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SEAN AND DAVID GOLDMAN INTERNATIONAL CHILD ABDUCTION PREVENTION AND RETURN ACT OF 2014

JUNE 26, 2014.—Ordered to be printed

Mr. MENENDEZ, from the Committee on Foreign Relations,
submitted the following

R E P O R T

[To accompany H.R. 3212]

The Committee on Foreign Relations, to which was referred the bill (H.R. 3212), to ensure compliance with the 1980 Hague Convention on the Civil Aspects of International Child Abduction by countries with which the United States enjoys reciprocal obligations, to establish procedures for the prompt return of children abducted to other countries, and for other purposes, having considered the same reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE

The purpose of H.R. 3212, as amended, is to help resolve pending abduction and access cases for both Hague Abduction Convention and non-Convention countries. It is intended to improve compliance by setting out appropriate procedures for the State Department to follow in entering into bilateral arrangements, including Memoranda of Understandings, resolving abduction and access cases, and prescribing a set of actions to be taken when countries fail to resolve these cases, or engage in a pattern of noncompliance. H.R. 3212, as amended, also aims to assist families and improve the U.S. Government's response to abduction and access cases through publication of a comprehensive annual report, by requiring U.S. missions abroad to designate senior officials to assist parents in resolving cases, and by establishing interagency coordination and a

prevention mechanism to halt wrongful abduction before it occurs. Additionally, H.R. 3212, as amended, authorizes a total of \$2 million in funding to provide judicial training on the effective handling of parental abduction cases in countries with either a pattern of noncompliance, or a significant number of pending unresolved abduction cases.

II. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the problem of international parental child abduction on February 27, 2014, at which testimony was heard from Ambassador Susan Jacobs, the Special Advisor for Children's Issues in the Bureau of Consular Affairs at the Department of State. The committee also heard testimony from a panel of private sector witnesses: Ernie Allen, President and Chief Executive Officer of the International Center for Missing and Exploited Children; David Goldman, Co-founder and Director of the Bring Sean Home Foundation; Patrick Braden, Chief Executive Officer of Global Future: The Parents' Council on International Children's Policy; and Noelle Hunter, the parent of an abducted child.

H.R. 3212 passed the House of Representatives on December 11, 2013, and was referred to the Senate Committee on Foreign Relations on December 17, 2013. On June 19, 2014, Senator Menendez introduced S. 2509, the Sean and David Goldman International Child Abduction Prevention and Return Act of 2014, with Senators Corker and Markey as co-sponsors. On June 24, 2014, the committee considered H.R. 3212, with a substitute amendment offered by Senator Menendez and co-sponsored by Senator Corker, which was the text of S. 2509. On June 24, 2014, the committee ordered H.R. 3212 reported favorably, with the substitute amendment as well as a manager's amendment.

The substitute amendment and the manager's amendment were agreed to by voice vote. The subject matter areas covered by the manager's amendment included, among other things, changing the sub-definition of Central Authority to address bilateral procedures countries, instead of MOU countries, adding "legal custodian" to definitions for "left-behind parent" and "rights of custody," adding a requirement that the Annual Report on International Child Abduction be posted to the State Department website, adding a formal request for the extradition of the individual engaged in the abduction to the description of actions by the Secretary of State in Hague Abduction Convention countries, and reducing the amount authorized to be appropriated to the Secretary of State for judicial training from \$5 million for each of fiscal years 2015 and 2016 to \$1 million for each of fiscal years 2015 and 2016.

III. BACKGROUND

The Hague Conference on Private International Law concluded the Convention on the Civil Aspects of International Child Abduction on October 25, 1980. The Convention's objectives are to protect children from wrongful removals and retentions across international borders, and to supply procedures to assist in either access to the children, or their safe and expeditious return. The Convention entered into force for the United States in 1988, and the U.S.

currently partners with over 70 countries under the Convention. Countries signing on to the Convention guarantee that a signatory nation will respect and follow the custody rights and laws of all other signatory nations. The Convention itself does not adjudicate the merits of a custody dispute or act like an extradition treaty.

