

17-0466-cv

United States Court of Appeals
for the
Second Circuit

CHRISTOPHER E. DAVIES, acting on behalf of infant child, K.D.,

Plaintiff-Appellant,

– v. –

SALLY K. DAVIES,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF FOR *AMICI CURIAE* SANCTUARY FOR FAMILIES,
LEGAL MOMENTUM, DR. JACQUELYN CAMPBELL,
DOMESTIC VIOLENCE LEGAL EMPOWERMENT AND
APPEALS PROJECT, MY SISTER'S PLACE, UNIVERSITY OF
OREGON SCHOOL OF LAW DOMESTIC VIOLENCE CLINIC,
HER JUSTICE, NEW YORK LEGAL ASSISTANCE GROUP,
NATIONAL NETWORK TO END DOMESTIC VIOLENCE,
BATTERED MOTHER'S CUSTODY CONFERENCE, AMERICANS
OVERSEAS DOMESTIC VIOLENCE CRISIS CENTER, AND
LAWYERS COMMITTEE AGAINST DOMESTIC VIOLENCE
IN SUPPORT OF DEFENDANT-APPELLEE**

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FED. R. APP. P. 26.1 CORPORATE DISCLOSURE STATEMENT

None of the corporate *Amici* have a parent corporation, and no publicly held corporation owns 10% or more of the stock of any of the *Amici*.

IDENTITIES AND INTERESTS OF *AMICI CURIAE*¹

Amici are non-profit and academic organizations as well as individuals that represent, advocate for, and support victims of gender-based violence, including victims of domestic and sexual violence and their children. *Amici* provide legal and advocacy services to tens of thousands of child and adult victims of domestic violence across the United States and have considerable experience and expertise in the patterns of coercive control that are present in this case, as well as the escalation of psychological, physical, and sexual domestic violence. Each *Amici* is described more fully in the declaration attached to the accompanying motion and is concerned about this appeal because Petitioner advances a position that ignores well-established social science findings about how domestic violence perpetrated by one parent against the other creates a grave risk of harm for a child, including after that parent separates from the abuser.

¹ No counsel for a party authored this brief in whole or in part, and no party's counsel, party, or person other than *amici curiae* contributed money intended to fund preparing or submitting the brief.

PRELIMINARY STATEMENT

The premise of Petitioner's appeal is that violence that inflicts physical injury is the sole conduct that could create a grave risk of harm to a child. That premise is invalid not only because the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention") expressly contemplates psychological harm, but in view of decades of research cataloguing the severe and damaging effects of psychological abuse and coercive control upon victims and their children.

This was not a close case. The record is replete with accounts of Petitioner's red-faced screaming, increasingly violent outbursts, and efforts over the course of years to achieve total control over the lives of Ms. Davies and K.D. The record also contains the expert testimony of Dr. Stephanie A. Brandt, a psychiatrist with over thirty years of clinical and academic experience, who accurately testified to the overwhelming consensus in the scientific community that the effects of psychological and physical abuse are severely damaging to children, whether or not those children are the direct targets of the abuse or are exposed to it. (SPA-34.) Dr. Brandt also testified that sending K.D. back to St. Martin would cause a traumatic reaction that would stifle his development and could not be meaningfully mitigated even if K.D. did not reside with Petitioner upon his return. *Id.*

The effects of the type of domestic violence perpetrated by Petitioner are far-reaching and devastating to both mother and child—conclusions supported by widely accepted scientific research, including decades of research conducted by *Amicus* Dr. Jacquelyn Campbell, as well as *Amici*'s collective experience over decades working with victims of domestic violence and their children. Research and experience confirm that Petitioner's physical and sexual abuse of Ms. Davies are strong predictors of future domestic violence and abuse of the victim's children. They also confirm that domestic violence often *escalates* after the victim separates from the abuser.

Plaintiff attempts to minimize or dismiss his abusive conduct despite the District Court's finding that the testimony at trial "showed *beyond any doubt* that Mr. Davies's behavior towards both Ms. Davies and K.D., and in K.D.'s presence, was extremely violent, unpredictable, outrageous, menacing, and dangerous." (SPA-35 (emphasis added).) Displaying a shocking and irresponsible disregard for the profoundly injurious effects of the abuse he perpetrated against his own family, Petitioner blithely claims that this case is about no more than "the breakdown of a marriage." (Pet. Op. Br. 17.) His denial of the suffering he has caused squarely fits a familiar pattern of minimization and blame-shifting that social scientists and *Amici*

recognize as a defining characteristic of perpetrators of domestic violence.

Plaintiff's pattern of coercive control and abuse is dangerous to both mother and son, and returning K.D. to that kind of perilous environment does not fit the letter or the spirit of the Hague Convention. Anything less than an affirmance will send the unacceptable signal that the Court does not protect victims of domestic violence and their children fleeing abuse and seeking safety in the United States unless they, and their children, bear visible scars to tell the story of that abuse.

