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THE GOLDMAN ACT TO RETURN ABDUCTED AMERICAN CHILDREN: ENSURING ACCURATE NUMBERS AND ADMINISTRATION ACTION

HEARING

BEFORE THE

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS

OF THE

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THE GOLDMAN ACT TO RETURN ABDUCTED AMERICAN CHILDREN: ENSURING ACCURATE NUMBERS AND ADMINISTRATION ACTION

THURSDAY, JULY 16, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH,
GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:04 a.m., in room 2200 Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the subcommittee) presiding.

Mr. SMITH. Good morning, and the hearing will come to order.

And we thank all of you, especially all of the left-behind parents I see in the audience—and there are many—for joining us this morning to discuss how the U.S. Department of State's first annual report under the Sean and David Goldman International Child Abduction Prevention and Return Act can better correspond with the mandate set by Congress and achieve the return of abducted American children, which is the ultimate objective of the Goldman Act.

Every year, as we know, an estimated 1,000 American children are unlawfully removed from their homes by one of their parents and taken across international borders. As many of you know all too well, international parental child abduction rips children from their homes and families and whisks them away to a foreign land alienating them from the love and care of the parent and family left behind.

Child abduction is child abuse, and it continues to plague families across the United States and across the world. For decades, the State Department has used quiet diplomacy to attempt to bring these children home. But we know that less than half of these children ever come home, even from countries that have signed the Hague Convention on the Civil Aspects of International Child Abduction.

In a hearing I held on this issue back in 2009, former Assistant Secretary of State Bernie Aronson called quiet diplomacy "a sophisticated form of begging." Thousands of American families, still ruptured and grieving from years of unresolved abductions, confirm that quiet diplomacy is gravely inadequate.

Last year, Congress unanimously passed the Goldman Act to give teeth to requests for return and for access. The actions required by

the law escalate in severity and range from official protest through diplomatic channels to extradition to the suspension of development, security, or other foreign assistance.

The Goldman Act is a law calculated to get results, as we did in the return of Sean Goldman from Brazil in late December 2009. But the new law is only as good as its implementation. The State Department's first annual report that we are reviewing today is the first step in moving past quiet diplomacy to results. The State Department must get this report right in order to trigger the actions above and for the law to be an effective tool.

Countries should be listed as worst offenders if they have high numbers of cases—30 percent or more—that have been pending over a year, or if their law enforcement, judiciary, or central authority for abduction regularly fail in their duties under the Hague Convention or other controlling agreements, or if the country simply fails to work with the United States to resolve cases.

Once these countries are properly classified, the Secretary of State then determines which of the aforementioned sanctions the United States will apply to the country in order to encourage the timely resolution of abduction and access cases.

While the State Department has choice on which tools to apply, and can waive actions for up to 180 days, the State Department does not have discretion over whether to report accurately to Congress on the country's record or whether the country is objectively non-compliant.

As we have seen in the human trafficking context—and I would note parenthetically I authored the Trafficking Victims Protection Act of 2000 as well as the Goldman Act—accurate accounting of a country's record, especially in comparison with other countries, can do wonders to prod much-needed reform. Accurate reporting is also critical to family court judges across the country, and parents considering their child's travel to a country where abduction or access problems are a risk.

The stakes are high. Misleading or incomplete information could mean the loss of another American child to abduction. For example, a judge might look at the report table filled with zeroes in the unresolved cases category, such as is the case with Japan, and erroneously conclude that a country is not of concern, giving permission to an estranged spouse to travel with a child for a vacation.

The estranged spouse then abducts the child, and the left-behind parent spends his or her life savings and many years trying to get the child returned to the United States, all of which could have been avoided with accurate reporting on the danger.

I am very concerned that the first annual report contains major gaps and even misleading information, especially when it comes to countries with which we have the most intractable abduction cases. For example, the report indicates that India, which has consistently been in the top five destinations for abducted children, has 19 new cases in 2014, 22 resolved cases, and no unresolved cases. However, we know that from the National Center for Missing and Exploited Children that India has 53 open cases, and that 51 have been pending for more than 1 year.

While the State Department has shown willingness to work constructively on making the report better, for example, meeting last

week with our staff, our June 11 hearing left many questions unanswered as to why this report failed to hold countries accountable for unresolved cases.

We wrote the law with the belief that the State Department was formally raising these cases by name, with the foreign ministries of destination countries, and asked that cases still pending for 1 year after being raised would be counted as unresolved. But these cases were not included in the report.

A few parents who reported their cases to the State Department years ago, and who have consistently been asking the Department for help, were told by their case officers recently that the cases were formally communicated to India in May 2015. May 2015. Clearly, delay is denial. They thought that that was not the case.

The Goldman Act also requires that the State Department take actions against countries, such as India and Japan, if they refuse to resolve abduction and access cases. The Goldman Act requires the State Department to bring negotiations with countries like India and Japan for a bilateral agreement to secure resolution of the more than 100 open cases we have pending with those two countries, cases that are not listed as unresolved in the report.

The Goldman Act requires an end to the status quo, but the first step to change is telling the truth in the report, which is why I am so concerned that Japan was not listed as showing a persistent failure to work with the United States on abduction issues. Japan has never issued and enforced a return order for a single one of the hundreds of American children abducted there. It holds the world record on the abduction of American children never returned. And yet it got a pass on more than 50 known open cases, most of which have been pending for 5 years or more.

Among those cases is that of Sergeant Michael Elias, who has not seen his children, Jade and Michael, since 2008. Michael served as a Marine who saw combat in Iraq. His wife, who worked in the Japanese Consulate, used documents fraudulently obtained, with the apparent complicity of the Japanese Consulate personnel, to kidnap their children, then aged four and two, in defiance of a court order telling Michael on a phone call that there was nothing that he could do. And she said, "My country"—that is, Japan—"will protect me."

Her country, very worried about its designation in the new report, sent a high-level delegation to the United States in March to meet with Ambassador Jacobs, our distinguished witness, who will lead off today's hearing, and explain why Japan should be excused from being listed as non-compliant, despite the fact that more than 1 year after signing the Hague Convention on the Civil Aspects of International Child Abduction Japan has ordered zero returns to the U.S.

Just before the report was released in May, 2 weeks late, Takashi Okada, Deputy Director of the Secretariat of the Ministry of Foreign Affairs, told the Japanese Diet that he had been in consultation with the State Department and, "Because we strive to make an explanation to the U.S. side, I hope that the report contents will be based on our country's efforts."

In other words, Japan understood it could get a pass potentially from the United States and escape the list of countries facing ac-

tion by the U.S. for their failure to resolve abduction cases based on what Mr. Okada euphemistically referred as "efforts," not concrete results.

Sergeant Michael Elias' country has utterly failed to protect him. He has seen zero progress, and I traveled to Japan myself with Michael's mother. And the idea there was, as she had a very close relationship with her daughter-in-law, that at least the grandmother of those children might have access, and we utterly failed during that trip to garner any kind of access, contact, and certainly no action on returning his children.

The Goldman Act is clear. All results for return that the State Department submitted to the Foreign Ministry and that remain unresolved 12 months later are to be counted against Japan and followed up with action. The Goldman Act has given the State Department new and powerful tools to bring Japan and other countries to the resolution table.

The goal is not to disrupt relations but to heal the painful rifts caused by international child abduction. The question still remains: Will the State Department use the Goldman Act as required by law?

I would like to yield to my good friend and colleague, Mr. Cicilline, for any opening comments he might have.

Mr. CICILLINE. Thank you, Mr. Chairman. I want to begin by thanking you for your leadership and for calling today's hearing on the Goldman Act to Return Abducted American Children: Ensuring Accurate Numbers and Administration Action, to give us an opportunity to discuss the disturbing increase of child abduction cases in recent years and examine how the Obama administration has been able to implement the very important provisions of the Goldman Act in order to ensure that all children that call the United States home are able to return.

I would also like to thank our distinguished witnesses for today's hearing that includes advocates, government officials, and, most importantly, parents that have been personally affected by international parental abductions.

I look forward to hearing each of your perspectives based on your expertise and personal experiences in this area, including your assessment of what more should be done to successfully implement the Goldman Act and how Congress can assist with effective implementation moving forward.

According to the State Department, approximately 1,000 children are victims of international parental abduction every year. It is important to note, however, that in recent years there has been a significant increase in the number of American children being abducted. This sharp increase in abductions is a grim indicator that while globalization has brought innumerable benefits to us all, the ease of international travel has had a negative impact on the number of parental abductions that occur.

For example, over 300 U.S. children have been abducted to Japan since 1994. And despite Japan's ratification of the Hague Convention on the Civil Aspects of International Child Abduction in 2014, many of these cases would not fall under the Convention as the ratification does not have retroactive power.

I look forward to hearing how the administration is working to bring all abducted children back, not only from Japan but from other countries with high numbers of abducted U.S. children, including India and Brazil. And I am very pleased that we have witnesses that can speak to their personal experiences dealing with abducted children in those countries as well.

I am proud to say that Congress has been quite active in this area of the law, with strong bipartisan support throughout. In December 2013, the House unanimously passed H.R. 3212, the Sean and David Goldman International Child Abduction Prevention and Return Act. This bipartisan support shows how committed this body is to ensuring that children are protected and that their welfare remains a top priority.

The Goldman Act provides a range of steps that the administration can take depending on the severity of the situation, from a petition through diplomatic channels to more serious actions like the withdrawal of foreign assistance or a formal request for extradition.

I look forward to hearing from our witnesses representing the administration on how effective these strategies that are outlined in the act have been in the short period of time since its enactment.

I will close by saying that we all have a personal stake in protecting those that are most vulnerable in our society. The welfare of our youngest citizens is of utmost importance, and I look forward to working with my colleagues here on the Hill and with the Obama administration to ensure that all children remain safe and in the custody of those that have been awarded that privilege.

And, again, I thank our witnesses, and thank the chairman, and yield back.

Thank you.

Mr. SMITH. I would like to now introduce our distinguished witness, first witness. Ambassador Susan Jacobs currently serves as Special Advisor in the Office of Children's Issues at the U.S. Department of State. Ambassador Jacobs has had a long career in the Foreign Service in which she has served around the world, including in Papua New Guinea, where she was Ambassador. She has also held a number of senior positions with the State Department in Washington, serving as a liaison to both Congress and Department of Homeland Security.

Ambassador Jacobs recently traveled to Japan and to Macau for a Hague conference to promote resolutions of child abduction and access cases.

And, Madam Ambassador, the floor is yours.

STATEMENT OF THE HONORABLE SUSAN S. JACOBS, SPECIAL ADVISOR FOR CHILDREN'S ISSUES, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Ambassador JACOBS. Chairman Smith and distinguished members of the subcommittee, thank you for inviting me to appear before you again. I am very pleased to be here.

Nothing is more important to me than the safety, health, and happiness of my own children and grandchildren. So as the Secretary's Special Advisor for Children's Issues, I seek the same for all children around the world, especially those who are victims of international parental child abduction.

To the families whose children were abducted, you have my heartfelt sympathy. I take your real-life stories with me when I meet with foreign government officials, and I raise your cases at the highest levels. We recognize that parents who are on active military service face an extra burden.

Abduction is wrong, it is not safe for children, and it is not fair to the child or to the left-behind parent, yet these cases are complicated and difficult to resolve because once the parent and child have crossed an international border they are subject to the laws of another country.

We place great importance on combating international parental child abduction. Our work on every case and every bilateral relationship matters, and we have the tools that work now, but we think with this new law they will be even more effective in the future.

Our work matters. The prevention branch in the Office of Children's Issues, working with colleagues at State, with law enforcement, and with NGO counterparts, through the reinvigorated process given us by the law, has stopped 360 abductions since 2011, but 66 in the first 6 months of this year, 2 of which were prevented just yesterday.

So this is very good news. We already have reports in addition that 202 children have been returned from various countries to the United States under the provisions of either the Convention or non-Convention. Through the Hague Convention on International Parental Child Abduction, one of the most important tools that we have, we have partnerships with 73 countries, and we are seeking to increase the number of Convention partners every day.

But even as we celebrate these successes, we still have work to do to return children from Convention and non-Convention countries. The 2015 annual report was the first under the new law. We compiled it under a compressed timeline and devoted significant effort to make sure that we included everything required in the law.

We fully understand that this report did not meet all expectations. We have received valuable feedback from this subcommittee, from others in Congress, from parents, and from NGOs about areas that need to be clarified with additional data. As Pope Francis said, "Criticism must be received, it must be studied, and dialogue must follow."

The 2015 annual report provides important opportunities to us. Our diplomatic missions overseas have delivered demarches to every country that was listed as non-complying as soon as the report was issued. We underscore our ongoing engagement through my trips to India, Japan, the Philippines, and Central America, as well as through multilateral meetings. We have informed governments of the potential repercussions if they are designated as showing patterns of non-compliance and followed up with demarches.

Let me talk about Japan for just a moment. I know that you and many parents are frustrated with the data that was furnished in the report on the Japanese cases. We will be posting supplemental data on our Web site with additional context that I hope will fill many of the gaps that you have identified.

As of July 1, the Office of Children's Issues, as the Central Authority, has cases involving 109 children to Japan. These cases include parents who are seeking the return of their children, as well as access, and in some cases both. But I think that we all agree that one case is one case too many.

And I know that you and others remain concerned that Japan was not cited as demonstrating a pattern of non-compliance in the report. But let me underscore: This report is not silent on Japan. The report acknowledges that the pre-Convention cases have languished for years, with little or no action, and we highlight this worrying lack of progress.

But as a Convention partner, Japan is fulfilling its treaty obligations. Japanese courts have ordered the return of abducted children to the United States. Japan has appointed two Hague network judges and has consolidated courts to hear return and access cases. But, still, the treatment of the pre-Convention cases is problematic, and we did raise every case with the Japanese on my recent visit. And we have told them, and they understand, that the status quo is not acceptable or sustainable.

With the support of Ambassador Kennedy and the leadership of the Department's East Asia and Pacific Affairs Bureau, we will continue to work together to resolve the pre-Convention cases.

We also appreciate the great interest shown by this committee, and by the Congress as a whole, and I believe that we will make more progress on abductions with Japan through sustained, proactive, rigorous engagement. In this diplomatic engagement, we have found that it is effective with all countries, not just Japan, and not just with countries that are demonstrating patterns of non-compliance. We analyze every country and every case to decide what appropriate actions need to be taken.

Mr. Chairman, members of the subcommittee, we do the work on IPCA together. It matters, and it works. Left-behind parents and their supporters do not have a choice to be involved in this issue. Their involvement is imposed on them by the reckless acts of others.

We in the Office of Children's Issues have voluntarily chosen to make this heartbreaking issue our professional calling. Numbers and reports may detail our efforts or reflect our proficiency, but they cannot show the heart that we bring to this important work on behalf of children and families, and I am honored every day to lead this team.

We are committed to fully and successfully implementing the law, and we are confident that the tools in the law will be even more effective in the future. Your support remains a key element to our success in improving the effectiveness of IPCA prevention, maintaining IPCA as a priority in our relationships with other countries, and pressing for viable resolutions in all cases.

Thank you very much, and I will be pleased to take your questions.

[The prepared statement of Ambassador Jacobs follows:]

DEPARTMENT OF STATE

STATEMENT

OF

AMBASSADOR SUSAN S. JACOBS

SPECIAL ADVISOR FOR CHILDREN'S ISSUES

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON FOREIGN AFFAIRS

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS

HEARING

ON

JULY 16, 2015

Chairman Smith, Ranking Member Bass, and distinguished Members of the Subcommittee – Thank you for the opportunity to address you again regarding international parental child abduction, or IPCA, and our continuing implementation of the Sean and David Goldman International Child Abduction Prevention and Return Act of 2014, or ICAPRA.

The Department of State values the ongoing interest and support on this issue from Members of Congress. We appreciate the efforts of Chairman Smith and the interest from Ranking Member Bass, as well as the many Members who advocate in support of their constituents affected by the tragedy of IPCA and parental child abduction in general. We also appreciate the efforts and advocacy of the many non-governmental organizations such as International Social Services (ISS) and the National Center for Missing and Exploited Children (NCMEC) working to support families and return children wrongfully abducted across international borders. We share with all of you the goals of preventing international parental child abduction, of the expeditious return of children to their homes, and of the strengthening and expansion of the 1980 Hague Convention on the Civil Aspects of International Child Abduction (Convention).

I have the honor of serving as the Bureau of Consular Affairs' Special Advisor for Children's Issues. Testifying before you today, I represent the many dedicated officials of the Department of State, in Washington and in our diplomatic missions worldwide, who are committed to the mission of preventing IPCA, safeguarding the welfare of children abducted across international borders, returning abducted children to their place of habitual residence, and helping parents resolve these difficult and painful cases. The Office of Children's Issues, or CI, in the Bureau of Consular Affairs' Overseas Citizens Services directorate leads U.S. government efforts on IPCA prevention and returns, assists children and families involved in IPCA cases in all countries, and executes U.S. obligations under the Convention as the U.S. Central Authority.

What we do on IPCA in CI and the Department of State as a whole is important. It matters. And it works. In my testimony today I will demonstrate the importance we place on IPCA cases and issues, how our work on every case and every bilateral relationship matters, and how the tools we use work now and will be even more effective in the future.

Our Work is Important

In 1994, the Bureau of Consular Affairs created the Office of Children's Issues with a staff of four officers to focus specifically on IPCA and intercountry adoption. Every Secretary of State and Assistant Secretary for Consular Affairs since CI's founding has recognized the importance of this issue and the role the Department plays in the Convention process and with non-Convention countries to resolve IPCA cases and return children.

As the serious and negative short- and long-term consequences of IPCA on children and families became more widely recognized and Hague Abduction Convention membership grew, so did our dedicated staff. Today, CI is one of the largest offices in the Bureau of Consular Affairs, with the IPCA-focused staff alone numbering more than 80 employees. Once primarily focused on case management, our country officers now coordinate Department-wide bilateral efforts in dedicated regional portfolios as well as pursue the resolution of individual cases in

those countries. This dual responsibility recognizes the mutually reinforcing importance of case resolution with the foreign country's policies and performance on IPCA issues.

In 2011, we recognized the importance of IPCA prevention by establishing a Prevention Branch to work closely with domestic passport agencies, state and local officials, NGOs, law enforcement, and the Department of Homeland Security (DHS), with the goal to protect children, assist parents, and save families the heartbreaking experience of wrongful abduction. The Prevention Branch manages the Children's Passport Issuance Alert Program (CPIAP), and prevention officers are trained to collaborate with passport agencies and U.S. embassies and consulates abroad to review passport applications involving children party to child custody cases, to ensure two-parent consent laws are upheld.

Our Work Matters

We know that our work matters to every child and every parent. From prevention to resolution to return, CI staff work hard to provide options and resources to parents, protect the welfare of children, and use all appropriate tools to return children. We know that our bilateral work encourages compliance in countries that are party to the Convention and that it encourages other countries to become party to, or to begin to apply, Convention principles.

How our work matters may be demonstrated in data and numbers. The Prevention Branch, working together with its State Department, interagency, law enforcement, and NGO counterparts, has prevented more than 360 abductions since 2011. The Prevention Branch enrolls and updates more than 500 CPIAP cases per month and has worked on more than 18,000 CPIAP cases since 2011. As reported in the 2015 Annual Report, in CY 2014, CI as the U.S. Central Authority, assisted in the resolution of 781 abduction and access cases worldwide. This included the return of 374 children to their habitual residences in the United States in 260 cases. In the first six months of CY 2015, we already have reports of 202 children returned to the United States in 142 cases. We are partners with 73 Convention countries and are working to increase this number.

Even as we celebrate these successes, we know our work matters in every case that remains unresolved and in every country, Convention or non-Convention, regardless of the number of cases. To our dedicated country officers, each and every case matters. They provide many services to left-behind parents (LBPs), from information about foreign and domestic IPCA-related resources, to processing Hague Convention applications and monitoring Convention proceedings, to coordinating with U.S. embassies and consulates to monitor the welfare of abducted children, to facilitating communication with state and federal government agencies and relevant foreign government authorities. In addition, every country officer develops effective working relationships throughout the Department of State, the relevant U.S. diplomatic missions abroad, and with foreign governments, including Foreign Central Authorities and other appropriate officials. They approach each case and each country strategically, employing the myriad diplomatic tools, resources, and legal actions available to try to resolve every case and return every wrongfully abducted child to his or her habitual residence.

It is clear our work matters, and we attract, recruit, and retain high-quality employees in CI. Left Behind Parents and their supporters, sadly, do not have a choice to be involved in IPCA cases; their involvement is imposed on them by the actions of others. CI, however, is an office of professionals who have voluntarily chosen to make this heartbreaking issue our professional calling. Numbers and reports may detail our efforts or reflect our proficiency, but they cannot show the heart we bring to this important work on behalf of children and their families.

Our Tools Work

As described above, the full array of diplomatic tools and engagement have yielded important results. Working with our diplomatic counterparts multilaterally and in support of the Hague Permanent Bureau, we have achieved important expansion of our partnerships in the Convention, the most effective legal mechanism for parents seeking the return of their children to the United States. We partnered with Morocco in 2012, the first majority Muslim country to become party to the Convention. We saw critical expansion in East Asia after significant bilateral and multilateral efforts, when the Convention went into effect with Korea in 2013 and Japan in April 2014. Our efforts continue full force, particularly in the Middle East, South Asia, and Southeast Asia. As reported in the 2015 Annual Report, in 2014, I traveled to 16 countries, and U.S. Central Authority officials traveled to nine other countries, to hold bilateral discussions with foreign governments on resolving IPCA cases, strengthening Convention compliance, and supporting their progress towards becoming party to the Convention. Just this month, I completed a trip to East Asia, including visits to Macau for a Hague Permanent Bureau conference, the Philippines to promote accession to the Convention, and to Japan to press for meaningful action on pre-Convention abduction cases and all Convention abduction and access cases.

The Annual Report to Congress has been and will continue to be an effective tool. The previous Annual Report focused on the compliance of other parties to the Convention. After being listed as non-compliant in successive reports, Mexico, a critical Convention partner for the United States, made substantive improvements on the challenging issues of judicial and law enforcement performance. As a result of increased compliance resulting in returns and resolutions, Mexico has not been listed as non-compliant for several years and has become a close and effective partner.

The 2015 Annual Report was the first since the recently-enacted Sean and David Goldman Act. We compiled this report on a compressed timeline with data gathered in the months after the new law came into effect. We devoted significant effort to ensuring we included everything required in the law. We fully understand that the 2015 Annual Report does not meet all expectations. We have received valuable feedback from this subcommittee, others in Congress, NGOs, and parents about areas that need further amplification or could be clarified with additional detail. We are committed to providing more information this year and to making future reports as effective as we can.

The 2015 Annual Report has provided important opportunities. Our diplomatic missions overseas have delivered demarches to the governments of every country listed as demonstrating patterns of non-compliance. This included non-Convention countries such as India, which has

the highest number of cases of any country that is not party to the Convention, and Middle Eastern countries where resolutions and returns are exceedingly rare. Through the demarches, we underscored our ongoing bilateral and multilateral engagement, such as my recent trip to India prior to the Annual Report's publication. We raised outstanding cases, IPCA issues, and Convention principles more broadly with these governments. We also informed these governments of the potential repercussions if they were designated as showing patterns of non-compliance.

ICAPRA prevention measures work. I have convened two meetings of the ICAPRA-required "Prevention of IPCA Interagency Working Group" composed of participants from the Department of State, the Department of Justice, the Federal Bureau of Investigation, DHS, and, at our most recent meeting, the Department of Defense. These meetings have helped streamline communications among law enforcement, our Prevention Branch, and DHS so that law enforcement can act quickly to stop abductions in progress. We are confident this working group will improve the prevention of IPCA throughout the United States.

Diplomatic engagement remains our most effective tool with all countries. We analyze every country and every case to decide the appropriate diplomatic engagement or action. Some of those actions will be detailed in the ICAPRA-required report on actions taken toward countries determined in the 2015 Annual Report to have demonstrated patterns of non-compliance, as defined in the law. In addition to the actions listed in the Annual Report, I and other Department officials regularly engage with foreign governments of non-Convention countries, and Convention countries with non-Convention cases, to encourage those countries to ratify or accede to the Convention, as appropriate, and to address pending abduction and access cases.

Though Japan's ratification to the Convention was achieved, and it is considered a Convention country for purposes of the Annual Report, we are keenly aware of and actively engaged on the pre-Convention abduction cases which predate Japan's ratification. The Department has been disappointed that, to date, none of these pre-Convention cases has resulted in either meaningful parental access or the return of a child to the United States. As a top priority on my recent trip to Japan, in meetings with the responsible officials at the Ministry of Foreign Affairs, I emphasized that the United States expects meaningful action and resolution of both pre-Convention and Convention cases. We have engaged the Japanese government unceasingly with the full support and participation of U.S. Embassy Tokyo and the Japan Desk to press for returns, meaningful access, and resolutions, as appropriate, in all cases.

We have developed a policy to consider potential bilateral agreements, which might include memoranda of understanding, or other protocols. CI is analyzing potential candidates at this time. The Department will continue to review potential candidates for bilateral agreements, while encouraging accession and ratification to the Convention and compliance among our Convention partners. As I testified in March of this year, we implemented ICAPRA's Congressional notification requirement in April after careful review of all privacy laws and are currently completing the notifications on all open cases.

Conclusion

Mr. Chairman, Ranking Member Bass, distinguished Members of the subcommittee, in the Department of State, the Bureau of Consular Affairs, and the Office of Children's Issues, what we do on IPCA is important. It matters. And it works. We are committed to fully and successfully implementing ICAPRA, and we are confident the tools in ICAPRA will be even more effective in the future. Your support remains a key element to our success in improving the effectiveness of IPCA prevention, maintaining IPCA as a priority in our bilateral relationships, and pressing for viable resolutions to all cases.

Thank you.

Mr. SMITH. Ambassador Jacobs, thank you very much for your testimony and for being with us today, and your staff and top leadership just several weeks ago on this very issue.

I have a couple of questions, beginning first with the supplemental data which you mentioned.

Ambassador JACOBS. Yes.

Mr. SMITH. Is that data likely to change the designation of Japan from its current status of being non-compliant?

Ambassador JACOBS. No, it won't, because we were judging Japan on its performance as a Convention country. But in the report you will notice it is the only country in which we gave a detailed narrative, so that we could capture the lack of progress in the pre-Convention cases.

Mr. SMITH. Well, with total respect to you, and to your office, which I have a great deal of respect for——

Ambassador JACOBS. Thank you.