More than 1,000 outgoing international parental child abductions are reported every year in the United States. This is a growing problem, as the total number of applications made under the Hague Abduction Convention has increased by over 40 percent since 2003. The return rate for children abducted to countries under the Hague Abduction Convention hovers around 50 percent, and the return rate is even less for non-Convention countries, with many non-Convention countries never returning a single child to the United States. Convention and non-Convention countries alike may experience difficulties with regards to their judicial systems, law enforcement, or central administrations that hinder efforts to locate and effectuate the return of an abducted child.

H.R. 3212, as amended, will provide the Secretary of State with stronger diplomatic tools and a more coherent and transparent U.S. policy so as to better enforce compliance with the Hague Abduction Convention and bilateral arrangements in the case of non-Convention countries. H.R. 3212, as amended, strengthens and streamlines H.R. 3212, the Sean and David Goldman International Child Abduction Prevention and Return Act of 2013, which passed the House of Representatives in December 2013, by expanding the scope of countries that may be subject to actions taken by the Secretary of State, and by adding important prevention measures.

IV. SUMMARY OF KEY PROVISIONS

A summary of the key provisions of H.R. 3212, as amended, follows.

Section 2

Section 2 presents key findings addressing the growing problems of international parental child abduction, obstacles to the recovery of abducted children, issues with compliance and implementation of the Hague Abduction Convention, challenges facing left-behind parents and military parents, and the importance of preventing abductions before they occur. The section goes on to state that it is the sense of the Congress that the United States should set a strong example for other Convention countries in the timely location of children abducted from other countries and brought to the United States, and the prompt resolution of their cases. The section states the purposes of the Act are to protect children whose habitual residence is the United States from wrongful abduction, to assist left-behind parents in quickly resolving cases and maintaining safe and predictable contact with their children while an abduction case is pending, to protect the custodial rights of parents by providing information to all stakeholders to prevent abduction, to detail actions to be undertaken by the Secretary of State to resolve abduction cases, and to increase interagency coordination to prevent international child abduction before it occurs.

Section 3

Section 3 defines key terms that are used throughout the legislation. The term “abduction case” is defined as a case that has been reported to the Central Authority of the United States by a left-behind parent for the resolution of an abduction, and meets the criteria for an international child abduction under the Hague Abduction Convention, regardless of whether the country at issue is a Convention country. The term “access case” is defined as a case involving an application filed with the Central Authority of the United States by a parent seeking rights of access. The term “pattern of noncompliance” means: the persistent failure of a Convention country to implement and abide by provisions of the Hague Abduction Convention, or of a non-Convention country to either abide by bilateral procedures that have been established between the United States and such country, or to work with the Central Authority of the United States to resolve abduction cases. Persistent failure is defined as, respectively: thirty percent or more of the total abduction cases in the country are unresolved abduction cases, the Central Authority of that country regularly fails to fulfill its responsibilities pursuant to the relevant document, the judicial and administrative branch of the country fails to regularly implement and comply with the Hague Abduction Convention or procedure provisions, or law enforcement authorities regularly fail to enforce return orders or determinations of rights of access. An “unresolved abduction case” means a case that remains unresolved 12 months after the date on which the completed application for return of the child is submitted for determination to the judicial or administrative authority in the country in which the child is located. An abduction case is considered resolved if the child is returned to the country of habitual residence, if the judicial or administrative branch of the country in which the child is located has implemented and is complying with the provisions of the relevant document, if the left-behind parent reaches a voluntary arrangement with the other parent, or submits a written withdrawal of the application, if the left-behind parent cannot be located for 1 year despite documented efforts to locate the parent, or if the child or left-behind parent is deceased.

