INTERNATIONAL CHILD ABDUCTION: BROKEN LAWS AND BEREAVED LIVES

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INTERNATIONAL CHILD ABDUCTION: BROKEN LAWS AND BEREAVED LIVES

TUESDAY, MAY 24, 2011

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

The subcommittee met, pursuant to notice, at 2 o'clock p.m., in room 2203 Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the subcommittee) presiding.

Mr. SMITH. The subcommittee will come to order, and I want to thank each and every one of you for joining us this afternoon to focus on the deeply troubling and growing problem of international child abduction, which occurs when one parent unlawfully moves a child from his or her country of residence, often for the purpose of denying the other parent access to the child. It is a global human rights abuse that seriously harms children while inflicting excruciating emotional pain and suffering on left-behind parents and families.

International child abduction rips children from their homes and lives, taking them to a foreign land and alienating them from a left-behind parent who loves them and whom they have a right to know. Their childhood is disrupted, in limbo, or sometimes in hiding as the taking parent seeks to evade the law or to conjure legal cover for his or her immoral actions. Abducted children often lose their relationship with their mom or their dad, half of their identity, and half of their culture. They are at risk of serious emotional and psychological problems and may experience anxiety, eating problems, nightmares, mood swings, sleep disturbances, aggressive behavior, resentment, guilt, and fearfulness. As adults, they may struggle with identity issues, their own personal relationships, and parenting.

In 1983, the United States ratified the Hague Convention on the Civil Aspects of International Child Abduction to try to address this serious issue. The Convention creates a civil framework for the quick return of children who have been abducted and for rights of access to both parents. Under the Convention, courts are not supposed to open or reopen custody determinations, but rather decide the child's country of habitual residence—usually where the child was living for a year before the abduction. Absent extenuating circumstances, the child is to be returned within 6 weeks to his or her habitual residence for the courts there to decide on custody or to enforce any previous custody determinations. This framework is

based on the premise that the courts in the country where the child was living before the abduction have access to evidence and witnesses and are the appropriate places for custody determinations to be made. However, even though more than 80 countries have signed the Hague Convention, the return rates of American children are still devastatingly low. In 2010, 978 children were abducted through Hague Convention signatory countries, and 360 children were returned. That is only 38 percent.

Some Hague signatories are simply not enforcing return orders. The State Department's 2010 Hague Convention compliance report highlights 15 countries, Argentina, Australia, Austria, Costa Rica, France, Germany, Honduras, Hungary, Israel, Mexico, Romania, South Africa, Spain, Switzerland, and Turkey, for failing to enforce return orders. Many other countries, Bermuda, Brazil, Bulgaria, Burkina Faso, Honduras, Mexico, the Bahamas, and St. Kitts, and Nevis, are failing to abide by the Hague Convention provisions concerning the central authority charged with implementing the Convention, the performance of their judiciaries in applying the Hague Convention, and/or the ability or willingness of law enforcement to ensure swift enforcement of orders issued under the Convention.

Some taking parents will try to drag out proceedings for so long that the child reaches the age where a court will consider the child's wishes regarding a return. And David Goldman, certainly, and others have experienced that very infamous tactic. Tragically, abducted children are often the victims of parental alienation, where the taking parent has filled the child's head with lies about the left-behind parent. If the child was not of an appropriate age to be heard when the child was abducted, the taking parent should not be enabled to drag out proceedings or motivated to psychologically manipulate a child, harm a child, or manipulate that child to testify that he or she does not want to return to the left-behind parent. Countries that permit these practices encourage the child abuse known as parental alienation.

In 2010, the United States lost 523 children to countries that have not signed onto the Hague Convention and received back 228 of those kids, a return rate of some 45 percent. Japan has by far the worst record of all. It has not issued and enforced the return order for a single one of the more than 321 American children abducted there since 1994, when the recordkeeping began. Japan is currently protecting the abductors of 156 American children under the age of 16. You will hear from some of their left-behind parents at this hearing.

Japan announced this week that it is introducing legislation needed to ratify the Hague Convention. However, I am very concerned that Japan will add exceptions and reservations to its ratification that would render its ascension to the Convention meaningless. And, tragically and unbelievably, Japan has already indicated that its approval of the Convention will be meaningless to the 156 American children already abducted to Japan. The Hague Convention is not retroactive unless Japan makes it retroactive.

I and members of this committee strongly urge Japan not to ignore the abducted children already within their borders. Just this year, the United States lost 31 more children to Japanese abduction. I can assure Japan that the hundreds of left-behind American

parents whose children are in Japan are not going away if Japan signs the Hague Convention. Japan will not move past its reputation here in the Congress and elsewhere as a safe haven for child abductors until Japan returns all abducted children. These 156 American children are bereaved of one of their parents. They cannot be ignored, nor will they be forgotten.

In the last Congress, I introduced legislation to impress upon both Hague and non-Hague countries alike that the United States will not tolerate child abduction or have patience with countries that hide abductors behind the Hague Convention. Yesterday I reintroduced a bill, the International Child Abduction Protection and Return Act of 2011. The new bill, H.R. 1940, will empower the President and the Department of State with new tools and authorities to secure the return of abducted American children.

Under this new proposed law, when a country has shown what we call a "pattern of non-cooperation" in resolving child abduction cases, the President will be able to respond decisively with a range of actions and penalties, 18 in all. I included penalties that we included back in 2000 in the Trafficking Victims Protection Act. I am the prime author of that legislation. It has worked in combatting human trafficking. It will work in combatting international child abduction.

We also included language taken right from the International Religious Freedom Act, enacted in 1998, which went through my committee. It was a bill that was sponsored by our good friend and colleague Frank Wolf. That, too, has worked to promote international religious freedom by having a penalty stage, without which we can admonish all we want, but we have to have something, carrots and sticks, in order to ensure compliance.

Based on past experience, as I said, we know that penalties get the attention of other governments, and we know that they work.

Also reflecting my anti-trafficking legislation, H.R. 1940, will raise the profile of the international child abduction issues by appointing a new Ambassador-at-Large for International Child Abduction to head a new office charged with helping left-behind parents secure the return of their children and to collect detailed information and report on abducted children in all countries. This has to be taken to a much higher level, and we have to put the full force of penalties and the ambassadorial rank of this new position behind that effort.

The growing incidence of international child abduction must be recognized for the serious human rights violation that it is. And decisive, effective action is urgently needed. Our hearing this afternoon will help us all to understand better the impact that child abduction has on children, parents, and entire families and provide us with the opportunity to explore the actions needed to end it.

I would like to now yield to my good friend and colleague Don Payne, the ranking member of our subcommittee, for any comments that he may have.

Mr. PAYNE. Thank you very much. Let me begin by commending you for calling this timely hearing. As many of us know, tomorrow is National Missing Children's Day. And it is fitting that we examine a problem of child abduction in an international context.

Losing a child is a terrifying experience for any parent, regardless of where they live, anywhere in the world. Unfortunately, reported cases of international child abduction are on the rise. In fact, the number of cases involving a child kidnapping kidnapped out of the United States into countries that signed the Hague Convention doubled since 2006, 2 times more in simply 5 years.

The troubling trend of increased international child custody disputes is likely to deteriorate as our society becomes more interconnected and mobile. These heart-wrenching cases warrant congressional vigilance and action. Currently the Hague Convention on the Civil Aspects of International Child Abduction, with 85 participating countries, is a principal mechanism for enforcing the return of abducted children.

Though imperfect, the Convention has successfully resolved many abduction cases and pressed signatory countries to properly return children to their rightful residence. Through the Convention, for example, the United States Government successfully returned 262 children, abducted to or wrongfully retained, in the United States in 2010 alone.

Nevertheless, as all of our witnesses will testify today, key challenges remain. For example, the Convention's available remedies do not apply to non-signatory countries, which leave parents, like my witness Colin Bower, with limited legal resources and support. Colin, I thank you for being here and willing to share your distressing personal story and providing us with insight on the hardship and difficulties of regaining children abducted to Egypt, a country that chose not to participate in the Hague Convention.

Many here in Congress are concerned with your case, including my friend Congressman Barney Frank, who is here in the audience—and I'm sure the chairman will invite him to come forward and sit on the panel if he chooses—who along with my colleague Mr. Smith introduced a resolution calling on Egypt to return your children.

I want to thank all of the parents here today for sharing their stories with us. Furthermore, the Convention promotes the prompt return of abducted children. Long delays are often and still too common. We are not satisfied. And often parents of abducted children still face protracted legal battles with potentially prohibitive legal costs.

Although international parental child kidnapping is a Federal crime in the United States, the Convention also fails to impose any criminal sanctions on the abducting parent, despite the serious danger such action poses to the mental well-being of the child.

The International Parental Child Abduction Deterrence Act of 2009, introduced by my colleague from New Jersey, Representative Rush Holt, which I co-sponsored, is designed to deter potential foreign national parental child abductors by increasing the potential penalties associated with such abductions. Proposed penalties against the parental abductors including freezing financial assets of foreign nationals within the United States' jurisdiction, and revoking or denying their visa eligibility to the United States.

Ms. Wells, I look forward to your analysis of the Convention, the opportunity for improvement, including U.S. legislative options.

As we reflect on the risks abducted children face internationally, I would like to further draw special attention to Africa, where at times we governments through our legal and judicial systems and widespread poverty prevent adequate response to child abduction and trafficking cases and leave children especially vulnerable. Globally children in conflict, post-conflict, and natural disaster crisis are especially at risk for child abduction or its pernicious counterpart: Child trafficking.

In some African countries, like Sudan and regions in that area, such as the Sahara countries in northwest Africa, abduction into slavery remains a horrendous practice. Child abductions between ethnic factions in the Sudan conflict, and especially of Dinke and Nuba children to the North from the South, speak to the enhanced vulnerability children face during conflict. As a matter of fact, many of us got involved initially in the Sudan crisis, even before war really broke out, because of the abduction of children. And they were being sold into slavery.

In other conflicts, such as those in Somalia and Central African Republic, amongst others, children are still at risk for abduction and forcible conscription as child soldiers. Scandals, such as the case of French aid workers from Zoe's Ark, attempting to remove Chadian children, whom they falsely claimed were often Sudanese refugees when arranging for adoption abroad, for that of the Americans from the Southern Baptist missionary, who attempted to remove Haitian children 2 weeks after the devastating earthquake, also false claimed to be orphaned, remind us of the need to ensure that children are protected in poor and especially in post-conflict and post-disaster areas.

Mr. Eaves, I look forward to your testimony on the risks children face in such situations and how we can work to protect children from abduction and trafficking when they are in the most vulnerable states.

And so I look forward to hearing the witnesses. And, with that, I will yield back the balance of my time.

Mr. SMITH. Thank you very much.

We have two rollcalls on the floor. So we are going to take a very brief—we are almost out of time on the first. So we are going to run over, vote, vote on the second one, and come right back and reconvene the hearing. So we stand in recess pending the outcome of those votes.

[Brief recess.]

Mr. SMITH. The subcommittee will resume its sitting, and I would like to introduce the witnesses to the subcommittee, beginning with Mr. David Goldman, who is the father of Sean Goldman, who was born in the Red Bank in 2000 and was abducted to Brazil in 2004. Mr. Goldman spent 5 arduous years devoting enormous amounts of time and financial resources and had a great number of people supporting him in the community to secure the return of his son.

In December 2009, I had the extraordinary privilege of being with David and Sean when they were finally able to return to the United States. Mr. Goldman recently published a book about his ordeal entitled "A Father's Love: One Man's Unrelenting Battle to Bring His Abducted Son Home."

Mr. Goldman has been a trailblazer in opening the eyes of our country to the agony endured by left-behind parents, and I would say the human rights abuse of child abduction, obviously we have all known about it. We have worked on it, many of us, for many years. It wasn't until David Goldman opened the eyes of Members of Congress and hopefully other policymakers around the world that they realized just how the Hague Convention is often gamed by countries, in this case Brazil, where endless appeals can be lodged by the abducting family, so-called family, the abductors, the kidnappers. And, frankly, that process can be carried on week after week, month after month, year after year, precluding the return of an abducted son or sons or daughters or family members. He has really refocused and revitalized a human rights movement that he launched by his leadership. And I want to thank him for it.

All of the other left-behind parents have been tenacious and courageous in their own right. But David's case, the breakthrough case I think, will help everyone else. And that is our, I think, the subcommittee's sincerest hope.

Secondly, I would like to introduce Ms. Sara Edwards, who is the mother of a 3-year-old, Abdullah Eli Kiraz. Eli's father took him to Turkey in March 2010 and has since refused to return him to his mother. Ms. Edwards lives and works in Akron, Ohio and is seeking concrete assistance in navigating the obstacles of her fight as a left-behind parent.

We have another witness who is on his way. He is not here yet. I would like to now ask Mr. Goldman if he would proceed with his testimony as he would like.

Mr. GOLDMAN. Thank you.

STATEMENT OF MR. DAVID GOLDMAN, FATHER OF CHILD ABDUCTED TO BRAZIL AND RETURNED IN 2009

Mr. GOLDMAN. Let me take us back in time a little bit. Good afternoon, Members of Congress. I am honored for the privilege to testify before you today.

For 5½ years, I walked in the shoes of the left-behind parent. I lived in a world of despondency and desperation, with a searing pain throughout my entire being. Everywhere I turned I saw an image of my abducted child. Sleep was hard to come by and never restful. If I smiled, I felt guilt.

When I saw children, whether it was in the store, a park, or on television or even on my charter boat, where clients often take their families for a day on the water, it was more than painful. For the longest time it was too painful to be around my own family members. I couldn't even be around my nieces and nephews. It was too painful.

Where was my son? Where was my child? He had been abducted. He was being held illegally. He was being psychologically, emotionally, and mentally abused. I needed to help him. I needed to save him. He needed me: His father. It was our legal, our moral, our God-given right to be together as parent and child.

I did everything humanly possible, leaving no stone unturned, but for many years, the result remained the same. Sean was not home.

Although I remained determined and hopeful, I must admit, the outlook for a permanent reunion with my abducted child often seemed bleak, at best. I felt like a dead man walking. The void left me a shell of the man I had once been.

There were orders in place. There were many orders from U.S. courts demanding the immediate return of my child. The courts in Brazil acknowledged that my child had been held in violation of U.S. and international law. However, he remained in the possession of his abductors.

Why were so many laws being ignored? Why were the abductors and in my case, the Government of Brazil, allowed to flagrantly violate international law with no consequences? Why were my child and over 50 other American children still in Brazil, another 80 or more in Mexico, and thousands of other American children also held illegally in various countries in clear violation of the Hague Convention on the Civil Aspects of International Child Abduction?

It would take 4½ years, numerous court hearings, extraordinary work from my attorneys in Brazil and the U.S. (one of whom is here today, sitting behind me, Ms. Patricia Apy, who will testify), a tremendous amount of political pressure applied publicly and internally, and House, Senate and state resolutions for me to finally be able to visit my abducted son for a few short periods of time.

My son had been abducted by my wife and her parents and held illegally for over 4 years. It wasn't until the tragic passing of his mother that my son's abduction became newsworthy. This finally brought it to the attention of those who could and would actually assist me.

It took Congressmen Smith traveling to Brazil with me. It took Senator Lautenberg holding up a bill that would have given Brazil nearly $3 billion in trade preferences for my son to come home.

Sean and I are extremely grateful for all of the assistance we received from supporters, elected officials, the Secretary of State, and the President of the United States of America. Nevertheless, it is extremely rare for a left-behind parent to be the beneficiary of this level of help. Yet, every other parent whose American citizen child has been abducted deserves the same help that I received.

This committee must realize that if the system had been working properly, our Government would have had the tools necessary to bring Sean and all of the other abducted children home years earlier. It should not have required the extraordinary efforts of Congressman Smith and Senator Lautenberg. Senator Lautenberg should never have needed to threaten a trade bill with Brazil because that option should have been available to our State Department when countries violate laws and refuse to return abducted American children.

As of today, there are many black and white Hague abduction cases in Brazil and other countries where the law is clear that the children must be returned. My case was the exception because the abducting parent had passed away, but almost always the abductor is still alive. These abducting parents and their attorneys manipulate the legal system to their advantage, stalling legal processes for years while our children grow up apart from half of their families. For these left-behind parents and families, time is the enemy.

With all the assistance and support I received over 4 years and then another 1½ years after the death of my son's first abductor, on Christmas Eve 2009, Sean and I were finally reunited and returned home. It was nothing short of a miracle. After 5½ years of my son's illegal retention and documented abuse, he is now home, and he is flourishing.

He will be 11 years old tomorrow, May 25. As Congressman Payne pointed out, his birthday, my son's birthday, is on International Missing Children's Awareness Day.

Although the remaining abductors of my son have challenged the Brazilian Supreme Court decision that brought him home and continue litigation in Brazil seeking my son's return, in addition to filing lawsuits in New Jersey courts, he is home. He is happy. He is loved. He is allowed to be a child again. And we are father and son again.

One thing my father said when my son and I finally reunited and returned home, which will always resonate within me—and that is how these parents and families live every day. My dad said, "Not only did I get my grandson back, I got my son back."

Our family will always be so very grateful for every ounce of support from wherever it came. It is for this reason that I am here today. To do whatever I can to ensure the pleas from the remaining families, desperately fighting to reunite with their abducted children, do not fall on deaf ears, as my own pleas did for so many years.

Our foundation is assisting a number of left-behind parents, including nine whose children remain illegally retained in Brazil. None of these children have been abducted by someone with great influence and power, like those who abducted my child. However, the results are the same. The children remain held illegally.

Other than my son, we are aware of no other child returned to the U.S. by Brazil under the Hague Convention. In fact, since Sean's return, two U.S. cases in Brazil received return orders by Brazilian first-level Federal courts, which is very good news. However, the rulings were appealed, the children were not returned, and the lives of the left-behind parents and their children hang in the balance while every day, the abductors live with impunity as these cases drag on. Brazil continues to defy international law.

I would like to note that Ambassador Jacobs recently returned from a trip to Brazil where she had gone to discuss international child abduction with senior Brazilian officials. Ambassador Jacobs reports that the trip was a success and that the U.S. and Brazil have established a working group, which will meet this summer to discuss how to speed up Hague applications and the adjudication of these abduction cases. Hopefully, real change will happen, but to be clear, the only way progress can be measured is by the number of American children who are returned.

Right now, there are zero, zero consequences when a nation flagrantly violates the Hague Convention and refuses to return abducted children to the United States. Nations, including Mexico, Germany, Brazil and Japan, which finally appears ready to ratify the Hague Convention, discover quickly that the United States is all talk and no action. These countries play endless legal and diplomatic games with left-behind parents, frustrating their hopes and

breaking their hearts month after month and year after year through endless, bureaucratic maneuverings. The method and the excuses may vary from one country to country, but the results are almost always the same. Children illegally abducted from the United States almost never come home. The current system is broken.

In the letter inviting me to speak at this hearing today, the chairman states that the purpose of this hearing is to explore ways the U.S. can help increase return rates of children abducted internationally by a parent. First of all, we can only help increase return rates if we start with a complete understanding of the full magnitude of the problem, including the true number of American children who were abducted and continue to be illegally retained abroad. This is a difficult number to find, and it is not presented as part of the annual Hague compliance report submitted to Congress by the State Department.

We keep hearing that the figure is around 2,800 American children. However, the last three annual Hague compliance reports prepared by the State Department show that the total number of abducted American children for those 3 years was 4,728.

These reports also show about 1,200 children were returned, although we weren't able to find return data for 2010. That would account for an increase of 3,528 abducted American children in those 3 years alone. And clearly there have to be literally thousands of American children illegally retained abroad whose abductions date back prior to the most recent 3-year period.

How are returns categorized? How were these children returned if they were, in fact, returned at all? Do returns also include cases which the State Department has closed for various reasons? If so, what are the criteria for closure?

Things need to change. We need a system by which these abduction cases are registered and monitored by each parent's elected Member of Congress. We need our elected officials to work closely with the State Department on these cases to make sure that all resources and additional tools are at their disposal to make it clear to these countries that we want our children sent home.

There is no valid reason for foreign governments to illegally hold American children and support international child abduction. This statement, however true, defies all logic because there is never a valid reason to break the law and support kidnapping. But as I testify before you today, this is exactly what is happening in many countries to thousands of American children and their families. These countries are breaking the law with impunity.

The fact is very few left-behind parents will be as fortunate as I was in having President Obama, Secretary of State Clinton, Congressmen Smith, and Senator Lautenberg all make my son Sean's return a fundamental foreign policy goal of the United States. Even then, Senator Lautenberg had to put a hold on renewal of GSP privileges for more than 100 nations, including Brazil, to put the final pressure on both Brazil and the administration, which led to Sean's return.

I wish every left-behind parent could have that kind of support in the future, but we all know that few, at most, and possibly none, will ever have that kind of leverage and power backing them. What

kind of leverage will these parents be able to wield without the kind of personal, high-level support I was so fortunate to receive from the White House, State Department, Senate, and House to bring their children home? Not very much and, in fact, probably none at all.

The Hague Convention has the force of law, but we all know there can be no rule of law if there is no system of justice to punish violators. Today Mexico, Brazil, Argentina, and a host of other countries face no real consequences for refusing to adhere to the Hague Convention requirements that abducted children be returned to the country where they were legally domiciled within 6 weeks.

American treasure and our armed forces have safeguarded the security of Japan since 1945. Yet, Japan pays no price for refusing to return the abducted children of those American service members as well as ordinary U.S. citizens whose children have been abducted to Japan.

This committee and this Congress must pass legislation that arms the State Department with real sanctions to exemplify U.S. intolerance for other nations which remain flagrant violators. Chairman Smith has authored such legislation. I support it, and I urge all members to do so as well.

Similar to our anti-human trafficking laws authored by Chairman Smith, his bill to combat international child abduction provides a real and credible inventory of sanctions to be used to help get our kids back. If you arm our negotiators with such sanctions, they will immediately be taken more seriously. If the Department employs such sanctions against the worst offenders, other nations will get the message also, and hopefully start to return our children.

What I do know is that if all we do today is express outrage and vow to do better as committees like this in both houses of Congress have done for more than 12 years, but fail to enact Congressman Smith's legislation with real and credible sanctions, our kids will not be returned. And we will be back before another committee next year with more left-behind families, more internationally abducted children, and no new mechanism of improvement.

It is worth noting that this is the seventh hearing on this issue since 1998. And I respectfully ask this committee to think about something at the conclusion of this hearing. What, if anything, has changed in those 12 years since we acknowledged the seriousness of the problem of international child abduction and realized that the system was failing these parents back then?

When you read the testimony, it is as if we are caught in a time capsule and suddenly the dates on the hearing transcripts don't matter. All of these stories could be told today because the reasons for the failures are the same. This is as much of a bipartisan issue as there could ever be, and I continue to plead on behalf of all the suffering families torn apart by child abduction for our Government to act now.

My son Sean and I can never get back the time we lost because of his abduction, but now that he is finally home, not a day is lost on either one of us. Let us help the rest of the families and begin with providing the much-needed tools that the State Department

so desperately needs to apply across-the-board pressure that will ensure abducted American children come home.

I would like to conclude with a letter from the left-behind parents of 117 American children unlawfully retained in 25 countries. The letter is addressed to Secretary of State Clinton and was written for the purpose of giving a voice to the thousands of parents who were not invited to speak here today. Their presence is felt and many of them are here in this room today. If I may, I would like to read this letter. And if any of the parents or families would like to stand with me? If the room were bigger, you could be assured there would be more families. If this room were bigger, you could be assured there would be more parents and families, making it even hotter.

> "Dear Madam Secretary, we, the undersigned, appeal for your help as left-behind parents of 117 American children who have been abducted and remain unlawfully retained in 25 countries. We also represent a number of U.S. service members whose children were abducted while serving our country overseas. Some of these countries are signatories to the Hague Convention while others are not, such as Japan, where we face overwhelming odds trying to reunite with our children.
>
> "We and our families are devastated emotionally and financially by the loss of our children and seek your assistance in ensuring that the U.S. Government is exercising all lawful means necessary to return these American children to their home country and reunite them with us.
>
> "The continued retention of our children violates international law, ethical norms, and human decency. Put simply, our children have been stolen from us. It is our legal and our moral right to be a part of their lives.
>
> "As our 85 cases demonstrate, there are a growing number of countries willfully ignoring or abusing their international obligations with regard to international parental child abduction. Each of us has had exasperating experiences seeking justice in foreign courts, where our cases are often treated as custody matters, rather than abduction cases.
>
> "Oftentimes, victim parents—and court systems of foreign country when it is well-known that such action will likely result in a decision with custody of our abducted children being awarded to the abducting party. Collectively, we have limited or no contact with our children, many of whom have been turned against us as a result of parental alienation, a documented form of child abuse.
>
> "Our children lost half their identities when they were ripped from their homes, families, and friends. Like us parents, our children's grandparents, siblings, aunts, uncles, and other family members have holes in their hearts left by the abduction of their loved ones.
>
> "We were encouraged by your July 2010 appointment of Ambassador Jacobs as Special Advisor to the Office of Children's Issues. However, in working with OCI, we have experienced little improvement in the quality of service provided by the Department of State and almost no positive results.

"The current system has failed us. While our children remain unlawfully in foreign lands, the number of new child abduction cases from the U.S. continues to grow at an alarming rate. There is an urgent need for change, not only to prevent more of our nation's children from being abducted across international borders but also to effectuate the expeditious and safe return of our abducted children.

"International child abduction is a serious human rights violation in desperate need of your attention. In our experience, all too often these international child abduction cases do not appear to be addressed aggressively because of the State Department's effort to maintain harmonious, bilateral relations with other countries or to pursue other compelling foreign policy goals.

"The State Department's Foreign Affairs Manual on the issue of child abduction highlights this point by instructing OCI case workers to remain neutral when handling these abduction cases. This inherent conflict of interest cannot be ignored, and we need to place a higher priority on the welfare of our children.

"We understand the necessity of maintaining strong relations with other nations, but this should not come at the expense of our children. Over the years, both houses of Congress have held numerous hearings on the issue of international parental child abduction. Yet, precious little has changed as our absent children grow older.

"On Tuesday, another group of parents will gather in Washington, DC for yet another hearing, as we are today. It is our hope that this will be the year that Congress and the administration unite to pass new laws to strengthen our nation's capacity to help the parent and children victims of international parental child abduction. We also hope that the State Department, under your leadership, will embrace these changes to finally end this gross injustice affecting thousands of American children.

"Madam Secretary, we applaud your past efforts and record on children's rights issues, but we are desperate and plead for your assistance. It is long past time for this great country to show leadership on the issue of international parental child abduction. We cannot grow complacent with each successful return, nor can we forget about all the other children who are being wrongfully retained abroad.

"We are fortunate to have strong support of groups which advocate for victims of international parental child abduction. However, we need our Government's unwavering support and determination to bring our children home.

"Madam Secretary, we would welcome the opportunity to meet with you directly to discuss how progress can be made. Please help us reunite with our children."

And the families and the names of the children are at the end of the letter.

Mr. SMITH. Thank you.

[Applause.]

Mr. SMITH. Without objection, the letter will be made part of the record.

[The prepared statement of Mr. Goldman and the letter referred to follow:]

David Goldman
Testimony before the House Committee on Foreign Affairs, Subcommittee on Africa, Global Health, and Human Rights
International Child Abduction: Broken Laws and Bereaved Lives
May 24, 2011

Good afternoon Members of Congress.

I am honored for the privilege to testify before you today.

For five and one half years, I walked in the shoes of the Left-Behind Parent. I lived in a world of despondency and desperation, with a searing pain throughout my entire being. Everywhere I turned I saw an image of my abducted child. Sleep was hard to come by and never restful. If I smiled, I felt guilt. When I saw children, whether it was in the store, a park, on television or even on my charter boat, where clients often take their families for a day on the water, it was more than painful. For the longest time it was too painful to be around my own family members. I couldn't even be around my nieces and nephews. It was too painful. Where was my son? Where was my child? He had been abducted. He was being held illegally. He was being psychologically, emotionally and mentally abused. I needed to help him. I needed to save him. He needed me, his father. It was our legal, our moral, our God given right to be together as parent and child. I did everything humanly possible, leaving no stone unturned, but for many years the result remained the same. Sean was not home.

Although I remained determined and hopeful, I must admit, the outlook for a permanent reunion with my abducted child often seemed bleak at best. I felt like a dead man walking. This void left me a shell of the man I had once been. There were orders in place. There were many orders from U.S. courts demanding the immediate return of my child. The courts in Brazil acknowledged that my child had been held in violation of US and international law, however, he remained in the possession of his abductors. Why were so many laws being ignored? Why were the abductors and in my case, the government of Brazil, allowed to flagrantly violate international law with no consequences? Why were my child and over 50 other American children still in Brazil, another 80 or more in Mexico, and thousands of other American children also held illegally in various countries in clear violation of The Hague Convention on the Civil Aspects of International Child Abduction? It would take four and one half years, numerous court hearings, extraordinary work from my attorneys in Brazil and the US (one of whom is here today, Mrs. Patricia Apy), a tremendous amount of political pressure applied publicly and internally, and House, Senate and state resolutions for me to finally be able to visit my abducted son for a few short periods of time. My son had been abducted by my wife and her parents and held illegally for over four years. It wasn't until the tragic passing of his mother that my son's abduction became "newsworthy." This finally brought it to the attention of those who could and would actually assist me. It took Congressmen Smith traveling to Brazil with me. It took Senator Lautenberg holding up a bill that would have given Brazil nearly three billion dollars in trade preferences for my son to come home.

Sean and I are extremely grateful for all of the assistance we received from supporters, elected officials, the Secretary of State and the President of the United States of America. Nevertheless, it is extremely rare for a left-behind parent to be the beneficiary of this level of help, yet every other parent whose American citizen child has been abducted deserves the same help that I received. This committee must realize that if the system had been working properly, our government would have had the tools necessary to bring Sean, and all of the other abducted children, home years earlier. It should not have required the extraordinary efforts of Congressman Smith and Senator Lautenberg. Senator Lautenberg never should have needed to threaten a trade bill with Brazil because that option should have been available to our State Department when countries violate the law and refuse to return abducted American children.

As of today, there are many black and white Hague abduction cases in Brazil and other countries where the law is clear that the children must be returned. My case was the exception because the abducting parent had passed away but almost always the abductor is still alive. These abducting parents and their attorneys manipulate the legal system to their advantage, stalling the legal process for years while our children grow up apart from half of their families. For these Left-Behind Parents and families, time is the enemy!

With all the assistance and support I received, after over four years and then another year and one half after the death of my son's first abductor, on Christmas Eve 2009, Sean and I were finally reunited and returned home. It was nothing short of a miracle. After five and one half years of my son's illegal retention and documented abuse, he is now home and he is flourishing! He will be 11 years old tomorrow on May 25, International Missing Children's Awareness Day. Although the remaining abductors of my son have challenged the Brazilian Supreme court decision that brought him home and continue litigation in Brazil seeking my son's return, in addition to filing law suits in the New Jersey courts, he is home. He is happy, he is loved, he is allowed to be a child again and we are father and son again. One thing my father said when my son and I finally reunited and returned home, which will always resonate within me. He said "not only did I get my grandson back, I got my son back." Our family will always be so very grateful for every ounce of support from wherever it came. It is for this reason that I am here today – to do whatever I can to ensure the pleas from the remaining families, desperately fighting to reunite with their abducted children, do not fall on deaf ears, as my own pleas did for so many years.

Our foundation is assisting a number of left-behind parents including nine whose children remain illegally retained in Brazil. None of these children have been abducted by someone with great influence and power, like those who abducted my child, however the results are the same. The children remain held illegally. Other than my son, we are aware of no other child returned to the US, by Brazil, under The Hague Convention. In fact, since Sean's return, two US Hague cases in Brazil received return orders by Brazilian first level federal courts, which is very good news. However, the rulings were appealed, the children were not returned and the lives of the Left-Behind Parents and their children hang in the balance while every day the abductors live with impunity as these cases drag on. Brazil continues to defy international law.

I would like to note that Ambassador Jacobs has recently returned from a trip to Brazil where she had gone to discuss international child abduction with senior Brazilian officials. Ambassador Jacobs reports that the trip was a success and that the US and Brazil have established a working

group which will meet this summer to discuss how to speed up Hague applications and the adjudication of these abduction cases. Hopefully, real change will happen, but to be clear, the only way progress can be measured is by the number of American children who are returned.

Right now, there are zero consequences when a nation flagrantly violates the Hague Convention and refuses to return abducted children to the United States. Nations including Mexico, Germany, Brazil and Japan, which finally appears ready to ratify the Hague Convention, discover quickly that the United States is all talk and no action. These countries play endless legal and diplomatic games with Left-Behind-Parents, frustrating their hopes and breaking their hearts month after month and year after year through endless, bureaucratic maneuverings. The method and the excuses may vary from country to country, but the results are almost always the same – children illegally abducted from the United States almost never come home. The current system is broken.

In the letter inviting me to speak at this hearing today, the Chairman states that the purpose of this hearing is to explore ways the US can help increase return rates of children abducted internationally by a parent. First of all, we can only help increase return rates if we start with a complete understanding of the full magnitude of the problem, including the true number of American children who were abducted and continue to be illegally retained abroad.

This is a difficult number to find and is not presented as part of the annual Hague Compliance report submitted to Congress by the State Department. We keep hearing that the figure is around 2,800 American children. However, the last three annual Hague compliance reports prepared by the State Department show that the total number of abducted American children for those three years was 4,728. These reports also show that about 1,200 children were "returned," although we weren't able to find return data for 2010. That would account for an increase of 3,528 abducted American children in those three years alone, and clearly there have to be literally thousands of American children illegally retained abroad whose abductions date back prior to the most recent three-year period. How are "returns" categorized? How were these children returned, if they were in fact returned at all? Do "returns" also include cases which the State Department has closed for various reasons? If so, what are the criteria for closure?

Things need to change. We need a system by which these abduction cases are registered and monitored by each parent's elected Members of Congress. We need our elected officials to work closely with the State Department on these cases to make sure that all resources and additional tools are at their disposal to make it clear to these countries that we want our children sent home.

There is no valid reason for foreign governments to illegally hold American children and support international child abduction. This statement, however true, defies all logic because there is never a valid reason to break the law and support kidnapping. But as I testify before you today, this is exactly what is happening in many countries to thousands of American children and their families. These countries are breaking the law with impunity!

The fact is very few Left-Behind Parents will be as fortunate as I was in having President Obama, Secretary of State Clinton, Congressmen Smith and Senator Lautenberg all make my son Sean's return a fundamental foreign policy goal of the United States. Even then, Senator

Lautenberg had to put a hold on renewal of GSP trade privileges for more than 100 nations, including Brazil, to put the final pressure on both Brazil and the Administration, which led to Sean's return. Let's be honest. I wish every Left-Behind Parent could have that kind of support in the future, but we all know that few at most, and possibly none, will ever have that kind of leverage and power backing them. What kind of leverage will these parents be able to wield without the kind of personal, high-level support I was so fortunate to receive from the White House, State Department, Senate, and House to bring their children home? Not very much. In fact, almost none at all.

The Hague Convention has the force of law but we all know there can be no rule of law if there is no system of justice to punish violators. Today Mexico, Brazil, Argentina, and a host of other countries face no real consequences for refusing to adhere to The Hague Convention requirements that abducted children be returned to the country where they were legally domiciled within six weeks. American treasure and our armed forces have safeguarded the security of Japan since 1945, yet Japan pays no price for refusing to return the abducted children of those American service members, as well as ordinary US citizens, whose children have been abducted to Japan.

This Committee and this Congress must pass legislation that arms the State Department with real sanctions to exemplify U.S. intolerance for other nations which remain flagrant violators. Chairman Smith has authored such legislation. I support it and I urge all Members to do so as well. Similar to our anti-human-trafficking laws authored by Chairman Smith, his bill to combat international child abduction provides a real and credible inventory of sanctions to be used to help get our kids back. If you arm our negotiators with such sanctions they will immediately be taken more seriously. If the Department employs such sanctions against the worst offenders, other nations will get the message also, and hopefully start to return our children. What I do know is that if all we do today is express outrage and vow to do better – as committees like this in both Houses of Congress have done for more than 12 years, but fail to enact Congressman Smith's legislation with real and credible sanctions, our kids will not be returned and we will be back before another Committee next year with more Left-Behind Families, more internationally abducted children, and no new mechanism of improvement.

It is worth noting that this is the seventh hearing on this issue since 1998 and I respectfully ask this Committee to think about something at the conclusion of this hearing. What, if anything, has changed in those 12 years since we acknowledged the seriousness of the problem of international child abduction and realized that the system was failing these parents back then? When you read the testimony, it's as if we are caught in a time capsule and suddenly, the dates on the hearing transcripts don't matter. All of these stories could be told today because the reasons for the failures are the same.

This is as much of a bipartisan issue as there could ever be and I continue to plead on behalf of all the suffering families torn apart by child abduction for our government to act now! My son Sean and I can never get back the time we lost because of his abduction, but now that he is finally home, not a day is lost on either one of us. Let us help the rest of the families and begin with providing the much-needed tools that the State Department so desperately needs to apply across-the-board pressure that will ensure abducted American children come home.

I would like to conclude with a letter from the left-behind parents of 117 American children unlawfully retained in 25 countries. The letter is addressed to Secretary of State Clinton and was written for the purpose of giving a voice to the thousands of parents who were not invited to speak here today. Their presence is felt and many of them are here in this room today.

AN OPEN LETTER TO SECRETARY CLINTON

May 24, 2011

Honorable Hillary Rodham Clinton
Secretary of State
US Department of State
2201 C Street NW
Washington, DC 20520

Dear Madam Secretary,

We, the undersigned, appeal to you for help as left-behind parents of 117 American children who have been abducted and remain unlawfully retained in 25 countries. We also represent a number of U.S. service members whose children were abducted while serving our country overseas. Some of these countries are signatories to the Hague Convention while others are not, such as Japan, where we face overwhelming odds trying to reunite with our children. We and our families are devastated – emotionally and financially – by the loss of our children and seek your assistance in ensuring that the U.S. Government is exercising all lawful means necessary to return these American children to their home country and reunite them with us.