Mr. SMITH [continuing]. The report, on page 17, says that there are zero unresolved cases.

Ambassador JACOBS. That will be corrected, sir.

Mr. SMITH. But, you know, remember, the language of the Goldman Act made it very clear that the calendar year is what needed to be reviewed, whether or not—and, again, even under the Hague, as far as I know, and you can correct this if you have new information, nobody still has been returned to the United States from Japan pursuant to the Hague Convention.

But the over 50 cases—and we had a—as you might recall, a representative from the National Center for Missing and Exploited Children, at this witness table just several weeks ago, who confirmed what we knew by our own numbers, that there, again, are over 50 unresolved cases, many of which are 5 years or more.

Captain Paul Toland, for example, you know, a distinguished member of our Armed Forces, you know, had his daughter abducted when he was deployed to Yokohama, defending not only the United States but also Japan as part of a force agreement that makes us very, very close allies. And his wife has passed, and yet he still has had neither access nor a return of his daughter, who is now a very young teenager, and it has been a dozen years for him.

That case alone, but then when multiplied by one case after another, including witnesses we will hear from today, I don't know how—and I say this with total respect—I don't know how Japan is not on the non-compliant list. And added to that, because—again, the Goldman Act said to look back 1 calendar year.

And added to that is the issue of a protocol which you reference in your testimony, which I have been pushing for at least 6 years. When I was in Japan I said a Hague ratification without a concurrent protocol or MOU, whatever we might want to call it, a bilateral agreement with Japan to resolve these existing cases, is like a double tragedy for the families. The door gets slammed in their face, because everything from Hague on is from that day a ratification forward, and they are thrown under the bus a second time and abandoned a second time.

The pushback has been profound for years. No bilateral agreement. I am hoping that will be revisited as well, and we will get a bilateral agreement that will lead to returns and not rhetoric.

Ambassador JACOBS. Let me assure you, sir, that we are not throwing the parents and the children and the pre-Convention cases under the bus. Everything is on the table with Japan. We had, for me, the highest level meeting that I have had there, and we stressed that the status quo on the pre-Convention cases is not acceptable, and that we need to find a way to resolve these cases.

There was—and let me——

Mr. SMITH. But, again——

Ambassador JACOBS [continuing]. Also mention we didn't give Japan a pass. We made a determination that we were going to judge Japan on—first, let me explain about the unresolved cases. We did the best we could, looking at the definitions in the law. I know that it was not satisfactory from all the comments that we have gotten, so we have gone back to capture the universe of the cases that exist in every country like Japan and like India.

So that information will be posted within a week on our Web site, travel.state.gov, and we will be sure and send you the information in advance.

Mr. SMITH. But——

Ambassador JACOBS. This report was the first effort to comply with the law. We understand that it was not satisfactory to many people, and we want to do a better job, present the best report that we can in the future. And if that means putting in more narrative and explaining things better or differently, that is our goal.

We want your feedback. And if you—when you get this new information, and you still believe there are gaps, then you need to tell us, so that we can continue to talk about it and try to get you the kind of report that will be helpful and satisfactory and capture the entirety of the abduction issue and these cases. But we are not giving up on any means of reaching the kinds of conclusions that the parents want.

Mr. SMITH. I would respectfully submit that the future is now for these parents. Waiting——

Ambassador JACOBS. I don't disagree.

Mr. SMITH [continuing]. Another year to do a report—Japan—it is inexplicable how Japan is not on the list. Now, whether or not the U.S. Government imposes a sanction of any kind is left to the discretion of the Department, and what works is left to the chief executive.

But getting the report right, I mean, after the last hearing I called it a whitewash, which I do believe it is. I mean, you go to the report and look on page 17, unresolved cases——

Ambassador JACOBS. Look at the narrative.

Mr. SMITH [continuing]. Abduction, it is down to zero.

Ambassador JACOBS. But look at the narrative.

Mr. SMITH. I read the narrative. But it is contradictory to the table that supposedly tells the whole story.

Ambassador JACOBS. I understand that, and so you are going to get new data that will reflect all the cases, the entirety of the cases in Japan.

Mr. SMITH. I understand that. Now, will the new data that comes——

Ambassador JACOBS. And Convention.

Mr. SMITH [continuing]. To Congress' way then lead to a new designation of pattern of non-compliance?

Ambassador JACOBS. I don't know. It probably will not, but that doesn't mean that they are getting a pass. Can I tell you how upset they were with that report? It really got their attention——

Mr. SMITH. But there is still nobody——

Ambassador JACOBS [continuing]. Like nothing else has.

Mr. SMITH [continuing]. No children coming home.

Ambassador JACOBS. The combination of the law and the report really brought home to the Japanese Government that something needs to be done. And we are working on that, and nothing is off the table, including an MOU.

Mr. SMITH. I hear you say, again, Madam Secretary—Madam Ambassador, that——

Ambassador JACOBS. I like the promotion. Thank you.

Mr. SMITH. After I pushed for 3 years to get the Trafficking Victims Protection Act, which had real and does have real sanctions—and we are late on that report, too, frankly. It is supposed to be June 1, I would note parenthetically, and a lot of us think it has to do with Malaysia. That is a whole other issue; it has to do with the TPP and a press conference that will be held this afternoon in a bipartisan way with Rosa DeLauro and others.

But that said, we tried to make sure that the report was absolutely sacred in terms of its data. Israel was put on Tier 3. South Korea, two allies with whom we are as close as it gets, and Israel had a huge trafficking problem, as did South Korea. South Korea, when they were on the sanctions list and were at risk of losing security aid, went overtime to pass a large number of important reform laws, as did Israel.

Israel cracked down, particularly in Tel Aviv, on the brothels where a lot of women were being exploited and cruelly mistreated as trafficked women, and all of a sudden—and I remember meeting with the Ambassador. He came in with a compliance—the possibility of the sanctions really, once the report is done right, sharpens the mind. And they can be angry all they want about anything that is in the report, but if there is no possibility of a sanctions regime, like a sword of Damocles hanging over their head, they will not respond.

And, again, nobody has come back. And what we are asking for is just complete and total honesty. You know, the Bush and certainly the Obama administration, Luis CdeBaca, who was the Ambassador-at-Large for trafficking, they made sure the report was right. There are always a couple of exceptions. But, frankly, they really made sure the report was right. Again, putting Israel and South Korea on there was proof positive.

Japan has to be on that list, or else a year from now we are going to have the same—we will have four more hearings between now and then. We will hear from parents who are heartbroken. Paul Toland will tell his case, others will tell their case, and we will still have kids that are being held, and the Japanese Govern-

ment, you know, will be non-compliant. It has got to be non-compliant.

Ambassador JACOBS. But let me say that even if Japan is not listed as non-compliant doesn't mean that we are not pushing them to do what they need to do.

Mr. SMITH. But they got away with it this year.

Ambassador JACOBS. Well, I——

Mr. SMITH. They did get away with it.

Ambassador JACOBS [continuing]. I would disagree with you. But next year is next year. The report is a snapshot in time, and it doesn't mean that we forget about what we are doing from writing one report to the next report. And I don't—we are not prejudging any country. We are not trying to give any country a pass. We are working to do the best job that we can, and we will continue to push for the resolution.

Mr. SMITH. Madam Ambassador, when you testified on May 9, 2013—and I did raise this with your staff when they were here several weeks ago—you had said that we need to reach an agreement with Japan—and we are talking about a bilateral agreement, and hopefully that is done immediately. I mean, what can be the hold up?

But you also said—and it was very disturbing because it was like the harbinger of what we are dealing with right now—"That the return of these children is important," you said—and I am glad you said that—"but I don't think we are going to sanction Japan or threaten them with sanctions because I think that would be detrimental to our bilateral relationship."

Ambassador JACOBS. Okay.

Mr. SMITH. The bilateral relationship should be built on a two-way street, reciprocity, and these are American children abducted and left-behind American parents.

Ambassador JACOBS. But what this report gives us instead are options for actions that we can take that I think are distinguishable from sanctions which have to be agreed to by the entire government. It isn't the Office of Children's Issues that decides on sanctioning a country.

Mr. SMITH. True.

Ambassador JACOBS. It has to be—can I just finish, please? It has to be decided by the Department of State and then through the interagency process. But that doesn't mean that there aren't actions that you give us in the report that we can take, such as a demarche or an official statement or a public condemnation.

Mr. SMITH. Have they been demarched?

Ambassador JACOBS. These are—yes, they have been demarched.

Mr. SMITH. And what is their response?

Ambassador JACOBS. Their response was, "Please give us some time to work this out." Look, you asked what the response was. That is the response.

Mr. SMITH. I know.

Ambassador JACOBS. But we have put other options on the table, and we raised——

Mr. SMITH. The reason for this——

Ambassador JACOBS [continuing]. We raised——

Mr. SMITH [continuing]. Follow-up hearing——

Ambassador JACOBS [continuing]. We raised an MOU with them. We raised the idea of an MOU.

Mr. SMITH. And what did they say?

Ambassador JACOBS. We need two people to negotiate on that. They haven't agreed to it yet, and we will continue to raise it.

Mr. SMITH. Okay. Who raised it, you?

Ambassador JACOBS. I did. Yes.

Mr. SMITH. And they said no, or——

Ambassador JACOBS. No. They did not say no. They said, "It is something that we will consider." I hope that doesn't mean no, because we will continue to raise it.

Mr. SMITH. One of the points that Patricia Apy makes, which is a leading expert and was David Goldman's lead attorney, that I think is very compelling—and she underscores the impact that the report has on judges when they are ascertaining whether or not a child should travel with one parent to a place like Japan. They will look at this report. And if I were a judge sitting here with robes, I would say, "Japan, zero unresolved cases."

Ambassador JACOBS. That is going to be——

Mr. SMITH. "Everything is fine. You can go."

Ambassador JACOBS. Sir, we are revising that. They will get new information. And let me tell you, you know what the Japanese told us? That there have been fewer abductions to Japan since the law went into effect.

Mr. SMITH. That is good.

Ambassador JACOBS. So I think that that is a positive.

Mr. SMITH. Can you tell us why it was—on page 17 you did put zero in?

Ambassador JACOBS. We put in zero because we defined the law as a request for a return that was pending over 12 months, and there were very few direct requests for return to the proper judicial or administrative authority made by the parents. In most of the cases, parents have asked for access or custody, and the law that you wrote defines it as a return.

Now, after receiving the criticism, we understand that we needed to include a greater universe of cases, and so the new data that you will get reflects all the cases that we know of in a country, whether it is pre-Convention or post-Convention.

Mr. SMITH. You know, the legislative history of the law—and it took 5 years to be enacted, multiple hearings, floor debates, bipartisanship in a great way in a town where that has been less than evidenced in recent years, both House and Senate couldn't have been clearer, especially with the left-behind parents from Japan, that they all asked for the return of their children.

They were encouraged, many of them, to go to an access mode, because they had not seen their children, but they are still pending on their return request. I couldn't have made that clearer. Every hearing I have had somebody left behind, a father or mother, from Japan testify. Just from that record alone would meet the non-compliant record of having made those requests.

And I know your office knew about it. We have been to your office. We have met with them. We even had a rally and a march on the office once, and I joined them for that. During the David Goldman case it was filled with left-behind parents from Japan,

Americans whose children were abducted to Japan. Please don't say that they have not gone through the proper channels of seeking access.

One of the reasons why we put in language on DOD was that Captain Toland got bad advice from his JAG as to how to deal with it in Japan and which further hurt his case in reclaiming his daughter from the grandmother who wouldn't even allow a phone call.

So, again, I would hope and I would respectfully ask, they need to be redesignated. There is nothing in the law that precludes you from, based on the evidence, and an admittance today, that you got it wrong by making zero unresolved cases, to now say that they do fit the criteria. They are a country that is non-compliant. And I do believe that will make the MOU work or there will be more ready to do that. Waiting a year is an eternity for these left-behind parents. An eternity.

Ambassador JACOBS. I understand that, sir.

Mr. SMITH. Thank you.

Mr. Cicilline.

Mr. CICILLINE. Thank you, and thank you, Ambassador. I just want to be where Chairman Smith just left off. Would you describe for me the process by which you make the determination of a non-compliant country? I take it from the report there are 22. There must be a standard that you follow or that the legislation establishes for what you conclude to be a non-compliant country, or patterns of non-compliance.

Ambassador JACOBS. We look at whether or not there is a central authority or a designated administrative authority that works on abduction cases. We look at judicial compliance, and we look at law enforcement compliance.

Mr. CICILLINE. But in addition to the structure that is in place, you also look at——

Ambassador JACOBS. We look at——

Mr. CICILLINE [continuing]. The activities of——

Ambassador JACOBS. We look at——

Mr. CICILLINE [continuing]. The abduction activities.

Ambassador JACOBS [continuing]. What happens.

Mr. CICILLINE. Okay.

Ambassador JACOBS. If we have a case and nothing ever happens, we send it to the central authority, they don't act on it, that is one thing. If they act on it, and they send it law enforcement but nothing happens with law enforcement, that is another black mark.

If it does go from the central authority to the location of the child, and when the case goes to court, if there are long delays in the judicial process, or if the judges never order a return in certain countries, that would be judicial non-compliance. We follow each case.

Mr. CICILLINE. And so then you are able to make a determination about the countries that are the most serious violators, that have the greatest both child abduction activities and then failure to respond to abduction demands for return.

Ambassador JACOBS. Yes.

Mr. CICILLINE. And is that the list of the 22 that you have identified?

Ambassador JACOBS. Yes. Those three criteria are the criteria that we used to determine if countries were non-compliant.

Mr. CICILLINE. And within that designation, do you do anything additionally to determine, of those 22, who is the worst violator, which country? Are they ranked in any way?

Ambassador JACOBS. They are not ranked. They are all violators.

Mr. CICILLINE. But do you have an assessment of who the kind of worst offenders are among that list?

Ambassador JACOBS. Yes.

Mr. CICILLINE. And who are they?

Ambassador JACOBS. They would be Brazil, India, Japan. Those are the worst offenders.

Mr. CICILLINE. Well, Japan is not on the list.

Ambassador JACOBS. But Japan pre-Hague. Pre-Hague. India we never get any cooperation. We do get cooperation from the Japanese. We don't get the returns, and I know that is what we want. But they do cooperate with us. In India, we get nothing. But now we are.

Since the law passed, there is a lot more activity in India working toward joining the Convention and implementing it. The discussions that we had were incredibly positive. Our Ambassador there, Richard Verma, is energized. He will be having a meeting in the next week or so with a number of ministers, as well as Ambassadors or High Commissioners from the United Kingdom and Canada, and Supreme Court Justices in India, to work on Hague compliance, because they get it and the law really was an impetus for them to get moving.

Mr. CICILLINE. Do we need to, in your judgment, need to modify any language in the existing statute, or is it simply a determination of the Department if in fact the intention is to get as much information and to be sure that the activities, using Japan as an example, be fully reflected, because you can both indicate the gravity of the problem, the pre-Convention challenges, and also the progress that you say is being made post-Convention.

But is there any impediment to you including that in the report, or is it necessary for us to modify the language of the existing statute?

Ambassador JACOBS. There is no impediment to us doing the things that you suggest, and we will do them. We were working under a very compressed timeframe with a complicated piece of legislation, trying to identify every bit of data that was required. And we recognize that there are gaps, and we want to correct them, and we can do a different kind of report that has more like the previous reports that had a lot of narrative. We can do narrative on the biggest offenders, and really identify in each case what the issues are. We are very happy to do that.

I mean, I think we have the same goal. We want these kids to come home. I mean, that is our goal, it is your goal, and we just need to do this together. I mean, I don't see that we are at odds in this.

Mr. CICILLINE. No, no, no. I think you are right that the—I think at least the experience that I have seen in the human rights area

is the more this information is shared and becomes widely known, the greater likelihood that countries will take action to respond so they are no longer on the list.

Ambassador JACOBS. Yes.

Mr. CICILLINE. And I would say just as a personal observation, to be the parent of a child who has been abducted to Japan, and look at a report that has a zero in it, is personally probably incredibly painful.

Ambassador JACOBS. And I understand that, and we are going to fix it.

Mr. CICILLINE. Thank you. The next thing I would just to ask you, with respect to the designation of the recommendations in terms of activity, the recommendations to improve resolution of cases, and they are A through F, one of them that you mentioned is bilateral meetings.

And I think you mentioned specifically that that was happening in Japan, but it looks like that was not actually indicated. In Japan, it says A, B, and C. I don't know if that is just——

Ambassador JACOBS. I don't remember what the——

Mr. CICILLINE. But, I mean——

Ambassador JACOBS. Tell me what those are. Let me tell you what we have done in Japan. Maybe that would be more helpful.

Mr. CICILLINE. Well, no, I am happy to, but just so you know what I am speaking about. You have a Table 3——

Ambassador JACOBS. Yes.

Mr. CICILLINE [continuing]. Which says Recommendations to Improve Resolution of Cases in Countries, and there are A through F as keys to what recommendations. And then you have a list of countries——

Ambassador JACOBS. Right.

Mr. CICILLINE [continuing]. In which you designate what your recommendations are. And as it relates specifically to Japan, it is A, B, and C. D is where it says Department officials hold bilateral meetings with government officials. So it would seem to me that D is——

Ambassador JACOBS. Okay. So we did it anyhow.

Mr. CICILLINE. Okay. Well, no, I mean, I think it is important that——

Ambassador JACOBS. Yes. No. We should put it——

Mr. CICILLINE. Okay.

Ambassador JACOBS. We will fix that, too. Absolutely.

Mr. CICILLINE. Okay.

Ambassador JACOBS. Yes. Because I was just there.

Mr. CICILLINE. Okay.

Ambassador JACOBS. I was just there, and we spent a whole day in meetings talking about this.

Mr. CICILLINE. Great.

Ambassador JACOBS. And talking about it at the Fourth of July party.

Mr. CICILLINE. No. And I think it is helpful to—I know you are doing——

Ambassador JACOBS. You are right.

Mr. CICILLINE [continuing]. An enormous amount of work, and it is important that that be shared, so people——

Ambassador JACOBS. Yes.

Mr. CICILLINE [continuing]. Have confidence that that is——

Ambassador JACOBS. We do that. I mean, we do—believe me, we do everything that we can. And maybe we need to make more public statements, and that is something that we will seriously consider.

Mr. CICILLINE. I would urge you to do that.

Ambassador JACOBS. I think there is nothing wrong with public statements saying we need more cooperation.

Mr. CICILLINE. And, Madam Ambassador, just now to turn to another country. According to the Center for Missing and Exploited Children, there are 53 open cases of a U.S. child abduction in India, including 26 that have been pending for more than 5 years.

In the wake of obviously the Goldman Act, it has been indicated that the U.S. is conducting bilateral discussions on child abduction cases. But the progress and content of them have not been shared with parents or with members of this committee. I am just wondering whether you can talk a little bit about what is happening in India, generally, what the——

Ambassador JACOBS. Absolutely.

Mr. CICILLINE [continuing]. Direction of those conversations are and——

Ambassador JACOBS. I was just there in May. We had meetings with ministers and with the first secretaries of the ministries. They have domestic legislation that is now circulating in the cabinet for India to accede to the Hague Convention, which I think will be very helpful.

In addition, Indian courts have now ordered returns of children. Not to the United States, but they did order returns to India. We have a very close relationship with two of the Justices, and they have offered to facilitate meetings, to be champions for this legislation, and we have the same commitment from the ministries.

Our Ambassador is energized. He had a lunch where we had lawyers who are also willing to do the same thing. So we are sort of attacking it from many angles, and we are hoping for success. We were just at a meeting in Macau that was sponsored by China, Macau, and the Hague Permanent Bureau. All of the countries that we are concerned with were there, and they all heard the same message: You need to take action now. And I was very fortunate. I had the first word at the conference, and I had the last word.

Mr. CICILLINE. Thank you. And my final point would be, Madam Ambassador, thank you for the work you are doing.

Ambassador JACOBS. Thank you.

Mr. CICILLINE. And if you think there are ways that we can improve or strengthen this existing statute, which would make this work more effective and produce greater results, I know we are all anxious to hear that. But one thing I would urge you to consider, that in the most egregious cases where we have real patterns in countries, I think strong public statements and bringing that to the attention of the world will be very valuable.

Ambassador JACOBS. And if I could suggest when you all travel on codels, when you are going to countries that we are mutually concerned about, that you raise it in your conversations with legislators and with ministers, so that they understand that this is the

United States of America's concern, not just the State Department or just the Congress.

Mr. CICILLINE. Thank you very much.

Thank you, Mr. Chairman. I yield back.

Mr. SMITH. Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman.

Madam Ambassador, welcome back.

Ambassador JACOBS. Thank you, sir.

Mr. MEADOWS. And so I am trying to piece together some of the things you have talked about. So is there or is there not a reporting mechanism to report all open unresolved cases? Is there a reporting mechanism?

Ambassador JACOBS. Apparently, there is. We took a more narrow definition of the law.

Mr. MEADOWS. Okay. So, yes, you said that earlier. So let me ask you, who took the narrow definition?

Ambassador JACOBS. The Department of State.

Mr. MEADOWS. Okay. So Congress passed a law. It is up to you to implement that law. Is that correct?

Ambassador JACOBS. Well, first, we had to interpret it.

Mr. MEADOWS. Rulemaking. Right. But I guess the concern that I have, Madam Ambassador, is you have been here before.

Ambassador JACOBS. Yes, I have, sir.

Mr. MEADOWS. And we have had parents every time here before, and you got a little bit of a honeymoon phase the last time that you were before here. And by "honeymoon phase" I mean it was a new law, it was about to be implemented. And as we got this, you were here, and you were saying, "Well, you know, we are going to make great progress." So now you are back with us.

My concern is is, if the State Department made that interpretation, and it was ambiguous, how much consultation did you have with either the author of the bill, with folks that actually did the debate? How much of that actually took place?

Ambassador JACOBS. I don't know. I was not——

Mr. MEADOWS. May I suggest none?

Ambassador JACOBS. I don't know if it was none, so I can't say that. What I can say is we did the best job we could on a compressed timeline.

Mr. MEADOWS. Well, I——

Ambassador JACOBS. Okay. We are going to fix it. You can keep beating me up about this, but, you know——

Mr. MEADOWS. Well, I am not beating you up. Here is what—let me tell you what I am doing. I don't have a child that was abducted, but I represent people who do.

Ambassador JACOBS. And so do we.

Mr. MEADOWS. And so it is imperative for us to get on the same sheet of music.

Ambassador JACOBS. And we are there now.

Mr. MEADOWS. But that is what you said in March when you came. You said "Well, you know, we are going to work this together, and we are going to work toward this." So when will we have an accurate report?

Ambassador JACOBS. I believe within a week.

Mr. MEADOWS. Okay. So within a week, you will report back to Chairman Smith and this subcommittee——

Ambassador JACOBS. There will be——

Mr. MEADOWS [continuing]. And you will have——

Ambassador JACOBS [continuing]. No——

Mr. MEADOWS [continuing]. You will have——

Ambassador JACOBS. There will be no zeroes for Japan or India or some of those other countries, unless it is a true zero.

Mr. MEADOWS. Okay. Thank you. How do we help you make this more visible? You mentioned mentioning to Ambassadors on codels, and let me tell you what my concern is because I am very involved with a number of Ambassadors, as Mr. Cicilline is, and human rights is something that is bipartisan. It is one of those few things where I will have Mr. Cicilline's back. He will have my back. And when we come to this, trying to do what is right, whether it is on this issue or other human rights issues, it is something that we can all agree on.

I guess the concern that I have is as I talk to those in the diplomatic corps and those that are out there, this is not an issue that is frequently talked about. And I guess my concern is, how do we do this in a polite, kind, but persistent and tenacious way? How do we help you help these parents?

Ambassador JACOBS. By being tenacious. I mean, that is what we have to do. We have made this, and I think that two Secretaries, Secretary Clinton and Secretary Kerry, have made children's issues a prominent part of what they really care about, one of their baseline concerns. And because of that, we get a lot of attention to the issue, more than in the past.

And with the new law, it really has energized many Ambassadors. I write to Ambassador Kennedy; she answers me immediately. She has three talking points on abductions that she uses in every meeting. Ambassador Varma in India, Ambassador Ayalde in Brazil, exactly the same thing. They have the same points that they use over and over.

It is always part of what they talk to when they meet with the Foreign Minister or the President's chief of staff or whatever high-level official in that country is at the meeting. And we need you to reinforce that message, to keep saying, "This is really important."

Mr. MEADOWS. So if we were to send them a YouTube of this particular hearing where they have got Democrats and Republicans that say that this is an important issue——

Ambassador JACOBS. I love it.

Mr. MEADOWS. You love it?

Ambassador JACOBS. Yes.

Mr. MEADOWS. All right.

Ambassador JACOBS. Sure. Why not?

Mr. MEADOWS. Well, here I would ask your help on something. Can you assure this subcommittee that, if there is ambiguity in the future, that you will check with us or have your counsel check with us, so that what we don't run into is the next hearing that we have, is that we have got these glaring omissions.

And I call them omissions; they may not have been out of commission, but they are omissions that indeed give the appearance

that we are trying to protect certain individuals or give—and I am not saying that you did that, Ambassador.

Ambassador JACOBS. Thank you. I appreciate that.

Mr. MEADOWS. I am not making that—I am saying it gives the appearance.

Ambassador JACOBS. You have——

Mr. MEADOWS. And so do we have your commitment——

Ambassador JACOBS. Yes.

Mr. MEADOWS [continuing]. That if there is ambiguity at all——

Ambassador JACOBS. Please, sir.

Mr. MEADOWS [continuing]. That they will get on the phone——

Ambassador JACOBS. Absolutely.

Mr. MEADOWS [continuing]. With the chiefs of staff.

Ambassador JACOBS. Absolutely.

Mr. MEADOWS. Okay.

Ambassador JACOBS. In person.

Mr. MEADOWS. Very good.

Ambassador JACOBS. Not on the phone.

Mr. MEADOWS. Okay.

Ambassador JACOBS. Ambiguities are better resolved in person.

Mr. MEADOWS. All right. So let me ask you my final two questions.

Ambassador JACOBS. Okay.

Mr. MEADOWS. If you were to give your agency a grade today, what would that grade be?

Ambassador JACOBS. A B-plus.

Mr. MEADOWS. Okay. All right. So I am concerned with that.

Ambassador JACOBS. That is okay. And I am a hard grader.

Mr. MEADOWS. Well, but we are not grading on a curve. And so my concern is is for the vast majority of parents. Their grade would be much closer to a D or an F. And so how do we take their grade for you and your grade for you and work together where we can make it where it is a B-plus to an A? How can we do that?

