

Let justice be done

The Second Circuit is urged to protect a four-year-old child and his mother facing domestic violence, abduction to Iran and human rights violations upon forced repatriation under the Hague Convention.

BY JANE KIM AND DORCHEN LEIDHOLDT

If ever there was a case of grave risk of harm to a child or of violations of human rights compelling a U.S. court to protect the safety and life of a child under the international treaty known as the Hague Convention on the Civil Aspects of International Child Abduction—this is it.

On March 13, the U.S. Court of Appeals for the Second Circuit will hear argument on whether U.S. courts should force vulnerable children to return to countries where they will be exposed to severe domestic violence, despite the established defenses enumerated under the Hague Convention. Specifically, the Second Circuit will decide if a volatile combination of a child's exposure to severe domestic violence perpetrated by his father against his mother, the abusive

father's scheme to permanently abduct the child from Singapore to Iran and the child's inevitable loss of his mother upon repatriation constitute "a grave risk of physical or psychological harm" to the child.

Imagine this. You are a Malaysian citizen living with permanent residency in Singapore. You marry an Iranian Muslim man who owns a lucrative international security business. A month into your marriage, he starts to physically, sexually and psychologically abuse you. He slaps you, kicks you, drags you around the house by your hair, chokes you and beats you. He rapes you. He tries to control you, blame you, isolate you from your friends and family, and he makes you quit your job. He threatens to kill you. You give birth to your beautiful baby son—and now, instead of one victim, there are two. The abuse

does not stop. You ask the police for help. You file no less than five police reports, but the police refuse to intervene.

Terrified, you leave. You flee your home with your son, but the abuse continues and escalates.

Your batterer repeatedly threatens to permanently take your son to Iran. Unbeknownst to you, your batterer surreptitiously obtains Iranian citizenship for you and your son, placing your Malaysian citizenship and Singapore residency status in jeopardy. To protect you and your son from the ongoing abuse, you again seek the protection of the judicial system and file for sole custody. But, in a twisted turn, the judicial system that is supposed to protect you instead reveals itself to be a complicated maze that ultimately leaves you at the mercy of religious courts—the Syariah courts of Singapore, Malaysia and Iran—where your

word as a woman is presumptively afforded less weight than that of your male batterer, and where your batterer has exposed you to loss of custody and the death penalty for your purported abandonment of Islam, a crime called apostasy in Malaysia.

This is only a piece of Jenni's heart-wrenching story.

In May 2012, Jenni fled with her son from their abuser to her uncle's home in the United States. Her batterer soon followed, hiring private investigators to track her down, and filing a petition for return of the child under the Hague Convention in the U.S. District Court for the Southern District of New York.

The purpose of the Hague Convention, to which the United States is a party, is to protect the safety, rights, and life of the child; it is not to embolden battering husbands or force the return of domestic violence victims to continued abuse. Under Articles 13(b) and 20 of the Convention, a U.S. court is authorized to deny the return of a child if it finds that such a return would create a "grave risk of physical or psychological harm" to the child, or if it finds that the return would be inconsistent with the "fundamental freedoms and human rights" of the United States. It is widely accepted—by federal appellate and district courts as well as by domestic violence and child welfare experts—that a history of violence or spousal domestic violence can constitute grave risk of harm.

In a decision that shocks the conscience, in December 2012, the district court granted the abusive father's petition and ordered the return of Jenni's son to Singapore. The district court's decision was based on profoundly erroneous misapprehensions about the fundamental nature of domestic violence. Domestic violence is about power, control and domination of the victim by the perpetrator, it escalates post-separation, victims minimize their abuse, and children profoundly suffer from witnessing domestic violence. Despite these widely accepted facts, the district court concluded that this was not a case of an "obsessed or jilted lover" and that the domestic violence in this case would not continue because the parties would not "cohabit." The district court also concluded that Jenni was a "willing participant" in her own sexual abuse and rape.

On February 22, 32 domestic violence and child welfare experts, law clinics and organizations submitted amicus briefs urging the Second Circuit to reverse the district court's shocking and profoundly misguided decision, which flies in the face of federal precedent and longstanding expertise and literature from the field.

Jenni and her son are now at the mercy of another judicial system: ours. On March 13, the Second Circuit will have the opportunity to provide protection and justice to Jenni, her

four-year-old son, and to victims and survivors of domestic violence by reversing a gravely misguided decision and dismissing this abusive husband's petition for the return of Jenni's vulnerable four-year-old son to Singapore.

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