TITLE I.—DEPARTMENT OF STATE ACTIONS

Section 101. Annual Report

Section 101 requires the State Department, not later than April 30 of each year, to submit a comprehensive annual report on the status of international child abductions as relating to children whose habitual residence is the United States. The report is to include a list of all countries in which there were 1 or more abduction cases, with more detailed information required for each country where there were 5 or more pending abduction cases. The report must also contain the number of abducted children who were returned to the United States, the number of cases resolved without abducted children being returned to the United States, a list of Convention and bilateral arrangement countries that have failed to comply with their international obligations, a list of countries demonstrating a pattern of noncompliance, whether noneconomic policy options to resolve the pattern of noncompliance have been

exhausted, and information on efforts by the Secretary of State to encourage non-Convention countries to join the Hague Abduction Convention, implement other bilateral procedures, and address pending abduction and access cases. The report must also include the number of unresolved abduction cases affecting military parents; a description of the assistance offered to such parents; information on the use of airlines in abductions; information on actions taken by the Central Authority of the United States to train domestic judges in the application of the Hague Convention; and information on actions by the United States to train U.S. Armed Forces legal assistance personnel, military chaplains, and military family support center personnel to deal with abductions, the risk of loss of contact with children, and the legal means available to resolve such cases. The completed report must be posted to the publicly accessible State Department website.

Section 102. Standards and Assistance

Section 102 requires United States diplomatic and consular missions to monitor abduction and access cases, maintain consistent reporting standards on such cases, and designate a least one senior official at each mission to monitor developments on individual cases, as well as assist visiting left-behind parents seeking to resolve such cases. It also requires a written strategic plan for engagement with any country in which there are five or more cases of international child abduction.

Section 103. Bilateral Procedures, Including Memoranda of Understanding

Section 103 requires the Secretary of State, within 180 days of passage of the Act, to develop and enter into appropriate bilateral procedures with non-Hague-Convention countries, or Hague Abduction Convention countries with unresolved abduction cases that occurred before the Convention entered into force. In entering into these procedures, the Secretary of State should prioritize those countries with significant abduction cases and related issues. These bilateral procedures should include identification of countries' Central Authority, their relevant judicial, administrative and law enforcement authorities; a protocol to identify, locate, and return an abducted child not later than 6 weeks after the abduction case has been submitted to the country's relevant authority; and the implementation of protocols to establish and protect the rights of interim contact with the children during the pendency of abduction cases and establish periodic visits between a State Department official and an abducted child.

Section 104. Report to Congressional Representatives

Section 104 requires that, when a left-behind parent reports a child abduction to the U.S. Central Authority and consents to the notification, the State Department must, as soon as possible, notify the congressional representatives representing the legal residence of the parent.

TITLE II.—ACTIONS BY THE SECRETARY OF STATE

Section 201. Response to International Child Abductions

Section 201 provides that if, 12 months after the date on which the Central Authority of the United States submits a child abduction or access case to a foreign country, the Secretary of State determines that the country has failed to take appropriate steps to resolve the case, the Secretary should take 1 or more of the prescribed actions in Section 202, and should direct the State Department Chief of Mission in that country to address the case's resolution with senior officials in the foreign government. The Secretary of State may delay these actions if the Secretary determines that an additional period of up to 1 year will substantially assist in resolving the case, but must provide a report to the appropriate congressional committees detailing the reasons for delaying or not taking action. The Secretary of State must first communicate with the Central Authority of the country at issue before implementing the actions in Section 202, and must target such actions as narrowly as possible, so as to minimize any adverse impact on the population of the targeted country, or on the humanitarian activities of United States and foreign NGOs in that country.