Ambassador JACOBS. We know that without a return we are not satisfying the parents. I understand that. But it truly is not from lack of effort. Our diplomatic engagement is to persuade countries, whether through actions, but through words, and through meetings, and through education, that the return of abducted children is in their best interest. It is in the child's interest. It is in the left-behind parent's interest. And it will make their relationship with the United States better.

And that is my job, and that is what I and everybody that I work with, the 80 people in——

Mr. MEADOWS. I do believe that.

Ambassador JACOBS [continuing]. That work on abductions——

Mr. MEADOWS. I do believe that.

Ambassador JACOBS [continuing]. This is the goal. And maybe we get a B-plus on effort and work ethic and heart, and maybe we do get a D because we don't have as many returns as we want. But I think there needs to be some recognition of the amount of work that we put into this, the effort and the heartbreak.

This is not an easy job for anybody in children's issues. These get to the core of who you are as a human being trying to resolve these questions. And it is easy to say we get a D because the kids don't

come back, but you need to think about all the effort and the work that we put into trying to get the children returned. And I am sorry if we fall short. I know that——

Mr. MEADOWS. I will close by saying that I won't speak for my two colleagues here, but I would imagine that the three of us are willing to drop whatever we have pressing as a priority to see us engage. If you need our help, not only will we be willing to help, but we will drop other things to make sure that this becomes a priority, because one of the greatest quotes that I enjoy is, it says no matter how beautiful the strategy, we must occasionally look at the results. And so that—we want to help you with those results.

And I will yield back.

Ambassador JACOBS. I am going to take you up on that.

Mr. SMITH. Let me just, Madam Ambassador, this false sense that there is any ambiguity in the definitions. We wrote those definitions, and worked with legislative counsel, with a large—we asked for your input. It couldn't be clearer what a pattern of non-compliance means, and it says—and it is all spelled out in riveting detail in the legislation.

And that persistent failure is if 30 percent or more of the total abduction cases of such a country are unresolved abduction cases. And it has other criteria as well, but that stands as one; one or more of the following criteria is enough to trigger a pattern of non-compliance designation.

On the whole issue of unresolved abduction cases, in a like manner we lay that out. I keep reading this and reading it. The last time I read it to your staff when they testified and said, "Where is the ambiguity?" There isn't any. My concern is that Japan was put—I mean, when you talk about grading, maybe some of the countries where it was easier to give a pattern of non-compliance, but Japan, with all due respect, you get an F for that one. And, thankfully, you will at least change the unresolved cases category.

But how that doesn't then trigger the next shoe dropping, that they are now in the designation of pattern of non-compliance, it is bewildering beyond words, because that is what happens when you have so many cases. The definition is clear, not ambiguous. And, again, we had both the Senate and the House, my staff, the Judiciary staff, the Senators' staff, everybody went over these definitions with such attention, to get it right. And then Japan mysteriously falls off.

You know, we have some of our witnesses, and I do hope you will stay——

Ambassador JACOBS. Unfortunately, I have another meeting that I cannot avoid.

Mr. SMITH. Please take their statements if you would.

Ambassador JACOBS. I have seen—I had talked to a lot of the parents before.

Mr. SMITH. Randy Collins makes a very important point. I would like this committee to insist that OCI and the State Department be far more transparent with Congress and with victimized parents. "We deserve answers," he says. "Simply telling this committee that they are raising our cases means nothing. What are they saying? Who are they saying it to? We have suffered years of secrecy

from State regarding our abducted children. Are they demanding the return of our children or simply begging?" as he point out.

I have asked that question a number of times. One time at a press conference over at the grassy triangle. I am a great Seinfeld fan. I love Seinfeld. I have seen every episode 15 times. One of them was a case of the file, the Pensky file. George Costanza has this file, a Pensky file, and he puts it in his desk. Pensky himself comes in and George says that he is working Pensy's file. And nobody knows what they are doing.

And I raise this again with respect—when you get a case that is pending before you, you have a case officer, are they fighting hard? And does it trickle up, hopefully put up, to the levels of the political side to say, "This stuff means something to us. We want this resolved." Because my feeling has been, and I saw it with David Goldman, David Goldman went for 5 years with his case, won in some of the courts, lost in others.

But it was always the wonderful Consular Affairs people who tried to do welfare and whereabouts. They love David. They love everything about trying to resolve the case. But it never got to the point where the political side said, "This is something the United States of America cares about." And that is where there is this total disconnect. Again, when you get it wrong in the report, it makes it even harder. What do you say?

We now hear—and I asked Secretary Kerry when he testified when President Obama and when Secretary Kerry went there, did they raise individual cases? We have learned in human rights work you raise individual cases. You don't say generically, "We are all for ending parental child abduction." And he said that they raised it at every level.

Are these cases brought? The ones who will testify, the left-behind parents today, does somebody say, "This means something to us. Here are the details. Let us resolve this." That is the problem. And with Japan, even when I was over there, I got the sense that there was empathy, but it was not a political priority. Everything else, Status of Forces agreements, everything else under the sun, put this on page 5 as a footnote.

Ambassador JACOBS. It is a political priority now.

Mr. SMITH. Okay. If you could, again, revisit. And I don't know how you update the unresolved cases and not put Japan on it.

Ambassador JACOBS. You are going to see——

Mr. SMITH. It ought to be on the list. And what you do sanctions-wise is all up to you, of course with——

Ambassador JACOBS. Actions. Actions, sir.

Mr. SMITH [continuing]. Reporting to Congress about what you do or don't do.

Ambassador JACOBS. Actions.

Mr. SMITH. We want actions.

Ambassador JACOBS. Actions.

Mr. SMITH. But we need the designation to be accurate and clear. Otherwise, we will be here a year from now talking about the same thing.

Okay. But F for Japan so far. I would love for all of us to put that as an A.

Mr. CICILLINE. Yes. I just want to follow up on Congressman Meadows' comment. I think it is understandable that every parent who has a child who has been abducted who is not yet returned would give everybody an F, Congress, every agency, because your child is not returned.

Ambassador JACOBS. Right.

Mr. CICILLINE. And I want to just take a moment to acknowledge your work, Madam Ambassador, and the work of the dedicated professionals who are doing this work. And the frustration that everyone has with individual cases should not in any way be read to not, at least from my perspective, undermine your deep commitment, your long record, and the really hard work that others in your department and agency are doing. I want to be very clear about that.

I do think that the value of the report—and I really appreciate your willingness to go back and both supplement it and revise it and correct it, the value of that report in this work cannot be overstated, because we can use it in our codel conversations. We can use it as a public statement. We can do a lot with it. And so the accuracy and the transparency of that is really critical, because it loses its potency as an effective tool if it doesn't include places like Japan, et cetera.

So it is not that I think any of us are interested in giving it a grade, the report, just because we are fastidious folks. But it is because its usefulness——

Ambassador JACOBS. I agree.

Mr. CICILLINE [continuing]. In terms of ultimately bringing children back home is dependent on its completeness and accuracy. And I look forward to the work that you are going to do to provide us——

Ambassador JACOBS. Thank you.

Mr. CICILLINE [continuing]. With that tool.

Ambassador JACOBS. Appreciate your comments. Thank you.

Mr. SMITH. Thank you, Madam Ambassador.

Ambassador JACOBS. Thank you, sir.

Mr. SMITH. And I look forward to that designation of Japan. Sure hope you do it.

I would like to now welcome our second panel, beginning with Patricia Apy, who is a partner in the law firm of Paras, Apy & Reiss, who specializes in complex family litigation, particularly international interstate child custody litigation. Her qualifications for testifying are impressive and extensive. She has litigated and been qualified as an expert witness in connection with family disputes throughout the world.

Ms. Apy frequently consults and is regularly qualified as an expert on family dispute resolution in non-Hague countries in risk factors for child abduction. She was also one of the lead attorneys, as I said, the principal attorney for David Goldman and provided expert advice and counsel in that long and arduous case.

We will then hear from Mr. Randy Collins, who is the father of Keisuke Collins, who was abducted to Japan in June 2008 by the non-custodial mother. He is also the managing director of Bring Abducted Children Home, an NGO working for the return of children abducted to Japan, and for the children's access to both parents.

As a resident of California, Mr. Collins inspired and helped write, with then-California State Senator, now Congresswoman Walters, SB 1206, also known as Keisuke's Law, which was named after his son and helps to deter future parental child abductions. The law was unanimously passed in the California Legislature in 2012.

We will then hear from Ms. Kelly Rutherford, who is the mother of two young children, Helena and Hermes, now 6 and 8 years old, who were sent by a U.S. court 3 years ago to live with their father abroad solely because their father alleged he could not enter the U.S.

Ms. Rutherford has since traveled to Monaco 70 times—70 times—to see her children and has had to declare bankruptcy. When the children's father began denying her access to their children this year, she again had to go to court in Monaco while continuing litigation in the U.S. Ms. Rutherford founded the Children's Justice Campaign to help other parents avoid the international legal nightmare she is now enduring.

We will then hear from Dr. Samina Rahman, who is currently a resident in internal medicine at the Montefiore Medical Center in New York City. She studied medicine at Gulf Medical University in the United Arab Emirates, and moved to the U.S. in July 2012, where she was joined by her son and husband.

However, as she will relay, her husband became verbally and physically abusive of her, as well as threatening to her son, culminating in his covert abduction of their son to India in 2013, a place the family had never lived. She is the sole custodian of her son under U.S. law, but has been able to speak to her son just 12 times in 2 years while India very slowly takes steps to consider her case.

And then we will hear from Diane McGee, who is the mother of several children who have been held by her American husband in Japan since 2012. Ms. McGee and her husband were married in New York, and each of their four children were born in the United States. The McGees temporarily relocated to Japan in 2011 when Mr. McGee was offered a job there, but maintained their home in New Jersey.

Ms. McGee's husband reneged on his promise to return with the children to New Jersey and began divorce proceedings in Japan in 2012. Ms. McGee returned to the U.S. with the youngest child in December 2012, and has suffered parental alienation from the older children and poverty while fighting for their return.

Ms. Apy.

We are joined by the distinguished Chairman of the full Foreign Affairs Committee, Ed Royce.

Mr. ROYCE. Thank you, Mr. Chairman. I will just take a moment here and thank you for your years of advocacy on this issue. It is good to see Ambassador Jacobs here, and I hope, really, that this hearing will help improve the reporting that this new law requires from her office. And, in particular, accurate data on unresolved abduction cases is essential to enabling American parents and judges to make informed decisions about whether to allow children to travel to particular countries in order to avoid new abduction cases.

I also want to welcome all of our left-behind parent witnesses, including Kelly Rutherford, whose case I have raised previously with

the State Department. We cannot help but feel the trauma that all of you endure while separated from your daughters and your sons. And, Kelly, all of us here are so pleased that you have been reunited with your children for the summer. We continue to hope for a permanent resolution for your family.

Before yielding back, I also would like to submit for the record a written statement by Sarah Kurtz, a resident of Los Angeles, who is enduring a painful separation from her two children who are currently in Sweden.

And I am grateful to the subcommittee, again, but also to the State Department, and our brave witnesses, for coming together today to shine a very personal light on these very tragic separations which must be mended.

Thank you again, Mr. Chairman.

Mr. SMITH. Thank you, Chairman Royce. And thank you for your work on the Goldman Act, and as full committee chairman, for making this a priority of our full committee. Thank you.

Mr. ROYCE. Well, what is amazing is 1,000 new cases a year. It demands our action. So thank you, Chairman.

Mr. SMITH. We are also joined by a good friend of mine from the State of New Jersey, Leonard Lance.

Mr. LANCE. Thank you, Mr. Chairman. Certainly, this is a very important issue, and I commend your leadership on this, your leadership over many years. And among the panelists, I welcome Ms. McGee , who is from the part of New Jersey that I have the honor of representing. This is an issue that demands the attention of the full Congress of the United States.

Thank you, Mr. Chairman.

STATEMENT OF MS. PATRICIA APY, PARTNER, PARAS, APY & REISS, P.C.

Ms. APY. It is my privilege to return to discuss ICAPRA and to discuss the reporting requirements. My purpose today is to review and articulate, first of all, the importance of the report, the current deficiencies in the existing report, and the necessity to address those deficiencies as a matter of urgency in order to aggressively combat international child abduction by encouraging a report which will become the authoritative source of objective evidence to assess obstacles to recovery of all children.

The focus of this act is two-fold. The first is prevention, which is of course one of the most important aspects of preventing the scourge of child abduction. This is the only report that is internationally issued with regard to accurate numbers involving child abduction.

Secretary General Bernasconi at the Hague has at least twice formally indicated that the Hague doesn't have the resources, does not have accurate information, is not provided information by countries. So much like the Trafficking in Persons Report, this is going to be not just the report that is looked at for prevention purposes by those in the United States of America, by those of you who legislate, by the diplomats who are addressing these issues, but of course by American judges, by American lawyers, by parents, in making determinations with respect to the resolution of their international custody agreements.

If you don't have accurate information, then you don't know that there is a risk. In my written remarks, I have outlined the way that those of us who do this work assess the risk of abduction. And it is a matrix, and I have talked about this before before this subcommittee. It is a matrix of the individual attributes of the litigants and the obstacles to recovery.

And the way that the obstacles to recovery are assessed is by looking at the objective information regarding whether or not there is a likelihood that a country is going to return a child who has been wrongfully removed or retained.

Now, I listened carefully to Ambassador Jacobs, and I was concerned in that one of the things when you, I believe it was Mr. Cicilline, who asked about the non-compliance process and that definition. And the Ambassador returned to the compliance assessment that preceded the current law.

What used to happen—and, again, this is more definitively addressed in my written remarks, what used to happen is the State Department would subjectively review, as she recounted, the judicial performance, law enforcement performance, and whether or not there is a central authority. That is no longer the way, or at least it is not the exclusive way, under the law that we are looking, in terms of oversight today.

And the point was that it was too subjective a mechanism to enable judges or lawyers or anyone else to accurately tell whether or not a country was or was not in compliance. So the new law made the requirement to be that of objective numbers. Tell us how many cases there are. Tell us how long they have been there.

Give us the objective criteria, so that anyone looking at the report, not just those who are perhaps on the telephone—and we have heard about transparency—anyone can pick up the report, including a judge, including a diplomat, including a legislator, and know whether or not there is a problem.

I recounted in my written remarks two cases, focusing on two particular countries. I did that because I could testify about specific cases that were not represented in the report. The United Arab Emirates is a country with which we have great diplomatic relationships. They are our partners in fighting terrorism in the region. I work with them consistently, and it is reported that there are no pending cases.

There is no question that there is a pending case. There is no question that there is a case in which there have been criminal indictments issued by the United States Attorney for the return of Gabrielle Dahm. There is no explanation provided for why that case is not reflected.

The other issue I would like to point out—and, again, my written remarks go into more detail, but—and we have been talking about Japan. Let me limit my remarks to Hague cases, because the response that the Ambassador gave was that the reason for the designation of no cases had to do with the pre-Convention cases.

Presume for the moment that that is the case. Let me address the cases that are in being since the Hague has been passed, many of which involve parents desperate, who have been willing to forego the return applications in favor of access applications. The access applications—first of all, in many cases, the Japanese insisted that

those return applications be withdrawn if they were going to work the access cases. Let us begin with that.

You have no choice. You want to see your child; this is the way. There has been no case under the Hague in which there has been a judicial submission resulting in any type of access whatsoever. Twenty-nine cases are listed as having been delayed in some way as if these parents who have been working day and night somehow delayed the prosecution of their cases.

They haven't been worked, and yet the number of cases is zero. Using not the test that was testified to by Ambassador Jacobs, but using the test in this act, there is no question that Japan is non-compliant. No question. And, in fact, the narrative does nothing but create a question.

If I am before a judge talking about someone going to Japan for vacation, and the judge asks me, "Is Japan compliant?" I have to say yes. I have to say yes. That is what the information provided by what the authoritative—and this is evidential for those of us who are lawyers—source in the world says.

So the very first thing that I would say is that all of this act is dependent upon the report. If the report isn't right, the rest of the remedies, the way it is treated diplomatically, the way it is treated in the Embassies, the way it is treated at the borders, falls apart.

Those are my preliminary remarks, and I am prepared to address any questions that anyone may have with respect to the specifics of either the issues that have been raised or testimony.

I would also mention, there was a question I believe by Mr. Meadows with respect to what type of actions were taken to go through these definitions. And I am speaking on behalf of myself, but I am a member of the American Bar Association's Family Law Section, and have been for many years, and I am member of course of the International Academy of Matrimonial Lawyers. Neither group that I know of was consulted.

I know our working groups on international law were not consulted, and have worked on these issues day and night, as part of our normal professional practices, to walk through why, for example, you would never remove a custody application in a non-Hague case. Please understand, there is no ability to seek the return of a child in a non-Hague case if you do not have the right to determine the child's place of residence. It is the only way to seek the remedy.

To exclude those cases without any explanation is simply to lower the numbers. And, again, I heard the Ambassador talk about the revision of the report as there having been mistakes. I am hoping that that is genuinely the motivation for lowering those numbers as opposed to being forced to address certain of the actions. And, again, there is tremendous discretion in the act.

But the part that I am concerned about is there seems to be a lack of understanding of how important these numbers are outside of just the acts that are associated with the law. It is important in the way that NGOs, in the way that those of us who deal with human rights are able to have discourse with accurate, credible evidence. And the lack of concern about getting these numbers right before the report was issued is stunning to me.

[The prepared statement of Ms. Apy follows:]

Patricia E Apy

International Family Law Practitioner Paras, Apy & Reiss, PC

Statement for the Record for Hearing before the House Committee on Foreign Affairs

Subcommittee on Africa, Global Health, Global Human Rights and International Organizations

Oversight Hearing to evaluate whether the annual report required by The International Child Abduction Prevention and Return Act (ICAPRA) (P.L. 113-150) has been implemented by the State Department as intended by Congress.

By Patricia E Apy[1]

Chairman Christopher Smith; Ranking Member Bass and Members of the Subcommittee :

It is a privilege to submit for the hearing record my comments reflecting my assessment of the State Department's initial report to Congress under ICAPRA.

Preliminarily I would indicate that this is fourth time I have had been able to provide testimony regarding measures to prevent international child abduction before the United States House of Representatives. As set forth more particularly in my biography, my practice has for nearly thirty years focused on complex international and interstate child custody litigation. I had the opportunity to provide consultation and technical assistance in the drafting of ICAPRA throughout the legislative process. My involvement in the enactment of this crucial legislation was initiated not only by my representation of David Goldman, in his efforts taking half of a decade to recover his abducted son Sean from Brazil, but in my years of international child abduction practice with particular expertise involving countries that are not signators to the Hague Convention on the Civil Aspects of International Child Abduction. (Non-Hague Countries).

[1] Patricia E Apy has been a Fellow of the International Academy of Matrimonial Lawyers since 1998. On April 15, 2015 she received the American Bar Association's National Grassroots Advocacy Award recognizing her body of legislative work and advocacy including having served as one of the principal authors of the ICAPRA. This statement includes information compiled in support of remarks made at the IAML Hague Symposium, Quebec Canada June 9, 2015.

My purpose in testifying is to articulate the importance of the report, the current deficiencies in the existing report, and the necessity to address those deficiencies in order to aggressively combat international child abduction by encouraging a report which will become the authoritative source of objective evidence to assess obstacles to recovery of children.

Brief Historical Perspective

In 1989, a mere three years after the United States Congress enacted the International Child Abduction Remedies Act, (ICARA) then, 42 USC 11601 et seq[2] a case was filed in United States Federal District Court in Wyoming, seeking the return of Sarah Isa Mohsen, a little girl from the United States of America to her habitual residence, conceded to have been the Kingdom of Bahrain. The application also conceded that Bahrain was not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. Hague Conference on Private International Law, Final Act of the Fourteenth Session, October 25, 1980. 51 Fed. Reg. 10498 (1980). However, the petition for return of the child was predicated upon the argument that with the ratification of the Treaty by the United States, the courts of the United States were now obligated to apply the substantive analysis of the Treaty in deliberating on the question of wrongfulness of the removal and retention as well as considering the unique Treaty remedy of a speedy return of the child. The argument advanced concepts of Treaty compliance as well as the adoption of the protections as a component of "customary international law". However, the Wyoming Federal Judge was not moved, and dismissed the application based upon the lack of treaty reciprocity existing between the United States and Bahrain. *Mohsen v. Mohsen*, 715 *F.Supp* 1063 (D. Wyo. 1989).

Five years later, Barbara Mezo sought the return of her abducted children from various countries in North Africa, filing a petition in United States Federal District Court in the Eastern district of New York charging that then Secretary of State, Warren Christopher, should, "perform his duties" by implementing the provisions of ICARA and securing the return of her two children, taken to Egypt and subsequently from Egypt to Libya. The Court observed the disconnect between the diplomatic functions of the Department of State and a private cause of action under the Treaty, and then repeated that because the Hague Convention applied to neither Egypt nor Libya, the remedy she requested was unavailable and the action summarily dismissed. *Mezo v. Elmergawi*, 855 *F. Supp*. 59 (E.D.N.Y. 1994).

[2] Now transferred to 22 USC 9001 et seq.

In 2004 Sean Goldman was taken by his mother in the company of his two maternal grandparents to Rio de Janiero, Brazil. The trip was explicitly intended to be a few weeks in length, however the mother, and later her family, would argue that upon arrival in Brazil the she chose never to return to the United States. What followed was protracted litigation waged in two countries which eventually made its way to the consciousness of the average American and Brazilian and became newsworthy throughout the globe. Sean's father, David Goldman enlisted the assistance of various Congressional leaders, career diplomats with specific experience in Latin America and the American media to articulate a case that Brazil, in failing to have ever returned an American child consistent with their explicit responsibilities in the Treaty could no longer be considered as compliant. As a result, he argued, a reciprocal relationship as contemplated by the Treaty, simply failed to exist, and he requested diplomatic intervention by the United States Department of State and legislative efforts by the United States Congress to pressure Brazil in recognizing and complying with their obligations under International law. Among other arguments, he urged that American Judges were continuing to permit American children to travel to Brazil, without restrictive preventative measures or language to insure their safe return, as a result of misplaced reliance in Brazil's tacit representation that they were Treaty partners in returning abducted children to their habitual residence.

Mr. Goldman's success at drawing Congressional attention to a host of systemic issues in the implementation and enforcement of the obligations found in the Hague Convention on the Civil Aspects of International Child Abduction, on a nation state basis made it patently obvious that replicating such action on behalf of each and any future individual litigant (however compelling) would require enormous individual financial and personal resources and offer little promise of institutional change. Similarly situated "left- behind" parents saw both increased hope, and overwhelming frustration in attempting to advance similar tactics in demanding individualized Congressional Action to assist in the return of their children from a host of countries, both within and without Treaty mechanisms.

These parents were able to garner Congressional attention in addressing the issues of international parental abduction, in an unprecedented way, in calling for a reasoned assessment of the process and effectiveness of the United States Department of State in managing its role as Central Authority under the Treaty and in exploring the long held formal position of the Department of State in refusing to consider alternate diplomatic and legal mechanisms to press for international compliance with existing Treaty obligations or to explore bi-lateral or multi-lateral agreements with countries who were not Treaty signators, and whose legal systems and historic approach to international parental abduction made them unlikely participants in a reciprocal treaty scheme.

Between December of 2009 and August of 2014 the United States House of Representatives and the United States Senate held no fewer than six different hearings , conducted in committees and subcommittees, before the Tom Lantos Human Rights Commission and requested by the Women's Caucus addressing the Hague Abduction Convention and ICARA's application both

outside and within the United States. Testimony was solicited not only from the United States Department of State office of Children's Issues, but from International family law practitioners, law professors and academics and subject matter advocates including representatives from various countries, NGO's and affected parents. Originally introduced by Congressman Christopher Smith of New Jersey in 2009, six different versions of what would eventually be entitled the Sean and David Goldman International Parental Kidnapping Prevention and Return Act of 2014 (ICAPRA) were authored, marked up and negotiated and on August 8, 2014 executed by the President of the United States as 22 USCS 9111-9114. The United States Department of State vociferously opposed them all.

The Act represents three areas of federal action now focused on the prevention of child abduction. First, it provides in the form of an annual report, documentation and accountability regarding the administration, prosecution and resolution of diplomatically reported abduction cases. Second it provides objective criteria for the use of diplomatic tools and remedies in addressing countries in which there are proven obstacles to the recovery of children. Third it begins the process of establishing border controls and protocols to insure the judicial restraints, once imposed, may be legally and practically implemented to prevent the removal of a child from the United States unlawfully. The Act is structured with attention to these three primary areas, Title I addresses the actions to be taken by the United States Department, primarily in its role as Central Authority, by enhancing its ability to comply with the duties already assigned to it by the existing requirements of the Hague Abduction Treaty.[3] Title II outlines mandatory and discretionary diplomatic steps to be taken where the objective evidence demonstrates either that a Treaty signator is not meeting its obligations under the Treaty, or where an alternate protocol for addressing child abduction must be negotiated apart from participation in the Hague Abduction Convention. [4] Title III begins the first step toward effective border control for the prevention of international child abductions from the United States, with the goal of insuring that all children travelling from the United States are authorized to do so.[5]

A. Focus on Prevention: The ICPRA Reporting Requirements serve as the basis for all the preventative measures contained in the Act, as well as the ability of Parents, Judicial Officers, Family Law Practitioners and Mental Health Professionals to accurately assess the of Risk of Child Abduction and fashion reasonable remedies to prevent it .

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[3] 22 USC Sec 9111-9114

[4] 22 USC 9121-9125

[5] Section III amends 6 USC 231 et seq. The Secretary of Homeland Security, through the Commissioner of U.S. Customs and Border Protection , in coordination with the Secretary of State, the Attorney General and the Director of the Federal Bureau of Investigation is charged with establishing a program preventing the departure of any child from the United States prohibited by valid court order from being removed.

Testimony elicited before this body has repeatedly demonstrated that the earliest observations made by the Hague Conference on Private International Law and included in its compilation of recommendations for continued good practice in dealing with the civil aspects of international child abduction, remained salient. , "Preventing abduction is a key aim of the 1980 Convention, and it is widely acknowledged that it is better to prevent an abduction than to have to seek the child's return after Abduction." (Guide to Good Practices)

Among those recommended measures by the Hague Special Commissions included; documentation of the requirement to obtain or maintain separate travel documentation for the minor child; the established express consent of both parents before issuing travel documentation for minor children; ***assessing and taking into account the potential risk of wrongful removal or retention of a minor child.***" Summary: Proactive Measures- Creating a Legal Environment which reduces the risk of abduction." Part III Preventative Measures.