The continued retention of our children violates international law, ethical norms, and human decency. Put simply, our children have been stolen from us, and it is our legal and moral right to be a part of their lives. As our 85 cases demonstrate, there are a growing number of countries willfully ignoring or abusing their international obligations with regard to international parental child abduction. Each of us has had exasperating experiences seeking justice in foreign courts, where our cases are often treated as custody matters, rather than as abduction cases. Often times, victim parents are told to use the court system of the foreign country when it is well known that such action will likely result in a decision with custody of our abducted children being awarded to the abducting party.

Collectively, we have limited or no contact with our children, many of whom have been turned against us as a result of parental alienation, a documented form of child abuse. Our children lost half their identities when they were ripped from their homes, families and friends. Like us parents, our children's grandparents, siblings, aunts, uncles, and other family members have holes in their hearts left by the abduction of their loved ones.

We were encouraged by your July 2010 appointment of Ambassador Jacobs as Special Advisor to the Office of Children's Issues (OCI). However, in working with OCI, we have experienced little improvement in the quality of service provided by the Department of State and almost no positive results. The current system has failed us. While our children remain unlawfully in foreign lands, the number of new child abduction cases from the U.S. continues to grow at an alarming rate. There is an urgent need for change, not only to prevent more of our nation's

children from being abducted across international borders, but also to effectuate the expeditious and safe return of our abducted children.

International child abduction is a serious human rights violation in desperate need of your attention. In our experience, all too often these international child abduction cases do not appear to be addressed aggressively because of the State Department's effort to maintain harmonious, bilateral relations with other countries or to pursue other compelling foreign policy goals. The Department's Foreign Affairs Manual on the issue of child abduction highlights this point by instructing OCI case workers to remain "neutral" when handling these abduction cases. This inherent conflict of interest cannot be ignored and we need to place a higher priority on the welfare of our children. We understand the necessity of maintaining strong relationships with other nations, but this should not come at the expense of our children.

Over the years, both houses of Congress have held numerous hearings on the issue of international parental child abduction, yet precious little has changed as our absent children grow older. On Tuesday, another group of parents will gather in Washington, D.C. for yet another hearing. It is our hope that this will be the year that Congress and the Administration unite to pass new laws to strengthen our nation's capacity to help the parent and children victims of international parental child abduction. We also hope that the State Department, under your leadership, will embrace these changes to finally end this gross injustice affecting thousands of American children.

Madam Secretary, we applaud your past efforts and record on children's rights issues, but we are desperate and plead for your assistance. It is long past time for this great country to show leadership on the issue of international parental child abduction. We cannot grow complacent with each successful return, nor can we forget about all the other children who are being wrongfully retained abroad. We are fortunate to have the strong support of groups which advocate for victims of international parental child abduction. However, we need our government's unwavering support and determination to bring our children home.

Madam Secretary, we would welcome the opportunity to meet with you directly to discuss how progress can be made. Please help us to be reunited with our children.

Sincerely,

David Brian Thomas, father of Graham Hajime Thomas (Nishizawa) (Age 20)
Abducted to Japan in November, 1992

Walter Benda, father of M.B and E.B (Ages 22 and 20)
Abducted to Japan in July, 1995

Charles A. Hamilton, father of Dakota Carmen (age 15)
Abducted to Spain in December, 1996

Eric Kalmus, father of Amy Ito (Kalmus), (age 14)
Abducted to Japan in 1998

James Filmer, father of Sarah (age 13)
Abducted to Germany in October, 1998

David Hendricks, father of Daniel and Patrick (ages 17 and 13)
Abducted to Norway in June, 1999

Mark & Lydia Harrison, father and grandmother of Jessica Danielle (age 15)
Abducted to Mexico in July, 2000

Craig Alciati, father of Peter Spencer (age 12)
Abducted to France in March, 2001

Michael C. Gulbraa, father of Michael K. & Christopher R. Gulbraa (ages 21 and 20)
Abducted to Japan in November, 2001

CDR Paul Toland, USN and Linda Toland, father / sole surviving parent and stepmother of Erika (age 8)
Abducted to Japan in July, 2003

Richard B Kephart Jr and Martha Kephart, father and grandmother of Richard Kephart III and Nicolle Hyler Kephart (ages 15 and 10)
Abducted to Japan in November, 2003

Brett Weed, father of Takoda Tei Weed & Tiana Kiku Weed (ages 13 and 10)
Abducted to Japan in January, 2004

Klaus Zensen, father of Maria Carolina (age 7)
Abducted to Brazil in July, 2004

Ariel Ayubo, father of Lorenzo (age 10)
Abducted to Brazil in September, 2004

Robert A. McConnell, father of Bianca Damanik (age 8)
Abducted to Indonesia in January, 2005

Deana Hebert, mother of Bianca Lozano (age 17)
Abducted to Mexico in April, 2005

Paul Brown, father of Liam Shiratori Paul Brown (age 8)
Abducted to Japan in June, 2005

William J Lake, father of Mary Victoria Lake (age 14)
Abducted to Japan in August, 2005

Stephen Christie, father of James Kento Christie (age 16)
Abducted to Japan in October, 2005

John Donaldson, father of Michiru Janice Donaldson (age 10)
Abducted to Japan in November, 2005

George A. Petroutsas, father of Andonios (age 6)
Abducted to Greece in December, 2005, re-abducted in June, 2010

Michele Swensen, mother of Amina, Layla, and Sami (ages 14, 12 and 10)
Abducted to Yemen in February, 2006

Didier Combe, father of Chloe (age 7)
Abducted to Mexico in March, 2006

Kelvin Birotte, father of Kelvin Jr. (age 5)
Abducted to Brazil in July, 2006

Timothy Weinstein, father of Paul and Anna (ages 13 and 10)
Abducted to Brazil in August, 2006

Marty Pate, father of Nicole (age 10)
Abducted to Brazil in August, 2006

Nigel Lewis, father of Jasmyn Lewis and Cody Lewis (ages 9 and 7)
Abducted to Japan in November, 2006

Donna Hesse, grandmother of Kai Noel Hachiya (age 12)
Abducted to Japan in December, 2006

Michael McCarty, father of Liam Gabriele (age 9)
Abducted to Italy in March, 2007

Douglas Brian Gessleman, father of David and Joshua Gessleman (ages 7 and 9)
Abducted to Japan in May, 2007

Robert Carpenter, father of Natalie Elisabeth and Krystal Lynn (age 5)
Abducted to Colombia in June, 2007

Trevor Richardson, father of Andrew (age 5)
Abducted to Mexico in August, 2007

Paul Wong, father and sole surviving parent of Kaya Summer Xiao-Lian Wong (age 7)
Abducted to Japan in August, 2007

Kirsten M. Snipp, mother of Joichiro Yamada (age 13)
Abducted to Japan in September, 2007

Michael G. Canopin, father of Christian Lehua Haolalani Yuuki Inamura-Canopin (age 13)
Abducted to Japan in October, 2007

Jose Maria Cacho Polo, father of Jose Martín (age 11)
Abducted to Japan in January, 2008

Michael Sanchez, father of Emily Machado (age 5)
Abducted to Brazil in March, 2008

Randy Ernst, father of Joseph and Nicole (ages 13 and 11)
Abducted to Russia in May, 2008

Sean A. McKnight, father of Kelly and Julia (ages 15 and 7)
Abducted to Poland in May, 2008

Randy Collins, father of Keisuke Christian Collins (age 8)
Abducted to Japan in June, 2008

Carlos Bermudez, father of Sage Antonio (age 4)
Abducted to Mexico in June, 2008

Bandi J. Rao, father of Anand Saisuday (age 6)
Abducted to India in July, 2008

Carl Hillman, father of Sean (age 8)
Abducted to Japan in July, 2008

Conrad Washington, father of Conisha Kanna and Maximus Riku (ages 16 and 7)
Abducted to Japan in July, 2008

Patrick McCoy, father of Yuuki McCoy (Kojima) (age 3)
Abducted to Japan in August, 2008

Regan Haight, mother of Chloe and Aiden Kobayashi (ages 9 and 5)
Abducted to Japan in September, 2008

James Robert Allen, father of Joseph Martin (age 2)
Abducted to Colombia in September, 2008

Brandon C. Neal, father of Alexander Hikaru Neal (Sugashima) (age 4)
Abducted to Japan in September, 2008

Chandrashekar Mungaravalli Puttappa, father of Akshara (age 3)

Abducted to India in October, 2008

Michael Elias, Nancy Elias and Miguel Elias, father, grandmother and grandfather to Jade Maki Elias and Michael Angel Elias (ages 5 and 3)
Abducted to Japan in December, 2008

Jessie Duke, Roy Duke and Deborah Duke, father, grandfather and grandmother of Shanonyuma Ishida and Rikki (ages 8 and 4)
Abducted to Japan in December, 2008

Matt Wyman, father of Jake Taylor and Alex Michael (ages 10 and 6)
Abducted to Japan in January, 2009

Roy Koyama, father of Emily Alina (age 2)
Abducted to Costa Rica in February, 2009

Devon Davenport, father of Nadia Lynn (age 2)
Abducted to Brazil in February, 2009

John Henry Richardson III, father of Matthew and Dylan (age 8 and 7)
Abducted to Mexico in April, 2009

Dhanika Athukorala, father of Kali Soleil (age 3)
Abducted to Dominican Republic in April, 2009

Richard C. Nielsen, Peter Nielsen and Karin Heintz, father, grandfather and grandmother of Leo Nielsen (age 4)
Abducted to Japan in April, 2009

Darshaun Nadeau, father of Kaya Nadeau (age 2)
Abducted to Japan in May, 2009

Mzimaz Youssef, father of Ghali (age 2)
Abducted to Morocco in May, 2009

James Patrick Carol, Jr., father of Andrea Vanessa and James Patrick (ages 7 and 6)
Abducted to Mexico in June, 2009

Tracy Baumgart, mother of Saxon Rayne Kawar (age 10)
Abducted to Jordan in July, 2009

Michael M. Bergeron, father of Ami Amor (age 6)
Abducted to Peru in August, 2009

Douglass Berg, father of Gunnar and Kianna Berg (ages 11 and 10)
Abducted to Japan in August, 2009

Christopher and Amy Savoie, father and stepmother of Isaac and Rebecca (ages 10 and 8)
Abducted to Japan in August, 2009

Colin Bower, father of Noor and Ramsay (ages 10 and 8)
Abducted to Egypt in August, 2009

Evangelina Pena, mother of Elias Badys (age 4)
Abducted to Morocco in September, 2009

Brett Purcell, father of Dante (age 1)
Abducted to Argentina in September, 2009

Bruce R. Gherbetti, father of Rion Suzuki, Lauren Gherbetti and Julia Gherbetti (ages 8, 6 and 4)
Abducted to Japan in September, 2009

Mark Gomez, father of Haydn (age 3)
Abducted to China in January, 2010

Jeffery Morehouse, Madeline Morehouse & David Sorlie, father, grandmother and grandfather of "Mochi" Atomu Imoto Morehouse (age 7)
Abducted to Japan in February, 2010

Stan Hunkovic, father of Gabriel Julius and Anastasia Sierra-Marie (ages 3 and 1)
Abducted to Trinidad & Tobago in February, 2010

Sara Edwards, mother of Eli Kiraz (age 3)
Abducted to Turkey in March, 2010

Michael Hassett, Dennis and Ann Hassett, father, grandfather and grandmother of Noah and Kynan Hassett (ages 10 and 7)
Abducted to Japan in March, 2010

Alex Kahney, father of Selene and Cale (ages 9 and 7)
Abducted to Japan in April, 2010

Brian Prager and Morton Prager, father and grandfather of Louis "Rui" (age 5)
Abducted to Japan in June, 2010

Antonio Quintana, father of Victoria and Virginia (ages 4 and 3)
Abducted to Argentina in July, 2010

Rex S. Arul, father of Rhea Immaculate (age 4)
Abducted to India in July, 2010

Simon Williams, father of Noan John (age 2)
Abducted to Brazil in August, 2010

Sheena Howard, mother of Talan and José Otavio Ribeiro da Silva (ages 5 and 2)
Abducted to Brazil in September, 2010

Dennis Patrick Burns, father of Victoria Emma and Sophia Marie (ages 4 and 2)
Abducted to Argentina in September, 2010

Richard Joseph Gatt, father of Natasha Joanie (age 6)
Abducted to Brazil in October, 2010

Douglas Trombino, father of Morgana Gray (age 2)
Abducted to Colombia in November, 2010

Ray Rose, father of Kaia (age 15 months)
Abducted to Japan in November, 2010

Robert W. Makielski, father of Isabel Marie and Gabriel Leonardo (ages 8 and 4)
Abducted to Dominican Republic in January, 2011

Tim Johnston, father of Kai Endo (age 6)
Abducted to Japan in March, 2011

Mr. SMITH. Mr. Goldman, thank you for your very powerful testimony, for speaking and articulating the deeply held views of virtually everyone in this room and all of those who couldn't be here.

I would note that this is the beginning of a series of hearings. We will hear from other left-behind parents in subsequent hearings—we have three panels today—because every single one of your situations needs to be aired, needs to have the full backing of our subcommittee, which they do, in order to hopefully, God willing, effectuate the return of those left-behind children.

I would like to yield to Ms. Buerkle for any comments she might have, the distinguished gentlelady from New York.

Ms. BUERKLE. Thank you, Mr. Chairman. Thank you for holding this very important hearing on the issue that will benefit from more attention and more action from this Congress.

The testimony of the witnesses is truly heartbreaking. And as a mother of six, I can only imagine what the pain is when a child is abducted by a former spouse. It is probably the worst nightmare divorced parents could face. And I want to applaud the vigilance and the persistence of the left-behind parent in your pursuit to get your child back.

Reading through the testimony was eye-opening. And especially disturbing was the non-return rate for the signatories to the Hague Convention. In 2010, the return rate for signatories to the Hague Convention was actually 7 percent lower than for the non-Hague Convention countries. Last year alone, the State Department handled 1,501 child abduction American citizen and residents.

These are our children. We must do better. This Congress will do better. And I assure you that with our chairman here, we will do better.

Thank you. And I yield back.

Mr. SMITH. Thank you very much. I want to thank Ms. Bass for joining us, a distinguished member of this subcommittee as well.

I would like to now recognize Sara Edwards. And please proceed as you would like.

STATEMENT OF MS. SARA EDWARDS, MOTHER OF CHILD ABDUCTED TO TURKEY

Ms. EDWARDS. Thank you all for the opportunity today to share my son's story.

My name is Sara Edwards and I am the mother of a 3-year-old boy named Abdullah Eli. Eli is a beautiful, curious, and active little boy who gives the most wonderful bear hugs, but I have not held him since March 4th of 2010. And on that day, more than 14 months ago, Eli's father, my husband, Muhammed Kiraz, took Eli to Turkey for a family visit.

Muhammed and I met while we were both in college, and we married in Kent, Ohio in 2003. Our son was born 5 years later, while I was in graduate school at The Pennsylvania State University. My family and parts of Muhammed's family lived in northeast Ohio. So when Eli was 6 months old, we moved back there.

In January 2010, after 7 years of marriage, Muhammed and I separated. We drafted an informal shared parenting agreement to outline our intentions for raising our son. I believed this document was a framework for us to work together as separated parents in

raising Eli. We acted under the plan, which called for equal custodial time of alternating weeks with Muhammed and I each visiting 2 days a week with Eli during each other's visitation.

I fully believed that Muhammed's participation meant he was committed to shared parenting, as I was. Therefore, when Muhammed wanted to go forward with a visit to see his family in Turkey and take Eli, I did not object. I thought it would be good for them to have the support of his family during the separation. Muhammed provided me with the round trip tickets of travel itinerary and also a signed, notarized statement promising to return with our son.

Muhammed and Eli were supposed to spend 2 months in Turkey. Now 14 months later, Eli is still not home. I certainly did not want to be without my son for 2 months. I knew that I would miss him more than I had ever missed anything, but I have always felt it is important for our son to know his Turkish family and to have exposure to that half of his culture. I wanted to be fair.

I myself had traveled to Turkey five times before Muhammed abducted Eli. On two of those times, Eli came with me. And we also stayed for 2 months during the visit. It all seemed routine.

I drove them to the airport on the day of the travel. And I was there as they went through ticketing and security. I blew kisses and waved to Eli as Eli waved bye-bye from Muhammed's shoulders. Excuse me.

As I hold onto that happy last look at him, I now realize that Muhammed actively deceived me from the moment we decided to separate. For the first 2 weeks of their trip, I was able to visit with Eli daily, but on March 22, 2010, my nightmare began. Muhammed told me that he would only bring Eli back to Ohio if I declared myself an unfit parent and gave full custody to him. He told me he had already got a divorce and there was not a thing I could do about it.

So the next day, March 23, 2010, I contacted Department of State Office of Children's Issues; National Crime Center, American Embassy; Turkish Consulate; and scores of attorneys across Turkey and all over the U.S.

It is certainly now clear Muhammed never intended to bring Eli home. He traveled to Turkey on March 6. And on the 10th of March, 4 days later, he attended a divorce hearing. One day later, March 11, 2010, the domestic court of Nevsehir, Turkey granted full custody of our son to Muhammed. Muhammed got full custody and divorce in a domestic court in a country where we never resided.

According to Turkish law, I should have been physically present for the divorce hearing. Not only was I not present, I was never informed of the case in any way. I never had contact at all with the attorney, Hasan Unal, who was supposed to have represented me. I did not even have hard evidence that a foreign case took place until Muhammed filed the Turkish court's ruling as evidence in our Ohio custody case.

To date, Muhammed continues to ignore the Summit County court order to return Eli to Ohio. The judge signed the order adopting our original shared parenting plan in June 2010, and Muhammed and I are still legally married in Ohio.

My Turkish attorney submitted my Hague petition to the Turkish Central Authority on January 24, 2011. I have learned that the Turkish authorities have investigated Muhammed's and Eli's whereabouts. And just this month, the Turkish Central Authority has opened a case on my behalf in Kayseri, Turkey for the return of my son. I await updates daily. I await updates desperately.

Over the past 14 months, Muhammed has permitted me to visit with Eli by webcam, sometimes on a regular basis, but he also abruptly cuts off access for long periods with no warning. I schedule my daily life around the chance to speak with my only child, and my despair or elation turns upon Muhammed's whim. My son no longer understands or speaks English, and I struggle to keep up with him in Turkish, but I am so grateful to still have contact and maintain our bond.

Eli was only two when Muhammed took him. And now at age three, I see him growing and changing drastically with each visit. Every day I wonder, "Is he thinking about me and missing his mother the same way I am thinking about him and missing him?"

Muhammed threatens to take Eli to Syria, torturing me with the reality that each webcam visit could again be the last time that I ever see Eli. Excuse me.

The obstacles I face fighting the abduction of my son are great. I am essentially on my own to fight a court battle in a foreign country where I do not know the language or understand the culture. I have to be continually vigilant as I learn to maneuver this nightmare of uncertainty that accompanies fighting for my son. Excuse me.

To date, I still do not know whether Eli has been issued a Turkish passport. No one can give me confirmation that Muhammed will be questioned if he tries to abscond from Turkey while the Hague case is pending. No one can give me confirmation that Muhammed will be questioned if he returns to the U.S. to renew his legal resident status. These are things we can know. These are obstacles that are ahead that need to be avoided. These are things we can do.

I love my son more than anything in this world. And I am ready every minute to welcome him home. And I personally ask each of you now to commit to do all that is within your power to restore the right of our children to have relationships with both of their parents.

Thank you very much.

[The prepared statement of Ms. Edwards follows:]

Testimony of Sara Edwards
May 24, 2011
House Committee on Foreign Affairs,
Subcommittee on Africa, Global Health, and Human Rights

My name is Sara Edwards and I am the mother of an adorable 3 year old boy, named Abdullah Eli. Thank you all for the opportunity today to share Eli's story. I miss my boy so much every day, but the chance to speak to you about my pain and struggle gives me the hope that someday very soon I will have him back in my arms. Eli loves to play race with his toy cars and trucks. He is a beautiful blonde-headed smile-factory of a boy. He also gives the most wonderful bear hugs, but I have not held him since March 4th 2010. That day, more than fourteen months ago Eli's father, my husband, Muhammed Kiraz, took Eli to Turkey for a family visit.

Muhammed and I met while we were both in college and we married in Kent, Ohio in 2003. Our son was born five years later in 2008, while I was in graduate school at The Pennsylvania State University. My family and parts of Muhammed's family lived in Northeast Ohio, so when Eli was 6 months old, we moved back there.

In January of 2010, after seven years of marriage, Muhammed and I separated. We drafted an informal shared parenting agreement to outline our intentions for raising Eli. I believed this document was a framework for us to work together as separated parents to achieve the best interests of our son. We acted under the plan, which called for equal custodial time of alternating weeks with Muhammed and I each visiting Eli two days a week during the other parents' visitation. We made bedtime phone calls every night regardless of which parents' week it was. I fully believed that Muhammed's participation meant he was committed to shared parenting like I was.

Therefore, when Muhammed wanted to go forward with a visit with Eli to see his family in Turkey, I did not object. I thought it would be good for Muhammed to have the support of his family during the separation. Muhammed provided me with the round trip travel itinerary of their tickets and also a signed, notarized statement promising to return with Eli. Muhammed and Eli were supposed to spend only two months in Turkey. But now 14 months later, Eli has still not come home.

Hindsight is 20/20. I now know that my husband felt he could not get what he wanted in the U.S. so he took our son to Turkey. There secured an unlawful custody ruling and divorce, and he did all he could to ensure that my side of the story would never be heard. I am here today to share my side of the story, and to speak for Eli.

I certainly did not want to be without my son for two months; I knew that I would miss him more than I had ever missed anything else, but I have always felt that it is important for our son to know his Turkish family and to have exposure to that half of his culture. I wanted to be fair. I myself had traveled to Turkey five times before Muhammed abducted Eli. I took Eli two of those times and each time we were there we stayed for two months. It all seemed routine. I drove them to the airport for their visit and I was there as they went through ticketing and security. I blew kisses and waved to Eli as Eli waved bye-bye from Muhammed shoulders. As I hold on to

that happy last look at him, I now realize that Muhammed actively deceived me and preyed on my trust from the moment we decided to separate.

For the first two weeks of their trip, I visited with Eli daily by web cam. While anxiously counting down the days to his return, I actually remember being glad to know that Eli would learn some Turkish words during his trip. Muhammed, however, had plans for something altogether different and on March 22, 2010, my nightmare began. Muhammed began making threats that he would only bring Eli back to Ohio if I would declare myself an unfit parent and give full custody of our son to him. I was in hell. He told me that he had already divorced me and that there was nothing I could do. I was shocked and devastated, but I thought his out bursts were just scare tactics to make me relinquish custody. On March 23, 2010, I contacted the Department of State, Office of Children's Issues; the American Embassy in Ankara, Turkey; and the Turkish Consulate in Chicago. I also began seeking advice from attorneys in Turkey and all over the United States.

It is now clear to me that Muhammed never intended to bring Eli home. Muhammed arrived in Turkey on March 6, 2010, and attended a divorce hearing on March 10, 2010. The domestic court of Nevsehir, Turkey granted full custody of our son to Muhammed on March 11, 2010. Muhammed got full custody and divorce in a domestic court in a country where we never resided. According to Turkish law, I should have been physically present for the divorce hearing. Not only was I not present, I was never informed of the case in any way, and I never had contact at all with the attorney, Hasan Unal, who supposedly represented me. I did not even have hard evidence that a divorce occurred until Muhammed filed the Turkish court's divorce and custody ruling through his Ohio attorney as evidence in the Ohio custody case.

To date, Muhammed continues to ignore the Summit County court order to return Eli to Ohio. The judge signed the order adopting our original Shared Parenting Plan in June of 2010, and Muhammed and I are still legally married in Ohio. My Turkish attorney submitted my Hague petition to the Turkish Central Authority on January 24, 2011. I learned that the Turkish authorities have investigated Muhammed and Eli's whereabouts and, just this month the Turkish Central Authority has opened a case on my behalf in Kayseri, Turkey domestic court for the return of my son. I await updates daily. I await updates desperately.

Over the past fourteen months, Muhammed has permitted me to visit with Eli by web cam, sometimes on a regular basis, but he also abruptly cuts off access for long periods with no warning. I schedule my daily life around the chance to speak to my only child, and my despair or elation turns upon Muhammed's whim. Eli no longer understands or speaks English and I struggle to keep up with him in Turkish, but I am so grateful to still have contact with him and maintain our bond. Eli was only 2 when Muhammed took him, and now at age 3 I see him growing and changing drastically with each visit. Every day I wonder if he is thinking about me and missing his mother the same way I am thinking about him and missing him. Muhammed threatens to take Eli to Syria, torturing me with the reality that each web cam visit could be the last time that I ever see Eli. My greatest fear is the real possibility that Eli will one day believe the lies that Muhammed has told; that I am a bad mother, that I abandoned him, that I did not want him.

The obstacles I face fighting the abduction of my son are great. I am essentially on my own to fight a court battle in a foreign country where I do not know the language or understand the culture. I have to be continually vigilant as I learn to maneuver this nightmare of uncertainly that accompanies fighting for my son. To date, I still do not know whether Eli has been issued a Turkish passport. No one can give me confirmation that Muhammed can be questioned if he tries to abscond with Eli from Turkey while the Hague investigation case is pending. No one can give me confirmation that Muhammed would be questioned if he returns to the US to renew is Legal Resident Status.

I love my son more than anything in this world and I am ready every minute to welcome Eli home. Thank you for this opportunity to share Eli's story. I personally ask each of you to commit now to do all that is in your power to restore the right of our children to have relationships with both of their parents.

Thank you.

Mr. SMITH. Ms. Edwards, thank you.

[Applause.]

Mr. SMITH. Thank you, Ms. Edwards, so much for sharing that.

We now welcome Carlos Bermudez, who is the father of Sage, who was born on May 14, 2007. Sage's mother abducted him to Mexico in June 2008. Mr. Bermudez has spent 3 years trying to bring his son to Durham, North Carolina. His presence with us

today is testimony to the fact that he continues to do so, just like all of the left-behind parents who are so valiantly struggling to reclaim their children.

Mr. Bermudez?

STATEMENT OF MR. CARLOS BERMUDEZ, FATHER OF CHILD ABDUCTED TO MEXICO

Mr. BERMUDEZ. Thank you, Chairman Smith.

Your amazing support of Mr. Goldman and advocacy on behalf of all families victimized by international child abduction is something that I respect gratefully. I am sincerely grateful for your efforts and honored to have the opportunity to address this committee.

My only son, Sage, was born May 14, 2007. Like many parents, I spent the months preceding his birth rearranging my priorities toward fatherhood and anxiously awaiting his arrival. I knew being his father would now be the most important role in my life.

In 2008, amidst increasing signs that something was amiss with my wife, I was having serious reservations about the long-term viability of our romantic relationship.

I was ultimately at a loss for what to do. While quietly and thanklessly maintaining a demanding work schedule to provide for my family, I tried not to read the writing that was, in hindsight, on the walls, and hoped that our problems would somehow work themselves out with time or keep long enough for me to be able to find the time and energy to deal with them effectively.

Time was, however, not on my side. In June 2008, 3 years ago, my wife falsely claimed there was a family emergency in Tucson, Arizona. The emergency involved her never-before-mentioned cousin, a 12-year-old who had gone missing himself and whose mother was scared to go to the authorities for fear of being deported.

Despite great discomfort, I didn't object to my wife going to Arizona with our son to see what she could do to help during this dire crisis. The only alternative I saw at that time was to take time off from my job at IBM to care for our son alone while my wife went to help find her endangered cousin. Being the sole provider for our family that, regrettably, did not seem feasible to me at that time.

My wife went to Arizona with our son for what was supposed to be a few days. Once there, she turned off her cell phone and only sent me occasional e-mail saying she was in Arizona and continuing to work on this family emergency.

I didn't know what was really happening. Was my child suffering or in danger? The idea that my son might be in trouble forced me to stop refusing to ask myself the hard questions about what was really going on.

As my uncertainty and fear grew, I began a frantic investigation into my wife's recent activity, plans, and associations. I traced the origin of her e-mails to find out she wasn't in Arizona at all. She was in Mexico. I began to see what she was doing and what her intentions were.

Although my wife has never endeavored to explain to me why she did this, before long, I would learn that my wife had been having a long-running affair with one of her friends in her social group and had left to live with him in Nogales, Mexico.

After significant effort, I located my son and initiated legal proceedings for his return under the Hague Convention. For good reason, the abduction convention is widely viewed as completely ineffective in Mexico.

While I could discuss the various problems in Mexico that prevent the effective implementation of the abduction convention there, I feel that doing so in this forum misses the forest for the trees. In my own sincere opinion, our priorities should not be to address problems in Mexico that we have very little control over.

Child abduction in Mexico from the U.S. is as much an American policy problem as it is a Mexican one. Inasmuch as Mexico is cited for failing to take appropriate measures to curb the international abduction of children, the U.S. Government is likewise criticized for not taking appropriate measures to protect American children or support American parents in their efforts to recover their internationally abducted children.

The proximity and close relationship between the United States and Mexico makes the problems of one country the problems of both and, by extension, places the responsibility of addressing the problem on both countries. This type of bilateral cooperation is part of a broadening recognition of the fact that as neighbors, both nations share the responsibility of addressing our problems.

American parents rightfully complain that they are alone in dealing with foreign courts and legal systems. The U.S. State Department has a virtual monopoly on information in such cases but refuses to share this information or act as a vigorous advocate for America's victimized families. There is an explicit conflict of interest between states' goal of maintaining pleasant bilateral foreign relations and assertive and effective advocacy and assistance on behalf of American citizens.

Upon being assigned a case worker at the Office of Children's Issues and having a first conversation with him, I remember thinking to myself, "My God. They have put the Department of Motor Vehicles in charge of recovering my son." To my subsequent horror, I have come to appreciate just how accurate that initial impression was. All of my entreaties for advice, guidance, or practical information on how I should proceed were immediately rebuked with claims that they could not provide legal advice.

When I look back on the way that the Office of Children's Issues orientated me on how to handle the abduction of my son, I have very little doubt that they were essentially setting me up for the rapid collapse and failure of the Hague application for my son's return. By not providing me with some very basic and essential facts, they were effectively guiding me down a path that would lead to the fast resolution of the Hague proceedings but which would also inevitably result in the denial of my son's repatriation.

Because such a result leads to the quick resolution of a potential diplomatic incident, they consider such results a form of success and view the American children's loss of their American family and heritage as an acceptable level of collateral damage. It was only through obsessive focus and efforts on my part that I managed to avoid the road that State had laid out for me.

In 2009, the Mexican family court rendered a decision that blatantly got every issue of fact and law wrong. In contradiction of vir-

tually every piece of evidence other than my wife's unilateral testimony, the judge denied my son's return to the U.S., claiming that my wife had been in Mexico since October 2007, rather than the actual date of June 2008 and that I had waited too long to file an application for his return.

In order to further prove during my appeal that my wife had provided criminally fraudulent testimony in Mexican courts, I requested that the U.S. State Department obtain copies of her entry and exit records to the United States. In the Kafkaesque conversations that ensued, I escalated this issue to the Abduction Unit Chief, who claimed they could not give me this information because it would violate my wife's privacy.

In spite of the fact that we remained legally married and that she had criminally abducted our child to a dangerous Third World country, when I asked to then have the entry and exit records for my son, for whom I am the legal custodial parent, I was told that this was not the role that OCI played and that they aren't allowed to give legal advice or assistance.

Furthermore, they said, the information I am looking for would be of no use to me in court because Mexico and the U.S. share a land border that allows for the fluid entry and exit of persons between the two countries. Therefore, they claimed, proving she had subsequently entered and exited the country would not prove the date of the illegal abduction and retention.

I couldn't help but wonder if moments after they had just said to me for the thousandth time that they couldn't give me legal advice, why were they now giving me legal advice. So I asked OCI if they had a Mexican attorney, to which they replied that they did not. Then why were they not telling me that the information I was requesting was of no legal use to me in Mexican courts during my appeal when it was my own Mexican attorney telling me to obtain this information.

At various points throughout this request, OCI told me something to the effect that a decision had been made in my case, sometimes adding that the appeal is now up to me and my attorney. The clear subtext of these statements was "We consider your case closed. We agree with the family court's decision. And we aren't going to get involved or help you undo what we view as the acceptable resolution of your son's abduction case." No matter how unjust the resolution itself may be, the important thing was that an aura of legitimacy had been created around my son's abduction, and a potential diplomatic irritant had been eliminated.

We cannot continue to offer up our abducted American children as sacrificial lambs at the altar of pleasant bilateral relations. The U.S. State Department and, by extension, the rest of the U.S. Government's own willingness to invest even the smallest amount of political capital in protecting our children is inconsistent with our values as Americans.

Contrary to the idea that abandoning these children helps us achieve our other more important policy goals, our callous indifference to the plight of our abducted children only serves to bolster the argument of America's critics that our foreign policy is dominated by the interest of American corporations, rather than a fundamental respect for justice in human rights. America leads best

when it leads by example. And I hope we can continue to do that. Thank you.

[The prepared statement of Mr. Bermudez follows:]

Testimony of Carlos Bermudez
House Committee on Foreign Affairs
Subcommittee on Africa, Global Health, and Human Rights
May 24, 2011

Issue of ICA and Mexico

Personal Story

My only son, Sage, was born May 14th, 2007. Like many parents, I had spent the months preceding his birth rearranging my priorities towards fatherhood, and anxiously awaiting his arrival. From the moment I first held him in my arms, I knew that being his father was now to be the most important role in my life. A few months after his birth, In October 2007, my wife Ana's dearest aunt Sylvia was dying of cancer. This unfortunate reality played out against the auspicious birth of Sage, and my marriage to his mother, Ana Belem. Estranged from her family and suffering from the idea that she might never see her Aunt before she died, my wife asked me to allow her to take our son to Mexico to see Sylvia before she died, and tell her family about our marriage and child. Although I offered to go along with her, she plead with me to let her go alone initially so she could talk to them before I got there, claiming that this would make the situation smoother because she knew how to handle her family. I was very reluctant, as Sage was only 5 months old, but she insisted they would be fine and that this was the best plan. We agreed that she would go alone for the first 2-3 weeks to give her time alone with her family, so that she could explain her previously unannounced marriage and child.

The trip was supposed to last two months, with her return from Mexico planned to coincide with the date we believed her green card would arrive to make her a legal US Resident. Leaving the country in the midst of changes in residency status is not without risk--Immigration does not allow applicants to do so without special permission. Whether knowingly or not, my wife falsely claimed, and convinced me, that if she requested this special permission it would be denied, and the proceedings to request would just delay the normal process making it even less likely that she'd make it to Mexico to see her aunt before she died.

Under these circumstances I notarized permission for my son to travel to Mexico for a "two month tourist visit." When the Green Card processing stalled for, to date, unexplained reasons, the two month visit extended to a total of four months, with my wife returning to the United States in March.

By staying behind in the United States, in deference to my wife's requests, I failed to effectively protect my son's right to be parented by his father. By not overtly publicly establishing, in Mexico, my ability and willingness to be father to my son, I implicitly abetted a series of events that would later lead to my son's abduction, and subsequent illegal retention from the country of his birth and paternal family. I pray my son will forgive me this error, though I shall never forgive myself for it. While trying to navigate the complexities of an international relationship, and to respect my wife's reported customs by allowing her to leave the country alone with

our son, I inadvertently enabled my wife to believe she could invent a completely false narrative of Sage's father, and of her life in the United States.

As one might expect, this four month separation from my wife and son was difficult. In particular, because it quickly became apparent that every conversation between my wife and I was initiated by me, and that my wife was not using any of the various cameras and communication media that I'd acquired and maintained at great expense, precisely to allow her to send pictures and videos and facilitate ongoing interaction between myself and our son over the internet.

Upon my wife's return from Mexico in March of 2008 I had serious reservations about the long term viability of our marriage, but believed that working to salvage the marriage was what was best for my son. Increasingly, there were signs that something was amiss with my wife. In spite of my efforts to understand and address what was happening, I was ultimately at a loss for what to do and was quietly, and thanklessly, maintaining a demanding work schedule to provide for my family, I tried not to read the writing that was, in hindsight, on the walls, and hoped that our problems would somehow work themselves out with time or keep long enough for me to be able to find the time and energy to deal with them effectively.

Time was not on my side. In June of 2008, my wife falsely claimed there was a "family emergency" in Tucson, AZ. The "emergency" involved her supposed cousin, a 12-year-old boy who had gone missing, and whose mother was an illegal alien who was scared to go to the authorities for fear of being deported. The missing boy had supposedly gone out with his uncle to McDonald's, where they believed he'd been picked up by the US Border Patrol. Although his mother was illegal the boy was born in the US. My wife's mother asked for her help, since she is licensed to practice law in Mexico and a legal US Resident. Despite great discomfort, I didn't object to my wife going to AZ with our son to see what she could do to help during this dire crisis. The only alternative I saw at that time was to take the time off at IBM to care for our son alone, while my wife went to help her endangered cousin. Being the sole provider for our family that, regrettably, did not seem feasible at the time.

