. 23-CV-05141-VKD, 2024 U.S. Dist. LEXIS 23730, at *34–35 (N.D. Cal. Feb. 9, 2024) (finding the proposed measures insufficient).

Similarly, in *re Kelly*, the court broadly construed testimony about anger management as a proposed ameliorative measure. No. 3:25-CV-247, 2025 U.S. Dist. LEXIS 78984 (D.Or. Apr. 25, 2025) (finding anger management classes were an insufficient protection).

Such deliberate efforts to consider ameliorative measures are contradictory to the Supreme Court's directive to prioritize the safety of children.

Two other cases in which the courts imposed ameliorative measures *without* a finding of grave risk, are particularly troubling. *See Elkhaiat v. Mawashi*, 2025 WL 711949 *7-8 (D. Ariz. 2025) ("[T]he Court has significant concerns about L.E.'s safety and the potential for psychological harm prior to any Canadian court's custody disposition.

The evidence indicates that Petitioner is ill-equipped to care for infant L.E."); *Keen v. Bowley*, No. 8:23-cv-02333, 2024 WL 3259040 *51-52 (C.D. Cal. July 1, 2024) ("The court may, within its discretion, order mitigation measures to be taken upon the return of the baby to the United Kingdom.

Here, the court holds that there is no such "grave risk" to mitigate. Nevertheless, the court does – within its direction – consider what measures might ensure that the baby's return is as smooth and drama free as possible.").

In both cases, the courts had concerns for the safety and well-being of the children that were sufficient to impose ameliorative measures, yet nonetheless decided that these concerns were not enough to find grave risk.

Given the inherent problems with the effectiveness of ameliorative measures, including lack of enforcement once the parties have left the court's jurisdiction, and the reliance on the party who is the cause of the safety risk to comply with such measures, courts should be careful not to permit ameliorative measures to provide a false sense of comfort, and ultimately to swallow the grave risk defense

This would undo the progress made in the three years post-*Golan*.

If a court is sufficiently concerned with a child's safety to impose ameliorative measures, it is more appropriate to find grave risk of exposure to harm and decline to return the child, because, as the *Golan* Court squarely held, the safety of the child should always be paramount.

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