Among the difficulties discussed in years of Congressional briefings and hearings, particularly by family law practitioners and parents, was the inherent challenge in successfully securing reasonable preventative restraints on international travel of their children. The complexity and expense of providing accurate and admissible information to the judges who were charged with fashioning parenting and international access when parents could not agree, were daunting. Judges considering the imposition of preventative measures and restraints were universally and naturally reluctant to impose restraints where no objectionable behavior had as yet occurred. Further, locating and qualifying experts with specialized knowledge in foreign law and factors in the assessment of the risk of wrongful removal or retention of a child were often challenging or unavailable.

In their seminal work on child abduction, summarized in the "Judges Guide to Risk Factors of Child Abduction", Linda Girdner Ph.D. and Janet Johnston Ph.D. explained that assessing the risk of removal or retention of child required, in addition to the individual characteristics of the parents and their actions, an objective assessment of the institutional obstacles to recovering that child.

Obstacles to recovery refer to the degree to which there are legal, procedural, policy or practical barriers to locating, recovering or returning a child in the event of an abduction. If the obstacles appear to be extremely difficult to overcome then the likelihood of the child ever being returned may be remote. If the case appears to involve a few minor obstacles, then the recovery of the child being recovered promptly would be relatively good....the family court judge should consider that in cases in which the obstacles to a prompt recovery would be difficult to

overcome, the need for preventative measures is more acute, warranting the use of measures which are more restrictive. [6]

Of course, the Treaty itself is silent with regard to enforcement of its provisions or assessment of the current status of compliance among Treaty partners. Further, no formal record keeping component is contained within the structure of the Treaty nor has one been routinely or voluntarily taken on by Hague Conference.[7] The original requirement under United States Department of State to provide information to the Congress regarding the status of the abduction treaty was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999, and also as part of the Foreign Affairs Reform and Restructuring Act of 1998 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the original treaty implementing legislation, International Child Abduction Remedies Act then found at 42 11611. Under the prior reporting requirements the Office of Children's Issues, relying upon the Hague Conference "Guide to Good Practice" subjectively assessed three areas of performance in categorizing a country as "non-compliant" or "demonstrating patterns of non-compliance". Historically, many of the reports had been received lukewarm enthusiasm by family lawyers who remained hopeful of the eventual ability to rely upon the information in their international practices. Practitioners perceived that there was sometimes an almost myopic tendency on the part of the Department of State to avoid applying the moniker of "non-compliant" to offending countries even in circumstances where it was clear that the obstacles to recovery were virtually total. Unless a country had demonstrated deficiencies in all three of the areas of performance (central authority compliance, judicial performance and law enforcement performance) the report would indicate that the country displayed merely "patterns of non-compliance". Further, the reports did not highlight qualitative statistical data which would permit independent review or reliably document the current number of cases, how old they were or their disposition. There was no policy of identifying for members of Congress, whether or not a child abduction had taken place into or out of their constituency. This was particularly important in districts with strong religious or cultural communities, where systemic difficulties involving particular countries could have a deleterious impact upon the entire community and application of law. There was, for example, no formal recognition of the link between international military service and an over-representation of international child abduction cases. Of course, the report was limited to information regarding countries who were signators of the

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[6] "Judges Guide to Risk factors of Child Abduction", Linda Girdner, Ph.D. And Janet Johnston Ph.D. March 20, 1995 22nd National Conference on Juvenile Justice National Council of Juvenile and Family Court Judges and the National District Attorneys Association , March 20, 1995

[7] In May of 2014 and again in June of 2015 Secretary General Christophe Bernasconi in addressing the International Academy of Matrimonial Lawyers at their Hague Symposia indicated that the Hague Conference does not have access to uniform or current statistics from signator countries providing a recent or relevant basis for the assessment of international reciprocity and Treaty compliance. See also, Caitlin M. Bannon, "The Hague Convention on Civil Aspects of International Child Abduction, The Need for Mechanisms to Address Non-Compliance 31 BC Third World L.J. 129, 153 (2011)

Hague Abduction Treaty, and provided no information regarding reported abductions or requested assistance involving non-treaty signators.

The Hague Conference itself, has in the past, studiously guarded its "neutrality" avoiding engagement in any public negative critique of signatory countries (particularly where it could be viewed as punitive) in favor of educational and technical support to "encourage" treaty implementation. There is absolutely nothing wrong with this perspective, from such a body. **However, when such a perspective results in an unintended loss of transparency and is unreservedly echoed in United States diplomacy without scrutiny. Reluctance to unflinchingly review the actions of state's parties encourages a false sense of comfort on the part of world's family Judges who could assume that a country that identifies itself as a signator, without more, acts with reciprocity regarding the implementation of the Treaty. To apply the Girdner-Johnston risk factor matrix, such misinformation could leave the impression of few existing obstacles to recovery of a child, in the absence of concrete disclosure of the number, circumstances and treatment of active abduction cases.**[8]

In her introductory correspondence accompanying the 2010 Compliance Report, Janice Jacobs, Assistant Secretary of State for Consular Affairs admitted, "Compliance is a challenge for many countries. Consequently, continued evaluation of Treaty implementation in partner countries and the United States is vital for its success." [9]

Comparison of the initial ICAPRA report to the TIP Report

The model for the diplomatic and reporting requirements now codified as part of ICAPRA was the United States' Trafficking Victims Protection Act of 2000 (TVPA) and its subsequent amendments . 22 USC 7107

The goal of the reporting requirements found in TVPA have been articulated as, "seeking to increase global awareness of the human trafficking phenomenon by shedding new light on various facets of the problem and highlighting shared and individual efforts of the international community and to encourage foreign governments to take effective action against all forms of trafficking in persons." [10]

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[8] In prior State Department testimony offered by Ambassador Susan Jacobs before the Senate Foreign Affairs committee summarizing the State Department's opposition to ICAPRA, she encouraged the inference that ICAPRA somehow undermines the work of the Hague Conference and indicated that its passage would be "threatening the efficacy of the Convention". However in the 35 years since the enactment of the Treaty, the Hague Conference has not been willing exert its leadership in providing neutral assessment and publication of timely and relevant statistics evaluating the status of reciprocity. The United States Department of State's deference to the Hague Conference as a body that the US should "continue to delegate its sovereign authority to" is not supported in the arena of identifying obstacles to recovery.

[9] See, "Hey Uncle Sam! Maybe it's time to stop condoning child abductions to Mexico", Antoinette A Newberry Wood, Ga. J. Int'l & Compels, Vol 42:217 at 240 (2013)

[10] Introductory remarks ,"Purpose. The 2009 Trafficking in Persons (TIP) Report" Report and subsequent updates available at www.state.gov/g/tip

While originally opposed by the Department of State, who raised similar objections in 1999 to the financial, manpower and diplomatic burdens inherent in the reporting function, a decade of TVPA has been demonstrated that the TIP report has had a remarkable impact upon the recognition and amelioration of trafficking in persons, both domestically and internationally.

*Widely acknowledged as the world's most comprehensive and influential assessment of global anti-trafficking efforts, the Tip report is a potentially powerful advocacy and campaigning tool for anti-slavery groups working both in country and internationally. Since 2001, the Tip report has been the US' principal diplomatic tool to engage foreign governments on the issue of trafficking and slavery within their own borders. Using a three-tier system, the US state department ranks how countries are complying with the Trafficking Victims Protection Act. It offers a detailed analysis of credible evidence of people trafficking and slavery within each country, any counter-trafficking efforts being undertaken and a series of suggestions for how the situation could and should improve. '**It is a blunt instrument to force through change and a strong platform in delivering credible information that looks at solid evidence in an objective light with the weight of what is still the most powerful nation on earth behind it. As an advocacy tool you don't get much better than that.**' Steve Trent Environmental Justice Foundation*

"How NGO's are using the Trafficking in Person's Report", Annie Kelly the Guardian, 21 June 2013

The motivation for the changes made to previous ICARA reporting requirements were designed with precisely the same purpose as the TIP report. ICAPRA was designed to enhance and strengthen the information to be submitted to Congress by requiring production of more than generalized and subjective summaries and by expanding reporting requirements to provide information about abductions to non-Treaty jurisdictions. In addition to reporting on any countries in which there are pending abductions, regardless of their Treaty status, the new requirements were designed to provide the tools for judges, in addition to law makers, to evaluate components of the practical obstacles facing those attempting to recover their abducted children from particular countries. **For the legislators and diplomats, this information is to be used to form and communicate a conclusion as to whether there has been a "governmental failure" and when the evidence so demonstrates, and to contemplate diplomatic or legislative action if appropriate. For the jurist, attorney, arbitrator or mediator this information can be used to objectively assess the systemic obstacles to recovery of a child, apart from any contested allegations regarding the individual family dynamics and to be informed by this objective, non-case specific information in considering the necessity or prudence in recommending the imposition of preventative measures or enhanced enforcement mechanisms. (Title I ICAPRA Department of State Actions, Reporting**

Requirements; Actions in Response to Unresolved Cases; Actions in Response to Determination of Pattern of Noncompliance 22 USCS 9111-9114)

1. **Reading the first ICAPRA Report 2014**

On May 13 2015 the Office of Children's Issues released its first ICAPRA report, admittedly for a truncated reporting period. [11]**It is clear, in reviewing the first compliance report issued pursuant to ICAPRA, that there are a number of weaknesses that at best may simply reflect the Department of State's inability to quickly comply within the robust statutory time frame in a way that reasonably articulates the information required by the law in a useable form. At worst, it could be read as evidence of persistent institutional resentment to the Congressional imposition of the modified reporting requirements and a profound determination to render the report of limited value.** In either case, a comparison between the quality, scope and comprehensiveness of the 300 plus page annual Trafficking in Person's Report and the recently released 41 page ICAPRA report demonstrate a failure to appreciate the need for and potential international impact of the report required by the legislation.

The report actually warns, "The *case numbers provided in Table 2 do not necessarily reflect the total amount of cases per country or area, reported to the USCA. Rather the statistics provided reflect the number of abduction or access cases that met the specific data requirements of the law, as outlined in the header of categories in Table 2 in CY 2014.*"Section 3.2 "Countries and Areas with Five or More Pending Abduction Cases during CY 2014".

Further, a cursory review indicates an almost arbitrary and entirely subjective inclusion and exclusion of cases, apparently loosely based upon the Department's own reading of the legislation, and not as a result of specific instructions in the law.

a. **Non-Hague Treaty Cases:** By way of example, if one looks at a non-Treaty country such as the United Arab Emirates, the report, in Table 2 indicates incorrectly that the number of unresolved cases is zero. A check of the Appendix II which in Table 6 purports to list all unresolved cases, offers no listing for the UAE. This would come as a shock to Christopher Dahm, whose daughter Gabrielle was abducted by her Mother with the assistance of her maternal grandparents 5 years ago, and to his Congresswoman Lois Frankel D-FL and Senator Bill Nelson R- FL who have been working with the Department of State and Department of Justice in insisting on her return . "Gabby's" abduction occurred in violation of express orders prohibiting the mother from removing the child from the United States, and placing restrictions on passport issuance. Neither parent is a citizen of the UAE. As a result, the United States Attorney for the Southern District of Florida sought and obtained criminal indictments against both the abducting Mother and her parents for International Child Abduction pursuant to the International

[11] The report indicates that the reporting period under the statute was from August 2014 to December 2014 with future reports reflecting a calendar year.

Parental Kidnapping Prevention and Crime Act.[12] Mr. Dahm has, throughout his ordeal, identified his daughter as having been abducted, and sought the assistance of the Office of Children's Issues in securing the repatriation of his daughter, as well as frequent requests for diplomatic help in securing information regarding her location and her health. Communication from the Department confirms that Mr. Dahm's case has been the subject of discussion with UAE authorities by Ambassador Susan Jacobs, Mr Dahm's Congressional Representative Ms. Frankel and her office have been aggressively involved with the matter, compelling regular diplomatic and law enforcement updates. Mr. Dahm's case can only be read as falling into the category of cases the Department of State has selectively removed from their reporting requirements.[13] Remarkably, understanding the purpose of the legislation in the prevention of abduction and the identification, location and recovery of abducted children, the report leaves the reader to guess at which cases the Department felt were outside of the "data requirements of the law" or which did not "necessarily" reflect the total number of cases.

With regard to the identification of Countries demonstrating a "Pattern of Non-Compliance", and necessarily implicating diplomatic remedies it is clear the selective choices made in reflecting the nature and number of pending abduction cases has a direct bearing on the assessment of whether a Country is acting in "persistent failure". In the absence of such an objective assessment, the Department of State is absolved of further compulsory diplomatic action.

b. **Hague Treaty Cases:** Japan is singled out in the report, but only as a diplomatic success story, with contradictory information within different sections of the report, regarding Japan's status. While seemingly acknowledging that Japan has continued their historic patterns of recalcitrance in the return of abducted children or organization of rights of access, Japan is not identified as exhibiting patterns of non-compliance. Within hours of the Hague Abduction Convention becoming effective between the government of the United States and Japan in April of 2014, the desperate parents of children who had been abducted from the United States (some who have been prevented from seeing their children for many years), filed their applications for the organization of Rights of Access pursuant to Article 21 of the Treaty. Left-behind parents had already been told that the

[12] 18 USC 1204

[13] The Department has independently, and rather absurdly, determined that "most non-Convention cases do not meet ICAPRA's definition of an unresolved abduction case." Their purposeful application of the definitions to exclude all existing non-Treaty abduction cases from reporting , unless there is request made to a non-existent central authority is neither a fair nor accurate reading of the language and intent of the statute. The accompanying statement, "When parents use the legal system of a non-Convention country, they are likely participating in the proceeding for custody of the child, which may not involve the return of the child to the United States, rather than submitting an application for return of the child for determination to the judicial or administrative authority. ***Therefore the Department does not consider a custody proceeding to be an unresolved abduction case in a non-Convention country, unless there is also a formal request for return***", is particularly unhelpful. If a parent has identified their child as having been abducted, and as a result opened a case with the Office of Children's Issues, to remove their case from the data, because they are forced to file a custody complaint as a condition of the return of their child, is unsupportable.

Treaty would not be retroactively applicable to their abduction claims, and were strongly encouraged by the Japanese Central Authority to relinquish any pre-ratification abduction claims or requests for return of their children to the US.[14] The chart of pending cases in the ICAPRA report confirms that the forty cases were brought, and indicates that only 29 were submitted to the Japanese Central Authority, and that the Japanese Central Authority has taken no steps to submit the requests for access to either judicial or administrative bodies . Nevertheless, the report indicates that there are zero unresolved cases, despite the fact that as of May 30, 2015 there appear to have been no access had been accomplished pursuant to the Convention, to any of the 40 applicants. The report fails to produce any evidence of efforts to negotiate a Memoranda of Understanding, or other alternate protocol to deal with the pre-ratification cases, despite repeated assurances that these children and their parents would not be abandoned. The documentation fails to identify service members or former service members (despite the fact that at least two known cases were among the pre-ratification cases). In identifying its recommendations to improve resolution of cases the Department does not identify Japan as a country with which they have held bi-lateral meetings, as expressly contemplated by the legislation to encourage governmental officials to comply with their obligations under the Treaty, or to intensify their engagement with the Japanese Central Authority for updates or prompt case processing. Table 3 Recommendations to Improve Resolution of Cases in Countries or Areas with Five or More Pending Abduction Cases during CY 2014 p. 20. However, its discussion of Japan references the Department's efforts as it " continues to encourage the government of Japan to remove ***obstacles*** that parents still face in gaining access to or return of their children." The paragraph closes with the admission that " almost all of these non-Convention cases remained un-resolved" It is unclear what the Department means by "Non-Convention cases" in this context, in that while the pre-ratification abduction cases could be so considered , a new access case would be a Convention case. Finally a review of the "Reasons for Delay in Submission to Authority" found in Table 5 identifies each of the 29 listed access cases as suffering from a delay. Notably, the Department indicates that in 9 of the cases "the case was not submitted to a judicial or administrative authority while the parents pursue mediation" However, if this mediation is program advanced by the Japanese Central Authority in 2013 it has produced no recognizable success not only since access petitions were made a year ago, but since before the Treaty became effective. There is no viable explanation given that there has been no successful access application or abduction application, nor any significant movement on pre-existing cases, how Japan is kept from being identified objectively as demonstrating patterns of non-compliance.

The real danger in the report, of course, is that in its current form its misrepresentation of obstacles to recovery leave parents in the worst possible circumstance. An attorney or Judge attempting to determine whether Japan poses systemic obstacles to recovery, would be entirely misguided in reading or attempting to evaluate the report. In fact counsel could (and will likely

[14] Indeed, a so called "access mediation program" had been offered in December of 2013 only to parents of abducted children who were willing to abandon their abduction claims.

argue) that Japan should be considered entirely Treaty compliant and their reciprocal obligations under the Treaty positively met based upon the purposefully incomplete content of the report.

The Hope of ICAPRA: Working Toward a National Registry for Custody Orders Preventing Travel from the United States

One of the most immediately promising portions of ICAPRA, and certainly the one that would directly impact family law attorneys and judges is found in the amendment to the Homeland Security Act. The new legislation requires the establishment of a federal program through the Commissioner of United States Custom and Border Protection, in coordination with the Department of Justice, Federal law enforcement and the Department of State to prevent children from being removed from the United States in violation of a valid court order. Title III begins this process by establishing a working a group comprised of the major stakeholders, including consultation with representatives from the Department of Defense and the FBI.

It is hoped that in formulating the program, work toward a federal uniform order preventing international travel can be drafted which provides an administrative mechanism for the registration of effective orders. In looking at the components of a meaningful and valid order the working group need not "reinvent the wheel". They can and should refer to the Uniform Child Abduction Prevention Act[15], promulgated by the National Conference of Commissioners on Uniform State Law in 2006. The Act harmonizes the Uniform Child Custody Jurisdiction and Enforcement Act [16] as well as considering a host of other state and federal laws and a myriad of substantive custody issues , including domestic violence concerns. In outlining a recommended process for, and the components of, a valid abduction prevention order, the act enumerates a number of specific measures that a court may order. The UCAPA references travel restrictions, the State Department's Child Passport Issuance Alert Program and includes criteria for expiration, modification or revocation of orders. Currently enacted in 14 states, using the UCAPA as a beginning template which has been drafted and amplified by subject matter experts , can only render a uniform order easier to use and therefore more likely to become a regular and accepted preventative method. Still, it will be helpful for international legal practitioners both in the United States and abroad, to remain engaged, through their professional associations[17] in rendering the process internationally user friendly.

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[15] Uniform Child Abduction Prevention Act (Statutory Text, Comments, Un-Official Notations) Linda Elrod J.D. Reporter 41 Fam L.Q. 23 (2007)

[16] Uniform Child Custody Jurisdiction and Enforcement Act, approved 1997, enacted in all states except Mass where pending. www.uniformlawcommission.com

[17] International Academy of Matrimonial Lawyer Hague Working Group; International Law and Procedure Committee of the Family Law Section of the ABA should provide technical assistance to the working group in addressing best practices to establish validity of orders.

The Promise of ICAPRA for Family Lawyers:

In addition to the reporting and diplomatic functions mentioned above and the steps toward border control, ICAPRA offers real time assistance to left behind parents and their counsel. Now, no longer experiencing their child's abduction as having been relegated to a "domestic dispute," litigants are assured of at least one senior official in each and every diplomatic and consular mission abroad specially assigned to assist parents who need to coordinate legal efforts abroad or may attempt to see their children. Embassies and consulates are to monitor developments in such cases and communicate accurate information back to OCI, and the litigants. For each country in which there are five or more active cases of international abduction, there must be a written strategic plan to engage with the appropriate foreign counterpart and provide predictable mechanisms for working such cases.

ICAPRA was not drafted to supplant or weaken ICARA, or the application of the Hague Abduction Treaty on a global basis. Nothing in the text of the legislation limits the Hague Conference in its current role, or its relevance. The Hague conference will presumably continue with its efforts for international judicial education and sharing of good practice and communicating international legal developments.

ICAPRA articulates Congressional intention that an individual left behind parent and their legal representatives will no longer be forced to litigate "systemic" maladies in the diplomatic relationships between that country and the United States of America. Once it is determined , using entirely objective criteria, that there is a breach in the reciprocal relationship with a Treaty partner, or there is a systemic governmental failure to address international parental abduction, the burden for action shifts to the Department of State to utilize the diplomatic tools available to it to identify and ameliorate the problems. If they can't, when they can't, the President of the United States has an escalating arsenal of measured diplomatic resources to direct attention to the problem and communicate its priority of the American people. That begins with bi-lateral and multi-lateral discussions and agreements to develop alternate protocol for the resolution of international child abduction, particularly where religious and culturally based legal systems make the future likelihood of participation in the Abduction Convention remote. But it also means identifying and disclosing the difficulties with our Treaty partners, so that family lawyers are not lulled into the belief that the Treaty is properly working in a place it does not. Any serious critique of the working of the Abduction Convention will, undoubtedly, include a critical analysis of the treatment of Treaty cases within the United States. We can and should welcome such a review.

There is something worse than a country that has not yet signed the Hague Abduction Convention. When a country is a "Treaty Partner" but is not demonstrating a capacity or desire

to act in reciprocity, the only way the American public and the Members of this body will be able to reliably identify such countries and recognize that they pose genuine obstacles to the recovery of American children, will be when the Department of State articulately and transparently discloses, in the form of its report , the accurate number of cases, their location and the success of efforts the Department of State has made in getting our children back.

Respectfully Submitted

Patricia E Apy

Mr. SMITH. Ms. Apy, thank you very much.

Before we go into Mr. Collins, let me welcome Sheila Jackson Lee, the gentlelady from Texas.

Ms. JACKSON LEE. Mr. Chairman, let me thank you, and to the chairman of the full committee, ranking member, and all of the witnesses, I will take just a moment to say that I am committed to this issue with every ounce of my abilities. I have been appalled at some of the stories, even in spite of this bill that we worked so hard to pass.

And I think this hearing with Chairman Smith, who has listened to stories along with me, and let me welcome Ms. Rutherford and the other witnesses who have painfully indicated, that this is not about paper or legislative proudness or the fact that a good bill is trying to do a good thing. It is about the passion and love that a parent has for their children and one where they deserve to be able to express that love and affection.

I would just yield back, Mr. Chairman, and say that however we can make the effective tool that the State Department uses to be an effective tool, I think that is what our challenge should be. American citizens should be able to look to their government for relief, even in spite of some of the unusual procedures of our foreign neighbors.

And, with that, let me yield back and commit myself to working on this issue continuously.

Thank you.

Mr. SMITH. Thank you.

Mr. Collins.

STATEMENT OF MR. RANDY COLLINS, MANAGING DIRECTOR, BRING ABDUCTED CHILDREN HOME (FATHER OF CHILD ABDUCTED TO JAPAN)

Mr. COLLINS. Chairman Smith, Chairman Royce, and committee members, thank you for the opportunity to share my story regarding international parental abduction to Japan. Reiko Nakata Greenberg and I were married on September 1, 2000, and on 03/03/03 at 3:03 p.m., my first and only child Keisuke Christian Collins was born in Orange, California.

In March 2008, we started the process of a divorce, and I needed to get my financial records together. I found monthly checks written by Reiko to her Japan Airlines credit card for almost 2 years. Through these cash advances on her personal credit card, and withdrawals from our home equity line, she secretly was able to build a nest egg for herself of over $220,000.

With this new evidence, I went to court in 2008 to stop Reiko from taking Keisuke to Japan for the summer. The judge ruled "Minor child not to be removed from the County of Orange, State of California, or the United States of America, and turn over the minor's passports to the Japanese Embassy within 24 hours."

I relayed the court's ruling to the Japanese Embassy in Los Angeles that afternoon. They replied, "We don't care about your court orders. We won't take the passports. They are Japanese citizens, and they can do what they want." I said my son was born and raised in the United States and is a U.S. citizen. He said, "I don't care."

Two days later was Father's Day. I picked up Keisuke in the morning for church. We had a Father's Day lunch and spent the afternoon at his favorite place, the Discovery Science Zone. Afterwards, I said, "Thanks for spending Father's Day with me, Keisuke. I love you. See you tomorrow." He said, "Love you, too, Daddy." Those were the last words I heard from my son. That was 2,586 days ago today.

On June 16, 2008, in violation of my court orders, and with the help of her father, Ken Nakata, a retired international pilot with Japan Airlines, Reiko bypassed the system, was able to kidnap Keisuke, and flee to Japan. Reiko Nakata Greenberg Collins has warrants for her arrest by the Orange County Sheriff's Department, is on the FBI's Most Wanted List for Parental Kidnappings, and has a Red Notice issued by Interpol.

Even with these Federal and international warrants in place, the State Department says it can do nothing. I believe it can; it just chooses not to.

Three and a half years later, I was notified that Reiko filed for full and physical legal custody in Japan. In my reply I supplied the restraining order, final divorce decree which awarded me full physical and legal custody, and proof of U.S. jurisdiction of this case. The Japanese court replied by disregarding my final divorce order, stole jurisdiction, and ruled my restraining order, which stated, "Minor child not to be removed from the County of Orange, State of California, or the United States of America" was too vague. What word in that sentence is vague? Nothing.

As the Japanese family courts have proven time and time again, they have a bias against Americans. I will call it for what it is: Racism. My case, and the 70 cases listed with BAC Home, occurred prior to Japan becoming a Hague signatory, and, by definition under the Goldman Act, are abduction cases.

To date, children are collectively trapped in Japan and cut off from us. These cases are not resolved, yet the State Department's ICAPRA compliance report unilaterally, and without explanation, decided to downgrade all of them to access cases. To say the ICAPRA report is an insult and a slap in the face of every parent of an abducted child is an understatement.

The numbers do not add up in any way you try, but create an ever-bigger problem as a grossly inaccurate report gives potential abducting parents ammunition to go to court, show any judge that Japan is compliant with the Hague, and nothing can be further from the truth.

With no American child ever being returned by the Japanese Government, nor any ruling in favor of the victimized parent ever enforced by a Japanese court, Japan is non-compliant. Even using State's own numbers, as ridiculous and as ludicrous as they are, Japan is still 57 percent non-compliant, which is greater than the 30 percent Goldman Act standard. Japan is unequivocally non-compliant. Period.