Ana went to Arizona with our son for what was supposed to be a few days. Once there she turned off her phone, and via email, said that Sage had thrown it in the bath tub but she was "looking for another phone to call with". I spent nights in terror when I couldn't get a hold of my wife. Did something happen? Was my child suffering or in danger? Emotions any parent can relate to. The idea that my son might be in some kind of danger forced me to stop refusing to ask myself the hard questions about what was going on. As my uncertainty and fear grew, I began a frantic investigation into my wife's recent activity, plans and associations. She never seemed to find a phone, but for several weeks I continued to receive emails saying that she was "looking for a phone to call," and that she was still working to resolve the family emergency. Finally, I traced the originating IP address of her emails to find she wasn't in Arizona at all. She was in Mexico, and there began the investigation into why she had really gone to Mexico. I began to see what she was doing and what her intentions were. Although my wife has never endeavoured to explain to me why she did this, I have determined the following:

Before long, I would learn that my wife had been having a long-running affair with

one of the "friends" in her social group. This "friend," amongst many others, had come to our house for a number of events we'd hosted there, including my wife's baby shower and a cook-out for her birthday when my son was 4 months old. To be with this family friend, she quietly planned the abduction of our son to Nogales, Mexico, a border city and sister to Nogales, AZ. Over the course of weeks, while still in the U.S., she asked me to go to the Mexican Embassy to apply for a birth certificate for Sage so he could have dual citizenship. She gathered up all the documentation she could find of our life, such as the pictures and legal documents like our marriage certificate. She also took my passport, social security card, both copies of my birth certificate and the title to my car and flew to Tucson. The detailed story she'd told about the missing child was pure fiction used to abduct our own son.

There have since been 9 separate trials in Mexico with multiple still ongoing. The Mexican legal system allows for a large number of appeals, all of which can suspend enforcement of any decision to return an abducted child. Since September 2010, the family court judge has illegally suspended the new proceedings to have my son returned, claiming he is waiting for the superior court to give him original court documents from the first trial. The State Superior court claims that they are waiting for these files from the first level federal court even though it was the State Superior court that incorrectly sent them to the 2nd level federal court, who then incorrectly sent them to the 1st level federal court, who has been unresponsive to requests that they be returned to the 1st level family court so that the proceedings can commence. As you may have just gathered, the Mexican legal system is both maddeningly slow and at times, a bit confusing. It's become very clear here that the claim being made by the 1st level family court that they cannot proceed without these "original documents" is patently false, since they have certified copies and have never even requested that the higher courts send them the documents they claim to need.

Mexico is amongst the world's most popular sources and destinations for international child abduction, while also being widely regarded as having one of the least effective systems of protecting and returning internationally abducted children within its borders.

Mexico signed on to the United Nations Convention on the Rights of the Child in 1990, the Hague Convention on the Civil Aspects of International Child Abduction in 1991,[1] and the Inter-American Convention on the International Return of Children. Since becoming party to the Hague Abduction Convention, the world's most recognized and utilized instrument for addressing international child abduction, Mexico has been repeatedly criticized for enjoying the benefit of having its treaty partners protect Mexico's own internationally abducted children, while also being consistently non-compliant in fulfilling its reciprocal obligations to protect and return children abducted to Mexico. To date its procedures for enforcing its treaty obligations are unpredictable and entirely ineffective. The Centre for International Family Law Studies in Cardiff, Wales, compared seven jurisdictions, including Mexico. The conclusion was that Mexico was by far the worst offender in its failure to return abducted children. In consideration of Mexico's history of noncompliance, as documented extensively over the past 11 years in the US State Department's annual compliance reports, Texas courts made a landmark decision finding Mexico's legal system ineffective and lacking legal mechanisms for the immediate and effective enforcement of child custody orders and, furthermore stating, Mexico posed a risk to

children's physical health and safety due to human rights violations committed against children, including child labor and a lack of child abuse laws. Ever-increasing travel warnings to Mexico for U.S. Citizens only further the risk to these children, and to their left-behind parents forced into litigations, and attempts to see their children, there.

Hague Convention

The Hague Convention is widely viewed as completely ineffective in Mexico, with the country being extensively cited as having problems with nearly every aspect of its implementation. Oftentimes, children can not be located for Convention proceedings to start, due to problems with law enforcement's performance. Law enforcement has reported an inability to locate children even when parents have reported giving them the children's exact address in Mexico. Although Mexico claims to provide free legal representation for victim parents, the provided representation is often completely unable to move the case forward and will only represent the parent during the natural trial, not during appeals. Parents who have been able to gain traction in Mexican courts have turned to private attorneys. Even when these attorneys have won favorable verdicts they are not enforced if the abductor files appeals, or amparos, which suspend enforcement of the decision until they've been adjudicated, frequently causing years of delays. In the unlikely event that children are located, legal proceedings commence, all appeals are heard and a final return order is issued, law enforcement issues can arise anew due to their inability to locate children yet again. A tragic example of this is the Combe-Rivas abduction where, after four years, the Mexican Supreme Court issued a final decision ordering the child's return in June 2009. To date, the decision remains unenforced due to an inability to locate the child.

Domestic family law

Mexican courts grant automatic custody of children below 7–12 years (depending on the state) to mothers unless they have been proven to be unfit. This maternal preference has been the subject of Constitutional challenges on the basis that the Mexican Constitution enshrines the equality of the sexes, but has been upheld on the grounds that the Constitution also protects the integrity of the family. Custody cases are also not immune to many of the problems found in Hague cases and, even if a custody decision were to be won it would not necessarily allow for the child to be taken back out of Mexico. In cases where taking the child back out of Mexico to the home country is sought, the decision can be subject to the same lack of enforceability pending the exhaustion of all appeals that plagues Hague Convention applications.

Corruption is an intrinsic part of the problem with international child abduction in Mexico,, and affects every other aspect of the issue from locating children and judicial decisions to enforcing court orders for repatriation in the rare cases where the obstacles of locating children and judicial noncompliance have been overcome. Parents of children abducted to Mexico have reported being asked for a "mordida" (literally "bite", ubiquitoius slang for bribe in Mexico) in order for Mexican officials to do routine work.[8] Mexico bears the stigma of being considered one of the most corrupt countries in the hemisphere.

Criticism of the United States government's role

Child abduction to Mexico from the US is as much an American policy problem as it is a Mexican one.[citation needed]Inasmuch as Mexico is cited for failing to take appropriate measures to curb the international abduction of children, the US government is likewise criticized for not taking appropriate measures to protect American children or support American parents in their efforts to recover their internationally abducted children. The proximity and close relationship between the United States and Mexico makes the problems of one country the problems of both and, by extension, places the responsibility of addressing the problem on both countries. US officials recognize this, and have increasingly worked to assist Mexico by providing training and education to Mexican judges and law enforcement. This type of bilateral cooperation is part of a broadening recognition of the responsibility both nations share in addressing problems in the region, and is most notably demonstrated in the Mérida Initiative, the $1.4 billion aid package to help Mexico interdict illicit drugs, arms and human trafficking.[43][44]

US State Department

American parents complain that they are essentially alone in dealing with foreign courts and legal systems. The US State Department has a virtual monopoly on information in such cases, but refuses to act as a vigorous advocate for left-behind American parents while also preventing the National Center for Missing and Exploited Children or anyone else from playing that role. State Department attorney Thomas Johnson remarked that when he reminded one senior State Department official with Child Abduction Convention responsibilities that she works for the American people, her immediate response was: "I don't work for the American people; I work for the Secretary of State", demonstrating the Department's inherent conflict of interest (i.e., a desire to maintain "good" bilateral foreign relations for their own sake that overrides assertive and effective advocacy on behalf of American citizens).

Dangerous Diplomacy

State's overriding desire to appease foreign governments and maintain "good relations" is having a conflict of interest between their responsibility to internationally abducted children as the designated United States Central Authority under the Hague Convention. This inherent conflict of interest between the two roles is magnified by what the book defines as the "culture of state", a culture characterized by extreme moral relativism, valuing process over substance and misplaced priorities that reward failures by promotions or high paying jobs "consulting" for the foreign government of the country that they'd previously been paid to advocate America's interests in.

Personal Experiences with US State Department

Upon being assigned a "caseworker" at the OCI at State, the first question I asked my caseworker at the State Dept was whether or not I should report my son's passport stolen since someone had suggested it as an option. He evaded the question and when I pressed for an answer he got angry and replied with deep sarcasm, asking me if the

passport had been stolen (which was exactly what I was asking him). That was the first of many signs that I needed to look elsewhere for help finding my son and the first moment I thought to myself, my God, they've put the DMV in charge of recovering my son. To my horror, I've come to appreciate, at great length, how accurate that initial impression was.

In the initial family court decision in Mexico, which resulted from what could more accurately be described as a debacle than a serious Hague proceeding, the judge denied my son's return to the US claiming that my wife hadn't been to the US since October of 2007 and that since I waited until June 2008 to file the Hague application, even though that would still be within one year, I must have consented to the abduction of my son or I wouldn't have waited so long. I submitted receipts and confirmation numbers for plane tickets that prove my wife was in the US until May of 2008 but the Mexican court claimed that these "private" documents could not be substantiated. I also submitted a vehicle title for a car my wife registered in NC, but the judge also held that it was possible she registered a North Carolina title, which is a public document, without ever coming to NC, and didn't seem to care that the address she wrote on the title was our address. In order to prove without a doubt in my appeal that my wife had returned to the US after a trip in October 2007, I requested that the US State Department obtain copies of her entry and exit records to the United States. In the Kafkaesque conversations that ensued I escalated this issue to the Abduction Unit Chief who told me that records were not always kept during land crossings between Mexico and the US. I repeatedly said that that was fine; I only wanted the records that actually did exist and had already given them the date, airline and number of a flight my wife had taken from Mexico into the US. State claimed that they could not give me this information about my wife because it violated her privacy. When I asked to then have the entry and exit records for my son, for whom I am the custodial parent, I was informed that this was not the role that the OCI typically played and that they aren't allowed to give legal advice and don't have the information I'm asking for. Furthermore, she said, the information I'm looking for would be of no use to me in my legal case since Mexico and the US share a land border that allows the fluid entry and exit of person's between the two countries, so proving she entered a country would not prove the date of the illegal abduction/retention. I informed OCI again that my wife claims to have not entered the US since October of 2007 and any evidence of entry proves she is lying, but couldn't help but wonder if, moments after she said they couldn't give me legal advice, she was giving me legal advice, so I asked her if she was a Mexican attorney, to which she replied that she was not, but then, why was she telling me that the information I was requesting was of no use to me in my appeal when my Mexican attorney is the one telling me to obtain this information? Furthermore, they said that OCI didn't have that information and asking them for it was like asking a plumber to fix my electrical. I told them that I felt it was more like asking a general contractor to work with the plumber and that I know the OCI has a working relationship with every other relevant US agency and that if I went to those agencies directly they would only tell me to work through the OCI. At various points OCI told me something to the effect, a decision was made in your case, sometimes including that the appeal is up to you and your attorney. The clear subtext of those statements was, we consider your case closed, we agree with the family courts decision, and we aren't going to get involved.

Mr. SMITH. Mr. Bermudez, thank you.

[Applause.]

Mr. SMITH. Mr. Bermudez, thank you very much for your testimony.

Let me just begin the questioning first. And I will start with you. I thank you for your very blunt assessment. You know, I have spoken now to dozens of left-behind parents. And one sense that I get from some and maybe from many is a fear that if they are too strong with the Office of Children's Issues and with our own Government and even with Congress and Senate perhaps, there is a sense of retaliation that might come their way or a lack of robustness in resolving their case and somehow the case would be mothballed out of fear for that retaliation. And you spared no words in expressing your profound dismay over the performance of our Government. And I think that has to be taken to heart in a very, very meaningful way.

No child should ever be a sacrificial lamb. You talked about the aura of legitimacy, Kafkaesque in terms of your description. And, frankly, when it comes to human rights, it has been my experience over the last 31 years as a Member of Congress who takes human rights very seriously, writes many laws on human rights, that very often human rights is demoted to an asterisk when it comes to pleasant state relationships. Statecraft somehow looks askance at the human rights agenda as, "Oh that," an irritant, I think, as perhaps you suggested.

And I am wondering if any of the panelists, and especially you, Mr. Bermudez, because you were so strong on this, would like to address that issue because I—you know, these are your children and all of your children. And to think that you need to walk on eggshells out of fear that all is being done that should be done is done is appalling.

We are here to serve you. All of us see it that way. The members who are here believe passionately in human rights. I know that. And I think you will see that by their comments. But no one in the State Department or here or on staff or anywhere should ever put you, any of you, ill at ease that somehow your concerns are not front and center and foremost in our minds.

So, you didn't sugarcoat one iota. And I think we need to take it to heart, learn from that. Your bluntness is well-received, at least by this Member. So perhaps you might want to speak to that.

And let me also ask, because I don't want to take too much time—we have two additional panels. You know, I mentioned the diplomatic side very often putting this down at the bottom. We heard that at our previous hearing.

We have heard that before. You know, one of the things that our legislation would do on child abduction would be to give the State Department serious tools to say, "We are not kidding." We say to Japan, "We are not kidding. We hold you to account. And we will take or impose serious measures of penalty if you continue this pattern of noncooperation and if you lead the left-behind parent astray the way you have done so repeatedly." So if you might want to speak a little bit further, that is up to you.

Let me also ask, Mr. Goldman, with regard to so many tactics that were used against you. And the other parents might want to

speak to this as well. But the delay is denial. You know, I found in your case—and I have seen it elsewhere but especially in your case—where you had a Hague-literate attorney using all of what should have been done against you—I am talking about the opposition's attorney—and that is to somehow suggest in the proceedings that the child has become so accustomed to their new home, the place of abduction, that it would be ill-advised to pull them out of that environment. It says to the abductors, "Hold onto that child long enough. And then you can use that, too, as one of your argument points to continue the abduction."

The abduction occurs every day. It is called "retention," but it is almost as if the abduction has been done anew each and every day. Every 24-hour period, that child has been reabducted. And so if you want to speak to that?

And then, if I could, to Ms. Edwards, I wonder how helpful our Embassy in Ankara has been for you, whether or not they have stepped in and made this an important issue. You mentioned the Office of Children's Issues. If you might want to elaborate on that a little further?

They should be passionate advocates. They may feel ill-advised or ill-equipped to provide legal advice, but they have to fight for American parents and American children's human rights. And that seems to have not gotten through in the way it ought to. So if you perhaps want to elaborate further on that?

So please, Mr. Bermudez, if you could begin?

Mr. BERMUDEZ. Yes. And just as an initial response to your comments, you know, you continue to demonstrate an uncanny intuition or knowledge of just really what this issue is about. And it really helps bring hope to me that there is someone in our Congress that really understands this and is really working toward addressing this problem.

I guess to address the various parts of your comments, one concern I have, I have read carefully both pieces of your legislation that you have authored related to this issue. One concern that I would like to—one overriding concern, rather, that I would like to raise is that providing the ability of State to enact sanctions will be an empty half-measure if we do not address the fact that State has consistently demonstrated the lack of will to use any such tools.

In regards to my comments, I shared the concern that speaking out about what I viewed as the American Government's complicitness in the abduction of our children—I was also very concerned that, in doing so, I was going to lose whatever assistance they were actually providing me. And, in deep reflection on that very idea, I convinced myself that they were doing nothing and that, in speaking out about these issues, I was effectively losing no assistance whatsoever, though this is something that many parents that I have spoken to have also expressed as their concern that, you know, if they say anything publicly, there will be a retaliation. And, actually, there is some precedent for that.

Tom Johnson, a parent, left-behind parent and also attorney at the State Department; and Patricia Roush, were both denied a seat at the various discussions on this various topic after 10 years ago, which kind of speaks to the longstanding nature of this program,

10 years ago speaking out against what they viewed as various inadequacies in the State Department's handling of this issue.

I think that covers all the points I wanted to make. Thank you.

Mr. SMITH. Thank you.

Ms. Edwards?

Ms. EDWARDS. My experience has shown that the OCI can be characterized as professional but also extremely distant. And what that means is they can give an A, B, C set of steps but they won't commit to give me G, H, and I. And I need to know those in order to make my plan work properly. So it is almost like they feel like they have a role and the assistance is to make it as—I don't know how to word this. I guess I just was not at all satisfied knowing how the process would continue and that if I finished one hoop, there will be another one waiting. That's assured. But I didn't know how to make that plan go forward.

The biggest issue now that my Hague is filed and going forward in Turkey is that the communication between the central authority there and my case representative in OCI has been less than full. So I get in touch with her every couple of weeks to give updates.

The last time she contacted me, instead of as a response, it was because someone in the Turkish media wanted to film our reunion. And the news got back to her. And she couldn't believe that I would do that.

I couldn't believe that she wouldn't have had the sense to ask me, "Have you heard about this?" I can't believe in her experience, she didn't know that people come out of the woodwork all the time. There are ridiculous amounts of people that have harassed or, I should say, approached every single one of us in this situation.

There is Turkish media who say they know where my son is and that if I go on their show, they will assure a reunion. Yes. Well, I want them to report where my son is to the Turkish authorities. And that is not something that the American Embassy has been able to help me with.

And so I guess that little anecdote kind of fills you in on my side.

Mr. SMITH. Was there any attempt by the Consulate Office in Turkey to do a welfare whereabouts or have they——

Ms. EDWARDS. I have not requested that visit because I still have, thankfully, right now webcam access. I kind of have to put that on hold. I don't feel like that is an infinite resource. So I am using that when I have to have that. Any time my husband threatens to take my son to Syria, which is a border-sharing country, I open the communication again so they know that I am ready to have that sent out as needed.

But no, I have not had a well check ordered so far.

Mr. SMITH. Now, has our Ambassador in Turkey raised your particular issue with the foreign ministry, as far as you know?

Ms. EDWARDS. I am completely not aware that that has happened. It is not a request that I put through.

Mr. SMITH. It's something you shouldn't have to ask for.

Ms. EDWARDS. Yes. No. I am not aware at all if that has happened.

Mr. SMITH. Mr. Bermudez, has that happened on your case?

Mr. BERMUDEZ. Yes. Actually,—and just to make her aware, actually, under ICARA, U.S. legislation that implements the abduc-

tion convention, parents are entitled to have a welfare and whereabouts visit every 6 months. This is also something that is allowed by the Geneva Convention.

I have had two visits over the last 3 years. The first one they did immediately. The second one I had to get my congressman and senators involved to get State to actually act on my request to have my son's well-being ascertained. But I have had two visits.

Actually, I was most recently in Mexico trying to get them to do another one and allow me to attend, if at all possible. And that is still something that I am working on.

Mr. SMITH. Mr. Goldman?

Mr. GOLDMAN. We all face sort of a feeling like we are marked with a scarlet letter initially when our children are abducted. There is this guilt. There is this feeling of what we did wrong, people are looking at us. We must have been some terrible people for a mom or a dad to run off with our children. Clearly, it is not the case. These are oftentimes very badly behaved people.

There is no real punitive measurement on the actual abductor. They can stay within the country that they are living, file for a divorce or separation, like parents do when they separate, couples do, or they could say, "You know what? I'm going to give it a shot. I'm going to go to this country, where I know I will have a jurisdictional advantage. And the worst case scenario is I get sent back and then have a normal divorce proceeding in the country, which I should have started this out to begin with."

So I know there have been suggestions of exit control, which is great. It wouldn't have helped me. I drove my wife and son and her parents to the airport with love, hugs, and kisses. And she goes to this foreign country, applies for custody in the courts of Brazil without me even knowing it for many, many months later. So that's how we start.

If we show anger, if we show like we're outraged, I think I feel like our State Department wants to look for something to dismiss us as much as someone who just can't believe that a parent could take a child from another parent without the left-behind parent to have done something that deserves it. So we are already starting out with this overwhelming feeling that we are behind the eight ball with a scarlet letter.

They are very adept at maneuvering and stalling in the courts. As you noted, the abductors of my son were, in fact, lecturing to different legal fellow attorneys in Brazil on how the abducting parent can turn the abducted child into an attack missile against the left-behind parent, parental alienation. And he also was lectured. While they were holding my son illegally in Brazil, this family of lawyers was also lecturing on how a clever lawyer can stall the judicial system with endless appeals and motions to keep that child in the abducting country for years on end.

And eventually the courts will say, "Well, we know the child has been held illegally. We get that he has been abducted" or "she has been abducted. But now they are adapted. So let's reward the kidnapper. And let's be a country that actually rewards child abduction to the abductor." And, again, this is where we need to step in with these sanctions to show we're not going to tolerate this.

There is no real deterrent for these abducting parents. And there is no punitive measure for them to face. The first thing a country would do is if you filed criminal charges, the Hague Convention, as good as it is, abductors use it as a double-edged sword because it is a civil remedy.

If America starts filing criminal prosecution against all of these child abductors, which we would in our own country if they took them across state lines, then the country where the child is abducted will say, "Well, we're not going to return that child back to their home state because then the abducting parent will be in jail and they won't be able to see the child."

So, I mean, as the left-behind parent, all of these thoughts go through your mind and your heart. What do we do? What can we do? And it seems to me that the most sensible is to start with these sanctions and use them.

Colin Bower in the back, his sons Ramsay and Noor, they were taken to Egypt by an abusive, drug-addicted mother, who forged passports. They entered Egypt with different last names on the passports than the mother. They entered Egypt. Egypt recognizes that they're held illegally. Yet, they still are in Egypt.

We just basically gave Egypt $1 billion. We forgo a debt of $1 billion, and we are going to give them $1 billion more. Glad that they are going to be a democracy, glad that Mubarak is out, bad that our children are still held there illegally by unfit parents, let alone just abducting that should have been returned anyway.

We have another case—and I believe he is going to be testifying—with Michael Elias. He served two terms in the deserts, came back a wounded veteran. The Japanese Embassy in New York gave fraudulent passports to the abducting mother of the children. And they are in Japan illegally. There has got to be something we can do. It is outrageous. And it is only getting worse year after year.

As I said earlier, the room is smaller and the crowds are bigger. And hopefully we won't have to be here next year because countries will be returning our children.

Mr. SMITH. Thank you.

Mr. Payne?

[Applause.]

Mr. PAYNE. Let me say I really appreciate the testimony, those of which I heard and those that I've read. And I think that you probably, through your testimony and the letter to the Secretary and also your answering of the questions, have answered the primary questions that I had.

I would, though, like to review your case. What do you think? The primary reasons that you finally got the release of your son was through senators or Congressman Smith, the Convention? Because your case is successful—of course, it took a long, long time—I wonder what advice you would have specifically to other parents that you would give right now?

Mr. GOLDMAN. Well, essentially, I walked in their shoes with my pleas falling on deaf ears. I had a very skillful team of attorneys. The first order that I received that would call for the return of my son, that first order is the most crucial order as you go through the process in the legal arena. It needs to be basically as solid an order

as you can get. You only get one first shot. So you definitely need an attorney who is very skillful on international child abduction, Hague or non-Hague countries, for that first order is paramount.

Second, what brought it to the attention essentially was the media. The media in my case acted as a fourth branch of government. It brought the story. It called people's attention. For so long I had, like many people do, had family members, friends wanting to help, but what could they do? They could do little more than I could do. And, finally, when it caught the attention of Congressman Smith and your colleagues, who could actually do something and would do something, that made the difference.

It began with the media. Ultimately it ended with sanctions by Senator Lautenberg. That shows sanctions mean something. These countries want our money more than they want our children. And it is unfortunate, but that is what it takes.

We give so many of these countries billions of dollars of aid. And if we do have these sanctions ready and waiting, more often than not, they will return our children without us having to use them. If we use them once or twice on the worst offenders to get our kids home, they know we are serious. We shouldn't be.

Most of these countries are our friends and our allies. And some of them, it is just inherent in their whole domestic system, as Japan. They have very archaic domestic laws when it comes to child custody to begin with. So they need to start there before they can—I can really feel comfortable with them acceding to the Hague Convention.

Mr. PAYNE. Are you able to find attorneys or were you or any of the others an attorney in the host country, so to speak, that would be willing to fight the red tape in their country, or in other words, to take your side against their government, either one of you? What was your success or lack of success trying to get a qualified attorney to really fight on your behalf against their countries?

Ms. EDWARDS. I myself am relatively early in the process still. So I have a Hague case under investigation. And it is going forward. And the government has opened the case on my behalf for my son's return. And, actually, they had a hearing this morning, 9 o'clock this morning.

So in finding the attorney, though, it is a maze to find someone who has passible English or to constantly be dealing with a translator. For that person to be versed in the Hague is very rare. And for that person to be in the city where you need them is also rare. So what you are doing is going through an entire country and trying to find an expert and put them in a location where they can serve you.

And while I would love to have had the money to get the best attorney anywhere in Turkey and have that person relocate for the course of this case or to pay them a travel for every hearing or whatever, those are not the conditions that we live in, you know. So you do the best you can.

And I have an attorney who represents me. And we do work with a translator because I decided that her proficiency in English was less important than her proficiency in Hague. But these are decisions you have to make.

And you have to also be timely. And then you have to constantly have a fear, was that the right choice? How do you know? This person I talk to is on Skype. How do I know that they're not going to take the money and run or how do I know that this person is even acting in my interest when clearly a judge and another Turkish attorney went way around the law to grant my husband full custody of my son?

That case I am having overturned in Turkey. And it is going to be reheard, not that that should have any effect on the Hague, which is pending, but every little bit—I don't know what my Hague judge is going to consider when he sees a Turkish custody ruling. But also that I had to put off for a long time because I am always concerned about what I do there. How will that have implications here? What do I do here that will mess up there?

I am still married to this man because I was worried that divorce would allow him the opportunity to appeal the Ohio custody. So there are all of these very intricate things to balance and maneuver.

So finding the attorney, sure, is an issue. It is just one of many. And I would say that the list of attorneys on the State Department's Web site is not the way to go. You have got to go through the social networks and word of mouth. That way it is a whole lot of time and money wasted trying to find someone. But they will say, "Yes, you can retain me for $10,000 up front and then $20,000 when you get your son home." You know, it is a racket.

Mr. PAYNE. Mr. Bermudez, your experience?

Mr. BERMUDEZ. Actually, that is a very important question. Attorneys, not for nothing, don't have the best reputation in any country. Mexico is somewhat legendary in terms of not having a national way of accrediting attorneys. So there was actually a very large number of incompetent attorneys in Mexico. And selecting a competent attorney that has all the qualities that Sara just listed is essential.

And initially I asked the State Department if they could just provide me a list of attorneys that had previously handled these types of cases so I knew I had someone with experience. And they refused to give this to me. They flat-out said, "We can't provide legal advice. We can't make any kind of recommendations." And I think that is atrocious. I think this is the very least they can do.

And, through trial and error and through lots of interviews and a massive amount of effort, I have had somewhat some luck in hiring attorneys in Mexico, but I do speak Spanish. And I can really relate to the difficulty of finding an attorney in a country where you do not speak the language. So it is unfortunate.

Australia is a great example where they handled this much better. There is financial assistance provided directly to parents to hire an attorney and to locate one. So that is one of many things that I think can be improved upon in the United States' handling of child abduction cases.

Mr. PAYNE. So in your opinion, probably the tactic is people would expect you to be worn down eventually and——

Mr. BERMUDEZ. Absolutely.

Mr. PAYNE [continuing]. And quit.

Mr. BERMUDEZ. Absolutely.

Mr. PAYNE. I mean, it's frustrating. You know it's your child. Number one, finances becomes an issue. Number two, delays, bureaucracy, postponements. And they figure they will just—time is on their side. They will win just by inertia of inaction. Is that what you think your goals are?

Mr. GOLDMAN. One hundred percent. One hundred percent. Time is our enemy. And they are adept at stalling and manipulating and keeping these cases going for years until we are emotionally, financially, physically bankrupt. And then we just walk as a dead man walking forever. And it is a terrible pain to deal with and to live with.

In Brazil, it was taking so long for the Brazilian Central Authority to even process my case that I had to hire a private attorney. And then the Government of Brazil says, "Well, no. We're not going to support you because now it is an individual case. You had a private attorney." So you are damned if you do, you're damned if you don't. They look for anything to keep the kid there.

Mr. PAYNE. And in your two cases, because both have less publicity than, of course—well, maybe it did, but I am a New Jerseyite. So I follow the case very closely. Did they attempt, as they normally would do and as in your case, to turn the child against you, I mean, the parents? How did both of your children? And what were their ages? How young were they?

Ms. EDWARDS. Well, my boy is three now. He was two when he left. And because I am able to see him by webcam, I know that he knows who I am. He calls me "Sara."

He doesn't have any English. So I learned Turkish to keep up with him. We look at picture books. I am constantly concerned about losing his attention. I can't hold him. I can't play with him. I can't kick the ball. So I am trying to find new ways all the time to keep him involved.

Back to the previous statement, I have not dealt so far with legal maneuverings that were uncouth. But I strongly believe that, even if I win my case, Muhammed is a flight risk. Then what? He is going to go somewhere else. Then what? He goes and hides in a village and the family protects him.

So the other side of that is some kind of enforcement, some real political will to say, "This person has won her case" or "This person's case was wrongfully ruled" or whatever the case is but to follow through on that because just, like I was mentioning before, knowing where to go next, knowing how this step affects the next. You have got to be able to see this all the way through.

I am not going to wait until he leaves to try to find him. I mean, I am not going to wait until he leaves to try to prevent it. But, thankfully, so far that hasn't been the case.

I do not know what he says about me. I don't know. I only imagine that it is very bad things because his family, whom I have known for 8 years and loved closely, turned against me. So clearly he is saying something bad.

I really try to enjoy my time with my son. I really try to only focus on those moments we have. So I don't poke the beast and ask his father what he says. I don't poke the beast and say, "What do you think this is doing to our child?"

I have many questions I would love to ask him, and I don't have that chance because it is much more important for me to see my son and to know that Mommy is not crying and we're happy and we're having a good time because that's his normal right now.

This boy doesn't have a mom. This boy is there completely separate from half of his life. And I don't want to be continually adding to his distress. So it's eggshells.

Mr. PAYNE. Okay. And, just finally——

Mr. BERMUDEZ. My son was 1 year old when he was taken to Mexico. And I hadn't seen him for 2 years. So parental alienation was not a major concern because it's hard to formulate concepts of "That is a bad person" in a very young child's mind. As my son gets older, it is a concern that I definitely have. And following these cases for years now, it is something that happens all the time.

I just recently saw my son 3 weeks ago for about 15 minutes for the first time in 2 years. And, as Ms. Edwards spoke to, it is—you know, we are really concerned about our children.

We really want to—you know, I didn't run and grab my son. I hadn't seen him for 2 years. I wasn't sure. I believed he wouldn't remember me when he saw me. And so I didn't run and grab him. I kind of came up to him, and I said, "Hi." I said, "How are you doing?" And I asked him what his name was. And he looked at me. And I was relieved to see that there was a recognition that I was someone important, that I was someone he knew, even if he didn't know that I was his dad. And they had been teaching him to call his grandfather "Father." And I believe that is a very serious piece of parental alienation that is going to be hard to change.

So for the time being—I think seeing the reaction my son had to me—we played for about 15 minutes. And we both enjoyed ourselves. And I think when they saw that reaction, that empathy that we had, that relationship kind of still existed, and the potential for it to grow.

I haven't been able to see my son since, 3 weeks. I've been in Mexico for a total of 4 weeks immediately prior to this hearing. And I saw my son the first week about 15 minutes. And they have been completely unresponsive to allowing me to see him again. And I think it is an effort of parental alienation to at some point be able to say, "Look, the child doesn't know him. He doesn't respond to him. He doesn't know. You know, he has no relationship." So it's a legal tactic as well as just a form of child abuse, frankly.

Mr. PAYNE. Thank you very much.

Mr. SMITH. Ms. Buerkle?

[Applause.]

Ms. BUERKLE. Thank you, Mr. Chairman.

Mr. Goldman, in your letter to Secretary Clinton and the letter that was signed by the left-behind parents of 117 children, you state that, "In our experience, all too often these international child abduction cases do not appear to be addressed aggressively because of the State Department's effort to maintain harmonious, bilateral relations with other countries or to pursue other compelling foreign policy goals." And, Mr. Bermudez, you alluded to the same thing in your testimony, the frustration with the State Department.

Now, I would like to ask the three of you, if we were the State Department, what is it you want to tell them? And what is it you

want us to ask of them and to tell them? So if you could be specific with us? What do you see? What do you want the State Department to do?

Because I disagree with the fact that the State Department doesn't work for the American people because they do. Ultimately they are to be representing American people. You are the American people. So I would like to hear from you specifically. What is it you need and you want from the State Department so we can have that opportunity to make those demands of them? We will start with Mr. Goldman.

Mr. GOLDMAN. Well, first, as the former Assistant Secretary of State for the Western Hemisphere pointed out at the last hearing 2 years ago, when there is an Ambassador who is appointed, say, to Mexico or Colombia, their first order of business is going to be immigration, drugs, arms, economics.

And that is why we do need to have this special Ambassador-at-Large.

So those other issues are taking precedent. And our abducted children are on the bottom of the totem pole. And we need to make them a priority. It is growing. The number of children that are being abducted and also the ones that are remaining held illegally, it's just growing and growing.

So we need to have this Ambassador-at-Large to focus specifically on our abducted children. We need to have some sort of system where Congress, each congressman knows when a child is abducted from their district. And they will be the advocate and get involved with the State Department.

Also, the State Department needs tools. They should be here begging us for help that they need and have needed for so many years. It shouldn't be anything that we have to introduce and then hope for votes and then hope that Democrats and the Republicans will get together to help our children. The State Department should be here begging for us for the help and to give them the tools that they so desperately need in their toolbox.

[Applause.]

Mr. GOLDMAN. And if it has to go all the way up to economic sanctions, it has to go up to economic sanctions.

[Applause.]

Ms. BUERKLE. Ms. Edwards, I have the same question for you.

Ms. EDWARDS. Aside from the points that David mentioned, one huge specific is that there should be a way for the State Department to correspond with the central authorities in Hague signatory countries, mine specifically the Turkish Central Authority, and that they should be able to flag people who are subject to a current Hague case and prevent them from traveling outside of the country during a current Hague case. This is something that can be done and something that should be done, the fact that there is a good possibility Muhammed will come back and try to maintain his legal residency status, retain his green card status, he can go into any port, do that, stay a couple of days, and go home, without my son ever coming here, without my son having rights to me.

I guess those are the specifics that I really, really would pray for. Yes. I will leave that.

Ms. BUERKLE. Thank you.

Mr. Bermudez?

Mr. BERMUDEZ. The State Department hiring process. I think one of the problems we have with our Foreign Service officers might be called a form of clientitis. I think one of the things I would like them to do in their hiring process is to ask everybody applying for a job there to identify the United States on a globe. I think what we see is that sometimes there is some confusion as to whether they represent foreign interests in America or American interests in foreign countries.

Mr. SMITH. Could you repeat that?

Mr. BERMUDEZ. Yes. Sure. I think one of the problems we have with our Foreign Service officers might be called a form of clientitis, where it is unclear whether our Foreign Service officers represent foreign countries' interests in America or American interests in foreign countries.

I think one thing that would be of value to us is to have each applicant at the State Department identify where the United States is on a globe to be sure that they know who they are working for.

[Applause.]

Mr. BERMUDEZ. The other thing I would really like them to know is that, you know, when we want to promote the interests of abducted children, we are not asking for something that is unpopular. This is something that we will be respected for. This is not an irritant. This is something that every other country has, this problem.

You know, we have to look beyond the trees to see the forest. I mean, it's a case where if we could lead on this issue, this is a human rights issue. And let's be very clear about that. Contrary to spending political capital, we'll gain political capital. We will have the opportunity to speak with moral authority on other issues.

And I think that is something sorely lacking. And I think that our lack of advocacy on this is detrimental to our foreign policy. I think it has a negative effect, rather than——

Mr. GOLDMAN. And we are not asking these countries for any favors. We are just asking them to abide by the rule of law. We don't want favors. It is not a favor to return our abducted children. It is abiding by the rule of law. It is simple, should be so simple.

Ms. BUERKLE. Thank you very much. I appreciate your courage to be here today and to all of the folks in the room. Thank you very much for your willingness to come out. And I ask you not to be discouraged.

I understand all of these hearings and this many years later, but I think you have a pledge from these Members of Congress that we are concerned that we will hold the State Department. We will talk with them and certainly hold them accountable. They do work for the American people, and we do pay their salaries.

So thank you all very much for being here.

[Applause.]

Mr. SMITH. Mr. Marino?

Mr. MARINO. No.

Mr. SMITH. I want to thank our very distinguished panel.

I just want to ask one "Yes" or "No" question. You know, it's been said that if you say you don't have time, you stated a priority, you haven't stated a fact. I know, David, you have spoken to the U.S.

Ambassador in Brazil. It took a long time. But I wonder, Ms. Edwards and Mr. Bermudez, have you had contact with the U.S. Ambassador?

Ms. EDWARDS. No.

Mr. BERMUDEZ. Absolutely not, not——

Mr. SMITH. Anything else you would like to add before we go to panel number 2?

[No response.]

Mr. SMITH. Thank you so much for your testimony.

[Applause.]

Mr. SMITH. We would like to now welcome our second panel. And beginning with Mr. Michael Elias, who is currently a Bergen County Sheriff in the State of New Jersey. He is a former sergeant in the United States Marine Corps and met his wife while stationed in Japan in 2004 to 2005. She abducted their two children, Jade and Michael, to Japan in December 2008.

Through his testimony here, we will hear about the particular challenges that parents whose children are abducted to Japan face, particularly from when they happen to be military personnel.

I would note parenthetically that earlier this year, I traveled to Japan with Nancy and Miguel Elias, Jade's and Michael's grandparents, Michael's mom and dad. I spent several days there meeting with high officials in the Japanese Government. And it was very clear that when they got to make their case, there were very empathetic ears, but the question is whether or not those empathetic ears turn into tangible policy that will permit the return of children who have been abducted to Japan.

As I said at the outset, it needs to be underscored with exclamation points if there is a mere ascension to the Hague without resolving the existing cases, there will be a gross miscarriage of justice perpetrated upon those American children and those left-behind parents. So this committee, and I'm sure members of both sides of the aisle, will be very emphatic to our friends in Japan—and they are indeed friends—in the government that they need to resolve these cases.