ARGUMENT

Petitioner's constant abuse of his family shows there is a grave risk that returning K.D. to St. Martin would expose him to harm. *First*, Petitioner's pattern of coercive behavior over the course of years to strip Ms. Davies of her independence is a severe and dangerous form of domestic violence. *Second*, Petitioner's minimization and refusal to accept responsibility for his coercive and violent behavior shows he has and will continue to shift blame for his own behavior to Ms. Davies and K.D. *Third*, Petitioner's long-standing history of violent and abusive behavior—including his sexual abuse of Ms. Davies—exhibits multiple risk factors for dangerousness and lethality that become more serious post-separation. *Fourth*, well-established social science research shows that Petitioner's

abuse of Ms. Davies has and will have serious and negative effects upon K.D.

I. Coercive control of an intimate partner is a severe and dangerous form of domestic violence.

Petitioner's domination of all aspects of Ms. Davies' life is a form of domestic violence that differs from physical abuse that results in physical injuries, but that has an equally damaging effect upon victims and their children. More than two decades of research demonstrates that physical violence is usually only one part of a broader pattern of behavior designed to strip victims of their independence and subject them to the batterer's will—a dynamic called “coercive control.” *See, e.g.,* Michael P. Johnson & Kathleen J. Ferraro, *Research on Domestic Violence in the 1990s: Making Distinctions*, 62 J. MARRIAGE & FAM. 948, 948-63 (2000); Mary A. Dutton, Lisa A. Goodman & R. James Schmidt, DEVELOPMENT AND VALIDATION OF A COERCIVE CONTROL MEASURE FOR INTIMATE PARTNER VIOLENCE: FINAL TECHNICAL REPORT (2005), <https://www.ncjrs.gov/pdffiles1/nij/grants/214438.pdf>. Coercive control is characterized by an ongoing pattern of gender-based domination by which abusive intimate partners “interweave repeated physical abuse with intimidation, sexual degradation, isolation, and control.” Evan Stark, COERCIVE CONTROL, FATALITY REVIEW BULLETIN 2 (Spring 2010); *see also* Evan Stark, COERCIVE CONTROL: HOW MEN ENTRAP

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Nearly constantly during the parties' relationship, Petitioner engaged in intense verbal and other psychological abuse, interspersed with acts of physical and sexual violence, to exert unrelenting control over Ms. Davies and K.D. Petitioner sought to control and in fact controlled every aspect of Ms. Davies' life through intense psychological abuse, a signature behavior of a perpetrator of intimate partner violence. *See* Lundy Bancroft et al., *THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS* 6, (2d ed. 2012). Such abuse is a classic manifestation of coercive control whereby the perpetrator "microregulat[es]" the victim's everyday behaviors, using physical violence in combination with threats and intimidation, emotional abuse, economic deprivation, and isolation of the victim from her friends and her family to control the victim. Stark, *COERCIVE CONTROL*, at 5, 274. Petitioner's control over Ms. Davies' life was absolute, extending from what Ms. Davies' "could or couldn't do"—including who she was allowed to talk to or where she could go—to what Ms. Davies was permitted to eat. (Tr. 69.)

Consistent with Dr. Stark's scholarship, Dr. Brandt provided expert testimony at trial that such controlling conduct is designed to "coerce that

person to . . . submit to the other person’s will in some way.” (Tr. 374.)² Dr. Brandt also testified that Petitioner used “gaslighting”—undermining Ms. Davies’ “sense of reality about her own perceptions, her own feelings, and her own judgment”—as a tactic of psychological abuse and control. (Tr. 386-87.) Petitioner applied this tactic to challenge Ms. Davies’ memory in every respect, to the point where he convinced her that she had early-onset Alzheimer’s disease. (Tr. 91.) Petitioner extended these gaslighting tactics to K.D.; for example, in one instance Petitioner hit K.D. so hard that it left a handprint, but later said that he only “tapped him.” (Tr. 335-38.)

The record also shows the toll of Petitioner’s ongoing pattern of control over Ms. Davies’ and K.D.’s lives. Physical violence alone does not explain the trauma experienced by victims of domestic violence. *See, e.g.,* Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 985-86 (1995). Dr. Stark notes that even where physical violence was not present, abused women subject to coercive control nonetheless “exhibited the signs and symptoms of abuse as the result of intimidation, isolation, and control.” Stark, COERCIVE CONTROL, 278. Victims of coercive control in intimate

² Dr. Heitler, a counselor appearing as a fact witness, also testified that her evaluation of Petitioner’s conduct “indicat[ed] to [her] a relationship that’s controlling and coercive rather than collaborative.” (Tr. 196.)

partner relationships often report traumatic symptoms such as “psychic ‘numbness,’” *id.*, and dissociation, both common reactions to sustained physical, sexual, and psychological abuse.