Japan's compliant rating in the report is highly suspect after the recent testimony of the Japanese Diet on May 14 where Takashi Okada, Deputy Director General, and the Secretariat of the Ministry of Foreign Affairs said, "I think I received Ambassador Jacobs' understanding about how our country has been dealing with the

issue of the Hague Convention. The report has not yet been released. As I explained earlier to the Diet members, because we strive to make an explanation to the U.S. side, I hope that the report contents will be based on our country's efforts to deal with the issue."

The ICAPRA report is not to take into account what Japan tells the Ambassador its efforts are. The report is to be compiled based on facts and results. There are no facts to support Japan as compliant.

For anyone to make any sort of assurance or to accept Japan's explanation, to give it a favorable rating in the report, is outrageous. This report must be amended to show Japan as non-compliant. Over 400 abduction cases to Japan have been registered with the State Department since 1994, and no child has ever been returned by the Japanese Government.

We have suffered years of secrecy from State regarding our abducted children. It is the perfect definition of insanity—doing the same thing over and over again but expecting a different result. The results have not changed in 7 years. We are still no closer to seeing our children today than we were before Japan joined the Hague Abduction Convention. So State's actions, or in this case inactions, speak so loudly we can't hear what they are saying anymore.

I would like this subcommittee to insist that OCI and the State Department be far more transparent with Congress and with victimized parents. We deserve answers. Simply telling the subcommittee that we are raising our cases means nothing. Are they demanding the return of our children or simply begging? Do they drop the issue just because Japan tells them it is too difficult to return our kidnapped children? What are the answers they are receiving?

It is time to start holding Japan accountable. Public condemnation, implementation of sanctions as outlined in the Goldman Act, and the demand that we have access to and the return of our American children immediately. My son, Keisuke Christian Collins, deserves his father, and I deserve my son.

Thank you.

[The prepared statement of Mr. Collins follows:]

Mr. Randy Collins
Managing Director, Bring Abducted Children Home

House Foreign Affairs Subcommittee

Thursday, July 16, 2015

Chairman Smith and committee members, thank you for allowing me the opportunity to share my story regarding International Parental Abduction to Japan. I am the Managing Director of Bring Abducted Children Home, a 501(c)(3) non-profit corporation dedicated to the immediate return of internationally abducted children being wrongfully detained in Japan and striving to end Japan's human rights violations of denying children unfettered access to both parents. We also work with other organizations on the larger goal of resolving international parental abductions worldwide.

I co-authored, along with then California State Senator and now US Congresswoman Mimi Walters, SB 1206, also known as Keisuke's Law, named after my son. It was unanimously passed in the California Legislature in 2012. My ex-wife Reiko Nakata Greenberg Collins has warrants for her arrest by the Orange County Sheriff's Department. She is also on the FBI Most Wanted List for Parental Kidnappings, and has a Red Notice issued by Interpol.

Reiko Nakata Greenberg and I were married on September 1, 2000. On March 3, 2003, at 3:03 PM, a National Moment of Prayer, my first and only child Keisuke Christian Collins was born in Orange, California. My ex wife told me Keisuke meant God's Blessing in Japanese and I chose Christian as his middle name for this special day.

In October 2007 the plot to abduct Keisuke by Reiko, with the help of her parents, began. Reiko's parents, Ken and Miyuki Nakata, made a visit to our home from their home in Japan. In our eight years of marriage, they had only come to visit one time. Reiko's parents are very wealthy. At one time they had ownership of over a million dollars in real estate plus Reiko had mentioned they had millions in bank accounts under other names. Her father, Ken Nakata, was a retired international pilot who flew in and out of Los Angeles numerous times before he retired. Her parents flew back to Japan on January 1st. They returned to our home again just three weeks later. This was very strange but then I was served divorce papers a couple weeks after that. I moved to a house nearby so I could stay close to my son. Whenever I came to pick up Keisuke, Reiko was always so secretive. I never picked Keisuke up at the door. She would always bring him to the car. Window blinds were always closed. This is a house I owned, lived in for 8 years, and was still making the payments on. Looking back on it, she and her parents probably had boxes packed in the house and garage and were getting themselves ready to flee the country with Keisuke.

Once I moved out I finally was able to get the father/son time with Keisuke that his mother would always prevent. I had witnessed first-hand the damage Reiko had done in alienating the father of her daughter from her previous marriage. I was not going to let that happen to me. Keisuke and I were able to finally enjoy some quality time together. We went to his favorite places, the Discovery Science Zone and Disneyland. I taught him how to swing a bat and throw a baseball. We were doing things a father always dreams of doing with his son and we were having a lot of fun doing it. Keisuke's growing bond with me appeared to frustrate Reiko a lot.

In the process of the divorce I needed to get my financial records together. To my surprise, what should have been only $18,000 on my Home Equity Line of Credit was now up over $98,000. In going through the bank records I also found monthly checks from our joint account Reiko had made out to her Japan Airlines credit card for exact dollar amounts ranging from $6600 up to $11,000 for almost 2 years. Through these cash advances on her personal credit card, and withdrawals of money from our Home Equity Line, she was able to build herself a nest egg of over $220,000 before she fled the country. She engineered this by encouraging me

to go back to school to finish my degree. She suggested that she could take over paying our bills since I was now working and going to school full time. It never even entered my mind that she would be stealing all the money for herself.

After showing my attorney this new evidence we went to court on June 13, 2008 to stop Reiko from taking Keisuke to Japan for the summer. The judge twice ruled the "minor child not to be removed from the County of Orange, State of California, or the United States of America and turn over the minor's passport to the Japanese Embassy within 24 hours." When I called the Japanese Embassy in Los Angeles that afternoon, I spoke to an official about the court's ruling. He told me "We don't care about your court orders. We won't take the passports. They are Japanese citizens and can do what they want." I said my son was born and raised here in the US. He is an American citizen and I was concerned my son could be kidnapped. He said "I don't care."

Two days later was Father's Day. I picked up Keisuke in the morning. We had a great day. The first thing he mentioned when I picked him up was that he wanted to go to my church to see my pastor. Then we had a Father's Day lunch at MacDonald's, and spent the afternoon at his favorite place, the Discovery Science Zone. I took him home at 6:30 PM. I said "Thanks for spending Father's Day with me Keisuke. Love you. See you tomorrow!" He said "Love you too daddy". Those were the last words I heard from my son.

A few hours later I got a call from Reiko asking me if Keisuke was feeling ok when he was with me because he had been throwing up since he got home. I said he was great and let's see how he is tomorrow, as it was my day to have him next. The next morning, June 15th around 11:00 I got a call from Reiko that I had let go to voice mail. Her message was "Hi Randy. This is Reiko. Keisuke is still throwing up. We will make it up another day this week. Thank you. Bye." I didn't think anything more of it. I called the next day to see how he was doing but only got Reiko's voice mail.

On Thursday, June 19th I was to pick him up at 11:00 AM but there was no answer at the door. I called her cell and came by the house numerous times throughout the afternoon. Finally around 4:30 I called a friend of Reiko's to see if she had heard from her. As I was asking questions, her replies became very strange. When I asked what was going on she said she couldn't tell me anything more and hung up. I immediately called my attorney who in turn called Reiko's attorney. A few minutes later my attorney called back to tell me to get to the house immediately. I entered the back door and found everything in the house was gone. I called the local police who came over and took my statement. The police then went to the home of Reiko's friend who confirmed Reiko had fled to Japan a few days earlier. That call I got from Reiko telling me Keisuke was still throwing up was made from the Seattle Airport. She was able to board a Northwest Airlines flight from Los Angeles, to Seattle, and then on to Narita, Japan. My greatest fears had come true. Reiko had kidnapped Keisuke on June 16th despite two preexisting court orders. It is easy to connect the dots to see that she and her parents planned the whole thing. Her father, as a retired pilot with Japan Airlines, was able to show her how to circumvent the system and escape with my son to Japan.

In November of 2011 I was served papers from a Japanese court notifying me that Reiko filed for full physical and legal custody there. In my reply to Reiko's petition, I supplied certified copies of both restraining orders, my final divorce decree, which awarded me full physical and legal custody, and that Lameroux Court in Orange, California had jurisdiction of this case. A few months later the Japanese court replied by disregarding

my final divorce orders, stole jurisdiction, and ruled that my two restraining orders which stated "Minor child not to be removed from the County of Orange, State of California, or the United States of America" was too vague. I ask you, what word in that sentence is vague? Nothing is vague. It was crystal clear. As the Japanese Family Courts have proven time and time again, they have a bias against Americans. I will call it for what it is, racism.

On April 1, 2014 Japan became a Hague Abduction Convention signatory, but they refused to add implementing language to give the several hundred pre-existing cases the ability to file a claim for a return order under The Hague. Victimized parents were left to continue to press for the return of our children based on violations of human rights, international law, federal law, local law, and/or Japanese law. The only change is we now could apply for access under Hague Article 21. On March 31, 2014, the day before Japan signed on to The Hague, BAC Home members, family and friends, lawyers, Congressman Smith and members of his staff, hand delivered 30 Article 21 Access applications to the State Department. Though we parents may have applied for access under Article 21, as we were encouraged to do by the State Department, our collective cases remain abduction cases.

Under SEC 3. DEFINITIONS in The Goldman Act, the term "abduction" means a child who is the victim of international child abduction. The term "abduction" means the alleged wrongful removal of a child from the child's country of habitual residence, or the wrongful retention of a child outside such country, in violation of a left-behind parent's custodial rights, including the rights of a military parent. The term "abduction case" means a case that---

(A) has been reported to the Central Authority of the United States by a left-behind parent for the resolution of an abduction; and
(B) meets the criteria for international child abduction under The Hague Abduction Convention, regardless of whether the country at issue is a Convention country.

My case, and the 70 cases listed with BAC Home, occurred prior to Japan becoming a Hague signatory and by definition under the Goldman Act are abduction cases. Our collective children remain trapped in Japan and cut off from us. They are not resolved, yet the State Department in their initial release of their ICAPRA compliance report unilaterally and without explanation decided to downgrade them to access cases.

To say this report is an insult and a slap in the face of every parent of an abducted child is an understatement. The numbers do not add up in any way you try. What creates an ever bigger problem is this grossly inaccurate report gives potential abducting parents ammunition to go to court and show any judge that Japan is "compliant" with The Hague when nothing could be further from the truth. With no American child ever being returned by the Japanese government, nor any ruling in favor of the victimized parent ever enforced by a Japanese court, Japan is Non-Compliant. Even using State's own numbers, as ridiculous and ludicrous as they are, Japan is still 57% Non-Compliant which is greater than the 30% standard set in the guidelines of the Goldman Act. Japan is unequivocally Non-Compliant. Period.

Japan's "Compliance" rating in the report is highly suspect after the release of recent testimony in the Japanese DIET. On May 14th, Takashi Okada, Deputy Director General in the Secretariat of the Ministry of Foreign Affairs said "I think I received [Ambassador Jacobs]understanding about how our country has been dealing with the issue [the Hague Convention]" and "The report has not been released yet. As I explained

earlier [to the DIET Member], because we strived to make an explanation to the U.S. side, I hope that the report contents will be based on our country's efforts [to deal with the issue]"

The annual ICAPRA report is not to take in to account what Japan tells the Ambassador its "efforts" are. The report is supposed to be compiled based on facts and results. There are no facts to support this report regarding Japan. The facts are that no American child has been returned. For anyone to make any sort of assurance or to accept Japan's explanation to give it a favorable rating in the report is outrageous. This report must be amended to show Japan as non-complaint. There have been over 400 abduction cases to Japan registered with the State Department since 1994 and no child has been returned by the Japanese government.

There must be change. Nothing State is doing or has done has created the return of a single child. Case workers who were supposed to be rotated every two years change annually or semiannually. I have had three case workers this year alone and six since my ordeal started seven years ago. We deserve better communication than the infrequent calls from a case worker asking me if I have heard anything new. We need follow up with the Welfare and Whereabouts requests OCI sends out. I stopped asking for Welfare and Whereabouts visits because no one at OCI would follow up with their own request. Since case workers never hear back from the requests they send, they never follow up. What's the use in asking for one if no one from State is going to follow up?

Quite frankly, State's actions, or this case inaction, speak so loudly we can't hear what they're saying. I'd like this committee to insist that OCI and the State Department be far more transparent with congress and with victimized parents. We deserve answers. Simply telling this committee that they are raising our cases means nothing. What are they saying? Who are they saying it to? What are the answers they are receiving? Are they demanding the return of our children or simply begging? Do they drop the issue just because Japan tells them it's too difficult to return our kidnapped children? We have suffered years of secrecy from State regarding our abducted children. It's the perfect definition of insanity, doing the same things over and over again but expecting a different result. The results haven't changed in my seven years. We are still no closer to seeing our children today than we were before Japan joined The Hague Abduction Convention.

The physical and emotional toll this has taken on me, my family, and my friends is harder than you could ever imagine. The only ones who understand what we go through every single day are other parents of kidnapped children. I've sent birthday and Christmas cards for years only to have them returned unopened. I've missed his first day of school, the loss of his first tooth, first time riding his bike, and numerous other things. I've missed them all. I dream of what he looks like today. I haven't seen him since he was 5. He just turned 12 in March.

Imagine if this was your child or grandchild what would you do to get them back? We are all tired of excuses. We are all tired of hearing "we need to give Japan more time." Japan certainly didn't need any more time to get children abducted from Japan back right away since joining The Hague. Yet in this same 17 month period of time the Japanese government, its family court, nor the Japanese Central Authority has ruled to enforce the return of any abducted American child to the victimized parent. The US Government could get our children returned within a year if it truly wanted to. But the plain and simple truth is that the US Government is not willing to use any real and significant political capital to get our abducted children returned from Japan. Why? Are our children not important enough? If any of these 400 children abducted to Japan belonged to the President, Vice-President, senior Cabinet Officials, individuals of great wealth, or titans of industry, I guarantee our government would use its full resources to get them returned immediately. But Keisuke and all the others are just children of ordinary, law-abiding, patriotic American citizens, abandoned by an indifferent US

government. A government more concerned with maintaining good relations with Japan than protecting our most vulnerable citizens, our children.

June 15th of this year was the seven year anniversary of the last time I saw or heard from Keisuke. Today marks 2586 days with absolutely no contact with my son. No more delays. No more excuses. It is time to start holding Japan accountable with public condemnation, implementation of sanctions as outlined in the Goldman Act, and the demand that we have access to, and the return of, our American children immediately. My son, Keisuke Christian Collins, deserves his father and I deserve my son.

Thank you
Randy Collins
Legal Father of Keisuke Christian Collins Abducted to Japan June 16, 2008

Mr. SMITH. Thank you very much.
Ms. Rutherford.

STATEMENT OF MS. KELLY RUTHERFORD, CO–FOUNDER, CHILDREN'S JUSTICE CAMPAIGN

Ms. RUTHERFORD. Thank you all for being here today. It is wonderful to see your faces and to hear the questions that you asked Ambassador Jacobs. And I know each one of you really believes in this, and it gives us all a lot of hope. I really, really appreciate it.

I would like to thank all of you, Chairman Ed Royce, Chairman Smith, Ranking Member Bass, Congresswoman Sheila Jackson Lee, who has worked on educating the public about my ordeal, and the distinguished members of the subcommittee, and these other gentlemen who I am just meeting today.

Thank you for the opportunity to address you today regarding international parental child abduction, or IPCA, and my ordeal as a parent separated from her children, and my commitment to getting my children back or to stay in this country, and working to educate judges and advocating on behalf of other parents.

My name is Kelly Rutherford, and I am U.S. citizen. My children were born in this country and are American citizens as well. They only hold U.S. passports. In 2012, at the ages of two and five, my children were ordered by a California Judge, Teresa Beaudet, to leave the United States and reside in France and Monaco, two countries where my children do not have citizenship and where they had never lived before.

My kids are here with me in the United States for 5 weeks this summer, and I would like to say I had to go to Monaco to have them give me that, because in my country no one seems to be claiming jurisdiction for my American children, including California, even though they sent them there.

They are currently required to return to Monaco 5 weeks from now, in August. I am testifying here in the hopes that you can help them and similarly situated children to remain in the United States.

If someone had told me when my children were born, which were the two most beautiful days of my life, that one day my children would be ordered by an American judge to leave the United States and live in a foreign country, I would have not believed it. I never thought that what has happened was possible in this country, and there are fellow Americans that come up to me on a daily basis expressing the same disbelief.

In 2008, my ex-husband and I both filed for divorce. We agreed at the time that California would have jurisdiction over the case, even though none of us were living in California at the time. I was under contract in New York to do Gossip Girl. I have since come to doubt whether it was proper for California to handle the case, because nobody in our family had lived there for a long time before the divorce was filed.

My ex-husband made no dispute over money as neither one of us sought support of any kind. The only dispute was over which parent would have primary custody. I assumed it would be me, because I had been the children's primary caregiver throughout their lives. This issue became an international controversy after my ex-

husband left the United States before the custody decision was made, and then claimed, through his attorney, that he was unable to return to this country because his work visa had been revoked.

In support of that claim, my ex-husband gave the court a photocopy of a forwarded email that appeared to have been sent to him from the U.S. Embassy in Berlin. The judge took no steps to authenticate the email or contact Federal officials to determine whether the information was true, even though the email contained many irregularities. For example, it was signed by the U.S. Consulate in Berlin, and there is no Consulate in Berlin. There is only an Embassy.

The email also contained no date of visa issuance or visa revocation, both of which are required under Federal law. Despite the email's questionable authenticity, the judge accepted the documents as evidence, and based on that email alone, ruled that my children must leave their own country and reside with their father abroad.

For reasons that remain unclear today, to this day, the judge never asked my ex-husband why he needed a visa to enter the United States, given that he was a German citizen and Germans come to this country every day on passports alone for months at a time. Surely, my ex-husband could have exercised his parental rights in America by coming here on his passports as he did during our marriage, and just as I have used my U.S. passport to travel to France and Monaco over 70 times since 2012 to see my children.

By forcing my kids to leave the United States, the judge ignored my children's rights to live in their own country as granted by the Supreme Court's 1967 decision of Afroyim v. Rusk. And because my children were made to live in a country where they had no citizenship, the judge effectively rendered them nationless, because, as an expert witness explained to the California court, many countries, including Monaco, have provisions in their laws that allow them to reject American court orders and American law generally.

After living in Monaco for a period of time, my children were declared habitual residents of Monaco, subject only to the laws of Monaco. They have now lived there for 3 years. They said it was temporary. Under the UCCJEA, the habitual residence of a child, and not the child's citizenship, determines where they live. Though legal experts tell me that this aspect of the UCCJEA may be unconstitutional as habitual residency cannot trump U.S. citizenship. One of the things that I argued in court was that I would be willing to take the kids to see their Dad in Monaco and France every holiday and all summer until he figured out whatever his work visa situation was. And that was ignored, because then we wouldn't have this problem to begin with, because they would have stayed in their own country.

The judge said that even though the visit to France and Monaco was temporary that if my ex-husband did not obtain a new visa the children would automatically return to this country. I saw that ruling as a hopeful sign that, worst-case scenario, my children would return home in a year or so, either with their father, if he obtained a new visa, or without him, if he did not.

Much to my shock, when I returned to the California court in 2014 to ask that my children be ordered to come home because

Max has done nothing to obtain a new visa, a fact that I confirmed through the State Department in 2014, the court denied my request and ruled that it had no authority to address my ex-husband's immigration efforts.

The court then questioned whether it even had jurisdiction anymore, given that nobody had lived in California for many years. This was a curious statement, considering that I had asked that the California court previously to relinquish jurisdiction said that the case would be handled in New York. This is before they were sent there. So we agreed to California jurisdiction because the California court refused to allow me to move the case to New York.

So here I was forced to litigate the case in California, which sent my children away in 2012, but it was now claiming it had no jurisdiction to fix the problem it had caused, and to this day that remains the same.

After that 2014 California ruling, I tried to have the children file their own case in the New York Federal Court, hoping the Federal Government would bring my children home, but that was unsuccessful as well, though we are now asking the Supreme Court to review the decision.

I went to Monaco earlier this year to object to jurisdiction there, and I went back to California again last week asking for the return of my children, but that California judge stated that if I don't live in California, he can't exercise jurisdiction for any purpose, including bringing the children home to America.

This case has developed a very strange legal vacuum where nobody in this country appears willing or able to do anything to help my American children home, bring them home, even though this is the country that sent them away. I can only see this as a legal kidnapping by a California judge, forcing my children to live abroad for so long that the other country seized control over their lives.

How could this be happening? I ask myself. I just ask each of you here today how it is possible that two American citizens have been ordered by their own Government to live in exile in a foreign country. I assume that many of you may have children, and can you only imagine a judge ordering you to put your 2-year-old child on a plane and sending them to live in a foreign country?

There are lots of great countries in the world, and I have traveled to Monaco many times. It is a beautiful, interesting place. But among the wonderful things about this country is that people have a right to choose whether to live here. My children did not choose to leave their own country. I and their court-appointed attorney in California chose for them to remain in the United States.

When they reach the age of maturity, if they want to live abroad, they can do so. Or if both parents make a private family decision to raise their children abroad, they can also do so. But my children are too young to make such a serious decision, and this was not a private family matter. This was a court order commanding my American children to leave the United States.

Congress could fix this problem and help many children and many others simply by codifying what the United States Supreme Court said in 1967, that ex-patriation can never be ordered by any court because choosing to live abroad is an individual right, not a government power. The Supreme Court explained in Afroyim that

no right is more fundamental than American citizenship. So I ask all of you here today, aren't my children American citizens?

On behalf of my children, and all American children affected by similar court rulings from family courts all across the country, please do all that you can to make sure that no child is ever forced to leave this wonderful country.

Thank you very much.

[Ms. Rutherford did not submit a prepared statement.]

Mr. SMITH. Ms. Rutherford, thank you so very much for your testimony.

Dr. Rahman.

STATEMENT OF SAMINA RAHMAN, M.D. (MOTHER OF CHILD ABDUCTED TO INDIA)

Dr. RAHMAN. I would like to thank Chairman Smith and Mr. Meadows, Ms. Jackson Lee, and other members of the subcommittee, and my representative Congressman Eliot Engel, for giving me this chance to testify.

My name is Dr. Samina Rahman, and I am Abdallah's mother. I am a resident of New York and a citizen of Bangladesh. Today, I will be Abdallah's voice. I will address the human rights violations, crimes, and injustice he and tens of thousands of American children are the silent victims of for decades.

In brief, Abdallah, who is a U.S. citizen by birth, and whose habitual residence is Westchester County, New York, was abducted to India by his own father, Salman Khan, a non-resident Indian citizen, or NRI, who never lived in India prior to seeking a safe haven there in April 2013.

In April 2013, after years of abuse, neglect, and his multiple declarations of divorce, I finally informed my husband that I agreed for divorce. Despite Shariah law, which would grant me sole custody, I promised him shared custody, to be fair to him, to which he responded, "There is no such thing as shared custody. I will never share my son."

Later, however, he cried in remorse, and he said he wished to reconcile. I gratefully agreed. A few days later, he announced he was going to Florida to visit his older sister, Arshi Khan. She had ex-communicated me in 2011 after she physically assaulted me and threatened to break my legs and my son's legs and ordered my husband to divorce me and throw me on the street. As a resident training physician, I worked 6 days a week, so I could not have accompanied them to Florida anyway.

Four days later, on the day my son and my ex were expected to return to New York, I received a text message from a United Arab Emirates cell phone number, "We are in Dubai." Two days later, my husband ended all contact with me abruptly. His parents and other siblings, who live only a mile away from my parents' home in the United Arab Emirates, refused to answer my, my parents, and my sister's many phone calls on their many phone numbers. Arshi Khan did not answer any of my calls either.

At a complete loss, I filed a complaint with the Mount Vernon Police Department. They made a phone call to Arshi Khan and asked her if she knew her brother's whereabouts. She said she had no clue. Her lawyer later admitted to the FBI that she had pur-

chased one-way Delta Airlines plane tickets to Dubai for her brother and my son.

However, the very next day, after this call from the police, my husband reestablished contact with me. He claimed I was having an affair and that is why he had to leave me, to protect my son from my immoral ways. He informed me that he had moved to India permanently. I later found out that he had also emailed my employers, my residency program directors, that all my certificates were fake and that I should be fired and deported.

I made many desperate calls at that time, to domestic violence hotlines, the FBI, the NCMEC, the Indian Consulate in New York, the Indian Embassy in Washington, and the United States Department of State. They all advised me to take my matter to family court. My parents then retained a New York lawyer for me, and we petitioned the Westchester County Family Court, since that was my son's habitual residence. However, my ex, despite being duly served, refused to appear in court even via phone, and instead simultaneously initiated custody proceedings in his local district court of Jhansi, India, where he claimed that I was an immoral woman who had abandoned my son and my husband.

My parents then hired a lawyer for me in India on the recommendation of a close friend of theirs in the UAE. My parents, like me, have never lived in India. On the basis of clear death threats, which my husband had made against me and my father, which I had recorded from a Skype video call in May 2013, the Supreme Court of India issued a 3-month stay order on the Jhansi court proceedings, on the district court proceedings.

However, 9 months later, that same Supreme Court of India refused to acknowledge that my son was abducted and ordered that I file a petition for a child custody case in a lower court of the State of Uttar Pradesh, which is a part of the world I have never even visited.

This is in direct contradiction to India's own Constitution. The Guardians and Wards Act of 1890, section 9, clearly states that the court that has the jurisdiction to entertain the application with respect to the guardianship of the minor is the district court of the place where the minor ordinarily resides, which, in my son's case, is the Family Court of Westchester County, New York.

The Supreme Court of India not only asserted jurisdiction over me, a non-Indian who has never lived in India, but also turned a blind eye to the death threats to my father and myself by an Indian citizen and threw out my Westchester Court Family Court order of sole physical custody without a written, unexplained disrespect to the comity of courts.

Am I really expected to hire a lawyer, site unseen, in a country which grants me conditional visit visas of 3 to 6 months at a time? Am I to make that lawyer my power of attorney to represent me in court? Am I expected to wire transfer him tens of thousands of U.S. dollars and then trust in God that he is really making the court appearances he claims he is making?

As a non-Indian who never lived in India, I have no records of tax filing, property ownership, employment, education, or residence in India. So on what basis would an Indian court decide whether I am a fit mother or not?

Tova Haynes-Sengupta from Texas is an American left-behind parent. Like me, she has never lived in India. Her 4-year-old daughter Indira was abducted to India by her ex-husband Susanta Sengupta in December 2013. Due to financial constraints of being a single mother who was a homemaker for the duration of her marriage, and the fact that she is the sole custodial parent of Indira's older brother, she has never been able to, and will never be able to, afford to retain a lawyer in India, nor make trips every 6 months for a court appearance there.