Next, we will hear from Mr. Joshua Izzard, who is the father of Melisande Izzard, who was born in Chicago, Illinois on June 18th of 2008. She was taken by her mother to Russia in October 2010. Mr. Izzard has not seen his daughter since September of last year and has not been allowed to talk to her since January.

Then we will hear from Mr. Colin Bower, who is the father of Noor and Ramsay Bower, ages 10 and 8. Noor and Ramsay were abducted by their mother from Boston to Egypt in August 2009. Colin remains committed to the safe and swift return of his children. I am pleased to have joined Barney Frank in sponsoring H. Res. 193 with regard to their particular case.

So I would like to now ask Mr. Elias if he would proceed.

STATEMENT OF MR. MICHEL ELIAS, FATHER OF CHILDREN ABDUCTED TO JAPAN

Mr. ELIAS. Thank you.

Congressman Smith and distinguished members of the subcommittee, my name is Michael Elias and I would like to thank

you for all your opportunities to share with you my personal experience involving international child abduction.

I would like to first extend my deepest sympathies to the people of Japan affected by the devastation of the earthquake, tsunami, and nuclear disasters.

I am a former sergeant of the United States Marine Corps, from August 2003 to November 2007. I am currently a Bergen County Sheriff in the State of New Jersey. While stationed in Japan in 2004 to 2005, I met my wife, Mayumi Nakamura.

Shortly thereafter, I was stationed in Camp Lejeune, North Carolina. She contacted me and informed me that she was pregnant. In September 2005, Mayumi relocated to the United States. And on October 18, 2005, we were married in Rutherford, New Jersey. Our first child, Jade Maki Elias, was born on January 5, 2006, at the naval hospital in Camp Lejeune.

In March 2007, I was deployed to Iraq. On August 2nd, 2007, while I was serving my country, my son Michael Angel Elias was born at Hackensack Medical Center in New Jersey. This inspired new levels of patriotism and responsibility inside of me that were matched with love for my family and children.

While I was deployed, Mayumi and our children lived with my parents in New Jersey. During that time Mayumi started a relationship with a Japanese national, Kenichiro Negishi, who was her travel agent.

When I returned from serving my country in Iraq, Mayumi, my children, and my extended family were all reunited and living together in New Jersey. Sadly a few months after my return, Mayumi and I separated.

I was then served with a document from Mayumi, headlining, "An Agreement for Travel and Residency," stating that "I, Michael Elias, allow Mayumi and my two children to visit Japan without any restrictions under any circumstances." If these conditions were not met, I would have to surrender any custody rights of Jade and Michael to Mayumi. This would also result in a relocation of Mayumi and our two children to Japan from the United States if Mayumi elects to do so. The document then stated, "Whether or not any actions of Michael Elias is complied with the conditions above are determined by Mayumi Elias, and Michael Elias must respect her decision at any time. Also, regardless of the courts' decisions, Michael Elias respects and follows the terms stated above."

I sought counsel after Mayumi asked me to sign that document that she had already signed on September 26, 2008. On October 29, 2008, before the Honorable Judge Alexander H. Carver of the Superior Court of Bergen County, New Jersey, I was awarded joint custody of my children. On that day, Judge Carver clearly ordered three times that the children's passports, both American and Japanese, be turned over to her attorney, Victor Nezu, because she was an obvious flight risk.

I did everything I could to ensure the safety and well-being of my children. I felt confident and had every reasonable expectation in our legal system with the ruling of Judge Carver and the strength of the United States Government, that my American-born children would be protected from being kidnapped to Japan. I was wrong.

Mayumi was an employee of the Japanese Consulate in New York City issuing visas and passports. She used her position in the Consulate as a tool to carefully collaborate the abduction of our children. Mayumi had replacement passports issued in the Japanese Consulate in Chicago, where she and her boyfriend, Kenichiro, exited the country through Chicago's O'Hare airport.

They carried out the abduction of our children on the Japanese Airline flight number 9, bound for Tokyo Narita airport in Japan on December 6, 2008. I still have in my possession their original passports.

My family and I are horrified and sickened by Mayumi's actions. We have repeatedly attempted to contact the Japanese Consulate in New York, Chicago and Washington DC and continue to receive no cooperation whatsoever.

Shortly after she had arrived in Japan, I was contacted by Mayumi, saying she had unilaterally decided that she would raise the children in Japan. When explaining to her that she had kidnapped our children, she maintained that, I quote, "It's not kidnapping. My country will protect me."

Thereafter I was awarded full custody of our children here in the United States. The judge also ordered the immediate return of the children to the United States from Japan by means of The Hague Convention. Unfortunately, the judge was unaware of Japan not being a signatory of the treaty and Japan's lack of accession, something Mayumi seemingly understood.

To date, no child has ever been returned by the Japanese Government. According to the State Departments statistics, there are 321 documented cases of abduction from the U.S. to Japan alone. If we include numbers of American children abducted while living in Japan, statistics would significantly be higher.

It is no doubt that these heinous crimes will continue and at the time of our next State Department meeting, these figures will have risen as more children will continue to be unwillingly and unlawfully abducted.

Since the abduction I have pleaded with Mayumi to return our children back to the United States, assuring her that there were no criminal charges pending in fear that she will not return under those conditions.

On January 5, 2010, I was granted the privilege to see my children via Skype. It was my daughter's fourth birthday. Although it was very hard to see my children through a monitor, it was very satisfying to see them so happy to see me. My daughter, Jade, looked at her mother in heartache and said to her ever so softly something in Japanese. When I asked Mayumi what Jade had said, she replied, "She wants to be with you." The monitor immediately went blank. That was last time I saw my daughter's face.

February of this year, my parents flew to Japan. With the assistance of the United States Embassy in Tokyo; Congressman Smith; and my attorney, Patricia Apy, they tried to contact Mayumi to ask if they could visit their grandchildren. After countless e-mails and phone calls were ignored, the U.S. Embassy was able to reach Mayumi. And she denied any access for my parents. She also told the Embassy she was not accepting any of their calls. Excuse me. Needless to say, my parents were devastated, but not shocked.

The sense of longing for my children can be completely unbearable and crippling at times. It does not get better with time. It only grows deeper and deeper along with the sense of hopelessness. As a father who no longer has his children to hold in his arms, I cannot deal with the sorrow. So I try my best to stay strong and keep fighting for their return.

All my hopes and dreams for their future now lie in the hands of others. I am begging our Government to help not only my family, but hundreds of other heartbroken families as well to demand the return of our American children who are being held in Japan and in most cases never seen or heard from again.

This goes against everything we stand for as Americans and especially for our children's lives and well-being. This is not just a family issue or an international issue. This is a human rights issue.

Our children are too young to speak for themselves. I am expecting our Government to be their voice.

In conclusion, I would like to read the names of the following American children abducted to and wrongfully retained in Japan who are unaccounted for since the earthquake/tsunami and ongoing nuclear disaster: Kianna Berg; Gunnar Berg; Keisuke Collins; Michiru Donaldson; Kai Endo; David Gesselman; Joshua Gesselman; Ayako Lucy Greenberg; Shanon Yuda Ishida; Riki Ishida; Ricky Kephart; Noelle Kephart; Mary Victoria Lake; Yuuki McCoy; "Mochi" Atomu Imoto Morehouse; Rui Prager; Rion Suzuki; Tiana Weed; Takoda Weed; and Kaya Wong.

Thank you.

[Applause.]

[The prepared statement of Mr. Elias follows:]

"International Child Abduction: Broken Laws and Bereaved Lives"

House Committee on Foreign Affairs

Subcommittee on Africa, Global Health, and Human Rights

Testimony of Michael Elias

May 24, 2011

Congressman Smith and distinguished members of the subcommittee, my name is Michael Elias and I would like to thank you all for this opportunity to share with you my personal experience involving international child abduction. I would like to first extend my deepest sympathies to the people of Japan affected by the devastation of the earth quake, tsunami, and nuclear disasters.

I am a former Sergeant of the United States Marine Corps, from August 2003 to November 2007. I am currently a Bergen County Sheriff in the state of New Jersey. While stationed in Japan in 2004-2005, I met my wife Mayumi Nakamura. Shortly thereafter I was stationed in Camp Lejuene, North Carolina. She contacted me and informed me that she was pregnant. In September of 2005, Mayumi relocated to the United States and on October 18th 2005 we were married in Rutherford, New Jersey. Our first child, Jade Maki Elias, was born on January 5th 2006, at the naval hospital in Camp Lejeune. In March 2007, I was deployed to Iraq. On August 2nd 2007, while I was serving my country, my son Michael Angel Elias was born at Hackensack Medical Center in New Jersey. This inspired new levels of patriotism and responsibility inside of me that were matched with love for my family and children.

While I was deployed Mayumi and our children lived with my parents in New Jersey. During that time Mayumi started a relationship with a Japanese national Kenichiro Negishi, who was her travel agent. When I returned from serving my country in Iraq, Mayumi, my children, and extended family, were all reunited and living together in New Jersey. Sadly a few months after my return, Mayumi and I separated. I was then served with a document from Mayumi, headlining "An Agreement for Travel and Residency" stating that I, Michael Elias, allow Mayumi and my two children "to visit Japan without any restrictions under any circumstances" if these conditions were not met, I would have to "surrender any custody rights of Jade and Michael, to Mayumi… this would also result in a relocation of Mayumi and our two children to Japan from the United States if Mayumi elects to do so." The document then stated "whether or not any actions of Michael Elias is complied with the conditions above are determined by Mayumi Elias, and Michael Elias must respect her decision at anytime. Also, **regardless** of the courts' decisions, Michael Elias respects and follows the terms stated above." I sought counsel after Mayumi asked me to sign the document that she had already signed on September 26th 2008.

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I did everything I could to ensure the safety and well being of my children. I felt confident and had every reasonable expectation in our legal system, with the ruling of Judge Carver and the strength of the United States Government, that my American born children would be protected from being kidnapped to Japan.

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Shortly after she had arrived in Japan, I was contacted by Mayumi. She had unilaterally decided that she would raise the children in Japan. When explaining to her that she had kidnapped our children, she maintained that, I quote, "**it's not kidnapping, my country will protect me**." Thereafter I was awarded full custody of our children here in the United States. The judge also ordered the immediate return of the children to the United States from Japan by means of "The Hague Convention". Unfortunately, the judge was unaware of Japan **not** being a signatory of the treaty and Japans lack of accession, something that Mayumi seemingly understood.

To date, no child has ever been returned by the Japanese Government. According to the State Departments statistics, there are 321 documented cases of abduction from the U.S. to Japan alone. If we include numbers of American children abducted while living in Japan, statistics would be significantly higher. It is no doubt that these heinous crimes will continue and at the time of our next State Department meeting, these figures will have risen as more children will continue to be unwillingly and unlawfully abducted.

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February of this year, my parents flew to Japan. With the assistance of the United States Embassy in Tokyo, Congressman Smith, and my attorney Patricia Apy they tried to contact Mayumi to ask if they could visit their grandchildren. After countless emails and phone calls were ignored, the US Embassy was able to reach Mayumi and she denied any access for my parents. She also told the Embassy she will not be accepting any of their calls. Needless to say, my parents were devastated, but not shocked.

The sense of longing for my children can be completely unbearable and crippling at times. It does not get better with time; it only grows deeper and deeper, along with the sense of hopelessness. As a father who no longer has his children to hold in his arms I cannot deal with the sorrow so I try my best to stay strong and keep fighting for their return. All my hopes and dreams for their future now lie in the hands of others. I am begging our Government to help not only my family, but **hundreds** of other heartbroken families as well, to **demand** the return of our American children who are being held in Japan and in most cases **never seen or heard from again**. This goes against everything we stand for as Americans and especially for our children's lives and wellbeing. This is not just a family issue or an International issue; this is a **Human Rights issue**. Our children are too young to speak for themselves. I am expecting our Government to be their voice.

In conclusion, I would like to read the names of the following American children abducted to and/or wrongfully retained in Japan who are unaccounted for since the earthquake/tsunami and the ongoing nuclear disaster.

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Gunnar Berg
Keisuke Collins
Michiru Donaldson
Kai Endo
David Gesselman
Joshua Gesselman
Ayako Lucy Greenberg
Shanon Yuda Ishida
Riki Ishida
Ricky Kephart
Noelle Kephart
Mary Victoria Lake
Yuuki McCoy
"Mochi" Atomu Imoto Morehouse
Rui Prager
Rion Suzuki
Tiana Weed
Takoda Weed
Kaya Wong

Mr. SMITH. Mr. Elias, thank you so very much. And I would like to now ask Mr. Izzard if he could proceed.

STATEMENT OF MR. JOSHUA IZZARD, FATHER OF CHILD ABDUCTED TO RUSSIA

Mr. IZZARD. Thank you, Mr. Chairman and Members of Congress, for inviting me to testify today regarding the ongoing tragedy of international parental kidnapping.

I am Joshua Hannum Izzard, bereaved father and sole and legal guardian of Melisande Izzard, my American-born-and-raised daughter and only child, who was taken almost 8 months ago to Perm, Russia; whose voice I haven't heard for many long months now.

I have been living for nearly 8 months with a hole in my life, while some, like Mr. Tom Sylvester of Cincinnati, Ohio, whose testimony I read during the preparation of my own, and his daughter and others like them have lived with that hole for years. Our great country must stop this constant bleeding of its most important resource, its children, in the interest of other, may I say, more tangible or natural resources or diplomatic gains.

As a nation, we need to construct legal mechanisms to facilitate resolution of existing parental kidnappings and put in place effective preventative mechanisms to assure that our citizens are not subjected to this daily, unbearable sorrow that comes in the wake of an international parental kidnapping.

I was in Rome, Italy when Tatiana Ivleva, my decade-long partner, the love of my life and the wife of 5 years, the mother of my daughter, Melisande, called to inform me that she and my little blue-eyed angel were in Russia and would never return, that I would never see my daughter again. In shock, I nearly collapsed on the street.

I wrote the first of many letters for my daughter while flying home, speeding westward away from her to Chicago. My heart seemed a spool of thread unwinding, my life unraveling as the distance between us grew.

At home I opened the door to our Chicago apartment overlooking Lake Michigan. Desolation overwhelmed me as the golden afternoon light filtering through the dead silence of our living room gently touched on a semicircle of my daughter's favorite toys, left exactly as she had been playing with them. No joyous "Daddy's home," only silence, thundering silence.

Initial denial became steely resolve to protect my child, who now lives in grave danger, to bring her back to her loving, lawful home. Since the kidnapping, my offers of compromise and reconciliation have gone unanswered, court orders and decisions ignored, and pleas to at least have phone calls with my daughter unheeded.

A local arrest warrant has been issued for Tatiana. The FBI, INTERPOL, Chicago PD, National Center for Missing and Exploited Children, State Department, and congressmen's offices are all involved, though the FBI open case crawls along due to the Office of Children's Issues' steadfast refusal to inform the FBI as to how they have been contacting my ex-wife.

I have given interviews to U.S. and Russian media, each time imploring Tatiana to simply speak with me, to negotiate a solution.

Melisande was torn away from me and everyone and everything she had known from birth in one cruel, selfish instant by her mother, Tatiana, and maternal grandmother, Galina, and abruptly

plunged into a strange world of darkness, mental illness, and physical danger.

Tatiana's own signed statements declare that she immediately moved in with her high school boyfriend in Russia, an abusive individual named Andrey Medvedev, with whom, it has been proven, she had been having an extramarital relationship for some time prior to the kidnapping.

Mr. Medvedev is a violent alcoholic, with numerous documental citations for public intoxication; drunk driving, for which he lost his license; and physical violence, offenses ranging from assaulting a bar employee to terrorizing neighbors with his drunken rages to purported accusations of child molestation. Both his former wife and a long-time live-in partner report that his inability to control himself when drinking was a primary cause of the breakup of their relationships. He is furthermore reported to be a devoted adherent of a cult which advocates the use of psychoactive drugs, engaging in ritualistic sexual behavior, and forcing women to submit to dominant males, isolating themselves from society.

This is precisely what my ex-wife has done. Despite not working, Tatiana attended only two court hearings in Russia before signing over her full power of attorney regarding all aspects of our divorce, including Melisande's upbringing and custody, to a violent alcoholic, whose decisions will impact my daughter's life forever.

The role of the Russian Consulate in the abduction itself and the ensuing legal processes has seen Russia make a joke of its own laws and flaunt its impunity to the international community.

To accomplish the abduction, Tatiana turned to the Russian Consulate in Washington, DC, for help. What she said is unknown, but she was issued a one-time Russian Repatriation Certificate with our American daughter's name written on it. This document allowed her to abduct our daughter, a U.S. citizen, from U.S. soil and transport her directly to a non-Hague country.

Imagine the situation, please, anyone here who travels frequently: Two nervous Russian women with a bewildered 2-year-old U.S. citizen in tow passing through security and boarding a foreign-bound commercial flight at one of America's busiest airports, without passports, without the signed permission of their father.

Tatiana wrote to thank Russian diplomats Nikolay Teoglot and Ekaterina Polozkova for the certificate issued shortly after the kidnapping. This note is in the possession of the FBI.

To reiterate, TSA officials accepted a travel document in lieu of a passport. And the airline they flew with required no further checks as to why and how these individuals were boarding an international flight with no passports and no written permission from the other parent, while at that very moment the father was happily scouting shops in Rome for presents to bring back to his beloved family. Diplomatic abuse and lack of exit controls and effective screening procedures made this abduction possible.

I have many close friends in Russia, but, sadly, it is a country in which not only international laws and human rights are frequently violated but one which does not follow the letter of its own law.

Consider the fact that since 2003, Russia has unilaterally refused to observe its duties under the 1965 Hague Service Convention. It

will not serve its citizens with divorce papers or legal documents from the United States of America. Yet, it permits its citizens to argue in court that they were not properly served because the papers were not delivered by Hague Service Convention through the Ministry of Justice in Russia.

Despite this, I was able to satisfy both American and Russian process service requirements and went on to win the American custody case when we were divorced on December 29, 2010.

I proceeded to legalize the divorce decision at the Russian Consulate in Washington, DC. And this decision was affirmed by the Russian Government's Vital Records Office in Moscow, who stated that the American divorce was valid in Russia from the moment on December 29, 2010, that it went into effect.

Now please prepare yourselves for an entry into a bizarre no-man's land of lawlessness and intrigue. Provincial Russian Judge Olga Sherbakova, being in possession of the properly served American divorce petition and divorce decision, translated into Russian, allowed Tatiana to initiate a divorce suit with me as respondent. The first hearing was on January 20, 2011, nearly a month after we were divorced with a decision that the Russian State had already considered valid.

Maxim Ivlev, my ex-wife's brother, as former head of the Legal Department of the Perm Duma, Senate, is a person with deep political, judicial, and intelligence service connections.

Within days, a media smear campaign, including primetime specials vilifying me, was undertaken. The media campaign included public statements and letters by politicians Pavel Mikov and Ilya Neustroev, who both violated Russian constitutional law regarding separation of the political and judicial systems. They both approached judges—they themselves publicly declared so—and requested an expedited outcome in favor of the Russian mother. Politician Neustroev, Tatiana's brother's former superior, runs a live blog, in which he immediately published an entry about my family titled, "I am Against America."

I then received serious threats against my life, so serious that I won't travel to Perm, lending credibility to my former wife's publicized statement that I don't care enough about my daughter to even visit her.

Please note, Mr. Chairman, there is never mention of the welfare of my daughter. Rather, it's Russia against America and my daughter a disposable political pawn.

The process leading up to my "second divorce" from my only wife on March 24, 2011, was fraught with bias. Legal infractions were numerous. The presiding judge met in private with Tatiana's side. Evidence was mysteriously introduced into the court clerk's files. Decisions consisting of several typed pages were ready within minutes or even seconds of the conclusion of the hearings, indicating that they had been prepared beforehand.

At one hearing, it was claimed that 2½-year-old Melisande had said she did not wish to Skype with her father, and it was argued that it would constitute child abuse to enforce Skype visitation. This argument was upheld by Russian courts.

It was stated that I am currently in Perm, Russia, plotting a Rambo-like attempt to bring Melisande home and was, therefore,

forbidden to travel with Melisande. My passport proves I have not travelled outside of the United States since I was in Rome. Russian Immigration and Border Control or the Russian Consulate here in Washington, DC, could confirm that I have not had a Russian visa, without which it is impossible to travel there, since 2007.

On March 24, 2011, I was divorced from a person that Russia had acknowledged I was not married to and had not been for the preceding 3 months. During the hearing, 20 procedural norms of the Russian Code of Civil Procedure or Civil Code were broken. Tatiana was awarded full custody and another divorce as well as child support, which if applied by Russian standards would require a local father to pay 80 percent of his income.

A complete list of these violations is available upon request, but here is a quick sampling in order of their breaking. I won't enumerate the numbers, they being meaningless. However, a summary of them is by violating existing Russian laws, the Russian courts provided a legalization of the abduction.

I was never served with any court documents from Russia. Neither was I allowed to give testimony or present statements from scores of witnesses willing to testify for me. My ex-wife's only witness, Mrs. Kseniya Vorontsova, gave fallacious, mendacious testimony against me, including statements that we had spoken in 2011, when, in fact, the last time that I had spoken with this individual was 2009.

I was not given time for translation of the documents. My lawyer was denied or given delayed access to case materials. My legalized Russian court decision and Russian governmental proof that I was already divorced were not taken into consideration. A higher court process was ignored by a lower court. And the courts refused to accept and register official evidence.

The case was tried in a court which had no jurisdiction because no evidence was even presented that Melisande could be a Russian citizen.

My daughter and I were denied and continue to be denied contact with each other throughout the course of the proceedings, again explicitly violating Russian law. But there is no mechanism for enforcement.

So grievous were the violations that 10 days ago an Appellate Court in Russia upheld my viewpoint, overturning the lower court's decision in its entirety, and sending the case back to the same lower court but to be retried by a different judge. My ex-wife and I may soon have the singular distinction of having been married once but divorced three times.

However, the appeal was reviewed without notification of my legal counsel. And the second half of the session occurred without him being present, as has happened numerous times. And while it's cited the many infractions the overwhelming reason for the overturning of the previous decision was that no evidence has been presented that Melisande is a Russian citizen.

And so, to my surprise, in the course of this very hearing, at the beginning, I was given a fax, copy of a fax, from the Russian Consulate confirming indeed that my daughter is a Russian citizen and, furthermore, with a document, which I have never seen be-

fore, that bears my signature giving permission to the granting of Russian citizenship to my daughter, very expedient.

Mr. Chairman, I contend that my daughter and I have the inalienable right to a full and loving parental/child relationship. The Russian Consulate's, courts, and government's assistance to Ms. Ivleva and Mr. Medvedev have facilitated violation of my daughter's and my right to that most basic human relationship, eroding the foundations of law; international diplomacy; and one of the most important elements of society, in fact, the fundamental element: The family. The alienation that is likely beginning now will have lifelong consequences for Melisande and for me and for Melisande's entire family in the U.S. I can't imagine doing to my daughter what is being done to her.

I deplore my family's tragedy being politicized. And I appeal to Russia to look beyond political one-upmanship and to acknowledge that a horrible injustice is being done to a little girl who needs her father, and to a father and family that love her little golden head, sparkling eyes, and joyous laugh.

Americans must take a decisive stance on defending our own citizens, our own inalienable rights to the most basic of relationships and bonds that a person has: Those between children and their parents.

I pray that our testimonies might lead to legislation which would unite all bereaved parties, which would prevent similar situations for other parents and children who might suffer due to selfish decisions of one or the other parent.

Intervention by government agencies whose hands are tied by incomplete or non-existent laws and enforcement mechanisms can lead to one eventuality and one alone. In non-Hague cases and, as we see, many Hague cases of child abduction, physical possession of the child spells complete control of the situation and of the other parent. The situation must be remedied for our children's future.

Thank you.

[Applause.]

[The prepared statement of Mr. Izzard follows:]

STATEMENT OF JOSHUA HANNUM IZZARD
c/o Whisperer Empirical Management LLC
P.O. Box 2827
Chicago, IL 60690

TESTIFYING AS THE PARENT OF AN AMERICAN CHILD WRONGFULLY REMOVED FROM THE UNITED STATES AND DETAINED IN THE RUSSIAN FEDERATION

HEARING

BEFORE THE

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS
CHRISTOPHER H. SMITH (R-NJ)
May 24, 2011

CONCERNING

INTERNATIONAL PARENTAL KIDNAPPING TO NON-HAGUE COUNTRIES

TESTIMONY OF JOSHUA HANNUM IZZARD
PARENT OF ABDUCTED CHILD, MELISANDE IZZARD

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS
May 24, 2011

Thank you, Mr. Chairman, for inviting me to testify today regarding the ongoing tragedy of International Parental Kidnapping.

I am Joshua Hannum Izzard, bereaved father and sole legal guardian of Melisande Izzard, my American born-and-raised daughter and only child, who was taken almost 8 months ago to Perm, Russia; whose voice I haven't heard since January. I have been living for nearly 8 months with a hole in my life, while some, like Mr. Tom Sylvester, of Cincinnati, Ohio, who testified in 2009, and his daughter, and others like them, have lived with that hole for years. Our great country must stop this constant bleeding of its most important resource, its citizens. As a nation we need to construct legal mechanisms to facilitate resolution of existing parental kidnappings and put in place effective preventative mechanisms to assure that our citizens are not subjected to the daily, unbearable sorrow that comes in the wake of an international parental kidnapping.

I was in Rome, Italy when Tatiana Ivleva, my decade-long partner, the love of my life and wife of five years, the mother of my daughter, called to inform me that she and my little blue-eyed angel were in Russia and would never return, that I would never see my daughter again. In shock, I nearly collapsed on the street. I wrote the first of many letters for my daughter while flying home, speeding westward away from her to Chicago. My heart seemed a thread being unraveled across the world, my life unwinding as the distance between us grew.

At home I opened the door to our Chicago apartment overlooking Lake Michigan. Desolation overwhelmed me as the golden afternoon light filtering through the dead silence of our living room gently touched on the semicircle of my daughter's favorite toys, left exactly as she had been playing with them. No joyous "Daddy's home, hurrah!" Only silence, thundering silence.

Initial denial became steely resolve to protect my child, who now lives in grave danger; to bring her back to her loving, lawful home. Since the kidnapping my offers of compromise and reconciliation have gone unanswered, court orders and decisions ignored, and requests to at least have phone calls with my daughter unheeded. A local arrest warrant has been issued for Tatiana. The FBI, INTERPOL, the Chicago PD, the National Center for Missing and Exploited Children (NCMEC), State Department, and Congressmen's offices are all involved. I have given interviews to US and Russian media, each time imploring Tatiana to simply speak with me, to negotiate a solution.

Melisande was torn away from me and everyone and everything she had known from birth, in one cruel, selfish instant by her mother Tatiana, and maternal grandmother, Galina and abruptly plunged into a strange world of darkness, mental illness, and danger. Tatiana's own signed statements declare that she immediately moved in with her high school boyfriend in Russia, an abusive individual named Andrey Medvedev, with whom, it has been proven, she had been having an extramarital relationship for some time prior to the kidnapping. Mr. Medvedev is a violent alcoholic, with numerous citations for public intoxication, drunk driving (for which he lost his license), and physical violence, offences ranging from assaulting a bar employee to terrorizing neighbors with his drunken rages and loud music, to purported accusations of child molestation. Both his former wife and a long-time live-in partner report that his inability to control himself when drinking was a primary cause of the breakup of their relationships. He is reportedly a devoted adherent of a cult which advocates the use of psychoactive drugs, engaging in ritualistic sexual behavior, forcing women to submit to dominant males, and isolating themselves from society. This is what my ex-wife has done. Despite not working, Tatiana attended only two hearings before signing over her full power of attorney regarding all aspects of our divorce, including Melisande's upbringing and custody, to a violent alcoholic whose decisions will impact my daughter's life forever.

The role of the Russian Consulate in the abduction itself and the ensuing legal processes has seen Russia make a joke of its own laws and flaunt its impunity to the international community. To accomplish the abduction, Tatiana turned to the Russian Consulate in Washington D.C., for help. What she said is unknown, but she was issued a one-time Russian Repatriation Certificate with our American daughter's name written on it. This document allowed her to abduct our daughter, a US Citizen, from US soil and transport her directly to a non-Hague country. Imagine the situation: two nervous Russian women with a bewildered 2-year-old US citizen in tow passing through security and boarding a foreign-bound commercial flight at one of America's busiest airports, without passports, without the signed permission of the father.

Tatiana wrote to thank Russian diplomats Nikolay Teoglot and Ekaterina Polozkova for the certificate shortly after the kidnapping; this note is in the possession of the FBI. To reiterate: TSA officials accepted a travel document in lieu of a passport. The airline they flew with required no further checks as to why and how these individuals were boarding an international flight with no passports and no written permission from the other parent. At that very moment the father was happily scouting shops in Rome for presents to bring back to his beloved family. Diplomatic abuse and lack of exit controls and effective screening procedures made this abduction possible.

My daughter is half-Russian. I have many close friends in Russia. Sadly, it is a country in which not only International Laws and Human Rights are frequently violated, but one which does not follow the letter of its own law. Consider the fact that since July 2003, Russia has unilaterally refused to observe its duties under the 1965 Hague Service Convention. It will not serve its citizens with divorce papers from the US, yet it allows its citizens to argue in court that they were not served properly because the papers were not delivered by Hague Service Convention through the Ministry of Justice.

Despite this I was able to satisfy both American and Russian process service requirements and went on to win the American custody case when we were divorced on Dec. 29th, 2010. I proceeded to legalize the divorce decision at the Russian Consulate in Washington D.C., and this decision was affirmed by the Russian Government's Vital Records Office in Moscow, who stated that the American divorce was valid in Russia from the moment on Dec. 29th, 2010 that it went into effect. Now… prepare yourselves to enter a bizarre no-man's land of lawlessness and intrigue.

Provincial Russian Judge Olga Sherbakova, being in possession of the properly served American divorce petition and divorce decision (translated into Russian), allowed Tatiana to initiate a divorce suit with me as respondent. The first hearing was on January 20th, 2011, nearly a month after we were divorced with a decision that the Russian State already considered valid. Maxim Ivlev, Tatiana's brother, as former head of the legal department of the Perm Duma (Senate) is a person with deep political, judicial, and intelligence service connections. Within days a media smear campaign including primetime specials vilifying me was undertaken. The media campaign included public statements and letters by politicians Pavel Mikov and Ilya Neustroev both violated Russian constitutional law regarding separation of the political and judicial systems. They both approached judges – they themselves publicly declared so – and requested an expedited outcome in favor of the Russian mother. Politician Neustroev, Tatiana's brother's former superior, runs a live blog, in which he immediately published an entry about my family titled, "I am Against America". I then received serious threats against my life, so serious that I won't travel to Perm, lending 'credibility' to my former wife's publicized statement that I don't care enough about my daughter to visit her.

Please note, Mr. Chairman, there is never mention of the welfare of my daughter; rather, it's Russia against America and my daughter a disposable political pawn. The process leading up to my "second divorce" from my only wife on March 24th, 2011, was fraught with bias. Legal infractions were numerous. The presiding Judge met in private with Tatiana's side. Evidence was mysteriously introduced into the court clerk's files. Decisions consisting of several typed pages were ready within minutes or even seconds of the conclusion of each hearing, suggesting that the complete text had been prepared before the hearing had commenced. At one hearing, it was claimed that 2½ year old Melisande had said she did not wish to Skype with me, and it was argued that it would constitute child abuse to enforce Skype visitation – this argument was upheld by the courts. It was stated that I was currently in Perm, Russia, plotting a Rambo-like attempt to bring Melisande home, and was therefore forbidden to travel with Melisande. My passport proves that I have not travelled outside of the United States since I was in Rome. Russian Immigration and Border Control or the Consulate could confirm that I have not had a Russian visa, without which it is impossible to travel there, since 2007.

On March 24th, 2011, I was divorced from a person that Russia had acknowledged I was not married to, hadn't been for the preceding three months. During the hearing, 20 procedural norms of the Russian Code of Civil Procedure (CCP) and Civil Code (CC) were broken. Tatiana was awarded full custody and another divorce as well as child support which, if applied by Russian standards, would require a local father to pay 80% of his income. A complete list of these violations is available upon request, but here is a quick sampling in order of their breaking: 113, 6, 9, 415, 220, 71, 163, 62, 67, 61, 215, 55, and 139. By violating existing laws a Russian

court proceeded with 'legal' processes resulting in this decision. I was never served with any court documents, nor allowed to give testimony or present statements from scores of witnesses. My ex-wife's only witness, Mrs. Kseniya Vorontsova, gave fallacious, mendacious testimony against me. I was not given time for translation of the documents. My lawyer was denied or given delayed access to case materials. My legalized Russian court decision and Russian governmental proof that I was already divorced were not taken into consideration. A higher court process was ignored by a lower court. Courts refused to accept and register official evidence. The case was tried in a court which had no jurisdiction, no argument or proof presented that an American child could be under that court's jurisdiction. My daughter and I were denied (and continue to be denied) contact with each other during the course of the proceedings, explicitly violating Russian law.

So grievous were the violations that ten days ago an Appellate Court in Russia upheld my viewpoint, overturning the lower court's decision in its entirety, and sending the case back to a lower court to be retried by a different judge. My ex-wife and I may soon have the singular distinction of having been married once but divorced three times.

Mr. Chairman, I contend that my daughter and I have the inalienable right to a full and loving parental/child relationship. The Russian Consulate's, courts', and government's assistance to Ms. Ivleva and Mr. Medvedev have facilitated violation of my daughter's and my right to that most basic human relationship, eroding the foundations of law, international diplomacy, and of the most important element of society, the family. The alienation that is likely beginning now will have lifelong consequences for Melisande and me and for Melisande's entire family in the US. I can't imagine doing to Melisande what is being done to her. I deplore my family's tragedy being politicized. I appeal to Russia to look beyond political one-upmanship and to acknowledge that a horrible injustice is being done to a little girl who needs her father, and to a father and family that love her little golden head, sparkling eyes and joyous laugh.

Americans must take a decisive stance on defending our own citizens, our own inalienable rights to the most basic of relationships and bonds that a person has – those between children and their parents. I pray that our testimonies might lead to legislation which would unite all bereaved parties, which would prevent similar situations for other parents and children who might suffer due to selfish decisions of one or the other parent. Intervention by government agencies whose hands are tied by incomplete or non-existent laws and enforcement mechanisms can lead to one eventuality and one alone – in non-Hague cases and many Hague cases of child abduction, physical possession of the child spells complete control of the situation and of the other parent. This situation must be remedied for our children's future. Thank you.

Mr. SMITH. Mr. Izzard, thank you.

The Chair recognizes Mr. Bower.

STATEMENT OF MR. COLIN BOWER, FATHER OF CHILDREN ABDUCTED TO EGYPT

Mr. BOWER. Thank you.

Chairman Smith, honorable subcommittee members. Thank you for inviting me to testify today. Chairman Smith, thank you, in particular, for your support of H. Res. 193 with Congressman Frank.

My children, both American citizens, were kidnapped and are being held illegally today in Egypt by Egypt. Meanwhile, the United States rewards Egypt by giving them billions of dollars in aid, $2 billion, in particular, announced last week.

This is wrong, by any definition. And I call for cessation of any aid to Egypt from the United States until they recognize human rights, the spirit of their own revolution, and, in doing so, return my sons: Noor and Ramsay Bower.

Noor and Ramsay, now ages 10 and 8, were kidnapped to Egypt in August 2009 by the mother, Mirvat el Nady. In light of Mirvat el Nady's condition, outlined in H. Res. 193, I have always assumed the parenting responsibilities for my two boys. I woke up with them every day, fed them, clothed them, made sure they got to school or to an appropriate activity I scheduled for them, and I

brought them to their play dates and parties. I bathed them. I read to them. And I put them to bed.

I changed jobs in order to simultaneously support my family financially and act as a de facto single parent. Before and after the divorce, I remained their sole legal and primary custodial parent.

What I think of today and worry about most is Noor's and Ramsay's present safety and their future quality of life. I wonder what they are being taught. I believe this will materially determine what they think and what choices they will ultimately have in life.

Their futures are being impacted each day they remain parented by an unfit mother, remain supported by her government, and enabled by her family from the abduction to the ongoing support of parental alienation and child abuse, both financially through their family company, Egybelg, and otherwise. My boys are being forced to hide from the rest of the world. And I can't imagine what this must be like for them.

There are several notable issues involved in this tragedy. First, this is not a custody battle. There was a 20-month court case in Boston completed in December 2008 in which both parties participated fully from start to finish, including Mirvat el Nady being represented by six separate high-powered U.S. divorce attorneys.

This is a Federal crime. The FBI issued a Federal warrant for the arrest of Mirvat el Nady, including the issuance of an INTERPOL red notice.

Third, this involves national security. Mirvat el Nady obtained Egyptian passports for the children in false last names. The passports were in false names. The Egyptian passports were real. Passport fraud, which this is, is an extraditable offense under the Mutual Legal Assistance Treaty, the MLAT Treaty, that exists today between Egypt and the United States. False passports, by definition, are used to commit crimes in other countries, just as in this case.

Fourth, this is child abuse. U.S. Supreme Court and other international bodies deemed both child abduction and parental alienation child abuse. This is not debatable.

The fact that Mirvat el Nady was found to be a long-tern addict of schedule 2 narcotics and incapable of to this day anticipating the boys' needs it yet another level of child abuse, which imperils the boys today.