Here, Petitioner berated Ms. Davies so frequently that she would often become disoriented (Ms. Davies described it as feeling “fuzzy”). (Tr. 39-40.) The District Court credited Ms. Davies’ testimony that she exhibited this symptom of abuse because she could not think clearly or form complete thoughts, was unable to cope, felt “heavy,” and her body would “shut down” after Petitioner berated her. (SPA-4.) Relatedly, the District Court also credited Dr. Brandt’s diagnosis of severe, dissociative, post-traumatic stress disorder (“PTSD”) as to Ms. Davies. (SPA-33-34.) These traumatic symptoms are a measure of the severity of the psychological harm that Plaintiff inflicted on Ms. Davies and K.D.

II. Petitioner’s minimization of and refusal to take responsibility for his abuse to Ms. Davies and K.D. shows coercive control.

Perpetrators of domestic violence frequently “shift responsibility for the effects of [their] actions” by both minimizing the effects of their abuse and blaming their victims (or other external factors) for the abuse. Lundy Bancroft et al., *THE BATTERER AS PARENT* 19-20 (2d ed. 2012). Abusers employ these tactics to deny the effect of their abuse on their children, and contrive ways to shift blame to the other parent or even to children. *Id.* at

20. Petitioner consistently attempted to shift responsibility for the effects of his abuse and continues to do so post-separation.

The April 15, 2016 incident described at trial demonstrates Petitioner's pattern of minimizing his abuse and imposing his alternative version of reality upon Ms. Davies to undermine her sense of reality in an effort to control her. Ms. Davies testified—and the District Court found—that Petitioner became violently angry; hurled a full glass of wine across the room; kicked the glass patio door so hard it broke, injuring himself so badly that he bled profusely; and stopped to berate Ms. Davies at least twice on his way out of the house. (SPA-15.) Photographic evidence of this incident showed broken glass, a significant amount of blood, and bloody footprints to the door. (SPA-14-15.) Exhibiting the incredible denials prevalent among perpetrators of domestic violence, Petitioner claimed he “pushed” the door with his foot after it jammed, accidentally cut his foot because the glass was cheap and poorly made, and accidentally knocked over the wine glass on the way to tend to his wounds outside, at night, in the front yard of his home. (SPA-15.)

Petitioner's denial is consistent with how domestic abusers minimize and re-characterize their violent and even shocking behavior to exert control over their victims. Petitioner devotes over six pages of his brief (Pet. Op.

Br. at 28-35) to rewrite this incident from a violent outburst that left blood, glass, and his wife and child terrified and crying in its wake to an accident that was someone else's fault (viz. the door manufacturer). (SPA-14-15.) The District Court had before it all of the supposed "inconsistencies" Petitioner identifies and found they weren't inconsistencies at all—but that Ms. Davies testified truthfully, and that Petitioner did not. Petitioner's refusal to take responsibility for his "uncontrollable, and dangerous" conduct throughout the parties' relationship and his continual effort to minimize that conduct fails to provide any support for his contention that the District Court committed clear error. (SPA-16.)

III. Petitioner exhibits multiple risk factors for dangerousness and lethality, demonstrating the grave risk of harm faced by K.D.

Petitioner is a dangerous individual with a long-standing history of violent and abusive conduct toward his family and others. His behavior fits squarely within the metrics of the most widely used and well-accepted evidence-based tool for predicting dangerousness and lethality in domestic violence cases. Developed by Dr. Jacquelyn Campbell, the nation's leading authority on the prediction of the dangers and lethality of domestic violence (and one of the *amici* here), the tool, known as the "Danger Assessment," identifies a series of factors to assess the risk of dangerousness or lethality posed by intimate partner abuse, and is used regularly by *Amici*, law

enforcement, the courts, and other providers of services to victims of domestic violence and their children. See Jacquelyn Campbell et al., *Assessing Risk Factors for Intimate Partner Homicides*, 250 NAT'L INSTITUTE OF JUST. J. 14 (2003) (hereinafter Campbell, *Assessing Risk*); Jacquelyn Campbell, *Danger Assessment*, <https://www.dangerassessment.org/uploads/pdf/DAEnglish2010.pdf>.

Petitioner's history of abuse is compelling evidence of Petitioner's future dangerousness under Dr. Campbell's analysis. Factual instances of Petitioner's abusive conduct mirror multiple risk factors identified by Dr. Campbell, including: "partner tried to choke (strangle) woman," "woman forced to have sex when not wanted," "partner controls most or all of woman's daily activities," "partner drunk every day or almost every day," "woman believed he was capable of killing her," "partner violent outside the home," and "partner threatened or tried to commit suicide." Campbell, *Assessing Risk*. *Amici* have extensive experience with domestic violence victims and their children who have been severely injured and even killed by perpetrators who used these tactics against their intimate partner victims.