She was awarded sole custody of Indira by the Family Court of Williamson County, Texas, after her ex-husband was found guilty of felony child abuse only months prior to the abduction. There is an unlawful flight to avoid prosecution warrant issued against Susanta Sengupta.

Why are Tova and I being asked to petition the district courts of India for child custody when we have never even lived in India? There are over 30 million cases pending in India's courts today. Ninety percent have been pending for over a year, and over half of them have been pending over 5 years. So why am I being forced to be pending case number 30 million and one?

Since April 2013, I have been allowed to speak to my son only 12 times. Despite the false claims of an Office of Children's Issues welfare report from July 2013, my son is not allowed to call me, and all my calls to him are screened by his father. It has been 27 months since I last looked into my own son's eyes. I breast-fed him exclusively for over 3 years until he outgrew his cow's milk allergy. I taught him to read, write, pray, ride a bike.

My son, my ex, and I lived with my parents for most of my married life. I worked hard on my career as a physician, so that I could provide myself and my son with security and our home someday, since my husband was unemployed, though he is also a medical graduate.

People often ask me, "How did your ex get your son past five international airports without a notarized consent letter from you?" So I went online and discovered that while the Customs and Border Patrol recommends such a letter, it does not require such a letter. The U.S.A. has no exit controls for people; only for bottles of shampoo over four ounces.

Americans then ask me, "Why don't you talk to the State Department and they will bring your child back," which could not be further from the truth. Left-behind parents like myself of American children who have been abducted to India have all had the same experience in our responses from the U.S. Department of State's Office of Children's Issues.

In December 2014, 4 months after the Goldman Act was signed into law, I emailed my OCI caseworker to have my son deported back to the U.S.—I thought it was a great idea—because he is an American minor living in India on a fraudulently acquired residence visa, or overseas citizen card, which by Indian law requires the notarized consent of both parents of the minor.

And this is the response I got from my caseworker, and I quote,

> "The Department of State does not have the authority under U.S. law to inform India that a foreigner is residing there illegally, or to request their deportation. I encourage you to con-

> sult with your attorney about the best way to inform the Indian court and the Ministry of Home Affairs, Foreigners Division, about Abdallah's legal status in India."

They continue to write,

> "The Sean and David Goldman Act, ICAPRA, grants the Department of State the authority to employ a full range of diplomatic tools to improve cooperation with India on resolving all cases of international parental child abduction. We strategically tailor our bilateral efforts to India's unique legal and political system. While I cannot share government-to-government communications concerning the status of bilateral efforts or procedures, I can assure you that we will seek opportunities to utilize the tools enumerated in the new law."

I was elated to learn that consequent to the Goldman Act there were now bilateral efforts and procedures, and government-to-government communications ongoing between India and the U.S. State Department. Finally, there was hope for parents of children abducted to non-Hague Convention countries.

However, in May 2015, on reading the 2015 annual report, we left-behind parents were devastated to discover that there are still no bilateral procedures in place between India and the U.S., according to the report, whereas section 103 of the Goldman Act clearly states not later than 180 days after the date of the enactment of this act, which should have been 5 months ago, the Secretary of State shall initiate a process to develop bilateral procedures, including MOU, which include identification of the central authority, which was not done; identification of the judicial and administrative authority that would promptly adjudicate abduction and access cases, which was also not done; and identification of the law enforcement agencies, not done.

We at Bring Our Kids Home are outraged to learn that our children's cases have been open with the State Department for years, but have still not been reported to the Government of India. Three years after Reyansh Parmar was abducted, 2 years after Abdallah Khan and Nikhita Jagtiani were abducted, yet to date the OCI has submitted no application to the Government of India for any of these children.

What prevents the State Department from reporting these cases to the Government of India? Child abduction is a crime in India under Indian Penal Code 361, punishable by up to 7 years in prison. And both the Ministry of Women and Child Development and the National Commission for the Protection of Children's Rights are mandated by the Indian Constitution itself, to uphold the United Nations Convention on the Rights of the Child, which India ratified in 1992, which states that India has committed itself to, "Take measures, including the conclusion of bilateral and multilateral agreements, to combat child abduction and the non-return of children abroad." This is referring to Articles 11 and 35 of the UNCRC.

The case of Avinash Kulkarni from California is now 25 years old. His son Soumitra, who was abducted at age 6 months in 1990, is now 25 years old and is completely alienated from his distraught

father who says that his life stopped the day his son was abducted 25 years ago.

Twenty-five years later, there is still no bilateral agreement in place between India and the U.S. to address IPCA, which is a crime, an act of child abuse, and a terrible violation of children's rights and parental rights. The numbers in the 2015 annual report by the State Department are inexplicable. Nineteen new abduction cases were reported in calendar year 2014. None were reported to a foreign central authority, yet 22 cases are reported as resolved.

What is probably the most alarming is that although India is listed as non-compliant, the only remedial measure recommended by the State Department is D, encourage India to sign the Hague.

India has a long and well-documented history of treating parental abduction cases as routine custody cases, disregarding custody court orders from jurisdictions where the child was habitually a resident and relitigating those decisions in India for several years and millions of rupees. The only person who consistently wins in India is the abducting parent.

It is no secret that our children are abducted to India precisely because of the legal and cultural environment prevalent in India for decades that provides a safe haven for abductors, where they can about their daily lives as if they never committed a crime.

Abducted children from the United States and from around the world are rarely returned by Indian courts. So why wouldn't the State Department choose to apply the full range of Goldman Act recommendations to address their non-compliance, including (A) training, the State Department promotes training with judicial and administrative authorities on the effective handling of international parental child abduction cases; (B) training with law enforcement entities on how to effectively locate children and enforce court-ordered returns; (F) Department officials intensify engagement with the foreign central authorities for updates on IPCA cases and to promote prompt case processing.

While we left-behind parents live a nightmare every waking moment, what really kills us inside is that we know our children suffer far more than us. They were pulled out of their homes at the most tender age, cruelly deprived of a mother or father's nuture, removed from their family, friends, their pets, their school.

Overnight they find themselves in a new country where they are thrust into a new living situation, a new school, with a foreign language and foreign customs, where they must always be stigmatized and bullied as the Indo-American child whose American parent abandoned them.

They are brainwashed by the abducting parent that they have been abandoned and are already forgotten by the left-behind parent. And they are forced to turn against their left-behind parent in violation of their every natural instinct to love and be loyal to both parents.

My own son was snatched from me at age 6 and is now being cared for by a maid who probably did not attend school, who cannot even communicate with my son. When I last spoke to my son a few months ago, he only knows English. He doesn't know any Hindi.

I am also shocked at how the school that my son was enrolled in, the Delhi Public School, which is one of the best schools of India

with several international branches, has enrolled my son without my ex-husband providing a transfer, a school leaving certificate, from Abdallah's elementary school in New York, without providing recent report cards, immunization records, none of that, all of which are typically required by the Board of Education for enrollment of children between grades one and six.

Is it not incumbent on every civilized society to protect its most vulnerable citizens? We at Bring Our Kids Home understand that this is a new era for the strategic partnership between the United States and India. Forward together we go. Chalein Saath Saath.

The two largest democracies of the world have agreed to work together, not only for the benefit of both nations but for the benefit of the world. Together we seek a reliable and enduring friendship.

However, our leaders must never forget Gandhi's words, the seven deadly social sins, including politics without principle, and commerce without morality. Our children need not be considered as sacrifices to the altar of commerce.

A true friend will tell you the truth about yourself and use it to empower you, not to belittle or destroy you. The question is: Does the United States have the courage to make the human rights and security of American children a priority and tell the truth? And does India have the will to lead by actions, not just by words?

Mr. SMITH. Ms. Rahman, if you could just briefly, to interrupt, we have——

Dr. RAHMAN. I am done.

Mr. SMITH [continuing]. We are on zero for a vote. No. We will come back, and you can pick up where you have left off. But we will take a short recess. We have five votes, and I deeply apologize to you for that. But hopefully 20 minutes, 25 minutes or so, we will be right back.

Dr. RAHMAN. Thank you.

Mr. SMITH. And reconvene. Thank you.

[Recess.]

Mr. SMITH. First of all, let me again express to our distinguished witnesses and guests here, I apologize for that long delay. We did have a series of votes, and they went a little bit longer than advertised.

But, Dr. Rahman, if you would continue?

Dr. RAHMAN. We at Bring Our Kids Home ask Congress that they continue to press the State Department to change the way they are engaging with left-behind parents and nations that our children are abducted to. There have been good communications, good conversations between India and the State Department, but a year after the Goldman Act there is still no MOU, no treaty, as required by the Goldman Act.

We ask that, though it may be politically unpopular, both Congress and State make clear to offending countries that these abducted American children must be returned to their habitual residence using the full range of diplomatic tools available to them by the Goldman Act.

Thank you.

[The prepared statement of Dr. Rahman follows:]

My name is Samina Rahman, I am a physician from New York, I live in Mount Vernon in Weschester County and I am a citizen of Bangladesh. In brief, my only child Abdallah Khan, born in Kansas City, Missouri in November 2006 was abducted to India from his home and habitual residence in Mount Vernon, New York in April of 2013, by his own father, Salman Khan, a non-Resident Indian citizen ("NRI"). Salman Khan has never resided in India prior to seeking a safe haven there in 2013.

In April 2013, after years of abuse, neglect and multiple declarations of divorce from my husband , I finally gave up on our marriage and informed my husband I completely agreed with him that we needed to get a divorce so that our son would not have to see us fighting anymore, and I assured my husband that he need never worry, because despite Shariah law which gives the mother sole physical custody of sons under the age of 9 or the age of reasoning, I would offer my husband shared physical custody. He responded by saying "I will never share my child with anyone, there is no such thing as shared custody."

Later however he cried in remorse for his abusive acts, apologized profusely, and showed me every sign of wanting to reconcile our differences. A few days passed and he announced he was making a trip to Florida to visit his elder sister Arshi Khan for 4 days. He was taking our son with him on this 4 day trip. As a physician in my intern year of residency, I sometimes worked upto 80 hours a week and so I could not accompany my husband and son to Florida, neither was I invited on this trip as my husband's sister had physically assaulted me in 2010, threatened to break my son's and my legs, demanded my husband divorce me and throw me out on the streets, and since 2010 she has not recognized me as her sister in law.

4 days later on the day I was expecting my ex and son to return to NY, I received a text from an unknown cell phone in the UAE- "We are in UAE". 2 days later he abruptly ended all contact with me. My ex-husbands parents and other siblings who live only a mile away from my parents' home in the UAE, stopped answering all my parents' and my calls. At a complete loss I then filed a missing person's complaint at the Mount Vernon Police department. They made a phone call to my sister-in-law Arshi Khan in Florida to ask if they knew of my son and husbands whereabouts. Arshi Khan claimed to have lost all contact with her brother following his 4 day stay at her home just 7 days prior (later her lawyer admitted to FBI that she had purchased the one-way tickets for my son and my ex to Dubai).

The very next day however my husband emailed me with his contact number. It was after a whole week of silence. I lost about 5lbs in that week simply because I would forget to eat. I then spent about $500 on cell phone bills for the first 2 days calling him

in India, he would yell at me that he had to leave me because he believed I was having an affair and he had to protect my son from my bad influence. I later found out that he had also emailed my residency program director to fire me and deport me since as he claimed my certificates were all fake.

I made many desperate calls in those first few weeks, while also trying to hold it together at the hospital so I would not be considered incompetent at my training program. I reached out to My Sister's Place (an organization that supports victims of DV), the FBI crimes against children office, and the NCMEC, they all redirected me to the State Department Office of Children's Issues since my son was already outside US borders. I was advised by all that if I had court order for custody, I may have a chance at getting my son back.

My parents retained a NY lawyer for $500 an hour, and I petitioned the Weschester County family court for custody, my husband was duly served and was given the option to appear in court via phone but he refused and simultaneously initiated court proceedings against me in the local district court in his father's hometown in India, where he claimed I had abandoned him and our son and was a woman of immoral character.

My parents then hired a Supreme Court lawyer in India on the recommendation of a close friend of my parents from the UAE where my parents have lived for over 3 decades, since we have never lived in India. On the basis of clear death threats which my husband had made against my father and myself which I had recorded on a skype call in May 2013, the Supreme Court of India ("SCI") issued a stay order of 3 months on the local district court proceedings initiated by my ex. However, 9 months later, 1 year after my son's abduction, that same Court refused to acknowledge my son's case as an international parental child abduction and ordered that I file a petition for custody in the lower court, in a State (Uttar Pradesh) which I have never even visited, in a country which I have never lived in nor am I a citizen of. This is in direct contradiction of the India's own Law, the Guardians and Wards act of 1890, where

Section 9. clearly states : Court having jurisdiction to entertain application:

(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides."

Which in my son's case was the city of Mount Vernon in Weschester County, NY

So, the Supreme Court of India not only asserted jurisdiction over me but turned a blind eye to my US family court custody order for sole physical custody, with unjustifiable disregard to the comity of courts, overlooked the death threats to my and my father's lives, and handed me off summarily to a lower court.

Am I really expected to retain a lawyer sight unseen in a foreign country, whose government grants me conditional visit visas of 3 to 6 months at a time, am I to make that lawyer my power of attorney so he can represent me in court, as a woman who

has no records of education, employment, residence or tax filing in India, no one to vouch for my character? Am I expected to communicate with this lawyer by emails, texts and phone, send him 10s of 1000s of US dollars by wire transfer and then trust in God he really is making the court appearances he emails me he is making?

Tova Haynes-Sengupta from Texas who unlike me is an American by both birth and heritage, who has no family outside of the US much less in India, is a left-behind parent whose daughter Indira was abducted at age 4 by her Indian ex-husband Susanta Sengupta in December of 2013. Due to the financial constraints of a single mother and the fact that she is the sole custodial parent of her older child Gabriel, she has never been able to and will never be able to afford to retain a lawyer in India nor make trips to India every 6 months for a court appearance. She had sole physical custody of Indira awarded to her by the family courts of Williamson county, Texas, there is an Unlawful Flight to Avoid Prosecution ("UFAP") with the DOJ, for her ex as he was charged with domestic violence. Yet her daughter's case as of May 2015 was not reported to a single Indian governmental authority by the Department of State OCI's own admission in their annual 2015 report.

Meanwhile, my ex blocked almost all communications between my son and I since April 2013. I turned to the Department of State OCI. In July 2013 the OCI arranged for a welfare visit to my son with my husband's consent, however the report contained an incongruity which the OCI later refused to address- they reported that my son has a cell phone he uses to call me. When in fact he has never called me from that cell phone number. My son informed me that the cell phone his father purchased for him never has any credit filled into it. The OCI has also not conducted any further welfare visits in 2 years.

In 27 months I have been allowed to speak to my son by phone only 12 times. I never lived apart for him for almost 7 years till he was abducted, except for 3 weeks when I travelled to the US for job interviews. My mother took care of him when I was at work, he lived almost all his life at my parents' home with my husband and I. I breastfed him exclusively for over 3 years till he outgrew his cow's milk allergy. I taught him to read, write and ride a bike. I would stay up with him all night when he was a baby crying because of reflux that wouldn't let him sleep. I taught him small chapters of the Holy Quran and how to pray. I made him do his homework. I was the disciplinarian but also his best friend. He would get all my jokes. In a crowded place he would never ever leave my side, I would never have to worry about losing him because he would be stuck by my side. Yet today is almost 27 months since I have looked into the eyes of my own baby, and 26 months since I last skyped with him, 4 months since I last spoke to him on the phone.

My American friends and colleagues are surprised at my situation. Their first question is, "How did your husband get your son past 5 international airports-NY-Florida-Atlanta-Dubai-Delhi without a notarized consent letter from the non-travelling parent?" So I went online and discovered that while the US Customs and Border Patrol "recommend" letters of consent from the non –travelling parent of a minor they do not "require" it. Most Americans live under this false sense of security that the US borders have exit controls. This is far from the truth. A 4oz shampoo bottle will not make it on a plane leaving this country but a minor travelling with only one parent will get past the border every single time.

People then ask me "But parental child abduction is a crime in America, so the American Embassy in India will bring back your son, right?" This, as I was later to find, could not be further from the truth.

The following has been my experience so far with the DoS OCI, and similar to those of other parents from Bring Our Kids Home whose children have been abducted to India:

In December 2014, 4 months after the Goldman Act was signed into law by President Obama, I asked my OCI caseworker in Dec 2014, for the last 2 years, my son is living on either a fraudulently acquired visit visa or fraudulently acquired Overseas Citizen of India card ("OCI card", lifetime, multiple entry Visa for people of Indian Origin), I say fraudulent since the Indian consulate website specifies that notarized parental consent is required in order for minors to be issued Indian visas and "OCI cards" and I never signed one. So I requested the OCI to inform the Indian government authorities of this fact on my behalf, to which my OCI caseworker responded:

"*The Department of State does not have authority under U.S. law to inform India that a foreigner is residing there illegally, or to request the foreigner's deportation. I encourage you to consult with your attorney about the best way to inform the Indian court and the Ministry of Home Affairs, Foreigners Division about Abdallah's legal status in India.*

The Sean and David Goldman International Child Abduction Prevention and Return Act grants the Department of State the authority to employ a full range of diplomatic tools to improve cooperation with India on resolving all cases of international parental child abduction, including Abdallah's case. We are continually exploring all available means at our disposal to resolve Abdallah's case, and we strategically tailor our bilateral efforts to India's unique legal and political system. While I cannot share government-to-government communications concerning the status of bilateral efforts or procedures, I can assure you that we will seek opportunities to utilize the tools enumerated in the new law, when appropriate. "

I was disappointed with the reported helplessness of the OCI but excited to know that the Goldman Act was finally empowering them! It was so great to read the part about

the existence "bilateral efforts or procedures, government to government communications" –finally there was hope for parents of children abducted to non-Hague signatory countries!

However, in May 2015, I like other left behind parents was devastated to find out on reading the 2015 annual report that there are still NO bilateral procedures in place between India and the US. Whereas, SEC. 103. Of ICAPRA clearly states:

(a)-Not later than 180 days after the date of the enactment of this Act, (early February, 5 months ago) the Secretary of State shall initiate a process to develop bilateral procedures, including MOU,

b) -These bilateral procedures should include - (1) the identification of-- (A) the Central Authority; - NOT DONE (B) the judicial or administrative authority that will promptly adjudicate abduction and access cases; NOT DONE (C) the law enforcement agencies NOT DONE.

We at Bring Our Kids Home were outraged to find out that our children whose cases have been open for years, not months, but were not reported as abducted to the Indian government. The only time the U.S. State Department has admitted in writing that they raised our children's names with Indian government officials was in May 2015, over 9 months after ICAPRA became law, 3 years after Reyansh Parmar was abducted, over 2 years since Abdallah and Nikhita Jagtiani were abducted.

What prevented the DoS from reporting these cases to the MEA in India or any other authority in India? If these cases were never reported prior to May 2015, then what "strategically tailored bilateral efforts" was the DoS pursuing with India? There are too many alarming questions and no clear response.

1000s of American citizen children have been abducted to or illegally retained in India over the last 3 decades, there is still no system in place to even report our children's cases to the relevant Indian governmental agencies, much less address the matter of arranging for their returns. In the case of Avinash Kulkarni, his son Soumitra who was abducted at age 6 months in 1990 and is now 25 years old and is completely alienated from his father and refuses to have any sort of relationship with him, yet not ONE case has officially been reported to any relevant Indian government Authorities as of May 2015, the justification based on emails some of parents have received from the OCI, "**being that India has not signed the Hague and therefore an FCA was not identified**".

Parents across the country are concerned that the U.S. Department of State may have breached its fiduciary duty towards our abducted American children or worse not complied with the letter and spirit of U.S. Law. I urge this Committee, Congress and President Obama to look at this issue and bring accountability wherever it is lacking.

Going back to the 2015 annual report by the State Department, India's numbers are truly inexplicable. 19 new abduction cases were reported in CY 2014, none of which were transmitted to an FCA even 9 months after ICAPRA was signed into law (now 11 months).

Zero children were returned. Yet, inexplicably, 22 cases are reported as "resolved".

India is listed as "non-compliant", however the only remedial measure recommended by State is: "D" - encourage India to sign the Hague.

We know India has a long and well documented record of treating parental child abduction cases as "routine custody" cases, disregarding custody and divorce court orders from jurisdictions where a child was habitually residing and re-litigating those decisions in India, to the detriment of our children and left behind families. Abducted children from the United States and the world are rarely returned by Indian Courts, so why wouldn't the Department of State apply the full range of recommendations to India, including:

KEY	**RECOMMENDATIONS TO IMPROVE RESOLUTION OF CASES**
A	The State Department (Department) promotes training with judicial and administrative authorities on the effective handling of international parental child abduction (IPCA) cases.
B	The Department promotes training with law enforcement entities on how to effectively locate children and enforce court-ordered returns.
C	Embassy and consulate public affairs and consular sections promote the resolution of IPCA cases with public diplomacy and outreach activities.
D	Department officials hold bilateral meetings with government officials in non-Convention countries that have not yet become party to the Convention to encourage accession or ratification, as appropriate, and/or other protocols or procedures for resolving IPCA cases.
F	Department officials intensify engagement with Foreign Central Authorities for updates on IPCA cases and to promote prompt case processing.

While we left behind parents are living a nightmare, we know our children suffer more than us - they were pulled out of their homes, deprived of their left behind parent, family and friends, and taken to a new country, where they are brainwashed to believe that they are "abandoned" by their left behind mom (or dad).

My own son was snatched from me and is now being cared for by a maid, who may not have attended school, speaks a foreign language, and may have different values than I. My husband says my son has a loving maid and 2 pet turtles now and he doesn't need me, which shows just how little he understands what is in my child's best interest.

Our children are victims of a crime, a crime that if a stranger commits, society would be outraged by it, but because it is committed by a parent, our victim children don't get the justice they deserve!

There is a perception that Indian Justice system is slow and only if they can fix it, everything will be sorted. Our own experiences say otherwise. Litigants in India face a multitude of challenges which have been documented in my testimony and by other parents including Bindu Philips and Ravi Parmar before this same Committee. Our children are taken there precisely because of the legal and cultural environment prevailing in India for decades that provides refuge for abductors and prevents the return of abducted children back to their countries of habitual residence. Left behind parents from across the country and the world will not accept the status queue.

Is it not incumbent on every "civilized" society to protect at the very least our children? If we can split an atom decades ago, travel through space, find remedies for life threatening diseases, there must be an actionable, urgent remedy to return abducted children and prevent future abductions.

We at Bring Our Kids Home understand that this is a new era for the strategic partnership between the United States and India. Forward together we go "Chalein Saath Saath". The 2 largest democracies of the world have agreed to work together not only for the benefit of both nations but for the benefit of the world. "Together we seek a reliable and enduring friendship."

However, our leaders must never forget, Gandhi's words, the Seven Deadly Social Sins, which include Politics without principle, and Commerce without morality." Our children need not be considered as sacrifices to the altar of commerce.

It is possible to be friends and also help each other overcome our flaws. A true friend will tell you the truth about yourself and use it to empower you. The question is, does the United States have the courage to make the wellbeing of American children a priority and say the truth? And does India have the will to lead by actions, not just words?

Exhibit A

It is widely accepted that the Hague abduction convention has shown limited success as it lacks enforcement mechanisms and there are no consequence for countries that are in non-compliance with their legally binding obligations. Thus, only about 40% of children are actually returned via Hague process, and is usually undermined by misuse of section 13 (b) where the state does not have to return the child when there is a perceived (not proven) risk of harm to the child if the child was to be returned to their habitual residence.

An example of a typical Hague failure in Argentina is provided in the April 2014 Hague non-compliance report:
child was abducted 9/10, Hague application was filed 2/11):
"In March 2011, a public defender submitted the left-behind parent's (LBP) Hague application to a district court in the Buenos Aires province. In August 2011, the LBP requested that the Argentine Central Authority (ACA) provide a new public defender after the taking parent (TP) relocated with the children to a different jurisdiction. In September 2011, the TP received notification of the Hague application and filed a motion to dismiss for lack of jurisdiction. For over a year, the Pilar and San Isidro courts disputed what district had jurisdiction over the case. After the Court of Appeals decided Pilar Family Court had jurisdiction over the case, the Pilar Family Court rejected the petition for return in December 2012. In June 2013, the Court of Appeals reversed the family court and ordered the return of the children. In July 2013, the TP filed an "extraordinary appeal" with the Argentine Supreme Court for the Province of Buenos Aires, and in December 2013, the court upheld the June 2013. However, litigation remains ongoing. "

The State Department even today after ICAPRA is almost a year old, insists that ratification of the Hague convention by India would lead to the return of our children. However, by their own admission in their 2104 report, ***Hague convention country stats are abyssmal***.. According to Table 2 of the IPCA annual report :

Mexico: 169 new abduction cases reported in CY 2014, CI transmitted 61 of them to Mexico's FCA, but did not transmit 108 (64%) of cases; the FCA of Mexico then transmitted only 25 out of the 61 cases to the judicial or administrative authorities. Somehow in 2014, 187 cases were "resolved", a total of 47%, while 59 cases were unresolved.

First of all it's blatantly obvious to a 5th grader that none of the numbers add up. Secondly, Of these 59 unresolved cases, 58 cases are listed on Table 6, the 59th case is unaccounted for. Thirdly, the minimum length of time pending in each case is over 1 year (372 days), maximum time 3193 days, and 28 cases (48%) have been pending for over 1000 days. Justice delayed is justice denied.

Clearly The Hague convention without any enforcement power, does NOT work as it was intended to, and is therefore an optimal solution. A law or treaty is only as good as its implementation. Additionally, pushing countries that are already non-compliant to join The Hague can result in activity that may be deemed as taking steps toward compliance without the result of having a single child returned.

Exhibit B

Inexplicably, abducted American children for several decades have been allowed enter India, no questions asked, are living on Indian soil on fraudulently acquired visas and OCI cards papers obtained without notarized consent of both parents, are even enrolled in the top schools of India without ever having to submit an original school leaving/transfer certificate (which in most schools including my son's school the Delhi Public School in Jhansi, UP, is a mandatory requirement for enrollment of any child from grade 1 to grade 6) ; custody battles costing millions of rupees and lasting over 5 years in most cases are ongoing in Indian courts, but not a single Indian government authority has been officially informed of these child abductions by the US Department of State.

Whereas Child abduction is a crime according to Indian Penal Code 361, punishable by upto 7 years in prison and a fine.