Lastly, this is a state-sponsored crime. The Egyptian Government issued false passports. They indirectly own the airline that ignored all the obvious flags by letting Mirvat el Nady kidnap these boys to Egypt using Egypt Air. And they provided el Nady security through the Egyptian State Security Agency, an agency which is now defunct after the revolution for being corrupt. The Egyptian Government shut down streets for Mirvat el Nady to travel, something they don't do for the highest level politicians.

There are many things we can do immediately to protect our children in basic human rights. Because time is limited, I am going to focus on five. The first and most obvious given current events, before receiving the $2 billion de facto aid package announced last week, Egypt must demonstrate through action its commitment to human rights.

Even the people of Egypt, who will either benefit or suffer from this aid, have spoken about the need to make sure this money does not simply continue the power structure that existed under the now defunct Mubarak regime.

By fact and definition, my children's rights are and have been abused for 21 months now. I call on the U.S. Government to ensure that the new Egyptian Government is protecting human rights, not violating them, and demonstrates this with the return of Noor and Ramsay before giving any aid to Egypt.

Second, before receiving aid, we need to ensure that the MLAT is being enforced by our partners and appropriate extradition is being carried out. This is a national security issue and one that impacts all of us in the United States. We should not provide aid to countries that have enabled crimes to be committed in our country against our citizen and who do not implement conditions of the MLAT.

Any agreement can be signed, but if it's not enforced, it is worse than having no treaty as all as it allows purveyors of deceit to fly under a false cloak of legitimacy.

Third, before they receive aid, we need countries to agree to recognized and mirror existing probate orders involving custody decisions reached in residential jurisdictions where both parties were active participants and legally represented.

The country harboring the fugitive should issue a mirror order consistent with the existing order in the country of the children's primary residence. These are principles not inconsistent with the Hague Convention today.

Fourth, I call on the Republican Party to stop the moratorium on resolutions being heard this Congress and make available the ability of House resolutions to be heard on the floor, including and notably H. Res. 193, which is bipartisan and involves the lives of my two little boys.

Alternatively, I ask for exceptions to be made in cases crucial to the lives of American children, including my boys and others in similar situations.

I ask that both parties stand together to send a strong message to Egypt and other countries that we support the Egyptian people's goal of obtaining democracy in human rights by assuring their new government acts in concert with these values before receiving the financial backing of the United States.

Given the relevant facts, it is not a stretch to say that H. Res. 193 if acted upon could very well save the lives of Noor and Ramsay.

Fifth, there must be further controls in place to protect against the unlawful removal of our children to foreign countries. In my case, the divorce judgment did call for a restriction on my ex-wife, Mirvat el Nady, to remove the children from the Commonwealth. Were such controls in place, this removal would not have happened.

Subcommittee members, I thank you for your invitation to speak today and for your consideration of this most important issue.

[The prepared statement of Mr. Bower follows:]

May 19, 2011

The Honorable Chairman Ileana Ros-Lehtinen
2206 Rayburn H.O.B.
Washington, DC 20515-0918

Re: Colin Bower - Written Testimony
US House of Representatives
Committee on Foreign Affairs
Subcommittee on Africa, Global Health and Human Rights
Hearing on "International Child Abduction: Broken Laws and Bereaved Lives"
Room 2203 Rayburn House Office Building
May 24, 2011, 2.00 pm edt

Dear Chairman Ros-Lehtinen and Honorable Committee Members,

Thank you for inviting me to testify today.

In sum, my children, American citizens, were kidnapped and are being held illegally by Egypt, in Egypt. Meanwhile, the United States rewards Egypt by giving them billions of dollars in aid. This is wrong, and I call for a cessation of any aid to Egypt from the United States until they return my sons.

It is instructive to have some background information on the kidnapping of Noor and Ramsay Bower, my two sons, and then I will speak about several areas I believe should be addressed going forward to protect and honor the lives of our children, their rights, and human rights generally.

My two sons, Noor and Ramsay Bower, now aged 10 and 8, were kidnapped to Egypt in August 2009 by their mother, Mirvat el Nady. The kidnapping took place 8 months after the final Massachusetts divorce judgment - which declared me as the boys' sole legal custodian - was rendered.

In light of Mirvat el Nady's condition (outlined in H Res 193), I had always assumed the parenting responsibilities for my boys. I woke up every day with my boys, fed them, clothed them, ensured they got to school or an activity, scheduled and brought them to their play dates and parties, bathed them, read to them, and put them to bed. I changed jobs in order to simultaneously support my family financially and act as a de facto single parent. After the divorce, I remained their sole legal and primary custodial parent.

What I think of and worry about most is Noor and Ramsay's present safety and future quality of life. I wonder what they are being taught, as I believe this will materially determine what they think and what choices they will ultimately have in life. Their futures are being impacted each day they remain parented by an unfit mother who remains supported and enabled by the el Nady family, from the abduction to their ongoing support of parental alienation and child abuse, both financially (through their family company Egybelg) and otherwise. My boys are being forced to hide from the rest of the world, and I can't begin to understand what this must be like for them.

There are several notable issues involved in this tragedy.

- **This is not a custody battle** - There was a 20 month court case in Boston completed in December 2008, in which both parties participated fully from start to finish, including Mirvat el Nady being represented by six separate high powered US divorce attorneys.
- **This is a federal crime** - The FBI issued a federal warrant for the arrest of Mirvat el Nady, including the issuance of an Interpol red notice.
- **This involves national security** - Mirvat el Nady obtained Egyptian passports for the children in false last names. Passport fraud is an extraditable offense under the Mutual Legal Assistance Treaty (MLAT) between the US and Egypt, as false passports by definition are used to commit crimes in other countries - just as in this case.
- **This is child abuse** - The US Supreme court and other international bodies deem both child abduction and parental alienation child abuse. The fact that Mirvat el Nady was found to be a long term addict of schedule 2 narcotics and incapable of anticipating the boys' needs is yet another level of child abuse of and imperilment for the boys.
- **This is a state sponsored crime** - The Egyptian government issued false passports, indirectly owns the airline that ignored obvious flags by letting Mirvat el Nady kidnap the boys to Egypt, and provided el Nady security through the State Security Agency (now defunct for being corrupt). The Egyptian government shut down streets for Mirvat el Nady to travel, something they don't do for the highest level politicians.

There are many things we can do immediately to protect our children and basic human rights. Because time is limited, I will focus on five.

First, before receiving the US$2bn de facto aid package announced in President Obama's speech last week, Egypt must demonstrate through action its commitment to human rights. Even the people of Egypt, who will either benefit or suffer from this aid, have spoken about the need to make sure this money doesn't simply continue the power structure that existed under the now defunct Mubarak regime. By fact and definition, my children's rights are and have been abused for the past 21 months. Before receiving aid, I call on the US government to ensure that the new Egyptian government is protecting human rights, not violating them, and demonstrates this through the return of Noor and Ramsay.

Second, before receiving aid, we need to ensure that the MLAT is being enforced by our partners, and appropriate extradition is being carried out. This is a national security issue, and one that impacts the very safety of US citizens. We should not provide aid to countries that have enabled crimes to be committed in our country, against our citizens, and who do not implement conditions of the MLAT. Any agreement can be signed, but if is not enforced, it is worse than having no treaty at all, as it allows purveyors of deceit to fly under a false cloak of legitimacy.

Third, before they receive aid, we need countries to agree to recognize and mirror existing probate orders involving custody decisions reached in residential jurisdictions where both parties were active participants and legally represented. The country harboring the fugitive should issue a mirror order consistent with the existing order in the country of the children's primary residence.

Fourth, I call on the Republican party to stop the moratorium on Resolutions being heard this Congress, and make available the ability of House Resolutions to be heard on the floor, including and notably H Res

103, which is bi-partisan and involves the lives of my two little boys. Alternatively, I ask for exceptions to be made in cases crucial to the lives of American children, including my boys and others in a similar situation. I ask that both parties stand together to send a strong message to Egypt that we support the Egyptian people's goal of attaining democracy and human rights by ensuring their new government acts in concert with these values before receiving the financial backing of the United States. Given the relevant facts, it is not a stretch to say that H Res 193, if acted upon, could very well save the lives of Noor and Ramsay.

Fifth, there must be further controls in place to protect against the unlawful removal of our children to foreign countries.

Committee members, I thank you for your invitation to speak today and for your consideration of this most important issue.

Best regards,

Colin Bower
Father of Noor and Ramsay Bower

Mr. SMITH. Thank you very much for your testimony.

[Applause.]

Mr. SMITH. I thank each of you for your very specific recommendations and for very carefully delineating your individual heartache because that helps us to get a better handle on what we can do to be, hopefully, positive in our response as well.

I would again note that this is a panel of non-Hague countries. You know, the three of you have had your children abducted to a country that has not signed the Hague, unlike our first panel. We will have a series of votes, so I will be brief. But on the Office of Children's Issues, if you could tell us briefly how well or poorly they have served you.

And I would encourage you not to worry about retaliation, even though that is easier for me to say than you. And if any of you, any of the parents, know of an instance where someone copped an attitude or worse as a result of your candor, we as an oversight, as well as a lawmaking subcommittee, legislative subcommittee, need to know that because we all serve you. And I want to say that again with emphasis.

I would like to know if each of you have had a phone call from perhaps the Ambassador or any contact with the Ambassador in Russia, Egypt, and Japan. And also two of you spoke in Michael Elias' case of a passport being issued under fraudulent circumstances; in other words, the judge took the original passports.

And then someone at the Consulate's office in Chicago, Illinois falsely issued, either knowingly or unknowingly—we don't know still, but the Japanese Government told you that there would be an investigation. What has happened to that investigation? We asked. And before you answer, in the case of Mr. Bower, you talked about outright fraud, where it's clear the wrong names in violation, as you put, of the MLAT. What has been the response of our Government to you on that issue?

And then I will yield to Mr. Payne for any questions he might have. Please?

Mr. ELIAS. As far as the Office of Children's Issues, Congressman Smith, I have spoken with them directly. I have not gained or lost or anything from them. So there is no comment I could really make upon that.

And as far as the phone call from the Ambassador goes from Japan, I have not personally spoken, received a letter, or heard any news of good or bad, from him personally.

Mr. SMITH. Briefly, has somebody from the Embassy called you at any time or has it all been OCI or what?

Mr. ELIAS. There is that ongoing investigation, but for the past almost 3 years in December that my children have been gone, I have not received anything upon an investigation or call from their Embassy directly from Chicago or New York.

Mr. SMITH. Do you and the other left-behind parents whose children have been abducted to Japan with the G–8 Summit very, very shortly to be convened and the anticipated announcement by Japan that they may sign the Hague, of course, with reservations—that could be catastrophic—how does that make you feel and the other left-behind parents whose kids are in Japan?

Mr. ELIAS. As far as them signing the Hague Convention, I don't see it happening personally. And, like we discussed before, even if they do, there's going to be numerous different kinds of language in it that would probably prevent me or any other left-behind parent as of right now from being grandfathered in. And it would definitely have to be—I think we should definitely—if we're getting them to sign the Hague Convention, we should sit down and declare what we want in the Hague Convention, not what they see as right to be put in just so they can have us off their back and say, "Don't worry about it."

[Applause.]

Mr. SMITH. In your view, there would need to be a sidebar agreement, country to country, U.S.——

[Applause.]

Mr. ELIAS. There needs to be a sit-down with them.

Mr. SMITH. Thank you.

Mr. IZZARD. I would like to answer first the question regarding OCI and how OCI has served me. It has been competent. They have conducted two welfare and whereabouts visits in Russia based entirely on the information which I had to literally spend a fortune on to actually locate my wife and daughter via private means.

However, the Office of Children's Issues has refused to coordinate with the FBI so that the FBI investigation could move forward because the agent that I had been working with out of the Chicago field office obviously has an open case with a number. However, because of the unusual circumstances that we were not getting divorced when my daughter was abducted, there is a very high bar to clear in order for there to be Federal criminal charges.

However, OCI has not provided the relevant information as to how they contact Tatiana so that the FBI could, hopefully, get the attaches in Russia to contact her and get her side of the story.

Regarding contact with the Embassy or the Ambassador, my mother actually assisted me greatly in contacting the Embassy in Moscow. She was at the time living in Moscow. However, the OCI here in Washington discouraged us from continuing to do so because they said that they would like all of the communication to be handled directly through the office in Washington, DC, even though in my opinion the people on the ground in Russia have a better understanding of the very unique circumstances regarding, say, the way things are done in Russia.

I think that is all.

Mr. SMITH. Mr. Bower?

Mr. BOWER. In my case, I have spoken with Ambassador Scobey and met with Ambassador Scobey in Cairo a number of times. I am in almost weekly contact with the Consul General there. I speak directly and communicate directly with Ambassador Jacobs.

Attention and responsiveness have not been my issue. Really, it is ironic in a way that this amount of attention almost takes away from the need to act on either party. And I would give up all of this attention for one single act, linear move, in the direction of a return. And I have not seen that. And I think a lot of the diplomatic speak gets in the way of any activity whatsoever.

I would also note that, for the record, it is difficult to speak directly about the State Department when you believe that the re-

turn of your children falls squarely into their hands and to think about being negative in any which way.

As a family, as a parent in this situation, you do not in any way want to speak out against an entity that could potentially provide an avenue for the return of your children.

Regarding the MLAT, the State Department has filed a request for information. The Assistant U.S. Attorney has filed a formal request. Senator Kerry has sent a letter. I have, as is my right according to Egyptian law, filed a request for information regarding the passport documents. All have been summarily denied or ignored.

The Attorney General's office is continuing to pursue this. They have said, the Assistant U.S. Attorney, they have another arrow in their quiver. I do not know what that means.

There has been no precedent set for extradition under MLAT from Egypt.

Mr. SMITH. Mr. Payne?

Mr. PAYNE. Thank you. Thank you all for your testimonies. And I just wondered, Mr. Elias, being a military person, do you see these issues perhaps even being more prevalent with members from our military, regardless of where they are serving?

Mr. ELIAS. I see it being more prominent in the military, strictly because you are subjected to overseas at long periods of time. And if I could give anything to that, that question, when you are brought overseas, any country that you go to, as being a Marine, you are briefed on everything from the number of people that have AIDS over there to the amount of robberies. And you are given classes on how the ocean comes in and hits the shore.

Our of all of those classes, I should have been given a class on child abduction or at least——

[Applause.]

Mr. ELIAS. Thank you.

—had it aware to me because I was so young in Japan. I was only 19 years old serving my country in Japan. And I had no idea I would be sitting here before any of you today.

Mr. PAYNE. It seems like that should be a part of the military training. Japan has had a relationship with the U.S. military in Okinawa and other places that had been strained for a long period of time. And it seems like that would be a part of what they would be talking about.

Hopefully perhaps with the great support that the United States has been giving with the current tragedy in Japan, perhaps, you know, there could be some opening up of dialogue to the Government of Japan about taking a look at the manner in which they treat their friends.

In Egypt also, a country that is going through transition, perhaps it may be an opportunity. There is a very close military relationship to the Egyptian military currently in charge. And it might be a suggestion to our State Department officials and even the Department of Defense because they were probably the ones that influenced the Egyptians not to fire on the people, Egyptian people, military, military kind of relationship they have. And, as we saw in other countries, Syria, Tunisia, the military fired on the people. They did.

So there could possibly be at this time an opportunity to have our Government talk, even if it's with military, State Department, to the Egyptian Government. So I would hope that that might be a window of opportunity.

And, even, actually, in Russia, there is a better working relationship with the Russian authorities and the U.S. They have cooperated with us on Iran, for example, on the proliferation of potential nuclear weapons.

And so I would hope that perhaps one of the moves from our subcommittee would be that we make a special appeal because of the changing situation. I mean, it doesn't apply to everybody in every country but, at least your three countries, I think that there is some hope, at least, that there could be some dialogue.

So, with that, I won't ask you any other questions at this time. We have votes coming up. And I will yield to other members of the panel. Thank you.

Mr. SMITH. Ms. Buerkle?

Ms. BUERKLE. Thank you, Mr. Chairman. Thank you to you all for being here today. Mr. Elias, thank you for your service to this country.

I will ask three brief questions and allow other members to ask their questions and then submit additional questions in writing. Mr. Izzard, in your testimony, you mentioned about the two Russian diplomats in the Russian Embassy and your ex-wife worked with them.

Has any follow-up been done? Has anyone held them accountable for their part in this? And was there any prosecution?

Mr. IZZARD. There has been no prosecution. There was a meeting approximately 1 month ago between the United States Department of State and Russian Consulate employees. The State Department declined to tell me with whom they met in particular. I do not believe that it was these two individuals.

And the Russian Consulate stated that their policy is that any person that comes in their front door that can prove that they are a Russian citizen, that that person's word will be taken at face value on good faith. And, therefore, they felt that they were justified in doing whatever that they did in issuing whatever, the Repatriation Certificate, which allowed my ex-wife and daughter to leave the country without passports.

Ms. BUERKLE. And so someone from the State Department had attended that hearing or that meeting, but you were not involved in that meeting?

Mr. IZZARD. I was not involved in that meeting, and I was given very limited information as to what was divulged.

Ms. BUERKLE. Do you know who the person from the State Department was?

Mr. IZZARD. I believe it was Ms. Janelle Guest. And I think she was accompanied by someone else, but I do not know that individual's name.

Ms. BUERKLE. Thank you.

Mr. Elias, same with regards to you. After the judge ordered that the passports be surrendered, you testified that your ex-wife obtained new passports. Has there been an investigation of her ac-

tions, anyone who may have assisted her, and any outcome to that or prosecution?

Mr. ELIAS. I have my speculations of who assisted her and everything like that. I don't want to get into that, but there is supposedly an ongoing investigation that I have not received a conclusion for at this time.

Ms. BUERKLE. And in your situation, is it State Department as well? Who is conducting this investigation? Is it the FBI?

Mr. ELIAS. The actual Embassy of Japan.

Ms. BUERKLE. Thank you.

And, lastly, Mr. Bower, you mentioned about the TSA's role and the airline's role and the fact that they let the children go through. Has any further action been taken against the airlines and/or the TSA? Have you had a conversation with them and made them aware of the situation?

Mr. BOWER. Yes. As a matter of fact, there is currently a suit that I filed against Egypt Air in this matter. And the suit is ongoing. So I can't speak much about it. So I will leave it like that.

But yes. We are in discovery about this very issue.

Ms. BUERKLE. And with regards to the TSA, have they been put on notice of what happened?

Mr. BOWER. Yes, they have.

Ms. BUERKLE. Thank you. I will yield back my time. Thank you, Mr. Chairman. Thank you to our witnesses today.

Mr. SMITH. Thank you very much.

Mr. Marino?

Mr. MARINO. Chairman, I do not have any questions. I would like to make a statement, though.

First of all, I cannot begin to imagine what pain all of you have gone through. You have my deepest sympathies. I know the two best wonderful days of my life have been when I adopted my babies.

Before I was a prosecutor, I was involved in domestic law here in the United States. And it can be extremely difficult. I can only magnify that by a million times with domestic law or international divorce law and custody, but I think where we can start here is because you have answered all of the questions eloquently.

There is no question that I could ask that would elicit a resolution, but I think I speak for my colleagues. And it has been certainly the chairman has gone down this path once or twice. I think the place for you to start is with your representatives, your congressman, your congresswoman, your senators because we deal a great amount of time with foreign issues.

We deal with ambassadors given the fact that we are on Judiciary, Foreign Affairs, Homeland Security. These all overlap. And in many cases, having a congressman or a congresswoman or a senator involved may to a certain extent expedite the matter.

I see my colleague to the left of me has been writing down names from State Department. And we can make phone calls. We can ask for meetings with these people and, if we have to, demand what can and should be done.

And we are talking about international law. We are talking about treaties. We are talking about relationships or lack thereof with other countries. But I think we can initiate the task that you

have undertaken. And it seems like many of you have undertaken these tasks yourselves.

So the only thing that I can offer at this point is contact us from the beginning. We will play a vital role in this, communicating with our State Department and our ambassadors.

I am a new member of the Congress, but I can tell you that I have spoken with numerous ambassadors in addressing this specific issue with them. I presented to the ambassadors a situation that had nothing to do with why they were visiting me but with what the United States had on their mind concerning other issues and got their attention rather quickly.

So perhaps in the future we can assist that way, at the very least, and help you through the process until we get this, your particular issue, resolved or until we get this resolved concerning any abductions of American children.

I yield my time.

Mr. SMITH. Mr. Marino, thank you very much. You know, you raised an extraordinarily important point that we can be advocates. And I would encourage you, if you haven't already, to be in contact with your individual member and two senators.

In the last appropriations bill, we wrote language that was included in the bill that admonished, told, instructed the Office of Children's Issues to inform a left-behind parent who files with them that a good advocate could be their own individual representative; but because of Privacy Act reasons, they can't automatically say to us—because I would like to know who in my district or in my state, for example, who is a left-behind parent. And I am not sure how well that is being implemented.

I ask but don't necessarily get good answers back, but it does mean that we will then be on their backs, just as our constituents, rightfully, should be on our backs to do our job.

You know, we all serve the people and not the other way around. So I thank you all. If there is anything else you would like to add before we go to panel number three? You have been tremendous witnesses. And I agree with my colleagues on both sides of the aisle. Our hearts go out to you. And we will do everything we can possibly do to keep the pressure on.

Yes, Mr. Bower?

Mr. BOWER. Chairman, I would just like to make one point. I understand that the Foreign Services Committee has jurisdiction over bilateral aid.

Mr. SMITH. Yes.

Mr. BOWER. And I would note that the aid, as announced last week in President Obama's speech, would, therefore, fall under the jurisdiction of this committee. And I would ask that you make a stipulation that my children be returned before $1 of that aid is given to Egypt.

Mr. SMITH. I thank you. Yes, sir. Your point is well-taken.

[Applause.]

Mr. SMITH. Both the Appropriations Committee and the authorizing committees have jurisdiction. So thank you so much for that, appreciate it. Anything else you would like to add?

I would also like to say to all of the other left-behind parents here and others who couldn't be here today there will be additional hearings. We will focus on the military side, like Michael Elias.

I did do an amendment to the Department of Defense bill a couple of years back, in 2009, that requires them, as Mr. Payne was pointing out so well, to begin educating—and Patricia Apy will speak to this, I'm sure, when she testifies—so that people who are deployed overseas are not unaware of what the risks are, and also so that our JAG corps is much better acquainted with the issue of child abduction to better serve those who are deployed overseas.

So thank you so much, all three, for your tremendous testimony. Thank you.

[Applause.]

Mr. SMITH. I would like to now introduce our third panel of experts, beginning with Ms. Patricia Apy, who is a partner with the law firm of Paras, Apy, and Reiss, who specializes in complex family litigation, particularly international interstate child custody litigation. Her qualifications for testifying for us are impressive and extensive. And I will reference only a few of them.

She has litigated, been qualified as an expert witness, and consulted on international family disputes throughout the world. Ms. Apy frequently consults and is regularly qualified as an expert on family dispute resolution in non-Hague countries and risk factors for child abduction. She has also participated in numerous reported decisions on Hague treaties regarding child protection and abduction. She is also a consultant to the U.S. Departments of State and Defense on issues involving families and children and the application of treaty law.

She was also, as we all know, one of the lead attorneys, certainly the lead U.S. attorney, for David Goldman, and provided expert advice and counsel in that long, arduous case.

Next we will hear from Ms. Kristin Wells, who is a partner in the law firm Patton Boggs. Ms. Wells provides lobbying services on a range of international affairs issues. She is well-known here on the Foreign Affairs Committee as she previously served as deputy chief counsel to now Ranking Member Howard Berman.

In that capacity, she worked on international child abduction issues with me and with my staff and others, including the crafting of H. Res. 125, known as the Sean and David Goldman Resolution, which also included Patrick Braden's case of his abducted child, Melissa.

I introduced this resolution, calling on the Brazilian Government to return Sean to his father. It passed the House in May 2009.

And then we will hear from Jesse Eaves, who is a child protection policy advisor at World Vision right here in Washington. Jesse coordinates the advocacy portfolio for issues of child protection. That includes child soldiers, exploited child labor, child trafficking, and child sexual exploitation. He works with World Vision programs around the world to ensure child protection is integrated into programming and international advocacy strategy. Jesse also educates and mobilizes Americans to take a stand against abuse, exploitation, neglect, and violence toward children.

Ms. Apy, the floor is yours.

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

Ms. APY. Good afternoon, Chairman Smith and Ranking Member Payne and members of the subcommittee. Earlier in the testimony, there was reference by one of the witnesses to the concept of a time capsule. And that immediately resonated to the testimony I am about to give because, actually, 11 years ago, in May 2000, I was asked by the Clinton administration to travel to Japan to begin discussions addressing the Hague Convention on the Civil Aspects of International Child Abduction and to discuss international child support obligations.

Ironically, both of those meetings were—and I have since obviously been to Japan, most recently in the congressional delegation headed by Congressman Smith. Both of those meetings and discussions about the Hague Convention were immediately preceding the G–8 Summit.

Now, in 2000, I met with Japanese officials, attorneys, judges, American diplomats, and American military commanders and addressed the issues of parental kidnapping, the abduction convention, allegations of domestic violence, and cases involving American service members.

I left the meetings having been told by the Japanese that they were considering the protections found in the Hague treaty. And I wad told by American diplomats that they were discouraged at what appeared to be little more than lip service.

When I returned with Congressman Smith in February, the topics discussed were precisely the same as the discussions that had been held 11 years earlier.

I am expecting to return to Japan in July to provide on-site training to American judge advocates and civilian attorneys serving our military families abroad regarding international child custody considerations.

I think that, given that we have had the announcements with respect to the Hague Convention, it is extraordinarily important to understand exactly what is being proposed and how it is and is not responsive to the issues raised and the extraordinarily poised and heartfelt testimony you have heard from left-behind parents.

Encouraging accession to the Hague Convention is, of course, a laudable goal. For one thing, it is a positive step in international law to define and recognize parental kidnapping as a wrongful act, which, believe me, as we sit here is not appreciated in Japan.

It ensures that the eventual resolution of a child custody dispute will be done in the place where the evidence is located regarding what is in the best interest of a child. That is the focus of the Convention. That is the child's habitual residence.

However, the moment that the Japanese deposit the accession to the Convention and request the accession to be accepted by the United States of America, a number of things will happen. And those have to be considered and appreciated, particularly by the Congress. One is that the people who are sitting behind me with children who have been abducted to Japan will be left in a position of legal limbo.

Now, in cases in which we have accessions filed by countries that have a family law construct and a type of family law which has a

legal culture that appreciates custody and appreciates visitation, it consigns those whose children have been abducted to have to litigate their cases in the country to which the child has been taken. That is not what I am talking about.

In this situation, there is no remedy. Promises that the Japanese domestic law is going to be changed are welcome but not responsive to the issue that this is an international parental abduction. And, of course, it is not responsive to the real issue that is being raised here. And that is what happens when we are talking about issues parental abduction that rise above the individual cases to a nation state's issue.

No parent should be in the position of having to become the United States Department of State, which is essentially what you have heard described to you here today. The treaty provides that the Convention will apply between contracting states only to wrongful removals and retentions after its entry into force. So as an initial preposition, that will cut off all of the individuals, who, by the way, you have numbered incorrectly.

Non-Hague countries are historically under-reported by the United States Department of State for good reasons. First of all, there are no central authorities in the countries involved which are keeping accurate numbers. We keep numbers based on who has applied for assistance through the State Department or applied for assistance through a central authority abroad.

In the case of a non-treaty signator, there is no repository. And many of the individuals who have been affected don't bother to file, certainly historically, with the United States Department of State because there were no services provided, no advantages to have done so. So, as a result, you have a whole host and percentage of cases who have simply unreported.

The second issue is, particularly as it relates to American military members, abductions from our bases in Japan, for example, are considered internal domestic abductions and, therefore, aren't considered as international abductions, despite the fact that an American service member may have been living on one of our bases.

So if the purpose of this hearing is, in part, to identify how we can improve the rate of the return of children, the very first thing you have to do is have a legitimate way of identifying how many children you have and what the problems are.

The other issue is that if the accession is deposited as it is expected with extensive reservations, it will be a lot worse than form over substance.

In a recent press account issued in Japan, there were assurances that the proposed legislation would specify that returns will be denied in the case of child or spousal abuse and there will be—and I will quote here—"no negative effects on the welfare of the child." Let me tell you that what that means is that it implies a best interest determination, which is prohibited by the express language of the treaty. In other words, it converts it from an abduction case to a child custody case.

And, finally, the chairman of the Japanese Federation of Bar Associations cautioned,—and I will quote—"Urging the government not to rush into concluding the treaty, citing the need for thorough

discussion by experts and related parties." Well, as I indicate in my written remarks, it would be difficult to imagine, since the dialogue regarding the treaty was alleged to have begun before July 2000, when the world's leaders met in Okinawa, and assurances were made to President Clinton what further internal discussions could be conducted which would do anything other than delay and obstruct the return of abducted children.

The recommendations, which are included in my written remarks, include as it relates to not just the Japanese issue but any offering of an accession to not merely accept the accession without some critical analysis, which has been the policy of the United States Department of State. We accept the accession. And then we worry about how it actually works.

I must caution it is a dangerous precedent. American judges rely on accessions as evidence that if they allow a child to visit grandma in a Hague country like Turkey, that the child will be returned in accordance with the Hague Convention, despite the fact that there may be no central authority that has been provided, despite the fact that there is no political or actual will on the part of that country to do so.

I recommend that in advance of full compliance with the treaty, that the United States Department of State encourage the return of children through a number of diplomatic mechanisms. One is that they enter into a memorandum of understanding, which is drafted to include an immediate protocol for the resolution of existing cases involving children alleged to have been abducted to Japan, abducted within Japan, as well as Japanese children alleged to have been abducted to the United States.

By setting this model protocol, issues of particular concern to Japanese legislators could be addressed in advance of finalizing the language in domestic legislation. So if we are going to start talking about issues, for example, of domestic violence, which are genuine concerns, and issues of spousal and child abuse, which are genuine concerns, by having an MOU, the good faith nature of those concerns, as opposed to what have seen in many, many of these cases,—and that is pretext to avoid returns—can be ferreted out. And the Japanese legislators, who are dealing with the rewrite of their domestic law, can have the benefit of experts in the United States who are failed with these issues and create a objective and credible mechanism for ensuring that such allegations are seriously addressed, protections assured, mutual recognition encouraged, and preventing the use of false allegations to reduce the effectiveness of the treaty.

We have to deal with the issues of American service members and their families and assist judge advocates and command authority with tools to advise American service members and Japanese national family members of reasonable and enforceable resolutions.

And we have to assess Japan's genuine commitment to the process of fighting international parental abduction by setting objective standards, which can be evaluated and can be addressed critically, if necessary. This would provide a template for other countries which are considering the steps approaching signing onto the Hague Convention.

We have other nations, particularly—and, again, my written remarks will address it. And I know we are short on time, but there was comment made about statecraft and the issues of statecraft as it relates to this particular problem.

We have countries like Pakistan. Not only do we have significant issues of aid, but we have huge populations of Pakistani-Americans who have relationships and travel regularly back and forth.

The United Kingdom has entered into bilateral agreements with the Pakistanis to deal with child abduction issues. We should be in that same position.

Now, again, historically the United States Department of State has taken a position that they will not entertain a memorandum of understanding because historically it was viewed to dilute the global effectiveness of getting everyone on board, if you will, to the Hague Convention.

The problem with that is the countries now, the non-Hague countries, in vast majority that have not entered into the Hague have unique issues with respect to the religious and cultural elements of their law, which make it necessary, very frankly, to find other ways to assure that they can become full reciprocal partners under the Hague.

A memorandum of understanding provides that opportunity. And the United States Department of State should immediately engage in discussions with judicial and governmental officials in non-Hague countries that have indicated that they want to do that, like the United Arab Emirates, India, and Pakistan.

Finally, with regard to reciprocity and the comments that were made with respect to the United States Department of State and the Office of Children's Issues and the perception of American left-behind parents that they're not being advocated for, there is no question that the United States Department of State Office of Children's Issues has as a client, not the individual parent, but the United States of America. That is the reality.

The problem is not that parents in my experience want them to be lawyers or want them to be involved in individual family litigation. They want them to do their job, which is to address the diplomatic issues and efforts, collection of information, and accountability that an individual litigant cannot possibly do.

In order for them to have the tools to do that, there have to be some very concrete things that are done. One is there has to be in real time an acknowledgement when a country is not acting in compliance with the treaty and cull that out in more than the report form. That is that reciprocity has to be something that an American judge and American parents who were formulating settlements of custody disputes can rely upon.

Legislative efforts in this body and in the other body must provide mechanisms for diplomatic actions that deal with the systemic lack of reciprocity. These parents can't do it themselves.

The protections outlined in now numbered 1940, the Smith bill, provides an objective, transparent process to evaluate reciprocity, which is the first step. Is this really a reciprocal relationship anymore? If it's not, like in Ecuador, where there is no central authority anymore, an American judge in Illinois might want to know that there is no way to get a child back because an American par-

ent is going to have to hire three lawyers to be able to do it because there is no central authority.

By way of example, in circumstances in which there are persistent and historical misuse of this process and treaty, other American parents and judges who are similarly situated need to know that. No one should have to hire experts to appear in family courts, which right now they do, in order to get protective orders to prevent abductions.

The work of this body in having resolutions, which addressed Brazil and Japan, has been used in hundreds of cases around the United States to provide the opportunity for parents and judges to formulate protective orders.

But you shouldn't have to do that. You should be able to—I mean, this body should not have to go to work on every individual child abduction case. There should be a process that evaluates that a country is not in compliance, enter into, if necessary, an MOU, which addresses the deficiency and allows for an objective review.

[Applause.]

Ms. APY. A reasonable system of diplomatic consequences must be available to the Secretary of State and the President of the United States so that no country may engage in the repeated and flagrant violation of its treaty obligations with meaningful review.

In conclusion—and I appreciate the extraordinary amount of time that this issue has been given by this committee, and I will tell you that the prior committee hearings and commission hearings have made incredible impacts on the operation of domestic law in the United States. And so I congratulate the chairman and the members of this subcommittee for spending the time that they have.

You are already aware that two of my clients, David Goldman and Michael Elias, have offered testimony to you today. I am most certainly not the only family lawyer working to see that families and children are protected from the scourge of international parental abduction. And I cringed when earlier there was a moment or two of concern about the motivation of lawyers, but I need to say that the American Bar Association Family Law Section and international sections, in particular, have been asked by the President of the ABA at the request of Congressman Smith to review the legislation that has been presented and the issues and to make recommendation on this legislation and other actions of this body.

Additionally, the American Chapter of the International Academy of Matrimonial Lawyers have also offered their expertise, both in evaluating proposed legislation and in providing assistance to the United States Department of State. Both the members of the ABA and the IAML have given thousands of hours of pro bono assistance in support of the return of abducted children and in advice and counsel to our colleagues at the United States Department of State.

I am personally appreciative of the continued willingness of Secretary Janice Jacobs to entertain my concerns and those of my colleagues in attempting to address these complex issues on a case-by-case basis. However,—and this is the take-away—her accessibility is no substitute for a genuine, identifiable, and transparent

process to address issues involving all similarly situated parents diplomatically.

My colleagues continue to provide incredible insight and advice and a willingness to work with the Members of Congress to improve the working of the treaty. The comment to contact your Congress person is only part of the step.

The members of this subcommittee I do not believe are representative of what usually happens. And that is, the people behind me contact their Congress person, who contacts OCI, who sends a self-serving letter that basically goes through administrative steps that have been taken and nothing more. There is no advocacy associated with that.

My observations during my most recent visit to Japan revealed the extraordinary access and contact that Congressman Smith was able to achieve, which undoubtedly advanced the serious dialogue with the Japanese Government in which we are now engaged.

I am honored to have been given the opportunity to participate in those meetings and to testify before this subcommittee in its efforts to bring every abducted child home. And I thank you.

[Applause.]

[The prepared statement of Ms. Apy follows:]

STATEMENT

OF

PATRICIA E APY

SUBMITTED TO THE

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH

HUMAN RIGHTS

COMMITTEE ON FOREIGN AFFAIRS

UNITED STATES HOUSE OF REPRESENTATIVES

HEARING

IMPROVING THE RATE OF RETURN OF CHILDREN

ABDUCTED INTERNATIONALLY BY A PARENT

MAY 23RD 2011

Chairman Ileana Ros-Lehtinen, Ranking Member: Howard L. Berman

Sub-Committee Chairman: Christopher H. Smith

Ranking Member: Donald M. Payne

Members of the Subcommittee:

My name is Patricia Apy. I am privileged to submit for this hearing record a statement which reflects my own experience and the experiences of many of my colleagues who practice in the complicated arena of international family law, both here and abroad.

Preliminarily, I would like to tell you something about myself. This is the third time in the last year and a half I have been privileged to offer testimony in the House of Representatives. For much of the last two and a half decades I have concentrated my practice and particular expertise in the operation of state, federal and international child custody litigation. I also hold a masters degree in Social Work with a clinical concentration in family and children's issues. My private practice is devoted to complex international and interstate child custody cases. In December of 2009 I offered my remarks regarding International Child Abduction to the Tom Lantos Commission on Human Rights, and in February of 2010 I offered formal remarks on behalf the American Bar Association to the Subcommittee on Economic Opportunity Committee on Veterans Affairs concerning Military Servicemember Child Custody Arrangements.

I have served as an instructor on issues of advanced family law, including international child custody, at the Judge Advocate General Schools of the Army and Air Force, and the Naval Justice School for over a decade. I served between 1991 and 2001 as Chair of the International Law and Procedure Committee of the Family Law Section of the ABA, and have just completed my three year tenure as Chair of that Section's Military Law Committee. I had been appointed by the ABA President to serve on the Standing Committee on Legal Assistance for Military Personnel, where I served from 2002 to 2008 as both a member and liaison.