- A. *Petitioner's sexual abuse of Ms. Davies, increasing in severity over time and coupled with strangulation, is a significant predictor of his future dangerousness.*

It is difficult to overstate the significance of the sexual abuse in this

case. Ms. Davies testified that “intimate relations with [Petitioner] became more sort of forceful and violent” following the parties’ move to St. Martin. (Tr. 52-53.) Ms. Davies’ pregnancy also prompted an increase in the severity of the sexual abuse. (Tr. 385.) Petitioner also would cause Ms. Davies to gag and vomit during oral sex. (Tr. 55.) The sexual abuse continued to escalate, with Petitioner impeding Ms. Davies’ breathing by closing her nose during oral sex and, even more troubling, strangling Ms. Davies on approximately five occasions during forced intercourse. (Tr. 324-327.)

Sexual abuse of a victim of domestic violence is part of a larger coercive control strategy, discussed *supra*, that is independently predictive of future violence. At its most basic level, Dr. Campbell has found that whether a victim is “forced to have sex when not wanted” is highly predictive of likely future abuse. Campbell, *Assessing Risk* at 14. Here, however, Ms. Davies’ testimony is an even more significant indicator of Petitioner’s dangerousness because she was also strangled during intercourse against her will. Victims of strangulation are *eight times* more likely to become attempted homicide victims if the victim was strangled by her partner. Gael B. Strack & Casey Gwinn, *On the Edge of Homicide: Strangulation as a Prelude*, 26 CRIM. JUST. 32, 33-34 (2011). Dr. Brandt

provided expert testimony about the dangers of non-fatal strangulation. (Tr. 408-09.)

The dangers of intimate partner sexual abuse extend to the victim's children as well, as sexual abuse of the mother is strongly predictive of "increased risk of sexual abuse of the children and increased physical danger." Lundy Bancroft, *Understanding the Batterer in Custody and Visitation Disputes* (1998), <http://lundybancroft.com/articles/understanding-the-batterer-in-custody-and-visitation-disputes/> (recommending examination of domestic violence perpetrators' history of sexual assaults against the mother in custody and visitation disputes). Research shows that sexual abuse of a parent is correlated with a "potentially severe traumatic impact on children and association with greater risk to the safety and well-being of children and adult victims." Kathryn Ford, *Children's Exposure to Intimate Partner Sexual Abuse*, 1 FAMILY & INTIMATE PARTNER VIOLENCE Q. 141, 149 (2008). In particular, sexual abuse of a parent "is associated with more severe depression, anxiety, and behavior problems in the children of adult victims, as compared to those whose mothers have been physically, but not sexually, abused," with the result that children of abused parents "might also internalize distorted and unhealthy messages about gender and sexual consent." *Id.* at 144; *see also* Lynn Hecht Schafran, *Risk Assessment and*

Intimate Partner Sexual Abuse: The Hidden Dimension of Domestic Violence, 93 JUDICATURE 161, 163 (2010).

In an attempt to minimize Ms. Davies' credible testimony, Petitioner focuses on Ms. Davies' failure to report the sexual assault during meetings with Dr. Heitler. (Pet. Op. Br. 20, 28). However, nondisclosure of sexual abuse by victims is a pervasive reaction to that abuse, and one that *Amici* have seen over and over again with clients who have experienced sexual abuse. The reasons that victims of sexual abuse by an intimate partner do not report immediately are myriad, including fear of the abuser, shame, trauma, fear of being disbelieved, and "not recogniz[ing] their abuser's conduct as rape." National Judicial Education Program, *Intimate Partner Sexual Abuse: Why Victims Don't Report*, <http://www.njep-ipsacourse.org/WhyVictimsDontReport/KeyPoints-WhyVictimsDont.php>; *see also* Clare Dalton et al., *High Conflict Divorce, Violence, and Abuse: Implications for Custody and Visitation Decisions*, 54 JUVENILE & FAMILY COURT J. 11, 16 (2003) ("One party's argument in court that allegations of abuse lack credibility because they would surely have been made earlier if they were true may be nothing more than an exploitation of this earlier silence."). Ms. Davies' trial testimony reveals these precise influences, including that the sexual abuse is "something that [she] really do[es]n't like

to talk about,” that she “didn’t know if people would believe” her, and that she “didn’t necessarily realize that it wasn’t -- that it wasn’t okay.” (Tr. 826.)

B. Separation from an abuser increases the risk of injury and death to domestic violence victims and their children.

Separation undermines the power and control that the abuser enjoyed over the spouse and children during cohabitation and is frequently the catalyst for an increased risk of domestic violence. Daniel G. Saunders & Karen Oehme, *Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns*, CHILD CUSTODY AND VISITATION DECISIONS IN DOMESTIC VIOLENCE CASES 4 (2007) (“[U]p to a fourth of battered women report that their ex-partner threatened to hurt the children or kidnap them, and children may witness violence more often after separation than before.”) (internal citations omitted); *see also* ABA Child Custody and Adoption Pro Bono Project, A JUDGE’S GUIDE: MAKING CHILD-CENTERED DECISIONS IN CUSTODY CASES at 87 (2d ed. 2008) (“Research demonstrates that a child is at risk for physical and psychological abuse when there is domestic violence in the home. Often a separation or divorce will escalate the abuser’s behavior.”). “[B]ecause abuse is one of the few tools the abuser has left to attempt to dominate and control his victim,” separation can increase the likelihood and severity of domestic

violence. Karla Fischer et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. REV. 2117, 2142 (1993). As Dr. Brittany E. Hayes observed: “Abusers may be more likely to use children as proxies for control post-separation, as other forms of abuse become less available.” Brittany E. Hayes, PhD, *Indirect Abuse Involving Children During the Separation Process*, J. OF INTERPERSONAL VIOLENCE 4 (2015) (finding a higher likelihood that an abuser will threaten to harm children post-separation).