India is also one of 194 nations that have ratified the UNCRC. The United Nations Convention on the Rights of the Child (UNCRC) was developed in 1989 and is the first legally binding international instrument to incorporate the full range of human rights for children, including prevention and return of abducted children. Ratifying governments hold themselves accountable for this commitment before the international community. However, even after 20 years of India's ratification of the UNCRC, the ground realities in India, when it comes to crimes against children, including parental child abduction haven't improved.

The UNCRC has several articles to address IPCA, illegal retention abroad, non-return of children abroad, the right of access to both parents, their right to a family, the right to have their grievances heard, and the duty of all ratifying nations to take the necessary measures conducive to international cooperation between nations to combat IPCA and non-return.

1- The State's responsibility to take measures, including the conclusion of bilateral & multilateral agreements, to combat child abduction and the non-return of children abroad – Articles 11, 35.
2- The child's right to maintain regular access to both parents, and to be cared for by both parents - Articles 3, 5, 7, 8, 9, 10.
3- The child's right to be heard in any judicial and administrative proceedings affecting the child – Article 12.
4- The child's right to be protected from all forms of abuse while in the care of parent(s)/legal guardian(s), and the responsibility of the State to identify, report and investigate such instances – Article 19.
5- The recognition by the State that both parents have common responsibilities for the upbringing of the child – Article 18.
6- The State's responsibility in making the principles and provisions of the Convention widely known, to adults and children alike – Article 42.

7- Timely reports submitted to the UN Committee on the Rights of the Child of the measures taken by the State and the progress made - Article 44

Since India's ratification of the UNCRC in 1992, India has recommitted to it several times, and the UNCRC is now embodied in the very Constitution of India, through the National Plans of Action for Children, 2005, the National Charter for Children, 2003, The Commission for Protection of Child's Rights Act, 2005 and the subsequent constitution of the National Commission for the Protection of Child's Rights.

"and Whereas India acceded to the Convention of the Rights of the Child...

and Whereas CRC is an international treaty that makes it incumbent upon the signatory States to take all necessary steps to protect children's right enumerated in the Convention;

and Whereas the UN General Assembly Special Session on Children held in May, 2002 adopted an Outcome Document titled "A World Fit for Children" containing the goals, objectives, strategies and activities to be undertaken by the member countries for the current decade;

and Whereas it is expedient to enact a law relating to children to give effect to the policies adopted by the Government in the regard, standards prescribed in the CRC, and all other relevant international instruments;

The Central Government shall...constitute a body to be known as the National Commission for the Protection of Child's Rights."

<u>The Functions and Powers of the Commission for the Protection of Children's Rights:</u>

"The Commission shall...

(a)examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation,

(b) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;

(c) inquire into the violation of child right and recommend initiation of proceedings in such cases;

...(f) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child's rights and make recommendations for their effective implementation in the best interest of children;

(j) inquire into complaints and take suo motu notice of matters relating to

...(ii)non-implementation of laws providing for protection and development of children."

The National Policy for Children, 2013 is a reiteration and recommitment to the same.

"India is home to the largest child population in the world. The Constitution of India guarantees Fundamental Rights to all children in the country and empowers the State

to make special provisions for children. the Government of India reiterated its commitment to secure the rights of its children by ratifying related international conventions and treaties...including United nations Convention on the Rights of the Child".

All children have the right to grow in a family environment, in an atmosphere of happiness, love and understanding"

International parental child abduction (IPCA) and the illegal retention of children abroad are violations of the UN Convention on the Rights of the Child and of the Constitution of India,

However these ongoing violations of children's rights even today remain unaddressed by the legislative, administrative, judicial and law enforcement authorities of India. Subsequently the problem continues to grow. Today India is the #3 top destination in the world for IPCA and illegal retention of children.

India is home to 400 million children. That's almost the entire population of the United States. Every 6th child in this world lives in India. Every year over 90,000 children go missing in India, 40,000 of which will never be returned home. The National Human Rights Commission of India reports that there a link with child trafficking and exploitation sex trade, child labor and maiming and begging, the latter of which in the city of Mumbai alone is a 7 million $ industry. Yet most police stations refuse to file a criminal case or FIR for a kidnapped child, only a missing persons report with the local police. The police will put up posters. The information goes to a local database that is not connected to any other database in the country so if the child was kidnapped and taken to the neighboring city there is no way for the police in that city to be aware that that child is already reported missing in another city. Only in 2009 did Ministry of Women and Child Development of India begin to develop and support a nationwide database called ICPS Integrated Child Protection Scheme (ICPS). This system has still not adopted by every city of every state.

Exhibit C

The lack of an integrated interagency database for abducted children is not a problem unique to India, The 2000 GAO report on deficiencies in federal response to IPCA addressed this issue:

> "The lack of an integrated, comprehensive database has led to duplication of effort between agencies. A caseworker in the State Department's Office of Children's Issues made inquiries to a foreign central authority on one case only to find that the Federal Bureau of Investigation had located the child and closed its case a month earlier. The OCI and the FBI often make duplicate inquiries to foreign central authorities on the same case. In addition, State's case-tracking process cannot provide information on all reasons why cases are closed, nor does a closed case mean that an abducted child was visited by the left-behind parent or returned. Consequently, the effectiveness of federal efforts is difficult

to evaluate. The Office of Children's Issues lacks data to determine where best to allocate resources or identify the elements of successfully resolved cases.

- In response to this GAO report of 2000, the DoS made a commitment:

  "The Department of State is taking concrete and specific action to develop a computerized case management tracking system that will collect data more accurately and provide improved case management capabilities. This case management tracking system was designated top priority by the Bureau of Consular Affairs. We have seen an initial prototype of the system and will begin a pilot testing version in May-June 2000. We expect the system to be ready in July-August 2000. The system will also allow interagency data sharing"

15 years after the GAO report and recommendation and the OCI's own commitment, there is still no interagency shared database for IPCA of American children.

A more recent GAO report from 2011 states there is a lack of **nationwide database of custody and court orders:** According to a DOJ report on IPCA, parents who fear that their children may be abducted can request a court order to have the other parent surrender his/her passport and the child's passport to the court.

According to DoS officials, however, enforcement of such orders is difficult, in part because of the lack of a nationwide database that maintains custody orders, and because the US does not generally exercise exit controls on its borders.

It is also a little known fact even among the judicial community of the US that in the absence of a custody determination, a judge, parent, or state child welfare institution, if they have adequate reason to believe that a child is at risk of a family abduction, may request the court issue a warrant to take the child into the court's custody , according to UCAPA uniform child abduction prevention act of 2006.
Exhibit D

Other incongruities of the ICAPRA 2015 report:

Canada: new reported cases in CY 2014: 22, of which CI submitted 12 cases to the FCA, and did not submit 10, the FCA of Canada submitted them all to the judicial or administrative authorities, 29 cases were resolved, reported as a 69% resolution rate. Table 2 reports that 31 cases were resolved (29 abduction and 2 access).

However figure 1 reports that total 33 abduction and access cases were resolved. The reality is that Randal Murphy from Sunbury, Pennsylvania, who was the custodial parent of Hannah aware abducted to Canada by their mother in June of 2012 and despite spending over $150,000 on legal and investigative fees in both the US and Canada to be reunited with his own children of whom he had primary custody of prior to their abduction, now 3 years later he has NO access to them, they are already alienated to the point that they have said to him " you are not our not our father" and "we hate America", and Randall Murphy faces over $20,000 if fines if he even enters Canada.

It gets worse- his local court of Northumberland County as of June 29th 2015 in direct conflict with his constitutional rights under the 14th amendment, has allowed the Canadian court order to come against him which now makes him liable for upto 40,000$ in child support and fines. Canada has asserted jurisdiction over this man who is an American citizen by birth and heritage and has never been a resident of Canada. Canada has refused to recognize his pre-existing US primary custody order.

Carolyn OBrien from Tennessee is the mother of Micayla, who was abducted to Canada 8 years ago, also while she had primary custody, and today she pays child support in Canada while her daughter lives in her ex's husband's mother's basement while her ex himself lives over 2 hours away from their daughter. She has been denied Hague access rights as well.

Mr. SMITH. Thank you very much, Dr. Rahman.
Ms. McGee.

STATEMENT OF MS. DIANE MCGEE (MOTHER OF CHILDREN ABDUCTED TO JAPAN)

Ms. MCGEE. Thank you. Thank you for giving me this opportunity to speak today. I would like to start out by saying that my children are being illegally retained in Japan by Sean McGee currently employed at Nomura Securities. Under the International Parental Kidnapping Crime Act (IPKCA), he has been retaining them outside the U.S. with the intent to obstruct the lawful exercise of my parental rights.

My children, Brendan, MaryKate, Jack, and Megan are all natural born U.S. citizens, holding only U.S. passports. Sean and I are also natural born U.S. citizens, holding only U.S. passports. We are not Japanese.

My husband, Sean McGee, works for Nomura Securities. He has been retaining my children against my will since December 2012, and has not allowed them to return to the United States in over 3 years. This is not about a custody dispute. This is about my children's right to be with and be loved by both parents.

Much has transpired over the 3-plus years, most notably the fact that after an 8-day plenary hearing Judge Matthew Curry ruled that my children and I are all bona fide habitual residents of New Jersey. Jurisdiction in the State of New Jersey. Why is it so difficult to bring my American children home to the United States?

The State Department, via the Sean Goldman Act, released its first annual report on countries that refuse to return American children who have been abducted or retained by a parent abroad. Conspicuously absent from this list was the worst offender, Japan. Japan has never enforced or issued a return order for any American child being held captive there.

This scenario of one parent violating the wishes of another parent by retaining children in Japan has been going on for many years. Japan is a black hole for child abduction. All members of the McGee family are American, and they are being held hostage by their father in Japan.

Sean has been able to live a very extravagant lifestyle in Japan, thanks to his employer, Nomura Securities. He vacations regularly to Phuket, Australia, India, Hong Kong, Korea, London, and Portugal. His lavish apartment costs $14,000 per month. At the same time, our youngest daughter Megan and I were on food stamps for over a year. The gas company, PSE&G, shut our power off.

Sean has not been following through with the court orders that are required of him. He is court ordered to pay my legal fees. My lawyers are no longer representing me due to his willful neglect in payment. In addition, he was court ordered to pay the mortgage on the family home. Our home is currently in foreclosure due to his willful neglect in payment. Not only do I have no one to represent me, but I had to file bankruptcy as well. Sean is breaking the law on many levels.

Our family unit has been torn apart physically and emotionally. Not only are they held captive in Japan, but they are now victims of Sean's mental abuse. His campaign to alienate them from me

and my entire family will cause lasting repercussions. The children are in grave danger due to his alcoholism and lack of supervision. Many nights they are left home alone while he is out drinking in Tokyo. The truth is that the children are struggling immensely in many areas affecting their lives, including academic, mental health, and substance abuse.

Last September, my father died, my children's grandpa, Vincent Cianciotto. Sean did not permit them to come home to attend his funeral. The role of their grandpa was one to be admired, for he took on a fatherly role for them their entire life due to Sean's lack of the ability in this area.

It pains me as a mother to be so far removed and not be able to comfort them and love them, as I have done their entire lives. You cannot imagine waking up each and every day not being able to be with your children. I miss every aspect of their being, their smiles, their laughter, and their tears.

If there are any parents in the room today, I ask you to close your eyes and envision one day where you wake up and have no idea what is transpiring in the life of your child. That is what I have been experiencing every day for the past 2½ years. A void that needs to be filled. No loving parent should have to experience this.

Japan and Nomura Securities, you are aiding and abetting a child abductor and abuser. Send my children home.

Thank you for allowing me this opportunity to tell my personal story. I hope this helps to bring awareness of the situation in order to return all our American children home.

Thank you.

[The prepared statement of Ms. McGee follows:]

Diane McGee
Mother of 3 children being unlawfully retained in Japan
House Committee on Foreign Affairs
July 16 2015; 10am
The Goldman Act to Return Abducted American Children Ensuring Accurate Numbers and Administration Action

Thank you for giving me this opportunity to speak today -

I would like to start out by saying that my children are being illegally retained in Japan by Sean McGee currently employed at Nomura Securities. Under the International Parental Children's Kidnapping Act (IPCKA) he has been retaining them outside the US with intent to obstruct the lawful exercise of my parental rights. My children, Brendan, MaryKate, Jack and Megan are all Natural Born US citizens, holding only US passports. Sean and I are also Natural Born US citizens holding only US passports. We are not Japanese. My husband, Sean McGee works for Nomura Securities. He has been retaining my children against my will since December 2012, and has not allowed them to return to the United States in over three years. This is not about a custody dispute this is about my children's rights to be with and loved by both parents. Much has transpired over the three plus years, most notably the fact that after an eight day plenary hearing, Judge Matthew Curry ruled that my children and I are all bona fide residents of NJ – Jurisdiction is in the state of NJ. Why is it so difficult to bring my American children home to the United States?

The State Department, via the Sean Goldman Act, released its first annual report on countries that refuse to return American children who have been abducted or retained by a parent abroad. Conspicuously absent from the list is the worst offender - Japan. Japan has never enforced or issued a return order for any American child being held captive there. This scenario of one parent violating the wishes of another parent by retaining children in Japan has been going on for too many years. Japan is a black hole for child abduction. . All members of the McGee family are American and they are being held hostage by their father in Japan.

Sean has been able to live a very extravagant lifestyle in Japan thanks to his employer, Nomura Securities. He vacations regularly to Phuket, Australia, India, Hong Kong , Korea, London and Portugal. His lavish apartment costs $14,000 per month. At the same time, our youngest daughter Megan and I were on food stamps for a year, and the gas company, PSEG, shut our power off. Sean has not been following through with the court orders that were required of him. He was court ordered to pay my legal fees. My lawyers are no longer representing me due to his willful neglect in payment. In addition, he was court ordered to pay the mortgage on our family home. Our home is currently in foreclosure due to his willful neglect in payment. Not only do I have no one to represent me, but I had to file bankruptcy as well. Sean is breaking the law on so many levels.

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alienate them from me and my entire family will cause lasting repercussion. The children are in grave danger due to his alcoholism and lack of supervision. Many nights they are left home alone while he is out drinking in Tokyo. The truth is that the children are struggling immensely in many areas affecting their lives - including academic, mental health, and substance abuse.

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It pains me as a mother to be so far removed and not be able to comfort them and love them as I have done their entire lives. You cannot imagine waking up each and every day not being able to be with your children. I miss every aspect of their being – their smiles, their laughter and their tears. If there are any parents in the room today, I ask you to close your eyes and envision one day where you wake up and have no idea what is transpiring in the life of your child. That is what I have been experiencing every day for the past three years. A void that needs to be filled. No loving parent should have to experience this.

Japan and Nomura Securities - you are aiding and abetting a child abductor and abuser. Send my children home!

Thank you for allowing me the opportunity to tell my personal story. I hope that this helps to bring awareness of the situation in order to return our American children home.

Mr. SMITH. Thank you very much, Ms. McGee. And your testimony, and that of all of our very distinguished witnesses, not only put a human face on the agony that you face, but all the others who have been left behind. And, frankly, this is like our fifteenth hearing or so, and always with a group of people who have lost loved ones, children, or had a court, as in Ms. Rutherford's case, do an awful job and not understanding.

And, Ms. Apy, you might want to speak to uninformed judges and how deleterious that is to cases, if you would.

But thank you so very, very much for that. Just a couple of questions.

You were all here for the testimony from Ambassador Jacobs earlier. The fact that egregious omissions remain in the first report seem to be on the cusp of being rectified. I will wait and see. I am not from Missouri, but I am from New Jersey, and we have the same motto sometimes. But the abduction idea of unresolved cases for zero for Japan, obviously for two of you had to have been like a hot poker in the face.

I mean, when I read that, I kept saying, "I am missing something. What am I missing?" And the Ambassador did indicate that they are going to fix that, but with that comes the designation of non-compliant, which follows like day follows night. And we will be asking, as I did here today, repeatedly asking that, don't wait until next year's report. Do it now. And my hope is that they will do it now, and then take appropriate actions.

The only reason I brought up how we got Korea and Israel's attention on trafficking was that we couldn't have closer allies than those two countries, and yet we were honest enough to put in the report for trafficking exactly what the situation was on the ground. No games, no brinkmanship, no omissions.

So I can assure you we are going to keep trying, and hopefully she and the Office of Children's Issues and all those who make decisions at State will amend an egregiously flawed report.

And I also, hopefully, will finally get to the bottom of what do the Foreign Service Officers do, what do OCI people do in a very tangible way to take the cases and represent the American citizen, you, who has been so wrongly dealt with.

So maybe some thoughts on that, if any of you would like to share what you think the Department has done.

Ms. Apy, on prevention and recovery, what does the State Department's excluding pending abduction cases from the report have on the goals of prevention and recovery?

Ms. Rutherford, you made some recommendations for possible legislation. If you could maybe elaborate where in the queue is your case, before the U.S. Supreme Court, I take it? Or is it State Supreme Court?

Ms. RUTHERFORD. My lawyer hasn't——

Mr. SMITH. Okay. Okay.

Ms. RUTHERFORD [continuing]. But I definitely think there needs to be things put in place. I mean, my case is a little different because it is court-sanctioned child abduction.

Mr. SMITH. Right. Right.

Ms. RUTHERFORD. But a lot of the problem is, when the kids are over there, you can't just come get them and bring them back or

you will be in trouble here. For instance, I can't just go get my kids, even though nobody is claiming jurisdiction, because I am still bound to the California court order, right? So it is not like I can just go get my kids and bring them back here and say, "Okay. Somebody decide who has jurisdiction," because I can't go to either country. So you are in this vacuum.

I think it is the same with the kidnapping, where you can't just go to Japan and bring the kids back here either unless your country decides to protect you and you are a U.S. citizen. So maybe if we can at least ourselves go back and kidnap them back, and be protected by our own country somehow, that would be good.

Mr. SMITH. Well, you——

Ms. RUTHERFORD. We are willing to do it.

Mr. SMITH. In Japan——[Laughter.]

Ms. RUTHERFORD [continuing]. If our country won't, but we just need to be backed by our country saying, "You did the right thing. We couldn't figure it out, but you as a parent figured it out, but we are going to back you, and your kids will stay here in the U.S." But there is that loophole, too, I think.

Mr. SMITH. Okay. Thank you.

And, again, Ms. Apy maybe to speak to the issue of judges being properly trained and informed about these cases.

Ms. APY. Well, I think, first of all, and I mentioned it briefly, but one of the most stunning moments of the testimony was—and I don't think she appreciated it as an admission, but admitting that the application of non-compliance was based on the old test and not based on the content of the new law, which requires objective numbers.

I am very concerned, however, that the promises that we heard with respect to changes in the report—first of all, it is not just Japan. We talked about Japan, because it is so obvious, and reaches the level of almost black comedy to be in a situation where you have a room filled with people who know that there are ongoing cases. And to see in print not only that it is not a situation of non-compliance, but also a situation where the case isn't even referenced as being in being, that is not the only country where that is reflected.

I am very concerned with the removal of any case in which custody is being proffered as no longer constituting a pending abduction case. There is also a failure—and I understand that since this is the first piece of legislation worldwide to address access that figuring out the access issues and how that will be done would take additional time.

The original comment to the report was not that we need more time. There was nothing in the report that said, "Yes, we have done a truncated report. But as it turns out, we are going to need a little bit more time to address how these definitions now fit with the reporting requirements."

The first time that the timeframe for reporting was raised was in response to the criticisms of the content of the report, because I am sure that if there had been a request for an extension of some kind because of the complexities of the definitions or a request to garner more information in reviewing them, that would have been

addressed. There was no request. The report was issued with determinations regarding conformance and non-conformance.

I would like to address India briefly, because of what I think is the persistent desire to continue in the mind-set that preceded this law. The only reference made in dealing with the Indian cases is to press the signator to the Hague Abduction Convention. I totally support efforts to do so.

However, there is no question that had India been addressed in a more aggressive way, we would be talking about negotiating MOUs, which of course the Department of State, as a matter of formal policy, refused to do prior to this act. The idea in the act is that whether a Hague country or a non-Hague country, a memorandum of understanding or other bilateral discussions were to be formally engaged in, so that the conditions of those MOUs—I like to say MOU with a hammer—the idea is that we are not going to have private, unknown, unnamed, unseen conversations, and then tell left-behind parents, "Well, we have talked about your case."

Now, I know that in a number of cases where that representation has been made, no one that I have been in contact with references individual cases that I am aware of having been diplomatically discussed. I don't think this is a matter of national security. I think that the issue is one of accountability.

There are sensitive conversations, and we all understand that they would take place, but the point of having objective actions in the bill—and now the law—was so that there would be transparent and public censure to behaviors that are deemed to be not in keeping with international law.

And the first efforts at compliance with this act harken back to the diplomatic efforts that were done without scrutiny, and based on subjective diplomatic determinations that were deemed by this Congress to not be adequate. It was not adequate to merely have an independent determination that, is there difficulty with judicial compliance?

And the reason for that was, even in that setup, unless all three categories were met, the country was not deemed to be non-compliant. So if a country never issued a return order, it could never be non-compliant because you would never get to law enforcement.

It made no sense. It was subjective. It was not responsive, and so it was changed by the Congress. But you heard today that the test that was applied—and apparently will be applied at the end of the week—is the old test. And the way that they got away with it was by not giving objective numbers for the number of pending cases, because if they had they would have no choice. They would have to look at the actions that are mandated to be taken under the new act.

I am delighted to hear, although I have some incredulity, about a report that will be issued in a week. However, if it only deals with Japan, and if it does not also include compliance with the actions portions, if it doesn't deal with accounting for what actions have been taken in India in addition to suggesting that they sign the Hague Convention, then we will be another year and the faces that are now becoming familiar to us will again be sitting here and asking the same questions.

It is supposed to be hard. The deal is, if these parents—and I said this before—this is not about them not taking all efforts necessary to litigate their cases and apply the rule of law. They are in a situation where despite having done everything that they are supposed to do on a systemic nation state level, they cannot get the remedies, which is why this act was originally conceived and should be applied.

And it is clear that either there is a huge lack of understanding or, as my written remarks I indicate, or a continued resentment to the provisions of the act about which the Department of State is uncomfortable. They opposed this act, and I would like to think they haven't gone into compliance with it kicking and screaming. But all evidence seems to support that they have in fact not been enthusiastic in their desire to be in compliance.

Mr. SMITH. Mr. Collins, when you decided to attempt an access agreement, did you give up your longstanding claim for return or otherwise change your case with the State Department from return to access?

And, if I could, Ms. McGee, how has Japan responded to New Jersey's claim of jurisdiction in the case?

Mr. COLLINS. I didn't change anything. My whole thing from the get-go—my whole thing from the beginning is I want access to my son. He is a U.S. citizen, born here. He was illegally taken.

Mr. SMITH. So you still maintain your earnest desire for return.

Mr. COLLINS. Absolutely. I have two court orders that state "Minor child not to be removed from"——

Mr. SMITH. I just wanted to get that on the record.

Mr. COLLINS. Yeah.

Mr. SMITH. Appreciate that.

Ms. McGee.

Ms. MCGEE. Japan ignored the jurisdiction order totally and actually gave him a divorce without my consent or knowledge at the time, without me being present, without me being served. And so he has a divorce order in Japan and custody of all four children in Japan that, according to Judge O'Neill in New Jersey, has stated that he is not allowed to use that court order here. It doesn't mean anything here.

But I have no access to the children in Japan, because he has full custody over there. And it is not a legal divorce or anything.

Mr. SMITH. I think, Ms. McGee, your presence here today further underscores that whether it be a father or a mother, Japan is a haven for child abductors, notwithstanding their signature and ratification of the Hague. And maybe there are, and I do believe there are some people within the Government of Japan—I have met with some there—who are reformers and want to see systemic change.

But it seems to me that we will sharpen the mind if we do our due diligence as a country, pursuant to the Goldman Act, and get it right first with the report, and do that with every nation, not just Japan, which—where it is egregiously flawed, but also to then apply the sanctions part, which should kick in on or about August 15.

The whole idea, we followed the way we did it in the trafficking law was to have first the report, and then for some serious consid-

eration of what the sanctions regime should look like. And so my hope is that next week, from the Department, we will not only get a report that is right, but then they will sharpen their pencils and figure out what, if anything, they should do. And I think there are some things that ought to be done vis-à-vis Japan to get their attention.

Mr. Meadows.

Mr. MEADOWS. Thank you. I am sorry I was slipping out dealing with another emergency and votes. But thank each of you. My heart goes out to you. And truly as best I can, not being in your situation, will certainly try to understand it and be an advocate for each one of you.

I guess one of the frustrations—and all of you were here to hear the Ambassador, and I do believe that the 80 people that she mentioned truly want to solve this problem. There are all kinds of diplomatic hurdles, but the frustration many times can be with regards to the State Department and that there is the bureaucracy, there is the lack of connecting, consequences with inaction. And I think that is what we all see.

And so I want to ask, for those of you that have been dealing with the State Department, how would you characterize those conversations? Are they enough? I mean, let us take it back away from the results. But are they keeping you informed? Do you feel like when they say they are working on it that they are actually working on it? And really want to get your perspective of that, if we could. And we will just go down—quickly down the——

Ms. APY. Thank you. I had a conversation in which Congresswoman Lois Frankel, my client, Mr. Dahm, and representatives from the Department of State were on the telephone to discuss the pendency of the case. The representatives could not tell me—from the Department of State could not tell me why the UAE was not listed at all as having the pending case.

They couldn't tell me the location of the child. The information that they provided with respect to the status of the case was information that I had originally given to them almost 2 years earlier. They had no idea who the current FBI agent on the case was, despite the fact that the Department of Justice identified the State Department OCI as being the ball carrier.

My experience—and I get very frustrated—is that when I have these conversations the answer is usually either, "I will get back to you" or the ubiquitous, "We have been having conversations, and we have mentioned your case at the highest level." That seems to be a euphemism for it is—I don't know, it is on a list, it is—again, and I tend to press that issue, because absent a national security concern I think there are things you can share with a parent, and things you can share with regard to where that conversation is.

And both on an individual level, as well as of course when there are systemic conversations taking place, I think there is still a reluctance to engage in those systemic conversations. I think that that becomes extremely frustrating for parents and for those who are attempting to work the cases.

I would also note that nowhere in the report is there the required reference to the number of cases that involve our servicemembers. So those conversations, when I ask, you know,

this is a servicemember, are we following up on it from that standpoint? There just isn't any response in that regard.

Mr. MEADOWS. Thank you.