I have attended the Hague Conference on Private International Law as an attorney advisor to the Department of State, on the preliminary negotiations of the Maintenance Convention, and returned as a delegate for the negotiations on the Protection of Minors Treaty in 1996. In June of last year, I attended a meeting of the Hague Conference as one of three international practitioner observers on behalf of the International Academy of Matrimonial Lawyers. The focus of that meeting was the workings of the Hague Convention on International Adoption, with particular attention to issues of Child Trafficking and Adoption practice.

I have addressed the return of abducted children in meetings with judges and practitioners in Pakistan, the United Arab Emirates and India and have twice travelled to Japan to meet with Japanese governmental officials and our own diplomatic officers regarding Japan's failure to consider parental kidnapping "wrongful" or enforce orders for the return of children entered by American judges.

Ironically both meetings in Japan commenced immediately prior to the G-8 summit. The first, conducted during the Clinton Administration, occurred just before the 26th G-8 Summit in Nago Okinawa in 2000. I met with Japanese officials, attorneys, judges, American diplomats and American military commanders and addressed issues of parental kidnapping, the Hague Abduction Convention, allegations of domestic violence and cases involving American servicemembers.

I left those meetings having been told by the Japanese that they were considering the protections found in the Hague Treaty. I was told by American diplomats that they were discouraged at what appeared to be little more than lip service.

In the second meeting I participated at the invitation of Congressman Christopher Smith of New Jersey occurring less than two weeks before the recent earthquake. The topics discussed were precisely the same as the discussions that had been held eleven years earlier. I am expecting to return to Japan in July to provide onsite training to American Judge Advocates and civilian attorneys serving our military families abroad regarding international child custody considerations and the threat of child abductions.

I would be honored to respond to any questions regarding my training and experiences or expertise and submission here. Of course, my responses should be construed as my own views unless confirmed as the official position of the American Bar Association, or the International Academy of Matrimonial Lawyers.

Improving the return of children abducted to "Non-Hague Countries". A significant portion of my practice has always involved international abduction of children to countries who have *not* signed the Hague Convention on the Civil Aspects of International Child Abduction (Non-Hague). I wish to propose a number of concrete steps which may be taken which will immediately impact and enhance the process for the return of children abducted to countries now not signators to the Hague Abduction Convention.

A. Encouraging accession to the Hague Abduction Convention: Review of current policy of unconditional acceptance: Japan

There is no question that encouraging accession to the Hague Abduction Convention is a positive step to the development of international law. It defines and denominates kidnapping of a child by a parent as a wrongful act, and insures that the eventual resolution of the child custody dispute is completed in the country which has the most contact with and evidence regarding a child, that is, in that child's "habitual residence". It has been the long-standing position of the United States Department of State to disfavor bi-lateral agreements or other diplomatic devices such as Memoranda of Understanding (MOU) in addressing global parental kidnapping.

Because the Convention is a reciprocal Treaty, this policy reflects the historical preference that in order to encourage worldwide adoption; the "carrot" of the expedited procedure for return of children had to be exclusive. Cutting side deals, as bi-lateral and multi-lateral agreements were considered, diminished the global effectiveness of the remedy. However, thirty years after the creation of the Treaty, those countries which persist in not executing the Treaty, often reflect very different legal cultures, including religious and culturally based law regarding the resolution of family disputes which requires much more than a ratification process and enabling legislation to become effective. Keep in mind that even with a sympathetic legal system the process can be daunting. In this country, between our participation in the drafting of the Treaty and the enactment of 42 USC 11601, the International Child Abduction Remedies Act (lCARA) 8 years transpired. It is important to recall that the Hague Abduction Convention, by its own terms in Article 35 provides, "*This Convention shall apply as between Contracting States only to wrongful removals or retentions after its entry into force in those States.*" Thus, the moment that a country, such as Japan, deposits it articles of accession and that accession is accepted by the United States all of the existing kidnapping cases are excluded from reliance upon the Convention. In much of the common-law based western legal culture, that merely means that an aggrieved parent will be consigned to litigate the best interest determination in a child custody dispute in the Court to which the child has been removed, regardless of the inappropriateness or inconvenience of the forum.

However, in the case of many non-Hague countries, this will consign the left-behind parent to no remedy whatsoever. In countries like Japan, where the current legal culture and domestic law do not provide a remedy to secure even access to one's own child, let alone custodial rights. It will mean consigning these left-behind parents to legal limbo, often to never seeing their children again.

Although we , as yet, have no formal document from the Japanese indicating the timing or the process to be employed, press accounts issued in Japan included assurances that the proposed legislation , " would specify that returns will be denied in the case of child or spousal abuse ," and there would be "no negative

effects on the welfare of the child," implying a "best interest" determination prohibited by the express language of the Treaty. Finally, the Chairman of the Japanese Federation of Bar Associations cautioned, "urging the government not to rush into concluding the treaty, citing the need for thorough discussion by experts and related parties." (May 20, 2011 the Japan Times)
It would be difficult to imagine, since the dialog regarding the Treaty was alleged to have begun before July of 2000 when the world's leaders met in Okinawa and assurances were made to President Clinton , what further internal discussions could be conducted which would do anything other than delay and obstruct the return of abducted children. But more troubling is the reference to the addition of language, reportedly to be found in projected reservations taken to the Treaty, which may do little more than legitimize the persistent use of false allegations of child and spousal abuse to endorse child kidnapping.

Recommendation:
By immediately engaging in the negotiation and execution of a MOU in advance of full compliance with the Treaty, the United States Department of State could encourage the return of children through a number of diplomatic mechanisms:

- An MOU should be drafted which includes an immediate protocol for resolution of existing cases involving children alleged to have been abducted to Japan and abducted within Japan as well as Japanese children alleged to have been abducted to the United States.
- By setting a model protocol, issues of particular concern to the Japanese legislators could be addressed in advance of finalizing language in domestic legislation and provide objective criteria to evaluate positive results, and diminish the use of "reservations" which would drastically reduce the effectiveness, speed and reciprocity of application of the Treaty.
- The issue of domestic violence could be addressed with judges, lawyers, and mental health professionals developing a objective and credible mechanism for insuring that such allegations are seriously addressed, protections assured and mutual recognition encouraged, while preventing the use of false allegations to reduce the effectiveness of the Treaty.
- Unique issues of American servicemembers and their families could be addressed, assisting Judge Advocates and Command authority with tools to advise both American servicemembers and Japanese national family members of reasonable and enforceable resolutions of family disputes.
- Japan's genuine commitment to the process of fighting international parental abduction could be evaluated objectively.

- A successful MOU could serve as a template for other countries desiring to address international parental kidnapping.

Accepting any accessions without objective criteria about the likelihood and ability of a country to offer reciprocal compliance creates a misimpression to American Judges who, in assessing the obstacles to recovery of children, must enter orders addressing arrangements for the voluntary settlement of international custody and access cases. The history of a number of countries who are signators but do not comply with the international responsibilities of the Treaty, such as the historic pattern of non-compliance of Brazil, or where functioning Central authorities are absent, such as in Ecuador, must inform us in this regard.
It must be noted that in the meetings conducted in February by Congressman Smith, the diplomatic representatives of other Treaty partners, who included diplomatic the Pacific Rim countries such as Australia and New Zealand, as well as European diplomats from Spain and Germany received the concept of the use of an MOU for addressing these issues warmly.
Further, the challenges both politically and legally posed by the members of the Diet in negotiating the delicate issues of the protection of abused spouses, and need to address such allegations, I believe would welcome the assistance and assurances of the United States in attempting to address such issues as a part of a collaborative bi-lateral agreement rather than formulating politically expedient language to facilitate unimpeachable affirmative defenses to return.

B. **Negotiating Bi-Lateral and Multi-Lateral Agreements with Countries which will likely be unable to consider ratification of the Hague Convention: Pakistan**

Countries which base their family and personal status law upon religious law provide a unique challenge, in that the underlying premise is that they will not consider the Hague Abduction Convention as a viable option. A number of countries with which we have and desire to maintain strong commercial and strategic ties do not lend themselves to inclusion in the Treaty processes.
Even when a country is struggling with extraordinary challenges, such as Iraq in the wake of the overthrow of the prior regime and subsequent instability , family courts were among the first, if not the first courts which were re-opened and stabilized. The reasons are very straightforward, the presence of family disputes, the dissolution of marriages, and family conflict are, unfortunately universal. International marriages and cross border commercial and educational endeavors require attention to the ability to provide a mechanism for the resolution of such disputes on a global basis. By way of example, the United Kingdom and Pakistan

entered a bi-lateral which has been judicially enforced addressing international parental kidnapping allegations between the countries.
Pakistan provides a unique opportunity, in that it is one of very few, if not the only country with a family law system conducted with common law legal structure, which incorporates the significant principles of sharia law.
In April of 2009 I addressed the South Asian Bar Association regarding the potential for engaging in talks directed to such a bi-lateral agreement with the United States to address the growing number of custodial disputes and unresolved abductions involving the parents with ties to the United States and Pakistan.
Recommendation:

- Engage in immediate discussions with Judicial and Governmental Officials in non-Hague countries with religious based systems to identify categories of cases lending themselves to treatment by bi-lateral or multi-lateral agreements. Examples : United Arab Emirates, India, Pakistan

C. The Case for Reciprocity:

The issue of compliance with the Hague Convention on Child Abduction must be a crucial aspect of legislative efforts. The Abduction Convention is a reciprocal treaty. The primary goal of the Treaty is to deter international parental abduction by insuring a disincentive for doing so. By providing a unique abbreviated process with a limited and specific remedy, that of the immediate return of a child to the state of habitual residence, parents may rely upon this process when they enter into agreements for parental access and time sharing with their children. Judges in fashioning orders permitting summer access, or visits to grandparents abroad, refer to the Treaty status and rely upon the reciprocal obligations in making their determinations. When there is no compliance, and when there is no objective way of evaluating compliance, families and those engaged in resolving family disputes reasonably rely upon the Treaty to their detriment.
In order to prevent parental abductions, families, mediators, lawyers and judges must be in a position to evaluate the potential risk of abduction, by accurately evaluating the obstacles to recovery found in a given country, were a wrongful removal or retention occurred.
When a country is not compliant, when the Department of State has identified patterns of non-compliance, that information must be communicated in real time, in an objective way, and the status of Treaty reciprocity evaluated and disclosed.
Finally, in circumstances where there is no reciprocity, to protect families and children diplomatic and legislative efforts must be made with urgency and vigor to identify the problems and to seek immediate solutions. No individual parent is in a position to litigate and fight a battle which appropriately belongs at a nations-state level, which is what each left behind parent is required to do when they attempt to

retrieve their child from a country that identifies itself as a Treaty signatory, but refuses to abide by its obligations.

Recommendation:

- Legislative efforts must provide mechanisms for diplomatic action on systemic lack of treaty reciprocity. Protections outlined HR 3240 provide an objective, transparent process to evaluate reciprocity and compliance with the assistance of practitioners and judges who are litigating and entering protective orders.
- Members of this body must be immediately made aware if a child has been abducted from their district, along with a "real time" report of the compliance status of the country in question.
- A reasonable system of diplomatic consequences must be available to the Secretary of State and the President so that no country may engage in repeated and flagrant violations of its Treaty obligations with any meaningful review.

D. Military Parents

It is important to remember parents who serve our country and consider their unique circumstances. There must be a dedicated effort to provide legal services to military members, particularly those abroad and deployed whose children are subjected to wrongful removal and retention, thus resulting in what is technically"in country" abduction from a United States military facility. Diplomatic efforts have to be made to consider international parental kidnapping issues when negotiating Status of Forces agreements and other necessary obligations associated with our service members' service abroad.

Conclusion

As you are already aware, two of my clients, David Goldman and Michael Elias have offered testimony to you today. I am most certainly not the only family lawyer working to see that families and children are protected from the scourge of international parental abduction. The American Bar Association, Family Law Section and International Sections in particular have been asked by the President of the ABA at the request of Congressman Smith, to review these issues and to make recommendations on legislation that he has sponsored. Additionally, the American Chapter of the International Academy of Matrimonial Attorneys, have also offered their expertise both in evaluating proposed legislation. Both the members of the American Bar Association, Family Law Section and the International Academy Members have given thousands of hours of pro-bono assistance in support of the return of abducted children, and in advice and counsel

to our colleagues at the United States Department of State. I am personally appreciative of the continued willingness of Secretary Janice Jacobs to entertain my concerns and those of my colleagues in attempting to address these complex issues on a case by case basis. However her gracious accessibility is no substitute for a genuine, identifiable and transparent process to address issues involving all similarly situated parents diplomatically.

My colleagues continue to provide incredible insight and advice and a willingness to work with the members of Congress to improve the working of the Treaty, to enhance the diplomatic efforts on behalf of children at the Department of State by sharing the experiences of those actually practicing in the courts of the United States and abroad

My observations during my most recent visit to Japan, revealed the extraordinary access and contact that Congressman Smith was able to achieve which undoubtedly advanced the serious dialog with the Japanese government in which we are now engaged. I am honored to have been given the opportunity to participate in those meetings and to testify before this Sub-Committee in its efforts to bring every abducted child, home.

Thank you.

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

And Ms. Wells?

STATEMENT OF MS. KRISTIN WELLS, PARTNER, PATTON BOGGS LLP

Ms. WELLS. Chairman Smith, Ranking Member Payne, Representative Marino, and members of the subcommittee, I am honored to be here today to share with you my thoughts and concerns about the parental abduction of American children to foreign countries.

I am here today testifying on my own behalf. And in no way should any of my comments be attributed to the partnership of Patton Boggs or any of its clients.

My written testimony provides an overview of some of the policy issues around international abduction of children. A number of these have been discussed already. So I am going to shorten my oral comments today. But my testimony does highlight some issues with the Hague Convention. It addresses obstacles associated with non-Hague Convention cases, discusses some of the challenges and improvements that have occurred at the Department of State, but I am going to discuss that a bit more.

We had highlighted issues relating to abductions in Africa and Japan and made some suggestions on some practical actions that Congress and other parts of the U.S. Government can take to improve the U.S. Government's response to abduction cases.

I will note that my testimony focuses primarily on abducted American children. And that, rightfully, is the focus today. But it is important to note that the Hague Convention also covers non-U.S. citizen children who are residing in the United States at the time of their abduction, irrespective of their immigration status here.

And also as a party to the Convention, the United States is obliged to help return the hundreds of children who are abducted from other countries into the United States each year from around the world. And I think this is an issue that the committee and subcommittee should continue to look at. We are rightfully concerned about U.S. citizens and U.S. constituents, but we also need I think to take a look at how our country is doing in respending to requests from other countries.

The Convention, as we have discussed, is a very imperfect legal instrument, but it has successfully helped to resolve a number of child abduction cases around the world. And it has returned children to their left-behind parents. And for every parent that has gotten their child through the Hague Convention mechanism, I am sure they are grateful of its existence, despite its sometimes low success rate.

It does provide a means for countries to communicate with one another and identifies authorities in each nation responsible for addressing these cases.

To clarify some of the internationally agreed-upon values of focusing on the child's best interest—and I don't mean, as Ms. Apy noted, that other courts should be making that determination, but it agrees that that is an important principle and that that principle should be best met by the jurisdictional court, where the child habitually resided. It also presses governments to promptly return the child. And it embodies promises made by the contracting states to assist other countries in locating children abducted into their territory.

Despite these benefits, there are too many cases, as we have heard today, where the Hague countries fail to return children to their state of habitual residence unless the Hague Convention does often fail in its primary objective.

The unfortunate delays in return and sometimes the complete failure to return children result from a number of problems with the Convention itself at times. One of the problems, as we have heard, is the lack of an effective enforcement mechanism. And I think some of the discussions about the use of trade and other mechanisms of bilateral power or influence are in response to the fact that there is no enforcement process.

But the Hague Conference on International Private Law, while it has no enforcement mechanism, could still continue to discuss ways in which enforcement could be further enhanced, not just in the interest of the United States but for all nations that are signatories.

In particular, though, this issue of enforcement is particularly complicated when a child is a dual national. And, as we have often seen or heard in these cases that were described today, even when a child is not a dual national, they often become a dual national as part of the abduction and the effort to take or keep them in another country.

In addition to the issue of enforcement, there is also insufficient oversight of the Convention, the mechanism—or I would say I would encourage the committee to look at the mechanism by which the Hague Conference reviews its own operations around the world, not just in the United States, because the truth of the matter is

that while the United States doesn't have any obligation to oversee or make particular comments about these matters, it is in our interest to do so.

We have as a country tremendous legal expertise and resources. And so I think if we can look at ways in which we can also influence the Hague Conference to either take more actions or initiate new discussions that might not have been had or continue to help progress their—or I shouldn't say their agenda but issues that we think are important, such as oversight and how that oversight is then turned into actionable review that can improve the Hague system as a whole, I think that is a useful role for the United States to play.

Although the Convention is over 30 years old, a myriad of interpretation issues are also evident in the U.S. case law and in the cases coming from other countries.

The fact that nations and courts interpret the language of the Convention differently has dramatic effects on these cases and often result in children not being returned.

There are different interpretations of habitual residence, debates about where the child actually was living. There are questions about whether the abduction was wrongful, as was noted in one of the witness' testimony, where the abducting spouse said, you know, "This isn't wrong. I'm the parent." And that is a frequent reply, not only by the parents but sometimes by foreign judicial systems as well. And, yet, the Convention has some clear language on these matters, but I guess I shouldn't clear—make it clear to one reader, but then it's read in so many different ways in different countries.

This is a problem with the Convention and how we come to some standards that can be uniformly accepted by both the Convention and then applied by judges around the world. This would help tremendously, but I think it is going to be a long haul. Nonetheless, I think it is something for Congress to think about and look at and to talk with the State Department and other U.S. Government officials about.

The critical area of interpretation regarding the Hague Convention is the provision that requires that children not be returned to a place where they would be harmed. This is the grave risk of harm extension. And it says that they cannot be returned to a place where they would be exposed to physical or psychological harm.

This language is very critical in domestic violence cases. And there is a fair bit of U.S. case law on this as well but also conflicting case law.

And so in my more lengthy submission, testimony, I have made a suggestion that the Department of Justice be more involved at looking at how some of this language is interpreted by U.S. courts. So that even if we can't prevent the fact that some of this language might be interpreted differently in the United States and in Senegal and in Thailand, we can at least try to make some uniform analysis of how the language of the Convention is interpreted in the United States.

I also need to note that domestic violence is frequently alleged and used as a tool, unfortunately, by either the abducting parents or some of the government officials that get involved in the case.

There are often concerns of domestic violence raised in cases where there is absolutely no evidence of that. The false claim, of course, not only hurts those children involved but hurts, takes away attention from cases where domestic violence really is at issue.

In terms of non-Hague cases, without the Hague Convention, left-behind parents face tremendous hurdles. As you, Chairman Smith, well know, they might not be able to identify where their child is located. They may seek to get a U.S. custody or visitation order, recognized in a foreign jurisdiction, but have faced great hurdles in doing so. They are often not able to even effectively file a case in another jurisdiction or if it's filed, it may not get heard.

Sometimes it is difficult to identify who in the foreign government has the ability, power, or desire to either locate or help return the child. And without the Hague Convention as a tool to encourage foreign governments to return the child, custody is most likely to be decided to a foreign court order using the child's presence there.

As Ms. Apy noted, I wanted to also highlight that the Convention is not, however, supposed to be a custody-determining document. It is not a regime to decide where the child should live and what is the best overall outcome. It is a document to determine what court has the jurisdiction to decide the case. And, as you noted in your testimony, this seems to be an issue also of great confusion among a lot of the states that have signed the Hague Convention. And to me, it seems to be a matter of needing substantially additional training and guidance that our Government can be involved in, other governments might be involved in as well, but that needs to be centralized and organized through the Hague Convention in the Netherlands.

I did want to talk about the Department of State. In studying this issue over the years, I have heard negative experiences faced by left-behind parents and their attorneys. There have also been, as you know, a number of changes at the Department of State. And I would like to talk about those.

But I must say, having heard the testimony today, that I am very saddened to hear that some of those changes have not impacted these families or that the impact is not as visible as it should be. And so I think there is no doubt that this committee, the State Department need to continue to do the hard work of trying to figure out how to get this system right.

Parents are still not feeling that they are being serviced; that their needs are being taken as seriously as they ought to be; and, as we have noted, that they have an advocate on their behalf.

I will just highlight some of the structural changes, however. As the committee may be aware, the Special Advisor for International Children's Issues has been appointed. And although this is and it's currently held by Ambassador Susan Jacobs, it is also a position designed to help elevate this issue, help coordinate between the Secretary of State's Office, the Office of Children's Issues, and other aspects of the State Department.

I understand, Mr. Smith, that you have a proposal for an even higher-level ambassador and potentially a new office. And I am happy to look at that.

I think that this initial position has, from what I have been hearing, helped garner attention. And I think this ambassador has been able to play a particular advocacy role in the diplomatic community that has been important, but there might be enhancements, either in changing the position or changing her powers that might be useful as well.

Case management has also been restructured to some extent at the State Department. In the past, there were the last few years about 20 Foreign Service officers who handled the heavy caseload of about 150 cases a year. That has now changed and they now have up to about 100 officers. Not all of them are Foreign Service. Some of them are Civil Service. And they now handle no more than 75 cases.

We should be seeing improvements in the reports from the families as a result of this. And so I think it is a concern that we are not. And I am particularly concerned that this is some of what I heard when I was working on the committee as well.

I think when you meet with the State Department, I believe that they are very earnest. I think that the people who are working on these cases do understand the importance of what they are doing and are putting forth their best efforts for these families, but there is a gap to be bridged.

Because of their perceptions or your perceptions as policymakers and as people looking at oversight of the agency, you are going to hear different things on one side. And then you are going to hear another set of things from the families.

I would encourage the committee to consider possibly having the State Department testify on this issue and be able to explain some of their limitations. For example, there are several notes about the State Department not providing families information on how they contacted the abducting spouse or identified where the child was.

I suspect that there are limitations on the State Department officers around that. There might be other limitations, as has been discussed under Privacy Act issues. And it might well be that legislation needs to overturn some of that. But I think it would be helpful if there is a way in which—and I'm sure that many have been asking for this for years, but if you can still look to bridge this gap so that the families feed like they are getting the information they need, they understand better the bureaucracy of the State Department, and they also don't look to the State Department as their adversaries but as their friends, because I think in the end, only by working together through the administration at the State Department, Congress, the families, the nonprofit organizations, the attorneys involved, as Ms. Apy noted, there have been tremendous strides. And I think more can continue to be done if everyone tries to stay on the same team.

I had a few comments about Japan, which I am going to shorten tremendously since I think it has been very well-covered, but I will say that I have been told that the Embassy of Japan in the last year or so has become more engaged with this issue.

In fact, the day that I met with them was the day that the Sean Goldman story broke on the news while I was in a meeting with the Embassy. And at that time—this is several years ago—the concept of how to work on the Convention and what to do was one that

they responded to with some vagaries. And they noted that it was being looked at at the Ministry of Justice, but that was the same answer that had been given for several years.

Now I understand that they are more aggressively involved in discussions here in the United States about Hague Convention, but what I haven't heard yet is that they are more aggressively involved in discussions about individual cases.

So I would reiterate what you, Ms. Apy, and others have said, that absolutely as they go forward, there has to be a decision around the existing cases and there has to be, whether it is in the Hague Convention, accession, or in some other document, an agreement.

And, of course, we have as primary interests the American children, but there are children in many other countries, from many other countries, who are in Japan. And so this is an internationally concerning issue.

I will just add that I was asked by Congressman Payne if I could make some comments about Africa. And given the committee that we are speaking with, I would like to do that.

Most of the nations in Africa are not signatories to the Hague Convention. At present, the United States only has four partners to the Convention there: Zimbabwe, South Africa, Mauritius, and Burkina Faso. And they face unique challenges there, both in terms of identifying where children are; operating with the central authorities in those governments; and, in particular, operating in governments where there is no Hague partner.

The road to accession of the Hague Convention is also challenging in some of these African nations, where there are problems with inefficient and ineffective government structures that have hampered the consideration of the treaty.

In addition, the Hague Convention does have a project on Africa to look at this issue and try to make strides in that region of the world. But there has been an identification at least that because of the critical role of personal relationships in Africa—and I have heard that this is also played in large part in Asia—that having a real regional approach that is individually based is important.

So having a conference in the Netherlands or in Washington, DC, is not going to help get countries in Africa to start looking at the Hague Convention. It will require a lot of direct outreach on an individual level.

I will note that children abducted to Africa, the profiles of their cases look somewhat different. The Africa cases tend to be of African immigrants who have come to the United States, either temporarily or permanently, where both parents are from an African nation and the child is abducted by one parent, taken back to the home country, and is often left with extended family. Grandparents, aunts, uncles, or people living in the United States would be considered friends but are very much relatives in the construct of an African family.

And there are a small number but a notable presence of cases where female genital cutting is a concern of the left-behind parent. As you can imagine, the logistics when a child disappears in countries where there may not be sufficient infrastructure, where telecommunications are still developing, despite the availability of cell

phones, where the Internet might be spare, is a challenge not just for the State Department following up on cases but very much a challenge for the left-behind parent. And, of course, challenges in the weak judicial systems that exist in many of these countries is also a problem.

Also—and this is getting to my last point on this—the left-behind parent as African immigrants here in the United States faces challenges because of that status as well. They tend to not necessarily live in large communities of African immigrants. It is different from, for example, being a Mexican-American living on this side of the U.S. border and near the border, where there might be lots of Mexican-Americans and lots of resources to help support you and learn more about how you can politicize or get media attention for your issue.

So getting attention from law enforcement, getting attention from the legal system, and interacting with the political system of the United States, Congress, but even at a local level state and local politicians is much more of a challenge. And so what I have heard and my understanding from speaking with some people in the agency is that these cases are not getting that kind of attention, and they're not getting the kind of advocacy that has, fortunately, been developed around some of the cases in Asia and Europe and other places among the family.

Lastly, I will just note that I do have a number of suggestions of response from Congress. I would just like to note a few. There has been a GAO report on this issue. It was done in 2000. I think the issue is ripe for a review by GAO, although, in truth, you might also—because of the time that GAO takes, you might want to also look at an independent report. The State Department has at times been given funding to issue a grant and to an independent report from an outside attorney or set of attorneys. There might be a way to do something like that to really effectively look at this issue of communication between the parents and the agency and, really, everything about what the State Department is doing on this.

But, in truth, I think that, as I have noted, there are areas of cooperation with the Department of Homeland Security, areas of cooperation with the Department of Justice that are important to look at, too, and what we heard today about TSA.

And we know the problems with the exit system. But there are, for example, ways to flag a U.S. passport. Maybe there are ways that a U.S. child's name can be flagged with the airline, regardless of what country the passport comes from. That still might be thwarted when the name of the child is changed, but as it is right now, if an airline brings a person to the United States who does not have a visa, the airline has to pay a penalty to the United States and has to return that person at the airline's expense. So there is a disincentive for them to allow people on the planes without appropriate passports and visas.

Maybe there is a similar way to create a list of children who should not be traveling internationally. It is very tricky, but I think that having some sort of discussion between the State Department, the other agencies, and Congress, it is almost more of a working group approach involving families and maybe these hearings at the beginning of that, where you can start to tease out and work on

how some of these ideas could be brought into policy, they could improve the overall operations.

And my last point would just be that I think the thing that I would love to see Members of Congress do more of and that I know you're a master of, Chairman Smith, is to make sure that these issues get mentioned to every foreign dignitary that the members meet with.

I don't necessarily mean every country, but if there is a country—if the committee pays attention to these issues and knows, for example, that one of the vast majority of our cases is with Mexico, then when the Mexican officials are here, it can be raised. And it can be raised by one member or in a larger setting. But I think that would help a lot. And, as we have seen, your attention to this issue has been a tremendous help for these families.

So thank you.

[Applause.]

[The prepared statement of Ms. Wells follows:]

Testimony before the
House Committee on Foreign Affairs,
Subcommittee on Africa, Global Health, and Human Rights
"International Child Abduction: Broken Laws and Bereavement Lives"
Tuesday, May 24, 2011

By Kristin Wells

Chairman Smith, Ranking Member Payne, Members of the Committee, as a former counsel to the House Committee on Foreign Affairs, I am honored to be here today to share my thoughts and concerns about the parental abduction of American children to foreign countries. I am here today testifying on my own behalf. In no way should any of my comments be attributed to the partnership of Patton Boggs, where I am now a partner, or any of its clients.

My experience with this issue began when I served on the Committee from 2007 to 2009. In my position as Deputy Chief Counsel for then-Chairman Howard Berman, I conducted oversight on this issue. My work began with inquiries about the abductions of Melissa Braden to Japan and of Sean Goldman to Brazil. Soon my work involved broader policy oversight of the State Department's efforts on this issue and the complexities of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, to which the United States is a party.

Today, my goal is to provide a practical assessment of the policy issues around the international abduction of American children. My testimony today will (1) highlight issues with the Hague Convention, (2) address obstacles associated with non-Hague convention cases, (3) discuss challenges and improvements at the Department of State, (4) highlight a issues relating to abductions in Africa and Japan, and (4) suggest practical actions Congress and other U.S. Government agencies can implement to improve the U.S. Government's response to international abduction cases. Ultimately, I believe all of us here today share the same goals: the return of abducted American children to their habitual residence in the U.S., and the resumption of parental access and visitation when return is not forthcoming. Both of these outcomes improve the chances that the best interests of the child will be met.

My testimony focuses primarily on abducted American children. However, it is important to note that the Hague Convention also covers non-U.S. citizen children who are residing in the United States at the time of their abduction, irrespective of their immigration status here. As a party to the Convention, the United States also must uphold its obligations regarding the hundreds of children who are abducted *to* the United States each year from other countries. As the Central Authority for the Hague Convention in the United States, the State Department works actively with U.S. federal, state and local law enforcement to help resolve these cases appropriately and expeditiously.

You have already heard heart-wrenching testimony from parents who have suffered the pain of international parental abduction of their children for many years. There is nothing more fundamental to parents than the bonds with their children. It is no surprise, then, that cases of international child abduction, such as those you have heard in the testimony here today, continue to be brought to Members of Congress for their political help. There is hardly a person among us who would not support their efforts to be with their children again, or who would not do the same thing if our child was wrongfully taken from us to a foreign land.

Unfortunately, in today's age of globalism, cases of international child abductions from the U.S. are on the rise. Within the U.S., there has been an increase of marriages and partnerships that are no longer confined to by religion, language, racial group, ethnicity or national borders. Along with the increase in cross-cultural unions is the inevitable corresponding increase in dissolution of those unions. Unfortunately, incidences of conflicts in these relationships sometimes result in one parent abducting their child from the other parent and returning to their "home" country.

The House of Representatives has actively examined the issue of international child abductions in the past. In 1999, former Chairman Benjamin Gilman (R-NY) of the House Committee on International Relations requested a GAO report on this issue. In 2000, Rep. Nick Lampson (D-TX) made a series of one-minute speeches on the House floor highlighting foreign abduction cases. In 2004, the late HIRC Chairman Henry Hyde (R-IL) held a full committee hearing on international child abductions and the Tom Lantos Human Rights Commission held a hearing on the issue in late 2009. These are just a few examples of the bipartisan attention this critical issue has received in the House of Representatives.

Despite improvements in the U.S. Government's responsiveness to U.S. child abductions, the international and domestic political, legal and law enforcement challenges of these cases continue to stymie the return of many American children. While the State Department has instituted several useful reforms, the U.S. Government should continue to seek new ways to respond to international child abduction cases until the rates of returns and visitation improve.

Application of the Hague Convention

The Hague Convention is an imperfect legal instrument, yet it plays a critical role in addressing international child abduction cases and it is the U.S. government's most reliable tool for seeking the return of children abducted from the United States. Eighty-five countries are now Contracting States to the Convention and the United States has actionable agreements with many of these countries to ensure prompt return of the child to their country of habitual residence.

It is easy to think of the Hague Convention as an international child custody mechanism–however that perception is not accurate. The Convention does not solve matters of custody or visitation. Instead it clarifies which country has the *legal jurisdiction* to resolve the dispute between the parents. The Convention requires the prompt return of the child to that jurisdiction under the theory that returning the abducted child to his or her area of habitual residence is in the best interest of the child. Additionally, the Hague Convention confirms that the court in that jurisdiction of habitual residence is the best equipped judicial body to hear and review evidence relating to a custody or visitation decision. The Convention seeks to rebalance the playing field so that the abducting parent does not have an advantage over the left behind parent.

Despite its imperfections, the Convention has a number of strengths, notably: (1) it is an international instrument that has successfully helped resolve many child abduction cases by returning children or providing access to the left-behind parent; (2) it provides a means for countries to communicate with one another and identifies authorities in each nation responsible for addressing such cases; (3) it clarifies the internationally-agreed upon value of focusing on the child's best interests, including the child's right to a relationship with both parents; (4) it presses governments to promptly return a child to their home of habitual residence; and (5) it embodies promises made by the Contracting States to assist other countries in locating children abducted into their territory and cooperating to resolve those cases under the terms of the Convention.

Challenges of International Operation

Nonetheless several key weaknesses demand further attention. First, the most obvious weakness is that a large number of abduction cases between Contracting States are not resolved despite the presence of the Convention. Often children are not returned to their state of habitual residence, and thus, there are too many cases where the Hague Convention fails in its primary objective. Second, even when the Convention does work, rarely are children returned to their habitual residence with anything near promptness, defined by the six week standard identified in the Convention. In fact, few children are returned to their parents in less than a year. Article 12 of the Convention indicates that if more than a year has passed since the child was wrongfully removed, the judicial or administrative authority is not bound to return the child to his/her habitual residence. The Contracting States should consider amending this language to allow the Convention to remain effective beyond one year.

The unfortunate delays in return and, sometimes, the complete failure to return abducted children, result from a number of problems with the Convention itself.
One such problem is the lack of an effective enforcement mechanism for the Convention. The Hague Conference on Private International Law has no power to enforce compliance among the Contracting States. Despite the Convention's terms, Contracting States are often less willing to comply with the Convention when a dual national child with rights to citizenship in both countries is at issue. A mutually agreed upon enforcement mechanism with real teeth is needed to exact much greater compliance by Contracting States. Issues of state sovereignty make such an agreement unlikely in the near future, however.

In addition, there is insufficient oversight of the Convention. A decade ago, the House was apprised of the need for greater resources at the Hague Conference and in other agencies and bodies to ensure proper operation of the Convention. Those unmet needs are even greater now. A robust oversight office that reports to the Contracting States and the global public could have a notable impact. Of course, the political will of Contracting States to improve compliance is essential for such oversight mechanism to succeed.

Challenges of Judicial Interpretation

Although the Convention is over 30 years old, a myriad of interpretation issues are evident in the U.S. case law and the judicial systems of other Contracting States. The fact that nations and courts interpret the language of the Convention differently has dramatic effects on the cases and often results in children not being returned. This is identifiable in the differing interpretations of "habitual residence" (see Art. 4) that reflect different cultural understandings of that term, and that vary starkly between court opinions. These conflicting interpretations are evident in U.S. cases as well. Furthermore, in many countries, abduction by a parent is not viewed as "wrongful" (per Article 3, 12), either by domestic law, customary interpretation, or political practice. Many countries have strong preferences for children to be with either the mother or the father, or the families of one parent or another, despite the Convention's terms. It can be very difficult for courts to rule against those traditional viewpoints, regardless of international agreements the government may or may not have made.

Another critical area of language interpretation regarding the Hague Convention is the provision written to ensure that children are not returned to conditions where they will be harmed. The grave risk of harm exception in Article 13 states that the authority of the requested State "is not bound to order the return of the child" if it is established by the opposing party that

"there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable position." This language becomes critical in cases where there are allegations of domestic violence. It is just these cases where the stakes for kids are highest, and the need to get the legal analysis right is most critical.

Varying interpretations of this language have split the U.S. federal circuit courts. In many parts of the world, and still sometimes amongst U.S. courts, it is very difficult for victims of domestic violence to effectively use this provision to prevent the return of their child to the alleged abuser or to the immediate area where the child would be in the proximity of that abuser, and possibly at greater risk of harm as a result. There are numerous cases where a history of violence against the mother, even violence in front of the children, has been found insufficient to enact Article 13 to prevent a return of the child to the habitual residence. In more recent years, some U.S. courts have begun to find that harm to the mother puts the child at greater risk of physical or psychological harm. Yet a number of courts have declined a return to the child's habitual residence under the Hague Convention using this interpretation. This is tricky -- for requesting countries will often argue that as the habitual residence, those nations are best situated to address issues of violence through their court system. Yet some American courts have been hesitant to accept that argument if an erroneous judgment would appear to place the child closer to the source of harm and may result in the child being returned to an abusive parent.

The U.S. Justice Department could play a more robust role to assist with U.S. federal court interpretation, by doing a thorough review of the "grave risk of harm" provision and by issuing guidelines to the federal courts on what standards and tests should be used interpret this part of the Convention. The Office of Violence Against Women could participate in developing that guidance and overseeing the training of judges on this issue, just as they have successfully trained judges on the Violence Against Women Act and thereby improved American jurisprudence to protect victims of domestic violence.

While Members of Congress have reviewed and debated the problem of international child abduction numerous times, the issues of legal interpretation are rarely addressed to the attention of Members or their staff. Few of these issues were raised to me when I was on the Committee staff. However, a notable number of law review articles discuss the challenge of handling domestic violence allegations in Hague Convention cases and the use of the "grave risk of harm" exception, along with other legal interpretation issues. When and if Congress drafts, considers or passes new legislation on international child abduction, I hope that the broad range of concerns reflected in the case law, legal analysis and statements of practitioners, and the fixes they, suggest will be thoroughly considered. I am sure that further outreach to experts at the State Department's Legal Advisor's office, the Department of Justice and in the realm of private practice would yield many robust suggestions that would positively impact future child abduction cases.