Separation creates the feeling that an abuser has lost control, and the abuser may resort to abusing children to retain that power and control over the victim. Michelle L. Toews & Autumn M. Bermea, “*I Was Naïve in Thinking, ‘I Divorced This Man, He Is Out of My Life’*”: A Qualitative Exploration of Post-Separation Power and Control Tactics Experienced by Women, J. OF INTERPERSONAL VIOLENCE 1,18 (2015); Shalansky et al., *Abused Women and Child Custody: The Ongoing Exposure to Abusive Ex-Partners*, 29 J. OF ADVANCED NURSING 416, 417 (1999). Researchers have also shown that behaviors like the abuser undermining the other parent’s authority or disparaging her in front of the children, all of which are harmful to the children, often increase upon separation. Saunders & Oehme at 5. Abusive partners also use visitation and custody disputes to manipulate and

control their victims. A JUDGE'S GUIDE, at 131-32 ("Custody disputes can be a litigation tactic that allows the battered woman to be revictimized") (internal citations omitted)).

Source after source confirms that separation of the abuser from the adult victim often provides no respite for a victim of intimate partner violence or her children. Contemporary social science research clearly concludes that "physical abuse, stalking, and harassment continue at significant rates post-separation and may even become more severe." Peter G. Jaffe et al., *Parenting Arrangements After Domestic Violence*, J. OF THE CENTER FOR FAMILIES, CHILDREN AND THE COURTS 81, 82 (2005) (internal citations omitted); see also Laura Dugan et al., *Do Domestic Violence Services Save Lives?*, 250 NAT'L INST. JUST. J. 20, 20-25 (2003); American Psychological Association, *VIOLENCE AND THE FAMILY: REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY* 39 (1996) ("Physical separation . . . increase[s] a man's need to control his partner and children").³ Further, research shows

³ See also U.S. Attorney General's National Task Force on Children Exposed to Violence, *Defending Childhood*, at 114 (Dec. 12, 2012); Bureau of Justice Statistics, U.S. Department of Justice, *INTIMATE PARTNER VIOLENCE 1993-2010*, at 6 (Nov. 2012); Audrey E. Stone & Rebecca J. Fialk, *Criminalizing the Exposure of Children to Family Violence: Breaking the Cycle of Abuse*, 20 HARV. WOMEN'S L.J. 205, 227 (1997); Andree G.

that separation “from an abusive partner after living together was associated with a higher risk of femicide.” Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 AM. J. OF PUB. HEALTH 1089, 1090 (July 2003). As such, the District Court correctly credited Dr. Brandt’s expert testimony “that domestic violence can continue even after the parties have separated” (SPA-34)—a conclusion with wide-reaching support in social science research and one consistent with the collective experience of *Amici*.

Social scientists confirm that separation can sometimes harm child and adult victims differently, but with no less devastating effects. Abusers deploy children as pawns in their war, continuing to abuse their victims through their shared children. The American Psychological Association notes that “[e]ven during supervised visitation, in which physical violence is constrained by the presence of an observer, threats as well as verbal and emotional abuse may continue” with the result that “the children often feel responsible for the violence against their mother, because the father was visiting them.” American Psychological Association, VIOLENCE AND THE FAMILY: REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION

Gagnon, *Ending Mandatory Divorce Mediation for Battered Women*, 15 HARV. WOMEN’S L.J. 272, 273 (1992) (“One of the most dangerous times for a battered woman occurs when she separates from her batterer.”).

PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY 40 (1996). Children are not only likely to be exposed to violence between the abuser and the mother post-separation, but threats of violence may be directed at the child. *See Zeoli et al., Post-Separation Abuse of Women and Their Children: Boundary-Setting and Family Court Utilization among Victimized Mothers*, 28 J. FAM. VIOLENCE 547, 547 (2013) (citing “threats against [] children” as a manner in which abuse escalates post-separation).

Several factors present in this case add to the increased risk for domestic violence post-separation. For instance, “[t]he risk of domestic violence directed both towards the child and the battered parent is frequently greater after separation than during cohabitation; this elevated risk often continues after legal interventions.” *See Model Code on Domestic and Family Violence, in A JUDGE’S GUIDE: MAKING CHILD-CENTERED DECISIONS IN CUSTODY CASES*, § 405 commentary.