Section 202. Actions by the Secretary of State in Response to Patterns of Noncompliance in Cases of International Child Abduction

Section 202 instructs the Secretary of State to review the status of abduction and access cases in each foreign country in order to determine whether the government of such country has engaged in a pattern of noncompliance during the preceding 12 months. If the Secretary makes such a determination, the Secretary must determine the offending agencies or instrumentalities of the foreign government, and take 1 or more prescribed actions, including a demarche; an official public statement detailing unresolved cases; a public condemnation, a delay or cancellation of 1 or more bilateral working, official, or state visits; a formal request for the extradition of the individual engaged in the abduction; or the withdrawal, limitation, or suspension of United States development assistance in accordance with sections 116, 502B, or chapter 4 of part II of the Foreign Assistance Act of 1961. The Secretary may substitute any other action authorized by law, so long as it is commensurate in effect to the action substituted, and does not prohibit or restrict life-saving humanitarian assistance. The Secretary is not required to take action for up to 90 days if the Secretary determines and certifies that such a period is necessary to continue negotiations, to review corrective action taken by the relevant country, or because the Secretary anticipates that corrective action will be taken within the 90-day period.

Section 203. Consultations With Foreign Governments

Section 203 instructs the Secretary of State to request and enter into consultations with foreign governments as soon as possible following any determination made under section 201, or any actions taken under section 202.

Section 204. Waiver by the Secretary of State

Section 204 authorizes the Secretary of State to waive the application of actions taken under section 202 if the country at issue has satisfactorily resolved the abduction cases giving rise to the United States actions, has ended such country's pattern of noncompliance, or the national security interest of the U.S. requires the exercise of the waiver. When exercising a waiver, the Secretary must notify the appropriate congressional committees and provide them with a detailed justification. The Secretary must ensure that each waiver determination is published in the Federal Register or posted on the Department of State website, unless the Secretary determines that publication would harm the national security of the United States, or would not further the purposes of this Act.

Section 205. Termination of Actions by the Secretary of State

Section 205 authorizes the Secretary of State to terminate any actions taken under this Act if the Secretary submits to Congress a written certification that the country in question has resolved the abduction case that gave rise to such actions, or has taken substantial and verifiable steps to correct its persistent pattern of non-compliance.

TITLE III.—PREVENTION OF INTERNATIONAL CHILD ABDUCTION

Section 301. Preventing Children From Leaving the United States in Violation of a Court Order

Section 301 amends the Homeland Security Act of 2002 to establish a prevention program with the U.S. Customs and Border Protection (CBP) to prevent the departure of a child from the U.S. if a parent or legal guardian secures a valid court order and presents it to CBP in sufficient time to prevent such departure. The Secretary of State must also convene and chair an interagency working group on preventing international parental child abduction. The group must contain representatives from the State Department, the Justice Department, and the Department of Homeland Security. Finally, the Secretary of Defense must designate an official to coordinate with the State Department on international child abduction issues, and to oversee activities to prevent or resolve international child abduction cases relating to active duty military service members.

Section 302. Authorization for Judicial Training on International Parental Child Abduction

Section 302 authorizes \$1,000,000 for Fiscal Year (FY) 2015, and another \$1,000,000 for FY 2016, in order to provide judicial training on the effective handling of parental abduction cases in countries either with a pattern of noncompliance, or in countries with a significant number of pending unresolved abduction cases. 180 days after this bill's enactment, the President must submit a strategy to carry out these training activities to the appropriate congressional committees.

V. COST ESTIMATE

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the committee notes that the cost estimate

provided by the Congressional Budget Office was not available for inclusion in this report. The estimate will be printed in either a supplemental report or the Congressional Record when it is available.

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirement of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee has considered the regulatory and paperwork impact of H.R. 3212, as amended. The bill requires the Secretary of State to ensure that diplomatic and consular missions abroad maintain a consistent reporting standard with respect to abduction and access cases, and to monitor developments in abduction and access cases. However, it is not expected that these requirements will produce significant regulatory effect on individuals or businesses. The bill requires the Secretary of State to submit written notification to the Member of Congress and Senators, or Resident Commissioner or Delegate, representing the legal residence of a left-behind parent, but only if the parent reports an abduction and consents to notification. As such, it is the committee's view that the bill would not have a significant impact on the personal privacy of individuals affected. Title III of the bill requires the Secretary of Homeland Security, through the Commissioner of U.S. Customs and Border Protection, in coordination with the Secretary of State and others, to establish a program that, among other things, seeks to prevent children from departing the United States if there is a court order prohibiting such removal. While some regulations may be required to implement this requirement, the language explicitly contemplates the use of existing authorities and processes. As such, it is the committee's judgment that the regulatory impact of H.R. 3212, as amended, will not be significant.