Challenges in Addressing Non-Hague Convention Cases

While the Hague Convention is a critical tool in resolving cases between two Contracting States, the other critical tools for resolving international child abduction cases are international law enforcement cooperation, diplomacy and the political will of the home State to wield them. While all of these tools can be exercised by a state, none can be exercised by a left behind parent. A parent's other critical tool, a good lawyer, is all that is within his or her control and many have financial, geographic or other limitations that restrict the ability to have a knowledgeable,

experienced, resourceful and tenacious lawyer advocating on his or her behalf. When facing the greatest challenge of their lives -- the abduction of their child -- left-behind parents confront their greatest need for a government that is pursing a legally appropriate resolution for them and their child.

Without the Hague Convention, left-behind parents may not be able to identify where their child is located. They may seek to get a U.S. custody or visitation order recognized in a foreign jurisdiction, which is rarely successful. In some non-Hague countries, parents are not even able to effectively file a case in the foreign judicial system, or they cannot get it heard even if they are able to file it. It may be difficult to identify who, if anyone, in the foreign government has the ability, power or desire to help locate or return the child. Even if some of these problems are resolved, without the Hague Convention as a tool to encourage the foreign government to return the child to the habitual residence, custody is likely to be decided by the foreign court using the child's presence there and the court's jurisdiction as a key factor against the left-behind parent.

Using the U.S. courts to get a domestic judgment is a critical step. Cooperation from the FBI or other U.S. law enforcement in searching for the child, collaborating with law enforcement in the foreign country can help to find a child and result in a return. Similarly, intense diplomatic efforts sometimes result in the return of children. The foreign country may help negotiate an agreement with the abducting parent, may revoke a visa causing that parent to leave the country, or may use other domestic legal or political procedures to return a child. The State Department, FBI and Department of Homeland Security can collaborate to flag the abducting parent's passport should they renter the U.S. and this may help locate the child. While all of these steps can help, often they do not result in the return of the child.

For those reasons, I support the State Department's efforts to continue to urge non-Hague countries to join the Convention.

Improving the U.S. Policy Response at the State Department's Office of Children's Issues

In studying this issue over the years, I have heard some of the negative experiences faced by left behind parents and their attorneys when they sought help from the State Department. There are cases where left-behind parents and attorneys did not know of or pursue a Hague Convention application and were unaware of any help, including diplomatic help, which the U.S. State Department could have provided. I also heard of a case where a foreign government tried vigorously to get the U.S. to return a child abducted into the U.S. and the State Department was no where to be seen in the discussion between the parties, their attorneys or the domestic court that decided the issue. Too often State Department case workers did not tell families of the resource materials created by the Department of Justice that could help their efforts to get their kids back. Too often they were negative and foreboding, and squashed what little hope families and their attorney's brought to the State Department. Too often they left parents thinking that the State Department would do nothing, had done nothing and would provide no help – despite clear evidence they have presented to Congress that they do work intently on these cases. As staff to the Foreign Affairs Committee, I found my conversations with State to be informative and engaging. They detailed steps taken on individual cases and groups of cases in a foreign country to work diplomatically at every level to seek the return of American children.

I am hopeful, however, that with significant expansions in the staff and resources, the Office of Children's Issues is now doing a better job in its responses to families and their attorneys.

The most significant structural change to this Office was the creation of the Special Advisor for International Children's Issues within the State Department to address international parental child abduction and intercountry adoption. Ambassador Susan Jacobs was appointed to the position by Secretary of State Clinton in July of 2010 to bring higher-level diplomatic representation and attention to these issues.

Case management has also been restructured. A few years ago, the unit was staffed with about 20 Foreign Service officers who handled a heavy caseload of about 150 cases each. The volume of work these officers handled and the limited resources often made it difficult for them to provide the kinds of responses to left-behind families and their attorneys as were often desirable. In addition, these officers worked for the unit for a standard 2-year Foreign Service tour so cases were frequently changing hands and families and attorneys had to being educating the new officer on their case every few years.

Today the unit has 85 to 100 officers, both Foreign Service and civil service employees. Each is limited to no more than 75 cases under a Congressional mandate, and most case officers handle and average of 50 to 60 cases at a time. There is more stability in the officer personnel and they have more time to work each case in their portfolio and to engage in the diplomatic outreach each case requires. Hopefully, we more children are being returned to their parents in the U.S. as a result.

Abductions to Japan and African Nations

Japan is a particularly difficult country for a left-behind parent whose child has been abducted. Because of cultural and historical traditions, some of which are embedded in Japanese law, it is the only nation where foreign parents are consistently unable to receive *any* access to their children's after the abduction. No U.S. child abducted to Japan has ever been returned with the involvement or assistance of the Japanese government. In the few cases where there has been contact or a return after the abduction, those have occurred when the left-behind parent was fortunate to work out access to the child with the abducting parent or with the child itself as the child became older.

However, Japan has made significant strides on this issue in recent years and there is much hope among parents and policy makers in the U.S. and in other countries that, in time, Japan will join the Hague Convention. Their Ministry of Justice recently completed a review of the Convention and, this month, recommended its consideration to the Japanese Diet. The Embassy of Japan has more vigorously engaged this issue here in the U.S. and the State Department – though both the Secretary of State and the Special Advisor on Children's Issues – have held high level discussions on the matter in Japan. Reform on this issue is still daunting in Japan, and Hague accession will not solve the thousands of existing cases. Continued political engagement, support and pressure from the State Department and from Congress will hopefully help to further this issue so that children and parents are able to retain or resume their relationships in the future.

Given this Committee's particular attention to Africa, I would like to speak briefly about some of the issues relating to the issue of international abduction of U.S. children to the nations of Africa. The profiles of these cases have some distinctions and the diplomatic effort of engaging African nations on this issue raises distinct challenges.

Most of the nations of Africa are not signatories to the Hague Convention. At present the U.S. only has four partners to the Convention in Africa: Zimbabwe, South Africa, Mauritius and

Burkina Faso. Overseas, the State Department faces unique challenges as well in these cases. The road to accession of the Hague Convention can also be tedious for some African nations when inefficient and ineffective government structures hamper progress on consideration of the treaty. Corruption in the judiciary or among law enforcement is sometimes a barrier to returns or visitation. The Hague Commission has an Africa project aimed to address these issues by increasing levels of accession in Africa. Improving Hague accession and the resolution of non-Hague cases will depend on strong relationship-building and targeted regional approaches to develop partnerships with African countries on this issue.

While abduction fact patterns often look different from cases of children abducted to industrialized countries, the pain for the left-behind parent is no less. U.S. children abducted to Africa are often taken to the continent and left with extended family – grandparents, an aunt or uncle or family friend – while the abducting parent returns to the United States or a third country. Some children are also left at boarding schools. For Consular Officers, the complications of locating a child and conducting welfare and well-being visits are sometimes extreme. A small number of the Africa cases also involve fears by the left-behind parent that their daughter will be subjected to female genital cutting.

Often both parents of children abducted to African nations are immigrants or visitors to the United States from Africa. They may use customs traditional to their country or community to solve relationship disputes and child custody issues without knowledge, understanding or acceptance of U.S. laws on these matters. In the United States, left-behind parents from Africa face great difficulties in getting help from local law enforcement when they try to access their child or pursue legal remedies against the other parent. Language, cultural differences and weak relations with law enforcement make their efforts particularly challenging. In addition, some of these parents are not as familiar with the American political system, and are not in large established immigrant communities where they can find support and information. As a result, African parents may not be able to galvanize the effective legal representation and political attention these cases often need.

Congressional Response

Without a doubt, a Member's advocacy on individual cases is critically important and I must commend you all for the attention you have given to this issue. While continuing that important work, I think that the House must be careful in moving measures that seek to respond to individual cases of abduction, rather than addressing the problem more broadly in a way that represents and can help the causes of all abducted American children. While some forms of economic sanctions may be successful in getting greater attention from a foreign government to abduction cases, they could cause notable other harms to our trade, diplomatic, intelligence or security interests that may sway against their use. If those steps are considered, it will be important for the United States to maintain compliance with international trade agreements and it should be weighed with trade preference discussions currently underway.

In closing I recommend that Members of Congress consider several actions:

- Request a follow-up report from the GAO on its 2000 report "Specific Action Plan Needed to Improve Response to Parental Child Abductions" (GAO/NSIAD-00-10) to analyze whether the recommendations where implemented, what effect they had, and what more should be done to improve our ability to win the return of American children.

- Examine the need for better collaboration between the Department of State, the Department of Justice, and the Department of Homeland Security, particularly the success of such collaboration in the field between our Foreign Service officers, law enforcement agents, and border security agents to locate children and achieve their return to the U.S.
- Expand existing programs of the Department of State and the Department of Justice to provide legal training on international child abduction and resources to identify and help left behind parents and inform them of their options and enable them to pursue those options.
- Continue to diplomatically engage non-Hague countries in discussions about joining the Hague Convention and advise on laws and structures for successful implementation and compliance.
- Organize and sponsor international conferences to expand understanding, and improve dialogue with other nations on abduction issues. These could both encourage Hague compliance, address issues of compliance, and look for other areas of cooperation with countries that are not becoming signatories to the Hague Convention.
- Continue training U.S. and foreign judges on the Hague Convention and non-Hague options for judicial consideration.
- Congress should consider increased funding to the Hague Conference on Private International Law to establish a robust office of oversight and compliance to monitor the Convention.
- Congress should support the State Departments active engagement with the Hague conference and urge continued dialogue on varying international interpretations of the Convention's language.
- Members should call on the Department of Justice to issue guidelines on the U.S. interpretation and application the Hague Convention, especially on the risk of harm exemption.
- Congress should continue to raise desire for Hague accession to Japanese government officials and should support efforts to improve cooperation among African nations on abduction cases.

Mr. SMITH. Ms. Wells, thank you very much.
Mr. Eaves?

STATEMENT OF MR. JESSE EAVES, POLICY ADVISOR FOR CHILDREN IN CRISIS, WORLD VISION

Mr. EAVES. Thank you very much, Mr. Chairman.

Mr. Chairman and Ranking Member Payne, thank you for holding this hearing today and for inviting me. I, you know, want to acknowledge the incredibly generous amount of time you have given to this topic. So I will be very brief and summarize my remarks and just ask that my full written statement be made a part of the record.

My name is Jesse Eaves, and I am the Child Protection Policy Advisor for World Vision USA. World Vision is a Christian relief, development, and advocacy organization serving millions of children and their families around the world, in nearly 100 countries. This work includes programs that work to prevent and respond to abuse, neglect, exploitation, and violence against children; and advocating for effective systems and laws that can provide a safety net for vulnerable populations.

Today I have been asked to bring a global perspective on child protection, especially as it relates to preventing and responding to illegal movement of children, particularly in fragile states.

I want to thank you again, Mr. Chairman, for your leadership in working to protect children not only here in the U.S. but around the world. You have been behind some of the most important pieces of child-focused legislation in our nation's history, and the child protection systems within our country are stronger for it.

As this hearing has shown, powerfully so, we still have more to do. And that is also, sadly, the case for the vast majority of countries around the world. Of particular concern are those countries in a post-conflict or post-emergency context where children are often found at their most vulnerable state. And informal and formal systems that should protect them have either failed or never existed to begin with.

This hearing provides an important opportunity to address not only how the United States can deal with issues like international child abduction but also opens the door to put systems in place that can prevent and respond to all cases of abuse, neglect, exploitation, abduction, and violence against children.

Governments in fragile states are often unwilling or unable to provide the formal services or support the informal mechanisms required to protect their most vulnerable populations.

The issue of identification documents is of extreme importance. In fact, something as simple as birth registration can determine whether a child remains in the care of those who love them or slip through the cracks, never to be seen again.

For example, the birth registration rate in Sudan is around 33 percent. In South Sudan, almost 300,000 people have returned to join nearly 10 million Southern Sudanese to take part in the creation of a new country that already has an incredibly low capacity to handle such an influx.

With an estimated 60 percent of returnees being under the age of 18, a lack of birth registration and identification documents means that unaccompanied and separated children are less likely to find a caring home and are extremely vulnerable to abuse.

We now see homeless child populations increasing in urban centers, particularly in the southern capital of Juba. With no identification and no way to find their families, these children are ex-

tremely vulnerable to abuses that include abduction, recruitment into armed militias, and sexual or labor exploitation.

Having proper documentation and officials trained in how to identify suspicious behavior is crucial to protecting vulnerable children, especially in fragile states. Since the January 2010 earthquake in Haiti, many organizations including World Vision and others, like our partner organization Heartland Alliance, have worked to train border guards to prevent the illegal movement of children.

There have been several documented cases where trained and alert Haitian officials were able to stop children from being taken illegally across the border. In one case, a 13-year-old girl was found with a man who could provide no proof of relation. The girl was placed in the family-tracing system. And her mother was able to come and provide proof that she was indeed related to the girl and had not intended for her to be taken anywhere, let alone out of the country.

In this and in so many other cases, the importance of documentation and officials implementing protection policies have meant the difference between a happy reunification and a life cut tragically short.

Just to conclude, the U.S. can and should play a central role in encouraging countries as they work to protect their most precious resource of their children.

Mr. Chairman, last year you introduced a bill that is a prime example of how the U.S. can take a systems-strengthening approach in its engagement with other nations. The Child Protection Compact Act aimed to foster partnerships between countries and strengthen the very institutions that are crucial to the protection of all children.

Legislation like the CPCA can play a crucial role in providing a safer world for children. And we look forward to seeing similar legislation in the future. We also look forward to working with you to ensure that every child can live life in all its fullness.

So thank you again for your leadership, Mr. Chairman and Ranking Member Payne. And I'll be happy to address any questions.

[The prepared statement of Mr. Eaves follows:]

Testimony of
Jesse Eaves
Child Protection Policy Advisor
World Vision USA

House Committee on Foreign Affairs
Subcommittee on Africa, Global Health, and Human Rights
On
International Child Abduction
May 24, 2011

Thank you, Mr. Chairman, for holding this hearing and for inviting me here today. My name is Jesse Eaves and I am the Child Protection Policy Advisor for World Vision U.S. World Vision is a Christian relief, development, and advocacy organization serving millions of children and families in nearly 100 countries. Our 40,000 employees are dedicated to working with children, families, and their communities to tackle the root causes of poverty and injustice. This work includes emergency relief after natural disasters; long-term economic development projects; programs that work to prevent and respond to abuse, neglect, exploitation, and violence against children; and advocating for effective systems and laws that can provide a safety net for vulnerable populations. World Vision U.S. has over 1 million private donors in every state and congressional district and partners with over 6,000 churches in the United States. We are part of the global federation of World Vision International, which last year contributed more than $2.6 billion to helping children through international development assistance.

Based on that description of our work, I have been asked to bring a global perspective on child protection, especially as it relates to preventing and responding to any illegal movement of children.

I want to thank you again Mr. Chairman for your leadership in working to protect children not only here in the U.S. but around the world. You have been behind some of the most important pieces of child-focused legislation in our nation's history and the child protection systems within our country are stronger for it. As this hearing has shown, we still have more to do and that is also sadly the case for the vast majority of countries around the world. Of particular note are those countries in a post-conflict or post-emergency context where children are often found in their most vulnerable state and where the informal and formal systems that should protect them have either failed or never existed to begin with. This hearing allows the opportunity to address not only how the United States can deal with issues like international child abduction but also opens the door to put systems in place that can prevent and respond to all cases of abuse, neglect, exploitation, abduction, and violence against children.

Systems of child protection are an inter-linking web that forms a safety net of prevention and response for children. An effective system includes formal mechanisms such as laws and regulations; services and service delivery mechanisms; and the human and financial capacity to see those laws implemented and services effectively delivered. Combined with informal mechanisms such as community training and awareness, child protection systems are the first and last line of defense in providing a safe environment where children can flourish.

Governments in fragile contexts are often unwilling or unable to perform the services required of them to protect their most vulnerable populations. That's why it's

incumbent upon organizations like World Vision and donor governments like the U.S. to partner with governments to fill in the gaps until the country can do it on their own.

The issue of identification documents is of extreme importance. In fact, something as simple as birth registration can determine whether children remain in the care of those that love them or slip through the cracks, never to be seen again. The birth registration rate in Sudan is around 33%. In South Sudan, nearly 300,000 people have returned to take part in the creation of a new country that already has a low capacity to handle such an influx. However, with an estimated 60% of returnees being under the age of 18, a lack of birth registration and identification documents means that unaccompanied and separated children are less likely to find a caring a home and are extremely vulnerable to abuse. We now see homeless child populations increasing in urban centers, particularly in the southern capital of Juba. With no identification and no way to find their families, these children are extremely vulnerable to abuses that include abduction, recruitment into armed militias, and sexual or labor exploitation.

Having proper documentation and officials trained in how to identify suspicious behavior is crucial to protecting vulnerable children, especially in fragile states. Since the January 2010 earthquake in Haiti, many organizations including World Vision and our partner Heartland Alliance have worked to train border guards on preventing illegal movement of children. There have been several documented cases where trained and alert Haitian officials were able to stop children from being taken across the border. In one case a thirteen year-old girl was found in the cab of a cargo truck with a man who could provide no proof of relation. The girl was placed in the family tracing system and her mother was able to come and provide proof that she was indeed related to the girl and had not intended for her to be taken anywhere, let alone out of the country. In this and so

many other cases, the importance of documentation and officials implementing protection policies have meant the difference between a happy reunification and a life cut tragically short.

The U.S. can play a central role in encouraging countries as they work to protect their most precious resources: their children. Mr. Chairman, last year you introduced a bill that is a prime example of how the U.S. can take a systems strengthening approach in its engagement with other nations. The Child Protection Compact Act was originally designed to create a partnership between the U.S. and countries trying specifically to combat child slavery. Though the bill uses a human trafficking lens, it has profound implications that can help combat not only child trafficking, but virtually all forms of abuse, exploitation, and violence against children. The bill aims to strengthen the very institutions that are crucial to the protection of not just the most vulnerable children but all children. 127 of your colleagues cosponsored the legislation with you, showing the political will to keep the U.S. as a global leader in preventing and responding to vulnerability. Legislation like the CPCA can play a crucial role in providing a safer world for children and we look forward to seeing similar legislation in the future. We also look forward to working with you to ensure that every child can experience life in all its fullness. Thank you again for your leadership Mr. Chairman and I'll be happy to address any questions.

Mr. SMITH. Mr. Eaves, thank you very much for your testimony and the great work you and your organization do.

Let me ask just a few questions and maybe on Japan, to be very specific. I only note parenthetically that we plan on having a Japan-specific hearing because I do think that it is not—I can't say that it is likely, but it is very possible maybe that in anticipation of the G–8, maybe a day before, a week before, Japan will announce that they are going to sign the Hague. And, of course, the big question will be, what are the conditions, the terms and conditions, the reservations?

And, as I think, Ms. Apy, you said so eloquently, you know, there needs to be an MOU drafted which includes an immediate protocol for resolution of existing cases involving children alleged to have abducted to Japan and abducted within Japan as well as Japanese children alleged to have abducted to the United States.

You and I, when we were in Japan, made that argument repeatedly. We have done it here. You made it, like I said, very eloquently. I wonder how our other witnesses might feel about that, because my deepest fear will be Japan gets all of the accolades, praises heaped upon them by the other G–8 leaders for its commitment and then when it comes time to implement, all of the existing families are left behind and that which is agreed to becomes Swiss cheese, so to speak, because it is riddled with loopholes.

Ms. Wells, would you want to start or would you want to start on that, Ms. Apy? It seems to be absolutely basic in my opinion.

Ms. APY. Right. I think that there is a genuine concern given what I have seen as projected reservations that if there is not some dialogue immediately generated and some objective assistance and criteria provided that, first of all, this process will go on without having a meaningful treaty relationship, if we accept their accession given the number of reservations that it appears will be there, it will effectively be different than the protections afforded by the treaty.

I think that there are legitimate issues that the Japanese have to address in their own domestic law that are so daunting that the advantage of carving out an opportunity in an MOU bilateral agreement so that some of those issues can be worked through will not only benefit the United States relationship but in the meeting that we had—and this would be what I would close with—the meeting that we had included representatives of other countries to Japan, including the Pacific Rim and Europe, all of whom were wildly positive on the concept of using an MOU in this context in order to set forth reasonable criteria and approach that on a multilateral level.

So, again, I think that by using that type of protocol, it could actually narrow the number of reservations that the Japanese would have to take and strengthen the possibility of true reciprocity.

Mr. SMITH. Ms. Wells?

Ms. WELLS. I agree, as I noted earlier, that absolutely there has to be some agreement to handle existing cases. And, in truth, when any country joins the Hague Convention, that is what we would want to see. And we know, in particular, because of the challenges in Japan and how intractable those cases have been, it is particularly important.

I think that I should add that in the past I have testified that I thought the notion of doing MOUs with countries where we were having trouble making agreements was a good idea. I have since heard that the State Department has thought that some of those MOUs have not been as effective as they should have been. So I would urge the committee to look at that question of what makes the MOU effective.

And if we can get an MOU—and it might be the right vehicle—how do we ensure that it is one that will have the force and will secure the rights of these left-behind parents and ensure that their children are covered as we wanted to because if we can't get sufficient assures through the Hague process, that the Government of Japan may go through—you know, if it's something that they don't want to agree to until they really want to agree to it, they can do another agreement that doesn't really have the force that we want it to have.

So I just think it's a matter of—and, you know I would certainly defer to Ms. Apy's view because she certainly—I haven't seen, for example, the potential reservations. And she is much closer to this issue.

That might be the right way to go. I just think that we should look at how MOUs are working for the State Department and what would it take to make this particular MOU effective.

Mr. EAVES. Thank you, Mr. Chairman. I have no comment.

Mr. SMITH. Let me ask all of you, or first, Ms. Wells. You mentioned dual nationals, children who happen to be dual nationals, might be a more complicated factor. Maybe you can elaborate on why that is the case.

You also mentioned that the Hague Conference—that there needs to be, perhaps, additional oversight in improvements. Do you have any specific ideas, Ms. Apy? I mean, three decades into the treaty, hopefully there is a lessons learned area where upgrades could be made.

I would just point out parenthetically that I would agree that the State Department people at OCI and the consular officials in country after country are earnest. It is not a competence issue. They are very smart. To be FSOs, obviously, they need to be very intelligent. And they are well-trained. I would argue that the problem is primarily the fact that they don't have the requisite toolbox to do the work.

One of the reasons why our legislation, H.R. 1940, has been introduced is to take a lessons-learned from all of the other human rights issues where we had been very effective—trafficking, and certainly on religious freedom—and take those tools, those penalties, if necessary, and apply them to countries. So it's a country-to-country fight, not an individual versus an indifferent or an enabling country or worse, actually, you know, very much on the side of the abductors and to make it an issue where you can get resolutions.

And I have found that 31 years in human rights work, you don't get compliance without penalties. It doesn't happen. So you might want to speak to that end of it as well.

Ms. APY. I would. Let me talk about a precise example. In the David Goldman case, the case was brought before the Supreme

Court of Brazil because there was a lawsuit filed by a political party, which sought a preliminary injunction preventing any child from any country being returned under the Convention. That was completely stopping all of the processes.

The United States Department of State took the position initially that the Hague Conference should respond because of the issues of enforcement and some of the issues that were raised in my colleagues' testimony that they are a more appropriate global body to review the issues of enforcement.

I had my doubts. And, in fact, what ended up—because the Hague Conference has never taken the position that they will act as an arbiter of reciprocity, they were opposed to looking at enforcement in the context of global reciprocity issues, and not as distinguished from enforcement in individual cases, and additional language, where we have treaties already that have already been drafted.

And so we waited. There was a 42-hour window in which the Hague Conference had to provide briefing in support of not just the David Goldman case but all similarly situated children from all countries. With less than 12 hours before the filing, they declined to file a brief.

Now, happily, having anticipated this as a possibility, we prepared a brief with the able assistance of the Consul General of the United States in Brazil. And that brief was filed by the United States of America.

However, it is a good example of the reticence because of the policymaking and educational components of the Hague Conference. I respectfully believe that reciprocity is not going to be evaluated substantively by the Hague Conference. I think they do not see that as their role. And I don't think they are going to take it on.

I think if we in the United States develop an objective template in order to assess and inform on the issues of reciprocity, that will be endorsed and joined by other nations. Very frankly, no one wants to act in a way that is not cooperative or can't we all just get along, but the truth of it is that somebody has to take the step to lay out and call out the issues of reciprocity.

Our report on this subject is the only one issued by any country in the world right now.

Mr. SMITH. Yes?

Ms. WELLS. I certainly wouldn't argue with that. I think that she makes excellent recommendations. And my comments about oversight were mainly in response to some of the research and reading I have done on this issue.

There are various suggestions on how to solve it, but I think the practicality of how the conference actually works and this issue of our country possibly being the one that needs to take a lead and possibly having other countries then agree once they see our country taking that leadership role, that might be the most effective way to do it.

I mean, there are also ideas of having an office that would do oversight within the Hague or that you could potentially have something like an ombudsman. I think all of those are areas that just need to be examined further. And I just wanted to certainly raise them to the subcommittee's attention.

On the issue of dual nationals, you know, as I noted, most of these cases become one of dual nationality. Often other countries, as the United States, will recognize and give national citizenship to a child of a parent born in that country. So if it doesn't happen before the abduction, it happens later.

I think part of the issue that has come up in some of the testimony and that I certainly had heard about before is the issue of the Embassies giving new passports. And that is a real challenge for the State Department. In truth, it is a challenge for us as a country because we do need diplomatic relations with other countries of the world.

And we can't have a situation where the United States can absolutely tell some country, "You are not allowed to issue passports. You are not allowed to issue visas." They will do the same to us. And then we won't be able to do the things we do outside of our own borders.

But I do think that that is something again for the committee to look at and discuss with State Department and other agencies. How can we talk to these Embassies better about their own processes? And how can we either explain or urge to them that, you know, if we can prevent these cases from becoming cross-border cases in the first place, we can work with their governments to come up with a fair resolution.

So, you know, especially if it's a Hague country, you don't necessarily have to issue a false passport. You know, if the courts, if our courts, review it appropriately and that child's habitual residence is in the foreign country, that court will be given the jurisdiction to decide the case.

So on the toolbox issue, I did want to just note one thing where I think one of the witnesses noted that the State Department should be coming to Congress saying, "Here is what we need."

I would only highlight, I guess, as a former staffer that I know sometimes that can be very complicated for the agency. As you know, the way our bureaucracy works, especially at a time of budget cuts and challenges, part of what we are all talking about here is making sure that this issue gets elevated. But there are a lot of things that the State Department has to come to Congress for.

I think that one of the benefits of the way our system works is that as members and as staff, your staff can raise ideas in meetings and they can get filtered and bounced around. And sometimes whether they like to or not, they might be the right thing to do.

I do think that the nature of the communications between Congress and the State Department might make it hard for some of the people in the agency who know what they need to be able to come forth and say, "This is it exactly" because it is a lengthy process they would have to go through to get that clear.

Mr. SMITH. Let me just conclude and ask unanimous consent to include a brochure from BACHome, Bring Abducted Children Home. Paul Toland, who has testified at one of our previous hearings, makes a number of points, he and the group, "Japan must immediately return the stolen children. Japan must provide unfettered access to our precious children. Number three, Japan must enact retroactive laws."

They have a very good series of recommendations with regards to Japan's Hague implementation legislation, it must meet the spirit of the Hague and really come down very hard on the fact that allegations of domestic violence must be accompanied by rules of evidence, that hearsay has no place in denying a child even access to his left-behind parent.

"Japan must unambiguously define the best interests of the child." And, then, very importantly—they're all important—"Japan must immediately locate our missing children." And they list names, as was mentioned earlier.

There are a number of American children who have been abducted and wrongfully retained who are unaccounted for and whose present location is unknown since the earthquake, tsunami, and the ongoing nuclear disaster, adding incredible pain and agony to existing pain and agony. They don't know what has happened to their children.

Mr. Payne?

[Applause.]

Mr. PAYNE. Thank you.

Ms. Apy or Ms. Wells, either one of you, I wonder if you can tell us what impact, if any, has United Nations Convention on the Rights of the Child or its optional protocol, on the sale of children had on preventing international child abductions? And do you think the Convention is a valuable mechanism for addressing this issue?

Ms. WELLS. I am going to defer to Ms. Apy on this.

Ms. APY. So I understood the question, you were referring to the United Nations Convention.

Mr. PAYNE. On the Rights of the Child or its optional protocol on the sale of children, which——

Ms. APY. Well, the optional protocol certainly has had an extraordinary impact on international law and customary international law.

Of course, I feel the need to respond. And that is quite a sticky question, Congressman Payne, because the United Nations Convention on the Rights of the Child, of course, has not been ratified by the United States of America.

And so I can assure you when I stand in another country, as I have often, and begin to litigate a case, if the child is considered a dual national, you may be assured that a judge glares at me over their glasses and says, "Now, could you please explain to me why the United States Congress takes the position that it does with regard to the United Nations Convention on the Rights of the Child?"

I will also tell you, having written on this subject and spoken on it, that I personally take the position—and this position is a policy of the American Bar Association as well—that the United States should, in fact, be a signator to the United Nations Convention on the Rights of the Child. And this would be yet another example of why because I would not want the argument made, as is often made, that there are protections associated with the UN Convention that are somehow broader than protections provided under United States law. And, as a result, a child should not be returned to the United States.

The area of customary international law in child rights issue is complex. I will assure you that in the most recent meeting at the Hague Conference, which dealt with child trafficking, that very issue was raised, particularly as it related to the alternate protocol, particularly as it related to child trafficking in the context of adoption. And that again is a sophisticated interplay of international legal issues that weigh heavily on countries in Africa and Central and South America.

So, again, I think it is a huge issue, to some extent beyond the scope of our discussion today but a discussion that needs to take place.

Mr. PAYNE. Can you tell me what other countries have not ratified the Convention? There aren't many.

Ms. APY. This is the second question the judge——

Mr. PAYNE. Even Burma?

Ms. APY [continuing]. Asks me, by the way. It is equally uncomfortable. It had been Somalia, and that's it.

Mr. PAYNE. Okay. Well, we have to be careful about the company we keep, right?

Ms. APY. Indeed, sir.

Mr. PAYNE. Do you know about the land mines treaty offhand? I know we haven't ratified that. Do you know how many countries have not ratified that one?

Ms. APY. I don't have that information. Perhaps my colleague.

Mr. PAYNE. How about combat for children soldiers, the under 18 military? We haven't ratified that either.

Ms. APY. Yes, sir, we haven't.

Mr. PAYNE. And there I think is only one other country, too. And I just bring that out because we are the land of the free, the home of the brave.

We are the leaders of the world. There is no question about it. It is the greatest place in the world. However, we leave ourselves open to criticism when we go into national courts. And we haven't even ratified a fundamental thing, protocol like the rights of the child.

Now, I am sure there is some legalistic reason why. Well, first of all, many people just don't like treaties. I was glad that Mother's Day came up years ago because if we had to bring it through Congress, maybe it might not pass because it was international. So we do really have to work more on own image as we argue these very sensitive issues.

Our time is running. Votes are coming. Let me just ask, Mr. Eaves, have parental abductions of children been documented in African countries? And to what extent do you think this is an issue for U.S. policy?

Mr. EAVES. It's a good question, Ranking Member Payne.

I am not clear as to the exact statistics. We definitely do see cross-border movement. For instance, in countries where you have had a refugee population in a particular country, so if you have Sudanese living in Uganda or, say, Sierra Leoneans living in Cote d'Ivoire, there have been cases where you see a parent take a child across the border, leaving another parent behind.

I am not certain of the role that the U.S. plays there, but we know that it does happen. And it is equally tragic there, as it is here.

Mr. PAYNE. Also, we do know that in some countries in sub-Saharan Africa, you do have some traditions in some Sahel countries, where you have this hereditary servitude and adoption into slavery, where their practice—this happened in Sudan, as I mentioned before, the Dinkas and the Nuba people that were put into indentured servitude by the Khartoum Bashir Government of the North.

Have you gotten into a discussion in regard to customs of countries where, for example, in Haiti, a person who is very poverty-stricken may turn their child over to a wealthy Haitian to simply work as a servant, which is not abduction? However, it is not nice either. Have you dealt with any of those issues? I think they call it restavec in Haiti.

Mr. EAVES. Yes. Yes, we have, in both Sudan and in the Haitian example you mentioned, yes. The restavec system has been an incredibly pervasive and harmful practice that we see in Haiti. And the main way that we addressed that is working with the families that find themselves in such desperate situations. You know, so often in cases of extreme poverty, a child can become either a source of income or a drain on income.

And sometimes the parents think they are doing their child a favor by delivering them over to a wealthy family, assuming that their child will receive education in exchange for doing some kind of domestic work.

Sometimes that is exactly what happens, but far and away, the majority of examples show that these children are taken. They are kept against their will. They are forced to work long hours, often doing dangerous work. And sometimes they are even sexually exploited as well.

So we work with those poor families to ensure that they have the ability to earn an income that can allow them to educate their own children and protect their own children because I think, as we have heard time and again today, the best place for a child is in their parents' loving arms.

Mr. PAYNE. Just finally, running out of time, I know there was a lot of controversy with the Madonna's adoption case you recall several years ago. And you had people on both sides of that issue. Of course, recently actually, about a week or so ago, we had a hearing on China.

And one of the international organizations said that he would urge the ending of adoption of Chinese children because he felt that some of them might be abducted or taken away from families and, therefore, improperly put up for adoption.

And so I know this question of adoption becomes very sensitive. I hear some people say, "Well, if they can get a better life somewhere else, well, why not let them go out?"

Others say, "Well, if you take them out of their own culture, are you really doing it better for them or not?"

So I just wondered, to what extent are there concerns related to international adoptions in your opinion or from any research, for example, pertaining to fraud and misidentification of children, often selling children to adoption agencies?

Mr. EAVES. Congressman Payne, we definitely believe that adoption could be a very beautiful and wonderful thing to happen.

One thing, when we're talking about international adoptions, we always want to make sure that, indeed, that that is the only option left available to the child. Oftentimes we have found that if there is one or more parent still living, working with that family to see if they can still care for that child; if that is not an option, looking to see if there is another family member that can care for the child, then looking toward foster care or domestic adoption. And if that won't be in the best interest of the child, then you look at international adoption, which, like I said, can be just a wonderful thing for all parties involved.

What we have seen is that especially unwittingly on behalf of Americans that may adopt, a case of adoption could be a case of unknowing abduction. And there can be fraud in the process. And so that is why it is so important that those safeguards are in place in countries all over the world.

It is important for those processes to work effectively and efficiently but always looking to ensure that the best interests of the child are placed first and foremost and that, wherever they end up, they will be in a loving, caring environment that will allow them to live out their life in all of its fullness.

Mr. PAYNE. Thank you very much.

Mr. SMITH. Thank you very much, Mr. Payne. I want to thank our distinguished witnesses. I actually have a number of additional questions, but there is a vote out and we have 2 minutes to report to the floor. And there will be a series of votes.

I will announce again that we will have a whole series of hearings on this, hopefully a markup in the not-too-distant future on H.R. 1940. I can guarantee you I will not cease to support those who support the legislation until it is law, no matter how long it takes and no matter how much pushback we get.

I would also note that we will have a Japan-specific hearing, especially surrounding issues of Hague accession and whether or not in the small print there is duplicity and especially to address the left-behind parents who would be left out, once again, should they not be included in an MOU or some other mechanism to provide inclusion and resolution of their particular issues.

Would you like to add anything very quickly before we close?

Ms. APY. No thank you, sir.

Mr. SMITH. Thank you again for your extraordinary service and leadership.

I would also just ask unanimous consent that additional statements that individuals have requested be submitted for the record be made a part of the record. And if left-behind parents who are here would like to submit their testimony or statement, we will include that as well, but it needs to be done rather quickly. And it needs to be eight pages or less.

And, finally, we will be reaching out to you again for another hearing because this issue has to rise in its visibility and not ebb or diminish. Thank you.

[Applause.]

[Whereupon, at 6:19 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-0128

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS
Christopher H. Smith (R-NJ), Chairman

May 23, 2011

You are respectfully requested to attend an OPEN hearing of the Subcommittee on Africa, Global Health, and Human Rights, to be held in **Room 2203 of the Rayburn House Office Building (and available live, via the WEBCAST link on the Committee website at http://www.hcfa.house.gov):**

DATE: Tuesday, May 24, 2011

TIME: 2:00 p.m.

SUBJECT: International Child Abduction: Broken Laws and Bereaved Lives

WITNESSES:

Panel I
Mr. David Goldman
Father of Child Abducted to Brazil and Returned in 2009

Ms. Sara Edwards
Mother of Child Abducted to Turkey

Mr. Carlos Bermudez
Father of Child Abducted to Mexico

Panel II
Mr. Michel Elias
Father of Children Abducted to Japan

Mr. Joshua Izzard
Father of Child Abducted to Russia

Mr. Colin Bower
Father of Children Abducted to Egypt

Panel III
Ms. Patricia Apy
Attorney
Paras, Apy & Reiss, P.C.