Dr. Brandt’s testimony, relied upon by the Court, is consistent with this body of research and with *Amici’s* experience. (SPA-33; *see also* Tr. 374 (“It’s something that tends to definitely get worse after there’s a separation.”).) Moreover, in response to questioning from the bench, Dr. Brandt testified that the potential for abuse not only continues and worsens immediately following separation, but may continue “weeks or months or

years later.” (Tr. 377-78.) Dr. Brandt’s conclusions that Mr. Davies posed a threat of domestic violence were only “intensif[ied]” after considering his conduct post-separation, including the commencement of legal proceedings. (Tr. 441.)

The record shows that the concern for continued or heightened abuse has already become reality. Petitioner’s pattern of abuse continued once K.D. and Ms. Davies escaped the situation on St. Martin, which included a threat of criminal prosecution in the form of a phony settlement “offer,” and baseless legal action against Ms. Davies. (SPA-23.) K.D. also continued to be a focal point of Mr. Davies’ continued abuse, with Mr. Davies conditioning his settlement offer on K.D.’s return, alone, to St. Martin (SPA-23), and also stating that Ms. Davies “was never going to see K.D. again” (Tr. 557). The facts of this case illustrate that which has been shown by research—“the *pattern of control and domination* common to abusers often continues after the physical separation of the abuser and victim.” A JUDGE’S GUIDE at 132 (emphasis added). These facts, especially when placed in context of the rest of the events that transpired, lend all the more weight to the court’s “concern[] about the escalation of violence just before Ms. Davies’s and K.D.’s departure, and the continued and increasingly hostile threats made after their departure” (SPA-34.)

Because Petitioner equates domestic violence with physical violence alone, he argues that physical separation eliminates all risk of harm to K.D., contending that the danger for prospective harm no longer exists because he and Ms. Davies are separated. (Pet. Op. Br. 39.) Not only do the cases he cites not support his contention,⁴ but voluminous social science research has firmly discredited both the premise that domestic violence is only physical *and* the notion that separation decreases physical danger.

C. Petitioner's violent outbursts in and outside the family home are further evidence of his dangerousness.

The evidence at trial of Mr. Davies's violent proclivities was overwhelming. The history of violence here is a critical predictor of Mr. Davies's future conduct—and that conduct would expose K.D. to a grave risk of harm. *See, e.g.,* Marie E. Rueve & Randon S. Welton, *Violence and Mental Illness*, 5 PSYCHIATRY 34, 34-48 (2008); Clare Dalton et al., *High*

⁴ In the portion of *Neumann v. Neumann* relied upon by Petitioner, the court noted only that it was less likely the children would witness domestic violence between the parties “in a cohabitation setting.” 187 F. Supp. 3d 848, 867 (E.D. Mich. 2016). The Court did not consider the question of whether separation of the parties increases the risk of harm. Moreover, the *Neumann* court did not order that the children in that case be returned to live with their father in their country of habitual residence, and the Sixth Circuit ultimately vacated and remanded the case, calling the analysis of the existence of a grave risk of harm a “close issue.” *Neumann v. Neumann*, 684 F. App'x 471, 481 (6th Cir. 2017).

Conflict Divorce, Violence, and Abuse: Implications for Custody and Visitation Decisions, 54 JUVENILE & FAMILY COURT J. 11, 18 (2003). Ms. Davies testified, and Petitioner did not refute, that he regularly drank to excess—consuming several beers, several glasses of wine, and often “substantial amounts of whiskey”—every day. (Tr. 106-08.) This exemplifies another of Dr. Campbell’s risk factors, and indeed, Ms. Davies observed that Petitioner would “get[] angrier more quickly and more violently angry” when he was drunk. (Tr. 108.) Campbell, *Assessing Risk*.

But Petitioner was violent not only when he drank, but also when he was sober—often threatening his employees and hiring thugs to carry out those threats on his behalf. And, as discussed in more detail *infra*, Ms. Davies’ account of the April 15, 2016 incident, credited by the District Judge, shows Petitioner’s short fuse and propensity for spontaneous and unpredictable violence.

Petitioner’s violence toward family pets is frightening and another indication of the grave risk faced by K.D upon return to St. Martin. During one violent outburst, Mr. Davies threw a family dog across the room in front of K.D., breaking the dog’s leg. (Tr. 82-83; SPA-7.) In another tirade, Kyle Thorpe, a former employee at one of the Davies’ dive shops, witnessed Mr. Davies kick one of the family’s dogs six to eight feet in the air, *after* the

parties were already separated. (Tr. 890; SPA-11.) Several studies have demonstrated a correlation between threats or perpetration of harm against animals and domestic violence against an intimate partner, with children at a high risk of witnessing the behavior and experiencing trauma. Shelby Elaine McDonald et al., *Children's Experiences of Companion Animal Maltreatment in Households Characterized by Intimate Partner Violence*, CHILD ABUSE & NEGLECT 1-2 (2015). In recognition of the co-occurrence of pet abuse and domestic violence, and its detrimental impact on children, certain pediatric screening procedures include questions regarding pet abuse. Benita J. Walton-Moss et al., *Risk Factors for Intimate Partner Violence and Associated Injury Among Urban Women*, 30 J. OF COMM. HEALTH 5, 9 (2005). Petitioner's behavior fits squarely in McDonald's research findings, which identify cruelty toward a pet as a means by which an abuser retaliates against the mother or child. McDonald at 8.