VII. CHANGES IN EXISTING LAW

In compliance with Rule XXVI, paragraph 12 of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

TITLE 42.—THE PUBLIC HEALTH AND WELFARE

CHAPTER 121.—INTERNATIONAL CHILD ABDUCTION REMEDIES

SECTION 11611. REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION *[Repealed]*

[(a) IN GENERAL.—Beginning 6 months after October 21, 1998, and every 12 months thereafter, the Secretary of State shall submit a report to the appropriate congressional committees on the compliance with the provisions of the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, by the signatory countries of the Convention. Each such report shall include the following information:

[(1) The number of applications for the return of children submitted by applicants in the United States to the Central

Authority for the United States that remain unresolved more than 18 months after the date of filing.

【(2) A list of the countries to which children in unresolved applications described in paragraph (1) are alleged to have been abducted, are being wrongfully retained in violation of United States court orders, or which have failed to comply with any of their obligations under such convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States.

【(3) A list of the countries that have demonstrated a pattern of noncompliance with the obligations of the Convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States to the Central Authority for the United States.

【(4) Detailed information on each unresolved case described in paragraph (1) and on actions taken by the Department of State to resolve each such case, including the specific actions taken by the United States chief of mission in the country to which the child is alleged to have been abducted.

【(5) Information on efforts by the Department of State to encourage other countries to become signatories of the Convention.

【(6) A list of the countries that are parties to the Convention in which, during the reporting period, parents who have been left-behind in the United States have not been able to secure prompt enforcement of a final return or access order under a Hague proceeding, of a United States custody, access, or visitation order, or of an access or visitation order by authorities in the country concerned, due to the absence of a prompt and effective method for enforcement of civil court orders, the absence of a doctrine of comity, or other factors.

【(7) A description of the efforts of the Secretary of State to encourage the parties to the Convention to facilitate the work of nongovernmental organizations within their countries that assist parents seeking the return of children under the Convention.

【(b) DEFINITION.—In this section, the term “Central Authority for the United States” has the meaning given the term in Article 6 of the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.】

Public Law 107-296

HOMELAND SECURITY ACT OF 2002

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TITLE IV.—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

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SUBTITLE C.—MISCELLANEOUS PROVISIONS

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SECTION 433. PREVENTION OF INTERNATIONAL CHILD ABDUCTION.

(a) *PROGRAM ESTABLISHED.*—The Secretary, through the Commissioner of U.S. Customs and Border Protection (referred to in this section as ‘CBP’), in coordination with the Secretary of State, the Attorney General, and the Director of the Federal Bureau of Investigation, shall establish a program that—

(1) seeks to prevent a child (as defined in section 1204(b)(1) of title 18, United States Code) from departing from the territory of the United States if a parent or legal guardian of such child presents a court order from a court of competent jurisdiction prohibiting the removal of such child from the United States to a CBP Officer in sufficient time to prevent such departure for the duration of such court order; and

(2) leverages other existing authorities and processes to address the wrongful removal and return of a child.

(b) *INTERAGENCY COORDINATION.*—

(1) *IN GENERAL.*—The Secretary of State shall convene and chair an interagency working group to prevent international parental child abduction. The group shall be composed of presidentially appointed, Senate confirmed officials from—

(A) the Department of State;

(B) the Department of Homeland Security, including U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement; and

(C) the Department of Justice, including the Federal Bureau of Investigation.

(2) *DEPARTMENT OF DEFENSE.*—The Secretary of Defense shall designate an official within the Department of Defense—

(A) to coordinate with the Department of State on international child abduction issues; and

(B) to oversee activities designed to prevent or resolve international child abduction cases relating to active duty military service members.