Mr. Collins, before we go to you, I will say there is sometimes a reluctance to share details because of the fear of lack of cooperation if you share. And so I would offer each one of you, if you feel like it is more appropriate, to reach out individually instead of under sworn testimony.

Feel free to adjust your comments privately, and that goes to the rest of you. Mr. Collins.

Mr. COLLINS. We can go back to the beginning of my case when the DA filed the charges and passed it on to the FBI. It took the FBI over a year to finally return my phone call. I called the agent of my case three to four times a week every week, and they never returned a phone call.

Caseworkers, I know they are doing the best that they can. About I think it was probably 4 years ago we were told in one of these hearings that these caseworkers want to be there for you. They are going to be in place. They are not going anywhere because they were coming in and out so quick.

I have just had my third caseworker this year. So it is like a semi-annual thing. And the only communication I get is—well, I got one 2 weeks ago. "Have you heard anything new?" So I get like an annual call.

I did—I was one of the first cases accepted by the JCA, and I got an email from my caseworker that came through the JCA saying that they have accepted my case. And then about—they would get back in contact with me when they have located my son. About 6 weeks later, I got another email saying they have identified an address, but there has been no response. And then, 2 weeks later was the last one that said, "We still have gotten no response. It is past the deadline. You need to hire an attorney."

Mr. MEADOWS. Okay. Thank you, Mr. Collins.

Ms. Rutherford.

Ms. RUTHERFORD. Ambassador Jacobs had helped—I had reached out to her a while ago, asking her to help in terms of just asking if my ex-husband had even reapplied for a visa. And they were helpful and wrote a letter saying, no, there was no application for him; he hadn't reapplied.

Beyond that, I think what I run up against is that most people see it as an ongoing litigation, or they refer to it as that. Nobody wants to get involved in that. They see it as a custody dispute, so they don't want to get involved in a custody dispute.

Mr. MEADOWS. Do you mean the State Department is saying that?

Ms. RUTHERFORD. Well, I think in general the people that I have asked to reach out to the State Department and myself have gotten that response. And it is almost like domestic violence. You hit a kid on the street, it is a crime and you are in front of a jury. You hit your own kid in your own home, it is domestic violence. Same with your wife or husband or whatever.

Mr. MEADOWS. Sure.

Ms. RUTHERFORD. It seemed it very differently when it is in family court than it is if it was in criminal court or another court. So

I think it is that same gray area of there is no jury, there is no one sitting there, it is kind of this family thing, an ongoing dispute litigation thing.

And so it is not dealt with in the way that it should be in terms of immigration issues or criminal issues or all of this, because it is family. That seems to be the response I get is that they can't help me because there is this sort of family court, ongoing litigation kind of thing.

Mr. MEADOWS. Okay. Thank you.

Dr. RAHMAN. The communications I have had with the State Department Office of Children's Issues caseworker, usually they will ask me if I have heard anything new, that is about every 6 months. So that is one problem.

The other problem—and then they never sent—formally sent an application for my son. I asked them last week, and 2 days ago I got the email that they never submitted a formal application for my son's return to any Government of India office. They raised his name in May, but there is actually no application, which means he will not be included in next year's report until there is an application for him.

Mr. MEADOWS. And why did they say they had not?

Dr. RAHMAN. Because India didn't sign the Hague, no foreign central authority has ever been identified for India. That is the reason I got by email. Because India didn't sign the Hague. So there is no foreign central authority.

So, and one thing that disturbed me was that my case, it took me a long time to figure it out, because this whole abduction thing is new to me. So my son, like any Indian citizen, or any American citizen, can live in India on an Indian green card that is called the Overseas Citizen of India Card.

Mr. MEADOWS. Right.

Dr. RAHMAN. And that needs parental consent from both parents, notarized consent. People with OCI cards, they can come and go into India. There is no need for an exit permit, and they never have to register at a police station or an FRRO office.

It took me 2 years to find that out, and I have to tell my caseworker that. And he thanked me for sharing the information with him. He found it very helpful. So——

Mr. MEADOWS. So what you are saying is is that you are the source of some information at least for your State Department caseworker.

Dr. RAHMAN. For my caseworker, yes, at the State Department, which is unfortunate because I don't know anything about India myself, and I was hoping that they would know something because that is what they deal with. They have an embassy or consulate there.

Mr. MEADOWS. All right. Thank you. Ms. McGee.

Ms. MCGEE. Yes. The State Department has shut me out, because my case is before Japan signed the Hague. So I don't fall under their criteria. And I have also been told it is more of a custody battle, which it is really not. So that is what I have gotten from them, but it has been a while since I have even talked to them, because they have not been able to help me.

Mr. MEADOWS. So I guess when they are saying this is a custody battle, and they are not wanting to weigh in, you are talking to lawyers at the State Department or just caseworkers?

Ms. MCGEE. I spoke to the caseworkers. I think I have sent them a lot of court orders and things like that to show them, but they——

Mr. MEADOWS. But they are giving a legal opinion?

Ms. MCGEE. They are giving an opinion that——

Mr. MEADOWS. This is a softball question.

Ms. MCGEE. Yes. [Laughter.]

Well, also the fact that mine started before they signed the Hague, so I don't count. My kids don't count.

Mr. MEADOWS. Well, I know I speak for the chairman. If there is anything that we personally can do to help that process with the State Department, we will be glad to do that.

I will yield back, Mr. Chairman.

Mr. SMITH. I will just conclude, you know, the promise of the Goldman Act remains underrealized. This is the beginning, and implementation is key. If we do find that there are needs for tweaks or upgrades for reforms, we will do it, but so far, as you pointed out, Ms. Apy, using an old standard to judge countries as opposed to the new very clear and precise standard is mind boggling, in my opinion. And I did say that to the Ambassador previously.

I do think that the key of what we are trying to do at these hearings—and there will be more, and we are trying to get more members to really get involved with this issue.

Matter of fact, one of the provisions of the Goldman Act is for the State Department to notify a Congressman or Congresswoman if, and the Senators, to give, obviously, the constituent who has the abduction against them the ability to opt in, but to tell them that having additional eyes and ears and advocacy is a good thing, get members who will speak out.

When they travel, they will raise these issues. So hopefully that is being implemented effectively. I don't know yet, but I should have asked that question earlier.

Dr. RAHMAN. Might I add something?

Mr. SMITH. Yes, please.

Dr. RAHMAN. Last week I got the email asking me to sign off a privacy waiver thing to allow State Department to inform my Congressman of my case, which is last week.

Mr. SMITH. Just last week.

Dr. RAHMAN. It should have been done some time ago.

Mr. SMITH. Better late than never and hopefully that will become the norm, and everyone will get that, which I think is likely.

Yes, Ms. McGee.

Ms. MCGEE. I have to call the Congressman's office and let him know, and I had many other people call his office to let him know. So I was glad he was here.

Mr. SMITH. If there is anything you would like to say while we conclude, but just I thought, Ms. Apy, you didn't read this, but it is in your written testimony, again, this whole issue of prioritization.

The Goldman Act—that is my word—you said ICAPRA; I don't use those words—

> "articulates Congressional intention that an individual left-behind parent and their legal representatives will no longer be forced to litigate 'systemic' maladies in the diplomatic relationship between that country and the United States of America. Once it is determined, using entirely objective criteria, that there is a breach in the reciprocal relationship with a Treaty partner, or there is a systemic governmental failure to address international parental abduction, the burden for action shifts to the Department of State to utilize the diplomatic tools available to it to identify and ameliorate the problems. If they can't, when they can't, the President of the United States has an escalating arsenal of measured diplomatic resources to direct attention to the problem and communicate its priority of the American people."

I emphasize the word "priority." And then you go on from there.

And that summarizes what we have tried to do with this. Hopefully, it will be effectively and aggressively implemented. That remains to be seen. And there are tests, like what do they do vis-à-vis Japan, and some of the other countries, and we will stay at it.

Thank you for your testimonies. Yes, Ms. Rutherford.

Ms. RUTHERFORD. Is there something that can be put in place, like a Web site or something, and maybe we need to do this ourselves, where people can report how often this is happening, because it has been a long road for all of us to sit in front of you here. And I know that for most parents that don't have the resources certainly that I have had and still had to deal with this, I mean, I don't even know what they do or how they get here.

But is there a place where these things are being reported?

Mr. SMITH. There is no one clearinghouse. Bring American Children Home, BAC Home, I should say, Bring Sean Home has a Web site where many people do go on and share best practices and what their situation is.

Ms. RUTHERFORD. Okay.

Mr. SMITH. But in terms of one watershed type of—yes, Ms. Apy.

Ms. APY. I would also encourage—and, again, the National Center for Missing and Exploited Children's international desk, one of the advantages is that they sometimes give more breadth to the issues than one might find from the Department of State.

Additionally, they have exceptionally good connections with law enforcement, to the extent that you are working through the law enforcement piece of this, which is by no means easy and should be the subject of a separate hearing, frankly, in terms of Title III of this act and those implementation issues, because we are off the rails there, too, I am afraid.

But NCMEC is a good go-to place to begin to develop the vocabulary for that, and to make those connections. But I think that the conversation, again, is finding pieces of information from various sources, and NCMEC would be one that tends to pull some of those together.

Ms. RUTHERFORD. So I am just trying to understand this. So the State Department is saying that there are zero reports of kids being kidnapped in Japan?

Mr. SMITH. Zero unresolved cases, and we know of at least 50. We have two here.

Ms. RUTHERFORD. Right.

Mr. SMITH. A few sitting right behind you, and the National Center for Missing and Exploited Children testified more than 50 cases.

Ms. RUTHERFORD. Right. So facts and figures are everything, obviously, to all of these people. So how do we get all these facts and figures? Because I have people stopping me on the street daily, so—and I don't think that people really know where to go and report these things. And it is more specific, so I think people think, "Oh, that may be a little different than my case," but certainly my case is different than that.

Mr. MEADOWS. Mr. Chairman, you make a valid point. I will be glad on your behalf to try to work on that to make sure that from an official standpoint that we have a Web site. There are some privacy issues, you know, just like with you guys having to sign a privacy release. I can't talk to the State Department about your case without you giving me permission to do that.

Ms. RUTHERFORD. Right.

Mr. MEADOWS. But there may be some ways that we can work that, and I personally will follow up and report back to you, Mr. Chairman.

Ms. RUTHERFORD. Just so we have some numbers, right, that are undeniable?

Mr. SMITH. Well, that is what the OCI should have been doing. And one of the questions we had even before the Goldman Act was the numbers never jived. There was always one number, it would change, we would have a meeting with key people at OCI, and we would get different numbers at the meeting.

With regards to Brazil, one time I almost fell off my chair when we got two different numbers from people sitting in the room. What is it?

Ms. RUTHERFORD. Well, it depends on how those are aggregated. I mean, depending on where they are getting their information, there is going to be a dispute. But even if you just say, okay, let us round it off, this is probably a good estimation of how often it is happening, because I know the facts and figures are the most important, it seems, to everyone. So——

Mr. SMITH. Well, the facts help us to——

Ms. RUTHERFORD. Well, I mean, you know what I am saying. Just say if this many people have reported it, we may not know their individual stories, but if that many people are—you guys have to go vote again.

Mr. SMITH. One of the reasons not often articulated why we wanted the Goldman Act to pass was that so that more people would feel it would be an engraved invitation to use the State Department. There are cases we know nothing about. These are just reported cases that State has, and they didn't even have an accurate number of that.

And the most recent report, as we have been talking about all day today, it is not even accurate here. And, you know, that is deeply troubling. There should be no other geopolitical consideration when you are doing this report. What you do on meting out sanctions, maybe some things ought to come into play. Not on the

report itself; that is foundational. So we would hope that this would be the ultimate clearinghouse.

Ms. RUTHERFORD. Right.

Mr. SMITH. Yes.

Ms. APY. The other point, the reporting back to Congress, one of the main reasons to do that was to avoid exactly the situation that we are in, and that is that the State Department was the purveyor of the numbers, and there was no way for members to have any accurate information other than if they were contacted by their constituents.

The State Department pushed for, obviously, if personal information about the cases were needed, that there be privacy concerns, and we all agree with that. But it doesn't obviate the responsibility to get the information to the Congress of the United States accurately without the private information regarding the case.

And I think that is the piece that is, not to circle back on the report too much, but that is the only other place you will get it. So unless your constituent calls you or the State Department contacts an individual and says, "Will you opt in?" the original language was to opt out. And so that was a change that State Department wanted and got.

The bottom line is that the numbers have to be right, and so I just encourage that I don't think that there is encouragement to sign off on the privacy issues, and I don't think that there is a desire necessarily to make sure that that information is as transparent as perhaps members would and need to know.

You are dealing—as we have talked about before, you are dealing with international issues in which knowing accurate numbers is absolutely crucial to the business of governing.

Ms. RUTHERFORD. I signed those waivers, and they got the same response that I did from my representative. So it didn't matter whether they reached out or I reached out. So it would be good to get the number here.

Mr. SMITH. Thank you so very much. We will likely have a follow-up hearing in September, especially when the sanctions part kicks in, but also to ascertain what has been done on Japan, for example. And, you know, the key here would be to keep Congress, as well as the administration, focused so that we don't get the kind of egregious mistakes that were made in this report.

Again, so thank you. Your testimonies were extraordinary and extremely helpful to the Congress, and this will be widely circulated to other members. So thank you so very much.

The hearing is adjourned.

[Whereupon, at 1:27 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Record

SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6128

Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations
Christopher H. Smith (R-NJ), Chairman

July 16, 2015

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held by the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations in Room 2200 of the Rayburn House Office Building (and available live on the Committee website at http://www.ForeignAffairs.house.gov):

DATE: Thursday, July 16, 2015

TIME: 10:00 a.m.

SUBJECT: The Goldman Act to Return Abducted American Children: Ensuring Accurate Numbers and Administration Action

WITNESSES:

Panel I
The Honorable Susan S. Jacobs
Special Advisor for Children's Issues
Bureau of Consular Affairs
U.S. Department of State

Panel II
Ms. Kelly Rutherford
Co-Founder
Children's Justice Campaign

Samina Rahman, M.D.
(*Mother of Child Abducted to India*)

Ms. Diane McGee
(*Mother of Children Abducted to Japan*)

Mr. Randy Collins
Managing Director
Bring Abducted Children Home
(*Father of Child Abducted to Japan*)

Ms. Patricia Apy
Partner
Paras, Apy & Reiss, P.C.

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON *Africa, Global Health, Global Human Rights, and International Organizations* HEARING

Day *Thursday* Date *July 16, 2015* Room *2200 Rayburn HOB*

Starting Time *10:04 a.m.* Ending Time *1:26 p.m.*

Recesses [*1*] (*12:02* to *12:45*) (____ to ____) (____ to ____) (to ____) (____ to ____) (____ to ____)

Presiding Member(s)

Rep. Chris Smith

Check all of the following that apply:

Open Session [✓]
Executive (closed) Session [ ]
Televised [✓]

Electronically Recorded (taped) [✓]
Stenographic Record [✓]

TITLE OF HEARING:

The Goldman Act to Return Abducted American Children: Ensuring Accurate Numbers and Administration Action

SUBCOMMITTEE MEMBERS PRESENT:

Rep. Mark Meadows, Rep. David Cicilline

NON-SUBCOMMITTEE MEMBERS PRESENT: *(Mark with an * if they are not members of full committee.)*

Rep. Ed Royce, Rep. Leonard Lance*, Rep. Sheila Jackson Lee*

HEARING WITNESSES: Same as meeting notice attached? Yes [✓] **No** [ ]
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

Statement of Rep. Steny Hoyer, submitted for the record by Rep. Chris Smith
Questions for the record from Rep. Chris Smith
Statement of Ms. Sarah Kurtz, submitted for the record by Rep. Ed Royce

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED *1:26 p.m.*

Gregory B. Simpkins
Subcommittee Staff Director

MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY, AND CHAIRMAN, SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS

Statement of Rep. Steny Hoyer

Hearing of the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations

The Goldman Act to Return Abducted American Children: Ensuring Accurate Numbers and Administration Action

July 16, 2015

Mr. Chairman, Ranking Member Bass, and Members of the Subcommittee, thank you for this opportunity to submit a statement for the record. The issue of international child abduction is one that calls for concerted action by the United States and the international community to prevent children from being separated from their legal guardians.

I have been closely monitoring one case that has brought heartbreak to a family and community in Prince George's County, Maryland. That case concerns the abduction of Eslam Chebbi, age nine, and his younger sister Zainab, age seven, who were kidnapped by their non-custodial father and brought to Tunisia in 2011. Zainab has since been returned to their mother, Edeanna Johnson-Chebbi, but Eslam remains effectively a hostage an ocean away in Tunisia. This is not a case of one nation's laws pitted against another – like its counterpart in the United States, a court in Tunisia has already ruled that their mother has custody of both children. However, the court's order has not been locally enforced, and the children's father continues to hold Eslam in violation of the law in both countries.

This is a deeply upsetting situation, and I continue to call on the Tunisian authorities to take action to return Eslam home to his mother, his sister, and their community in Prince George's County that has been praying for his safe return. I appreciate the Subcommittee's attention to this issue, and I hope you will all keep Eslam in your thoughts today as an example of this challenge and a reminder that Congress has an important role to play in working with the Administration to bring these children home. Thank you.

Questions for the Record Submitted to
Ambassador Susan Jacobs by
Representative Chris Smith (1-7)
House Foreign Affairs Committee
Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations
July 16, 2015

Question 1

In Japan, more than 50 cases were open before the Hague Convention went into effect—36 of which had been pending for more than 5 years. What specifically are you doing to resolve these cases, not just provide interim access while resolution is pending? Are you working on a bilateral agreement with Japan to resolve these pre-Hague cases?

Answer

The Department of State's Office of Children's Issues remains actively engaged in seeking the resolution of abduction cases that predated the entry into force of the Hague Abduction Convention between the United States and Japan. U.S. Ambassador to Japan Caroline Kennedy has discussed the issue of international parental child abduction and the concerns about pre-Convention cases in meetings with the Vice-Minister for Foreign Affairs and the Chief Cabinet Secretary. Special Advisor for Children's Issues, Ambassador Susan Jacobs, met with a range of officials at the Japanese Ministry of Foreign Affairs during her recent visit to Tokyo on July 1-3, to discuss steps toward this end. Her visit included meetings with, among others, the Director General of the Ministry of Foreign Affairs' First North America Division, the entity responsible for pre-Convention cases, and urged them to take action.

On a regular basis, the Department of State's Office of Children's Issues and U.S. Embassy Tokyo staff meet with officers of Japan's Ministry of Foreign Affairs' First North America Division to raise pre-Convention cases and discuss whether we can come to a consensus on dealing with them. We are continuing to pursue whether a bilateral arrangement with Japan, as well as with other countries where the Convention is not an available remedy to parents, would be a viable option to help resolve non-Convention cases.

Question 2

What does the United States consider as fulfillment of "access" under the Hague Convention? Does video conferencing, without in-person contact, constitute access?

Answer

The Convention gives no examples of how Central Authorities are to organize or secure the effective exercise of access rights, because such examples could have been interpreted restrictively. Ultimately, it is within the sole discretion of the court of competent jurisdiction to

determine what constitutes proper and effective access. Nonetheless, although it may not be ideal in all circumstances, modern means of communication – including email, internet calls (e.g. VOIP), instant messaging, photo-sharing websites, video conferencing (e.g. Skype), etc. – may help preserve contact between parents and children who are separated across an international border.

Question 3

Will the State Department take Sec. 202 action against Japan if it persists in its failure to resolve the 50 pre-Hague cases?

Answer

Though Japan's ratification of the Convention was achieved and it is considered a Convention country for purposes of the Annual Report, we are keenly aware of and actively engaged on the pre-Convention abduction cases that predate Japan's ratification of the Convention. The Department remains concerned about the lack of progress on these cases and has been disappointed that, to date, nearly all of the pre-Convention cases have failed to result in either meaningful parental access or the return of the child to the United States. At this time, it is premature for the Department to determine whether or not Japan has engaged in a pattern of non-compliance during CY 2015. Nevertheless, even if the Department does not determine that a Convention country has engaged in a pattern of noncompliance as defined in Sean and David Goldman International Child Abduction Prevention and Return Act (ICAPRA), and the Department is not required to take actions described in Sec. 202, the Department maintains the ability to take all appropriate actions authorized by law.

Question 4

Did the State Department give Japan's Foreign Ministry a list of the abduction cases predating the Hague Convention? How long ago was the first time this list was delivered?

Answer

Yes. We take every appropriate opportunity to raise all international parental child abduction cases with foreign government officials at the highest appropriate levels. We have been raising pre-Convention cases with the Japanese Ministry of Foreign Affairs for many years, at least as early as 2008, and will continue to do so. We delivered a Diplomatic Note to the Japanese Ministry of Foreign Affairs in May 2014 that included a list of outstanding pre-Convention cases.

Question 5

At least three parents with abduction cases to India pending for years with the State Department have recently received letters from your office stating that "an application as envisioned by the Goldman Act has not been delivered to the Indian government."

The Goldman Act envisions the State Department communicating a formal request for return to the foreign ministry of the (non-Convention) destination country (see definition of "application" in Sec. 3 of the Goldman Act). Has this been done for all abductions to India reported to the State Department? If not, why not? If so, when?

Answer:

The Department did cite India in the 2015 Annual Report as having engaged in a pattern of noncompliance due to its persistent failure to work with the U.S. Central Authority to resolve abduction cases. In May 2015, Ambassador Susan Jacobs raised reported cases of international parental child abduction with the Indian Ministry of External Affairs. The Department strategically tailors its bilateral and multilateral efforts on every case to India's unique legal and political system. We will continue to raise reported cases at every appropriate opportunity with the Government of India. We continue to review, in close coordination with the U.S. Embassy, all avenues to assist parents in gaining the return of their children to their country of habitual residence.

Question 6

One of the definitions of a "resolved case" is one in which the government is complying with the provisions of the Hague Convention or other bilateral procedure. Congress intended this to cover cases that have reached their legal conclusion and have been decided consistently with the Hague Convention or other bilateral procedure. Did the State Department include as "resolved" any cases that had not reached their legal conclusion? If so, how many? Did State include these cases as "resolved" even if they had been pending more than six weeks, in violation of the Hague Convention?

Answer

Under resolved category (ii), the Department included those cases that were resolved consistent with the Hague Abduction Convention, but which did not result in the return of the child and did not fit into another resolved category. In many cases, this was because the case reached a legal conclusion (i.e., return was denied), but 56 cases were considered resolved under (ii) because the foreign central authority rejected the application or because the Convention no longer applied due to the age of the child.

Question 7

In Figure 5, the report indicates that 521 Cases were resolved without the return of the child to the United States. How many children were involved in the 521 cases that were resolved without return?

Answer

Six hundred and forty children were involved in the 521 cases that were resolved without return.

MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE EDWARD R. ROYCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, COMMITTEE ON FOREIGN AFFAIRS

Sarah Kurtz,
Mother of two Court Ordered Abducted Children to Sweden

Company: Protective Parents Association

Hearing Date: Thursday, July 16th, 2015

Subject: The Goldman Act to Return Abducted American Children: Ensuring Accurate Numbers And Administration Action

To The Honorable Members Of The Committee on Foreign Affairs,

I am an American Mother of two beautiful children - both US citizens -
Alexander is 7 years old and Emma Rose is 2 years old.

A year ago my beloved children were sent to Sweden by a California Federal judge, who stated that Sweden had jurisdiction over the custody matters, but yet the children and I were not resident nor citizens of that country and my infant daughter had never even been there. How could Sweden be their Habitual Residence?
We had returned home after a temporary stay in Sweden and we had been living in Los Angeles for over a year when the father filed for a Hague Petition.

On April 17th 2015, the Appeal Court of California stated the lower court erred by sending Emma Rose to Sweden but yet they declined to make an order to return the children to the US and to me their loving and caring mother.

My case was never a Hague case as mentioned by the Appeal Court.
We all lived in the US with the written consent and agreement of the father, who also lived here with us for a period of time. Then he changed his mind about living in the US. And he created this tragic situation by wrongfully using The Convention for the purpose of forum shopping because he was not satisfied with the State Court ruling, where I was given sole custody of the children.

The father ripped away a nursing infant from her mother's breasts and a six years old who refused to go with his father to Sweden. When told about the Court Order, Alexander tried to kill himself and was hospitalized for 5 nights.

Now they are gone and there is no remedy for me to get them back even though they are both US citizens and residents of the State of California.

This tragedy keeps happening everyday, as the Courts are not knowledgeable of the Hague Convention. Babies and children are being ripped away from their primary care takers and sent to foreign countries where the mothers cannot follow as we are not citizens or residents of those countries.

Therefore when mothers are ordered to go with the children to the father's country, we become homeless, without work permits nor residency visa, income or a way to survive - all that so we can possibly have a glimpse of our children on the playground from afar!

The father's country takes all of our rights away during custody proceedings and we are forced to pay for the father's legal fees and for child support, and some mothers are even sent to jail for kidnapping charges. And mostly we don't even speak the language of that country to defend or provide for ourselves.

The Convention means well but the purpose is being twisted and manipulated to rip children away from their primary care givers, which is more important than Habitual Residence.

This is an American problem here today, but it is also more than that:
It's happening all over the world. My view is that the Hague Convention needs to be updated to reflect our global way of life: families travel for work or lifestyle, or mothers return home with the children after years of abuse. However The Convention stops Families from ever returning home even if it is not possible to stay due to Finance or Visa availability.

Therefore if a Habitual Residence Law was made based on common sense, defined by primary care needs, language, culture and citizenship instead of being left to the judges' s discretion, many families would still be intact and not harmed and separated as they are today.

Many of us who are affected by this tragedy are working together to amend the Hague Convention - pushing for new legislation that protects the rights of children and families. For example, Professor Merle Weiner and Professor Joan Meir have been working on adding and addressing domestic violence within the Hague procedure, which is only possible through amendments.

From my own experience and those of others I've helped, I have gathered a great amount of data and facts, which I believe would be helpful for drafting a new legislation. I strongly suggest we all meet to brainstorm a new legislation to address this gap in knowledge in regards to Domestic Violence and Sexual Abuse during Hague Procedure, wrongful use of the Convention after consent of return, relocation of families after a failed move to countries where no one is a citizen. This kind of tragic situation is costing many families our children, livelihood and even our general freedom.

It is time to understand the impact of the multicultural and International world we live in and the results is the suffering of our children because Judges use their discretion to make their decision instead of using the Law and the best interest of the children to remain with their primary care takers.
Thank you for listening.

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