Ms. Davies also testified that she believed Petitioner would kill her, and then kill K.D., were she to return to St. Martin. This is yet another risk factor from Dr. Campbell's analysis—"woman believed he was capable of killing her"—indicating dangerousness or lethality. Campbell, *Assessing Risk*. Once again trying to minimize the effect of his abuse, Petitioner points to testimony from Ms. Davies that Petitioner never threatened to physically

harm her. (Pet. Op. Br. at 26.) But Dr. Campbell's risk factor focuses on the woman's *belief* that the abuser was capable of killing her—a tacit acknowledgment that an abuser's intense psychological abuse (intended to instill the very fear that Ms. Davies testified about), like Petitioner's conduct in this case, make an explicit threat unnecessary.

IV. Well-established social science research shows that domestic violence toward a parent directly affects a child.

Careful consideration of Petitioner's coercive control of Ms. Davies, and minimization of his responsibility for the effects thereof (*supra* Sections I and II), along with other markers for dangerousness (*supra* Section III) is critical to assessing the grave risk of harm to K.D. Research and empirical evidence have shown that a batterer's treatment of the mother is an important predictor of how he is likely to treat the children. Bancroft et al., BATTERER AS PARENT 55-60. Indeed, Ms. Davies testified here that “a lot of the things that he was doing to me I could see that he was doing to K.D,” which supports the conclusion that K.D. is subject to a grave risk of harm. (Tr. 102.)

Petitioner's patterns of coercive control had, and will continue to have, a direct negative impact on K.D. Seeing one parent inflict “a pattern of assaultive and coercive behaviors” upon another “can destroy a child's core sense of security and trust and can create deep feelings of helplessness,

guilt, and shame when children cannot make the violence stop or protect the non-offending parent.” U.S. Attorney General’s National Task Force on Children Exposed to Violence, *Defending Childhood*, at 109 (Dec. 12, 2012). The effects are potentially life-long, ranging from “behavioral disturbance” to “poor academic performance” to “becoming future perpetrators or victims of intimate partner violence.” Mary A. Kernic et al., *Children in the Crossfire*, 11 VIOLENCE AGAINST WOMEN 991, 993 (2005). One review of 31 studies concluded that children exposed to domestic violence exhibit “a host of behavioral and emotional problems, when compared to other children.” Jeffrey L. Edleson, *Children’s Witnessing of Adult Domestic Violence*, 14 J. INTERPERSONAL VIOLENCE 839, 846 (1999); *see also Elyashiv v. Elyashiv*, 353 F. Supp. 2d 394, 408 (E.D.N.Y. 2005) (citing the Edleson study with approval).

Aside from experiencing feelings of helplessness and guilt, “[m]erely observing domestic violence may have the same effect on a child as actually being abused,” and “[c]hildren who witness domestic abuse experience increased health problems as well as impaired behavioral and emotional functioning, even when they are not abused themselves.” Lisa Bolotin, *When Parents Fight: Alaska’s Presumption Against Awarding Custody to Perpetrators of Domestic Violence*, 25 ALASKA L. REV. 263, 270 (2008).

Specifically, children exposed to domestic violence tend to exhibit symptoms of post-traumatic stress disorder and face a “higher risk for suicide, substance abuse and crime.” Robert B. Strauss, *Supervised Visitation and Family Violence*, 29 FAM. L.Q. 229, 230 (1995); see also Ann Coker et al., *Physical and Mental Health Effects of Intimate Partner Violence for Men and Women*, 24 AM. J. OF PREVENTATIVE MED. 260 (2002). Research “consistently demonstrates that children of a parent who has abused a partner are at a significantly increased risk for physical and sexual abuse at the hands of that parent.” Clare Dalton et al., *High Conflict Divorce, Violence, and Abuse: Implications for Custody and Visitation Decisions*, 54 JUVENILE & FAMILY COURT J. 11, 18 (2003).

K.D.’s exposure to violence in the home was not limited to abuse directed at Ms. Davies, but extended to Petitioner’s treatment of K.D. directly. Petitioner’s demeanor toward K.D. was defined by aggressive overreactions inappropriate for a child of K.D.’s young age: yelling angrily when K.D. woke up crying at night as a baby (Tr. 87); shouting at K.D. when K.D. would throw food from his high chair while eating (Tr. 94); and calling K.D. “an ignorant piece of shit” at a family beach outing (Tr. 103). And, Petitioner would “just rip K.D. out of [Ms. Davies’] arms” if Petitioner thought Ms. Davies wasn’t being a good mother or when Ms. Davies was

consoling K.D. if he injured himself. (Tr. 94.) As he got older, K.D. started to intervene to protect Ms. Davies from Petitioner's abuse, holding Petitioner back and imploring him to stop. (Tr. 584-85, 949-50.) Not only is K.D.'s intervention another instance of his exposure to Petitioner's domestic violence, but studies confirm that abuse against a parent can cause the child to intervene on behalf of the victim, placing the child at risk for harm and causing the child to experience negative psychological effects if they are unable to stop the abuse. *See* U.S. Attorney General's National Task Force on Children Exposed to Violence, *Defending Childhood*, at 109 (Dec. 12, 2012).

Recent neurological studies have confirmed the harmful effects of domestic violence on children. While the lasting detrimental effects of exposure to domestic violence on childhood development have been long known, neuroscientific studies have identified the explanations for these effects. Lynn Hecht Schafran, *Domestic Violence, Developing Brains, and the Lifespan: New Knowledge from Neuroscience*, 53 *THE JUDGE'S J.* 32, 33 (2014). Specifically, children exposed to domestic violence live in a perpetual "alarm state," acutely sensitive to stress—like traumatic stress resulting from domestic violence exposure—which damages normal development of the synaptic connections of a child's developing brain. *Id.*

at 34-36. The effects are wide-ranging, from impaired learning and memory that can impact a lifetime of learning, to neurochemical imbalances that can cause “withdrawal, helplessness, dependence, anxiety disorders, and major depression.” *Id.*

The World Health Organization has recognized that the exposure of children to violence in the family, along with child maltreatment, are predictors of a risk of violence. World Health Organization, *Violence Against Women Fact Sheet* (Nov. 2016), <http://www.who.int/mediacentre/factsheets/fs239/en/>. The WHO warned that such violence has “serious short- and long-term physical, mental, sexual and reproductive health problems for survivors and for their children, and lead to high social and economic costs,” and specifically impact children who “may suffer a range of behavioural and emotional disturbances.” *Id.* (noting an increased risk of child mortality and morbidity where violence is present in the home). And though the child need not witness domestic violence to be negatively impacted, the child is at an increased risk of both minor and severe injuries if the abuser has previously perpetrated physical violence in front of the child. Martie P. Thompson et al., *Risk Factors for Physical Injury Among Women Assaulted by Current or Former Spouses*, 7 VIOLENCE AGAINST WOMEN 886 (2001) (further finding that high levels of emotional abuse also increases this

risk); U.S. Department of Health and Human Services, Children's Bureau, DOMESTIC VIOLENCE AND THE CHILD WELFARE SYSTEM (2014) ("Children who have been exposed to domestic violence are more likely than their peers to experience a wide range of difficulties, and the potential effects vary by age and developmental stage.").

Courts addressing Hague Convention cases likewise have found psychological abuse of a child's mother can create a grave risk of harm to a child. For example, in *Khan v. Fatima*, the Seventh Circuit held that "physical and psychological abuse of a child's mother by the child's father, in the presence of the child (especially a very young child, as in this case), is likely to create a risk of psychological harm to the child." 680 F.3d 781, 787 (7th Cir. 2012); *Van De Sande v. Van De Sande*, 431 F.3d 567, 570 (7th Cir. 2005) ("But given [the father's] propensity for violence, and the grotesque disregard for the children's welfare that he displayed by beating his wife severely and repeatedly in their presence and hurling obscene epithets at her also in their presence, it would be irresponsible to think the risk to the children less than grave."). The First Circuit similarly observed that "both state and federal law have recognized that children are at risk of physical and psychological injury themselves when they are in contact with a spousal abuser," and reversed the lower court's ruling that a pattern of spousal abuse

toward the mother did not pose a grave threat to the children. *Walsh v. Walsh*, 221 F.3d 204, 220 (1st Cir. 2000); *see also Miltiadous v. Tetervak*, 686 F. Supp. 2d 544, 554 n. 12 (E.D. Pa. 2010) (noting “state and federal law have recognized that children are at an increased risk of physical and psychological injury themselves when they are in contact with a spousal abuser”).

Petitioner’s response to the weight of this authority is to minimize and deflect it, arguing that this Court should reverse because “There is No Evidence K.D. is Afraid of Chris.” Petitioner’s response is not compelling. Article 13(b) of the Hague Convention does not require Ms. Davies to show that K.D. fears Petitioner; the inquiry is whether there is a grave risk of *harm*, including psychological harm, to K.D. should he be returned to St. Martin. In any event, K.D. may not show his fear of Petitioner because “systematic abuse . . . can lead to the formation of unusually strong but unhealthy bonds and can foster the victim’s development of potent dependence on the abuser.” Bancroft et al., *THE BATTERER AS PARENT* 49-51. This phenomenon, known as “traumatic bonding,” undercuts Petitioner’s arguments that K.D.’s behaviors are due to a lack of fear.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Boston, Massachusetts
September 21, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Local Rules 29 and 32.1 because this brief contains 6,553 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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Dated: September 21, 2017

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