Ms. Kristin Wells
Partner
Patton Boggs LLP

Mr. Jesse Eaves
Policy Advisor for Children in Crisis
World Vision

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, and Human Rights* HEARING

Day *Tuesday* Date *May 24* Room *2203 Rayburn*

Starting Time *2:00 p.m.* Ending Time *6:19 p.m.*

Recesses [1] (*2:20* to *2:38*) (____ to ____) (____ to ____) (____ to ____) (____ to ____) (____ to ____)

Presiding Member(s)

Rep. Christopher H. Smith

Check all of the following that apply:

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

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

TITLE OF HEARING:

International Child Abduction: Broken Laws and Bereaved Lives

SUBCOMMITTEE MEMBERS PRESENT:

Rep. Christopher H. Smith, Rep. Donald M. Payne, Rep. Ann Marie Buerkle, Rep. Karen Bass, Rep. Tom Marino

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

*Rep. Barney Frank**

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.)*

Written Statement of Mr. Goldman
Written Statement of Ms. Edwards
Written Statement of Mr. Bermudez
Written Statement of Mr. Elias
Written Statement of Mr. Izzard
Written Statement of Mr. Bower
Written Statement of Ms. Apy
Written Statement of Ms. Wells
Written Statement of Mr. Eaves
Written Statement of Rep. Poe
Letter from left-behind parents to Secretary Clinton submitted by Mr. Smith
Written Statement of BAC HOME
Written Statement of Global Future
Written Statement of Mr. Burns
Written Statement of Mr. Collins
Written Statement of Mr. Makielski
Written Statement of Mr. Morehouse
Written Statement of Mr. Richardson
Written Statement of Mr. Sylvester
Written Statement of Mr. Toland
Written Statement of Mr. Trombino
Written Statement of Mr. Weed
Written Statement of Mr. Wong

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED *6:19 p.m.*

Subcommittee Staff Director

Statement for the Record
Congressman Ted Poe (R-TX)
Tuesday, May 24, 2011

House Foreign Affairs Subcommittee on Africa, Global Health, and Human Rights
International Child Abduction: Broken Laws and Bereaved Lives

Mr. Chairman, I appreciate the opportunity to submit a statement for the record on behalf of my constituent – a parent of an abducted child – Mr. Robert 'Marty' Pate. He, like all other witnesses on the panel today, has experienced the emotional and financial hardship that accompanies the international abduction of a child. His story illustrates the need for the federal government to do more in assisting parents of abducted children.

In 2001, Mr. Pate married Monica Dutra, a Brazilian national. The two had a daughter, Nicole Dutra Pate, and were later legally divorced in Houston, Texas in February 2005. A district court in Harris County issued joint custody orders over Nicole. In July 2006, Ms. Dutra approached Mr. Pate about her desire to move back to her home country of Brazil with their daughter. In complying with the custody order, which provided Mr. Pate the opportunity to refuse the relocation of his daughter, Mr. Pate refused and informed Ms. Dutra that she would need to seek legal permission for Nicole to return to Brazil with her. Ms. Dutra did not receive such legal permission. Instead, on August 31, 2006, Ms. Dutra fled to Manaus, Brazil with Nicole and has yet to return. Mr. Pate's daughter has remained in Brazil, against her own free will, since this time.

After receiving no real assistance from the federal government, Mr. Pate contacted my office for help. For almost five years, my office has worked with the U.S. Department of State and its Brazilian counterpart, the Brazilian Central Authority (BCA), to seek justice for Mr. Pate's case. It has taken years for the BCA to provide answers and when received, we are left with additional questions that continue to go unanswered. Meanwhile, Mr. Pate has endured years without seeing his daughter. He has exhausted all financial means to travel back and forth from the U.S. to Brazil to visit his daughter on several occasions. The emotional price he has had to pay, however, is not quantifiable.

The U.S. and Brazil, along with many other countries, have agreed to comply with the Hague Convention. Since 1988, the Hague Convention has served as the international standard for enforcing the return of abducted children to the U.S. Pursuant to the Hague Convention, Brazil is required to return Nicole to the U.S.. However, Brazil has failed to comply. In an act of exasperation and desperation, Mr. Pate has given up trying to obtain custody of Nicole. He is simply desperate to see his daughter and to have her visit with him and her family in the U.S. Despite this change in Mr. Pate's position, Brazilian officials are still stonewalling his request and are ignoring their legal duty. While, the U.S. continues to pressure Brazil to follow its international treaty obligations, the federal government has not done enough to sanction the kidnapping of American children. I look forward to the day where Mr. Pate feels some sense of justice as his daughter steps off a plane into the U.S. to visit with her American family. And that's just the way it is.

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, AND HUMAN RIGHTS

Submission for the Record

"International Child Abduction: Broken Laws and Bereaved Lives"
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515-0128
Subcommittee on Africa, Global Health and Human Rights
Christopher H. Smith (R-NJ), Chairman
May 24, 2011

Bring Abducted Children Home (BAC Home) is an organization dedicated to raising awareness and facilitating the return of all United States citizen children kidnapped to and/or wrongfully retained in Japan. Currently there are at least 321 documented cases of children abducted from the U.S. to Japan. There are a minimum of 20 children still unaccounted for since the March 11, 2011 earthquake, tsunami and nuclear disaster in Japan. To date, ***no child has ever been returned by the Japanese government.***

BAC Home represents the interests of approximately 70 left-behind parents with children abducted to and/or wrongfully retained in Japan. Our members were intimately involved with drafting and obtaining sponsors for H.Res 1326 and succeeded in adding International Child Abduction to the State Department's Annual Country Reports on Human Rights Practices. Additionally, we continue to support HR 3240 or any future legislation replacing HR 3240.

We are cautiously optimistic regarding Japan's anticipated announcement that they will finally sign on to The Hague Convention with regards to International Child Abduction. Japan is an important economic partner and strategic ally for the United States in Asia. However, Japan has been willingly and complicitly one of the worst culprit nations in the International Child Abduction of American children.

Much of the news and governmental rhetoric emanating from Japan on this issue leads us as parents to the unfortunate conclusion that Japan is laying the legal groundwork to enter The Hague Convention with less than good faith and intentions reflective of our relationship of trust and comity in so many other spheres. All indications are that Japan will steadfastly refuse to return children under The Hague, using a variety of specious legal excuses and loopholes favoring Japanese Nationals who abduct, and statutes that prevent the return of children are already under legislative debate in Japan.

We are thus gravely concerned that ***without specific direction and action from Congress*** toward the White House, The Department of State, and the Government of Japan, the currently kidnapped children will be cast aside and forgotten by their own government and that future cases will not be returned to the U.S.

We thus have a six point policy platform that we believe is essential to return kidnapped American children and prevent further abductions:

I. Japan Must Immediately Return The Stolen Children

We implore Congress to request in the strongest possible and unambiguous terms that the President and The Department of State ***demand*** the return of children taken in violation of U.S. Court orders. It is imperative that these demands are made forcefully, openly, publicly, and fervently until Japan returns each and every child back home.

II. Access to Our Precious Children

Article 21 of The Hague states that the Central Authority will "promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of such rights may be subject. The central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights."

To this end, based on their outdated domestic laws, Japan's idea of access is extremely restricted, and equivalent to the type of access that Felon Criminals in the United States have to their children. We want Congress to get Japan's assurance that access granted to Left-Behind Parents under The Hague will be completely unfettered, unmonitored and dignified to the extent possible.

III. Japanese Must Enact Retroactive Laws

The Hague is not inherently retroactive and effectively does nothing for existing cases. Japan would have to enact legislation within their country in order to make it retroactive. There is no indication that the Government of Japan would consider such measures by legislation or policy. The United States owes it to these children to demand retroactivity as part of a bilateral framework for returning the kidnapping victims to U.S. soil without delay.

Japan has a history of violating it's own policies with regards to child abduction. In April 2010, the Japanese Ministry of Foreign Affairs, Passport Division, Consular Affairs Bureau issued the following policy statement titled *"To Parents with Children of Japanese Nationality: Notice: Passport Application for Japanese Minors"*

It states, "An application signed by one parent will be accepted under the assumption that the signature is a representation of consent from both parent(s)/guardian(s). However, if one parent/guardian submits a written refusal to passport offices in Japan or Japanese Embassies and Consulates-General abroad, a passport will be issued only after it has been confirmed that there is consent from both parents/guardians."

In April 2010 a Japanese national mother living in the U.S. as a resident alien attempted to obtain a passport for her son from the Seattle Consulate. She was refused by the consulate because the father had twice written to all Japanese consulates in the U.S. requesting any passport attempts be denied on the basis that the mother was legally restrained from traveling outside the State of Washington or holding a U.S. or Japanese passport for the child.

In June 2010, the mother violated the court's orders and traveled to the Portland Consulate and where she was issued the passport. Three days later she abducted the child to Japan and has not been heard from since. The boy's whereabouts remain unknown.

This is why we repeat, we need Congress to declare that without regard to Japan's Hague status, the United States will demand forcefully, openly, publicly, and fervently that Japan immediately return all U.S. citizen children who have been abducted to or wrongfully retained in Japan. Congress should further demand that Japan enact legislation to make all existing and past cases of parental kidnapping subject to same provisions as The Hague Convention with regards to the return of all U.S. children previously abducted.

IV. Congress Must Address Japan's Hague Implementation Legislation

We would like to see Congress address the legislation drafted by Japan for implementing The Hague. In particular, it is crucial that any provisions in Japan's drafted legislation related to rejecting requests to return a child, are in full compliance with the intent of The Hague Convention. This means that allegations of domestic violence must be accompanied by rules of evidence, with that evidence almost always originating in the country of habitual residence from which the child was taken. An allegation by a spouse alone should not be considered adequate to prevent the return of a child. The current proposed implementation statutes in Japan allow for hearsay allegations unsupported by empirical evidence to form the basis for a refusal to return children under Japan's planned Hague mechanisms. It is our view that any allegations of abuse must be proven in a court of law in the place of habitual residence. As it currently stands abductors are able to cut off all access of the child to the Left-Behind (victim) Parent through unsubstantiated hearsay allegations filed in Japan. Facts and evidence are optional, but not necessary under Japan's proposed system for Hague Return Denial.

Additionally, while the possibility exists of utilizing the civil remedies of The Hague in lieu of criminal remedies, the fact that international child abduction exists as a crime in the country of habitual residence cannot be used as a reason to not return the child, as Japan currently plans to require. If this were the case, then NO children could EVER be returned to the United States because the act of International Parental Kidnapping is a federal crime buy the legislation of this very Congress.

Professor Colin P. A. Jones of Doshisha University Law School, Japan in his March 2, 2011 Japan Times article "Solving parental child abduction problem no piece of cake Carving out Hague caveats could halt the return of any kids snatched to Japan" writes,

"It has always seemed highly likely (to me, at least) that Japan will eventually submit to foreign pressure and join a treaty regime that effectively represents the international community's consensus on how cross-border child custody disputes should be decided: in the child's country of habitual residence. At the same time, it has also always seemed unlikely that signing the treaty will result in children who have been abducted to Japan by Japanese parents actually being returned to their foreign homes. The Japanese civil justice system lacks the tools to enforce a return and, probably more to the point, it is unlikely to ever be in the interests of any Japanese judge, cop or other bureaucrat to be responsible for a crying child being taken away from a weeping Japanese mother in any particular case. The rule of law is one thing, but Japanese officialdom is not short on cake aficionados.

So it has not been too surprising to read recent news reports that the government is considering signing the convention while at the same time amending its domestic laws to ensure that children are not returned if there are concerns about domestic violence. The Japan Federation of Bar Associations (JFBA) also recently issued a formal opinion that included similar recommendations, as well as suggesting that children should not be returned if it would result in the abducting parent being subject to prosecution in their home country (the U.S., Canada and other countries have criminal penalties for parental child

abduction). This would mean that in addition to the civil trial procedures (which should include appeals, according to the JFBA) used to return children in Hague Convention cases, it might be necessary to negotiate nonprosecution agreements with home country authorities in some instances.

Whatever legislation is used to implement the Hague Convention, it is hard to imagine that it will not also include a catch-all "other" caveat that will provide additional excuses for nonreturn in just about any situation. Even without the provision, the domestic violence exception alone will probably be enough to ensure that Japan fulfills its duties under the convention in terms of appearances and process, without actually accomplishing any of the goals the treaty is supposed to achieve in terms of substance.

To be fair, domestic violence is an issue that some commentators assert is not dealt with adequately under the Hague Convention in its current form, and I am certainly not suggesting that it is not a problem in cross-border — or any — marriages. Yet as a matter of law and judicial process, exceptions drafted around claims of domestic violence are likely to suffer from the same evidentiary and other practical constraints the convention is intended to address in the case of child custody decisions. In both situations, factual determinations are usually best made by courts in places where school officials, social workers and other potential witnesses are likely to reside, and where other relevant evidence is likely to be located. This is the child's country of habitual residence under the Hague Convention, and logic suggests that claims of domestic violence or child abuse should also be adjudicated by courts where the conduct allegedly took place. This logic is even more compelling if the claims of violence are linked to a child custody dispute, and if the conduct in question also constitutes a criminal offense, as is often the case in many countries.

Whatever exceptions are provided for in Japanese law, as an evidentiary matter it is difficult to see how Japanese courts would decide whether to apply them except based on allegations by the Japanese victims, with the foreign "aggressor" being put in the position of having to prove a negative, over linguistic and geographical barriers. Unless Japanese courts are willing to start with a presumption that parents claiming abuse are lying (a cruel result for those actually fearing for their lives or those of their children), the safest thing for judges to do in any particular case will be to simply accept the claims at face value and grant the exception.

Japanese judges will be aided in this task by Japanese law, which defines spousal violence as including not just "bodily harm" but "words and deeds of one spouse that cause equivalent psychological or physical harm to the other" (this is from the Japanese government's translation of Article 1 of the Act on the Prevention of Spousal Violence and the Protection of Victims). This already broad definition is further expanded by government publications that go so far as to include "yelling" and "ignoring" as types of domestic violence. Child abuse also is defined as including "words or conduct which cause a child significant psychological harm" (my translation of the relevant portion of Article 2 of the Child Abuse Prevention Act, for which a government translation is not yet available), though even this expansive definition is apparently not broad enough to cover abduction from abroad or the parental alienation that often follows.

To the extent that marital breakup is pretty much always emotionally traumatic for everyone directly involved, the unsubstantiated Japanese media trope about all cases of child abduction to Japan involving Japanese women fleeing from violence or abuse abroad can be said to be true: It will always be possible to find some sort of "psychological harm" that can be attributed to broadly defined violence or abuse if necessary."

There is clear evidence that Japan is creating a platform for refusing to return children based on unsubstantiated claims of fleeing from domestic violence and for the abductor to avoid criminal prosecution for their violations of U.S. law.

V. Japan Must Unambiguously Define the "Best Interest of the Child"

It is well known and researched in the legal community that for years the Japanese government has used the subjective phrase "best interest of the child" to uphold the status quo in court cases and deny any access by American parents, whereby each judge individually defines "best interest" without any standards or guidance in order to craft a ruling that will prevent the child from meeting with the American parent. The "best interest" of a child has been used as a catchall to justify judicial rulings that condemn the U.S. child from being returned to the country or home of habitual residence or of upholding pre-existing visitation schedules. In one reported case of which we are aware, custody of a child was given to a mother because the "best interest" analysis required that she live in a house with a Japanese garden, which the mother had and the American father did not.

VI. Japan Must Immediately Locate Our Missing Children

The following American children abducted to and/or wrongfully retained in Japan are unaccounted for and/or the present location is unknown since the earthquake/tsunami and the ongoing nuclear disaster:

Kianna Berg
Gunnar Berg
Keisuke Collins
Michiru Donaldson
Kai Endo
David Gesselman
Joshua Gesselman
Ayako Lucy Greenberg
Shanon Yuda Ishida
Riki Ishida
Ricky Kephart
Noelle Kephart
Mary Victoria Lake
Yuuki McCoy
"Mochi" Atomu Imoto Morehouse
Rui Prager
Rion Suzuki
Tiana Weed
Takoda Weed
Kaya Wong

Conclusion

In summary, Japan continues to harbor and support the abduction of American Citizen minor children through its actions and inactions. Their public rhetoric leading up to the potential signing of The Hague is of great concern. Left unchecked it is evident that the government of Japan will not retroactively return current cases of abducted U.S. children, nor future cases by citing unsubstantiated allegations or undefined criteria all centered around maintaining the status quo.

By announcing that they will sign onto The Hague, the Government of Japan will be able to claim that they have joined their partners in the world stage and modernized. But the Japanese will not have to return our children. They will be able to fly the banner of The Hague without having to uphold its intent.

International pressure has brought Japan to the precipice of change, but announcing intent to sign onto The Hague is only a beginning. A small first step.

To truly affect change and bring abducted children home it will require a Herculean effort. It will require a shift in U.S. policy that no longer gives Japan a public pass on the illegal abduction and unlawful retention of our children. There are 321 documented cases of abduction from the U.S. alone. If we include the cases of abduction of U.S. children from within Japan, the total is significantly higher.

We implore Congress represent us citizens and our children to enact a change in policy without haste to direct the Department of State to publicly demand at every opportunity that Japan return our children, that the President make this a top priority equal to no other until each and every child is safely home back home.

Sincerely,

Paul Toland, National Coordinating Director
Douglas Berg, Eastern Regional Director
Randy Collins, Southwest Regional Director
Jeffery Morehouse and Brett Weed, Pacific Northwest Regional Directors
Christopher Savoie, Midwest, Regional Director

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REPORT OF

Global Future
The Parents' Council on International Children's Policy

REGARDING KIDNAPPING OF AMERICAN CHILDREN FROM THE U.S. TO JAPAN

OVERVIEW

In domestic U.S. kidnappings, officialdom springs into action immediately. Amber Alerts and other established rapid response plans often lead to dramatic and heartwarming recoveries of children. In glaring contrast, parents of American children kidnapped from U.S. soil and taken to Japan have no such chance of reuniting with their children, and there is no first responder or law enforcement action. Instead of the well-ordered action following the initial shock and horror of receiving the news that their children have been kidnapped to Japan, these parents encounter apathy from police agencies, resistance from public officials, a stunningly uninformed judiciary that lacks effective enforcement tools, and the active subversion of U.S. laws by Japanese nationals and diplomats on U.S. soil and in Japan. These U.S. parents desperately need meaningful assistance from their own government, but they find a perfect storm of failure and ill-preparedness at every level.

Many of these U.S. parents took every possible legal precaution to protect their child from kidnapping and never consented to the children's removal to Japan. They had previously established U.S. jurisdiction and custody orders in U.S. courts, including travel ban and passport surrender orders against the kidnapper parent. Many US court Judges issue these orders with the express intention of preventing the very crimes that have now occurred. The children remain under the previously established, lawful jurisdiction of U.S. courts, and in the lawful custody of the so-called 'left-behind' parents. On paper, the parent of the kidnapped child has the law on their side. In practice, through flawed design and procedure, the courts do precious little to enforce their orders beyond the walls of the courtroom. Inevitably, the U.S. parents learn the grim fact that the United States government has never secured the return of a kidnapped child from Japan through legal or diplomatic means.

They further find that local police agencies often do not apply fundamental crime-solving procedures, such as investigating and arresting accomplices, or allotting resources to Japan abduction cases; elected representatives frequently and dismissively turn the parents away; children kidnapped from U.S. soil are a very low priority of American diplomats abroad, whose efforts are disorganized, inconsistently responsive, and gallingly deferential to Japan, the world's leading state kidnapper.

By state policy, Japan facilitates international kidnapping. Japan is not signatory to any bilateral agreement for the return of kidnapped children and Japan is the only G7 country

not signatory to
the Hague Convention on the Civil Aspects of Child Abduction. Japan ranks first per capita and second in the world in the raw numbers of international kidnappings perpetrated by its nationals, behind Mexico (1st, which shares a long border with the U.S.) and ahead of India (3rd, and which has nine times Japan's population.)
On U.S. soil, Japanese diplomats, Japanese-language service organizations, private individuals, and Japanese lawyers in Japan assist with planning, aiding and abetting the abductors with impunity. Upon returning to Japan, the government shelters its kidnappers from extradition to the U.S., in violation of existing treaty, and rewards the perpetrators economically with single-parent stipends.

In the growing phenomenon of international kidnapping, the nation of Japan does not hold a monopoly on perverse incentives:

- Local U.S. police and the FBI believe a US citizen child abducted to Japan is a lost cause, and in turn decline to allot investigative and prosecutorial resources to these cases.

- In several cases, U.S. family courts, driven by the financial incentives provided under Title IV (d), force 'left-behind' parents to pay child support *to the kidnapper parent* even after the child's abduction to Japan.

- For unknown reasons that vex and bewilder the parents, the U.S. State Department expresses no urgency and has never issued a steadfast demand to recover kidnapped children from Japan.

- Criminal kidnappers, belligerent foreign diplomats and the networks that support them notice and readily exploit the uncoordinated and ill-equipped nature of U.S. law enforcement, which only incentivizes more kidnappings.

While the combine of perverse incentives works against them, the 'left-behind' parents live a daily nightmare of worry for the present and future of their innocent children, who have had a beloved parent ripped away from them, probably for the rest of their lives. Frequently, the kidnapper parent suffers from a documented mental illness and cannot distinguish between what is or is not in the best interest of the child. Some of the children may have special needs or problems, (which typically a kidnapper parent does not address) and which target them for bullying in Japan. Mixed-race children face intense bullying and discrimination in Japan, a country that is 99.4% ethnic Japanese and only .6% minority. While the U.S. citizen children face daily threats to their safety, health and well-being in Japan, their government in the United States apparently finds no urgency in securing their removal from Japan or in protecting their basic human rights. In yet another exercise of backwards priorities, U.S. diplomats expend more time, energy and resources meeting with and advocating for adults imprisoned in Japan than they do for innocent and vulnerable American citizen children, whom Japan has unilaterally stripped of their U.S. Constitutional rights, and their American heritage, culture and families.

Most cases of children kidnapped from U.S. soil and taken to Japan share many common facts and elements:

a) The U.S. parent took every legal precaution possible to prevent the kidnapping.
b) U.S. courts issued custody orders prior to the abduction.
c) U.S. courts ordered the Japanese parent not to travel to Japan or anywhere else outside of the court's geographic jurisdiction.
d) U.S. courts ordered the Japanese parent to surrender their Japanese passport.
e) Despite the court orders, Japanese Consulates on U.S. soil issued a duplicate passport for the abductor parent.
f) Japanese Consulates on U.S. soil issued Japanese passports for American citizen children under false Japanese names.
g) In planning and executing the kidnapping, the abductor parent received material assistance or coaching on U.S. soil from private individuals, attorneys, Japanese service organizations and attorneys in Japan.
h) Police agencies did not pursue accomplices to the kidnappings.
i) the abductor parent suffers from well-documented mental illness.

In this report, we shall dissect and analyze the many components of this problem.

U.S. FAMILY COURTS

In our surveys, discussions and reviews of court records of 'left-behind' parents, we find that family court judges were either

a) unaware of Japan's status as a non-signatory to the Hague Convention;
b) aware of Japan's non-Hague status and record on child abduction, but did not issue orders accounting for those facts;
c) aware of the abductor parents' desire to flee with the children to Japan;
d) aware of the abductor parents' mental illnesses;
e) aware that the abductor parent posed an imminent flight risk and
f) unaware that once in Japan, the kidnapper would never be extradited back to the U.S.

Frequently, judges either did not impose orders for continued monitored visitation between the flight-risk parents and the children. In some cases, based on insincere promises from the Japanese parent, judges allowed the flight-risk parent to travel with the children to Japan on vacation, from which they never returned.

Whether knowledgeable or ignorant about parental kidnapping to Japan, these judges unwittingly played a game of Russian Roulette with the children, and lost repeatedly. Nationwide, the legal education of judges and government attorneys throughout the legal system is lacking.

In a 2007 conversation, a Los Angeles Assistant City Attorney told one parent that he would "probably have more rights in Japan (family court) than you have here." This baseless and false statement from a veteran law enforcement official responsible for the protection of crime victims is alarming, as it suggests that other government officers of the courts around the country may hold similar opinions.

Typically, after the kidnappings, judges award 100% custody to the U.S. parent--small consolation for someone who will likely never see their children again, and who fumes knowing that the judge could have taken further steps to prevent the abduction.

In every case, the courts lacked the initiative or legal requirement to alert ICE, DHS or TSA of the abductor parent's identity information, so that authorities could possibly intercept the abductor parent at the airport during the commission of a crime. In every Japan case, the abductor parent exited the U.S. with the child aboard an airplane.

Presently, with no federal mandates in place, the courts have no incentive to implement such a preventive program.

Existing law, most notably the uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) empowers U.S. courts with clear and continuing jurisdiction in international abduction cases. Japanese and other foreign nationals who kidnap hold U.S. green cards or U.S. visa's, which obligate them to obey the laws of the United States. In every case, the abductor parent had previously and voluntarily submitted to the UCCJEA in U.S. family court proceedings. The primary purpose of the UCCJEA is to prevent a parent from abducting a child and fleeing to another jurisdiction to seek a more favorable outcome. In a warped game of forum-shopping, Japanese nationals who kidnap children from the U.S. to Japan have effectively nullified the decisions of U.S. courts.

Following the flouting of their orders, U.S. family court judges do not as a practice contact local or regional Japanese Consulates and re-assert the standing jurisdiction under the UCCJEA, which would force Japanese diplomats to respond in writing.

Japanese officials on U.S. soil, under color of diplomatic immunity, actively subvert U.S. court orders and aid and abet kidnappings, while ordinary individuals would face arrest. In spite of passport surrender orders by U.S. courts, Japanese Consulates reissue passports with new numbers to kidnapper parents and issue Japanese passports to children who are by birth U.S. citizens, in false or derivative Japanese names.

One DOS official told a parent that it is common for foreign nationals to bribe Consular officials to obtain false passports or other documents. In 2009, U.S. authorities arrested several retired Armenian diplomats, who worked with active Armenian officials to issue forged 'letters of
refusal', which allowed Armenian criminals to stay in the States after their home country 'refused' their deportation from the U.S.

LOCAL POLICE AND PROSECUTORS

Some police departments move quickly to issue an arrest warrant when a kidnapping case involves Japan, often bypassing investigation into evidence of local accomplices, who coached and facilitated the kidnapping. To our knowledge, local law enforcement has not arrested any accomplices to kidnappings to Japan. Arrests of individuals in the organized networks who help kidnappers would certainly deter future kidnappings. There is evidence that private individuals, Japanese community organizations (perhaps even churches) and legal counsel in the U.S. and in Japan, all aid and abet the kidnappings. Kidnapping a child from the U.S. requires skill and knowledge that an ordinary parent does not possess.

The left-behind U.S. parent knows that any arrest warrant is essentially useless as either an instrument to recover their children or negotiate for their return. Many do not push law enforcement for an arrest warrant on the kidnappers, to keep communication and negotiations open with the kidnapper parent and their family in Japan.

While local law enforcement has every incentive to move the hopeless Japan cases off of their desks, the U.S. parent, facing every possible disadvantage and a dearth of leverage, is naturally lukewarm to the warrant process, which has never recovered a child from Japan and represents the permanent end of law enforcement's involvement in the case.

FBI

Procedurally, the FBI does not become involved in international abduction until after local law enforcement issues a warrant. In many Japan cases, it took many months for the FBI to assign a case worker. The U.S. parent frequently encounters the same response received from local law enforcement: 'it is Japan; there is not much we can do.' Los Angeles FBI Special Agent Joseph Brine told Patrick Braden, whose then-eleven month-old daughter Melissa was kidnapped to Japan in 2006, "We need to allocate our resources to cases in which we can achieve some kind of favorable result. Unless there is new cooperation from the government of Japan, there seems to be nothing more we can do for you."

Randy Collins, whose son Keisuke was kidnapped to Japan in 2008 at age 5, persisted with FBI for nearly one year until the Bureau assigned a case worker. Even when the FBI issues a warrant for the international kidnapper's arrest, the warrant goes through several layers of time-consuming bureaucracy before it is forwarded to Interpol. At face value, an Interpol red notice would appear to be a somewhat promising tool, should the kidnappers or their accomplices carelessly travel from Japan to a third country, where they could be detained and extradited to the U.S. In theory, such detention of a kidnapper or their accomplice would give the left-behind U.S. parent leverage in gaining the return of their child.

In practice, the slow movement towards an Interpol warrant allows the kidnapper and their accomplices to travel freely with no fear of arrest, though some may also stay

exclusively in Japan, under the government's protection. Accomplices, or even material witnesses held on Interpol warrants, would yield productive information about the welfare and whereabouts of the child and the kidnappers, and provide leverage toward the return of the children. Again the inexplicable non-investigation of accomplices impedes the U.S. left-behind parent's chances of recovering their child.

The targeting of accomplices as a means to recover children and solve crimes—the actual job of the FBI—remains a largely ignored and unexplored approach.

U.S. STATE DEPARTMENT (DOS)

After seeing local police spring into action when their child goes missing, the U.S. parent experiences a crushingly lackluster reception from the Office of Children's Issues intake desk. Immediately, the U.S. parent finds that their kidnapped child is a low priority for DOS, which informs them that the US Embassy in Japan can attempt to locate or visit the child in 6-8 months, if even then. This time lag allows the kidnapper to become comfortable and develop a derisive attitude toward U.S. authorities in Japan, who they correctly assess as ineffective and uninterested in the children. Japanese families typically reject DOS' "Welfare & Whereabouts" visits, which the Japanese government interferes with and prevents by policy.

The left-behind U.S. parent also discerns, with amazement, that DOS has lost portions of their files and apparently has a poor, and probably technologically archaic, case management system. Recently, a group of parents discovered an apparent breach of privacy by DOS, in which DOS staff inadvertently authorized an unreliable parent to collect the personal case information of the entire group. That unreliable parent subsequently posted a DOS communication on the internet, exposing the parents' email addresses and DOS' admitted lack of data to outsiders and to Japan, which employs agents to scour the internet for anti-Japanese activities. This afforded Japan the chance to counter U.S. plans before any were formulated.

In many cases, Japanese diplomats on U.S. soil aided and abetted the abductions of American children by issuing false or duplicate Japanese passports to the abductors and Japanese passports to the children under false Japanese names. Such actions would appear to constitute international incidents. DOS does not address such actions as international incidents and confront Japanese diplomats accordingly.

Scott Sawyer, prior to the kidnapping of his son Wayne from Los Angeles to Japan in December 2008, followed the instructions of the Los Angeles Superior Court and the State Department's website and requested that the Japanese Consulate in Los Angeles withhold issuing a Japanese passport to Wayne. Aware of the Superior Court's orders, Vice Consul Yamamoto of the Los Angeles Japanese Consulate and his assistant Suzuki, in 2007 and 2008, gave Mr. Sawyer and his attorney (with a translator present) multiple verbal assurances that the Japanese Ministry of Foreign Affairs had placed a restriction

on issuing Wayne a Japanese passport. Yamamoto refused Mr. Sawyer and his counsel's repeated requests to put this commitment in writing.

The Japanese Consulate, in what is a routine practice of Japanese officials stationed in America, issued a Japanese passport to Wayne under a false Japanese name and allowed the mother, Kyoko Sawyer a/k/a Kyoko Mori, to travel out of the United States using a second passport with a different identification number than the one she previously surrendered under order to the Superior Court.

JAPANESE COURTS

Protected by the Uniform Child Custody Jurisdiction and Enforcement Act, the left-behind parents never waived jurisdiction to Japan, a fact the Japanese government wantonly disregards.

When confronted and pressed to return the kidnapped children, Japanese officials reflexively offer the cynical and unsubstantiated defense that they must protect Japanese women from abusive foreign husbands. This claim obfuscates the real issue of Japan's unlawful expropriation of jurisdiction from other sovereign states. Japan's feudal-era court system permits and condones hearsay. Aware of the U.S. family courts' defined standards of evidence and penalties for lying under oath, and coached from the planning stages of the kidnappings by Japanese attorneys in Japan, many Japanese women make their initial charges of abuse upon arriving with the abducted child in Japan.

When exactly did Japan transform itself into such a haven for women's rights and protection? Within Japan's own borders, more Japanese men kidnap children from foreign wives than Japanese women kidnap children from the United States. Japan frequently responds by deporting the foreign wives. When Japanese men living in the U.S. and other countries grab children and run away from their Japanese wives, Japan refuses to extradite. Did Japanese women abuse these men? Or if these male abductors abused their Japanese wives in violation of foreign laws, why doesn't Japan extradite them, or at least put them on trial in Japan? Astonishingly, Japan now also refuses to extradite non-Japanese abductors, turning it into a hot destination for international kidnappers. The plain truth is that Japan is not a haven for the globe's abused parents, but is the world's leading refuge for abusers and kidnappers. That Japan uses abuse of women as a cover for international kidnapping trivializes the real abuse women suffer in many places in the world, including and especially in Japan.

Faced with the bundled challenges of a rapidly aging and declining population, social alienation of the sexes and a low birth rate, Japan's policy of state-protected kidnapping is self-defeating and stunningly anti-family. A 2004 Japanese Health Ministry study revealed that 20% of married Japanese couples had not engaged in reproductive activity for one year or more. Japan has the steepest declining birth rate in the industrialized world, now at 1.3 per woman, a rate that will cause its population to drop by an estimated 25% by 2050. Japanese women continue to enter in increasing numbers into international marriages, citing general misogyny and the domineering ways of Japanese men as

reasons they seek other candidates, according to numerous studies by Japanese and Western scholars. Rather than embrace bi-cultural marriages as a long-range source of population replenishment, Japan actively seeks to break them up, with the abduction option hovering over them like a vulture. Japan poaches mixed-race children from other countries, inadvertently producing legions of fatherless children and single mothers, which it encourages by providing abductor mothers with monthly stipends. By refusing to enter into any bilateral treaty on child abduction, Japan incentivizes kidnapping, creating an inequitable negative pressure on international marriages which might otherwise survive and produce more children.

Japan defends the kidnapping crimes of its nationals by insisting that under Japanese law and culture, parental abduction is not a crime--a statement that ignores the fact that many of the kidnappings occurred on U.S. soil, where parental abduction is a crime, and where Japanese law and culture do not have jurisdiction. Rather than oblige by discussing the matter on Japan's chauvinistic terms as they have in the past, U.S. officials must now firmly and correctly remind their Japanese counterparts that Japan's laws and customs do not exempt Japanese nationals on U.S. soil from U.S. laws. If Japan truly believes that its nationals can pick and choose which U.S. laws they will observe, then perhaps the U.S. should consider restricting the number of Japanese admitted to the U.S. via green card or visa.

Japan habitually claims that reconciling its laws with any treaty on child abduction will require several years of legislative work. This is a delaying tactic that stalls and outlasts successive U.S. administrations. In reality, Japan needs only to start honoring the existing extradition treaty with the U.S. and send the abductors back. American children need not be present while Japan toils to change its labyrinthine laws.

Japan's stock response: extraditing the Japanese parents would leave the children alone. This rejoinder exemplifies Japan's outright contempt for the civil law of other countries and its treatment of foreign parents as persona non grata.

Japan's actions and arguments demonstrate that the Japanese government believes that when its nationals reside in America or any other country, Japanese law and custom reigns supreme; conversely, when Americans or other foreigners seek justice in Japan, Japanese law and custom reigns supreme.

For foreigners, the Japanese legal system is little more than a kangaroo court, which the U.S. Embassy implies on its own web site. Abductor parents know their crime will succeed because a) the United States has historically shrunk from enforcing U.S. custody orders on Japanese kidnappers; b) joint custody is not available under Japanese law; c) Japanese judges' recommendations for U.S. parent visitation are non-binding and extremely rare; d) while Japanese courts do not honor foreign custody orders, they unilaterally and routinely overrule or amend them in the abductor parent's favor; and e) Japanese family courts' legal definitions are so loose that the transmission of a child's image over an internet camera to the other parent can be construed as "visitation."

May 24, 2011

Congressman Christopher Smith,

Thank you sincerely for taking your vital time to address these issues surrounding the need for more government involvement in the vast amount of open Hague cases with left behind parents in the United States. Your involvement to myself as a father who's heart is missing after 8 long months without my 2 angels in my life, is beyond commendable. Perhaps I speak for all of us "left behind" parents when I say that your efforts may actually be divine.

There is nothing more crushing in this life that to lose a child in any way. Knowing your child(ren) are being alienated from your life without any recourse is beyond emotionally torturous. One of the many emotional pains is simply the fact that even thinking about my daughters hurts because of the everlasting mountain of impossibility I face. To survive day to day sometimes means trying to keep my own little girls out of my mind. I sometimes think how simply wrong that concept is in itself . I miss them beyond words, yet sometimes cant even think about their beautiful faces and what they might be doing at this very moment.
This only scratches the surface of the daily emotional and literally physical pain caused by Victoria and Sophia being gone from my life without even a chance to hug them goodbye one last time over 8 months ago.
The Hague Process, which is written as it states to resolve the return of a kidnapped child within 6-8 weeks has not even gotten me into my first hearing in Argentina in over 8 months. The State Department as well as my attorneys expect this to take years at best, and I cant even bring myself to conceptualize the possibility that they may never be returned as some others imagine...

Please continue your efforts to have our United States Government apply direct pressure to these countries who flagrantly ignore or draw out the Hague process. The vital time that passes is inflicting suffering in the form of "Parental Alienation Syndrome" which as you know is a form of child abuse. These are our youngest US citizens who deserve every precious ounce of justice to protect them, as they are voiceless in these battles where the kidnapping parent uses them directly as pawns in their crime.

Enclosed I have provided a petition which I would like to submit to this Hearing today on International Child Abduction. Please forward to Secretary of State Clinton and as many other inspired politicians who would work to pressure these countries directly from our government level. This direct pressure may be what it actually takes to "Return the Burns Children" as well as the thousands of other illegally detained children from their rightful parents outside of the United States. My petition has over 500 signatures of family and friends who miss Victoria and Sophia and want to see them home today.
I thank you with whatever is left of my heart for your continued patriotic efforts.

God Bless you,

Dennis Burns
970-948-9788; BurnsChildren@aol.com; "Facebook: Return Burns Children"

Submission for the Record

"International Child Abduction: Broken Laws and Bereaved Lives"
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515-0128
Subcommittee on Africa, Global Health and Human Rights
Christopher H. Smith (R-NJ), Chairman

May 26, 2011

Honorable Members:

My name is Randy Collins. I am the legal and custodial father of Keisuke Christian Collins who was illegally abducted by his mother to Japan on June 16, 2008. I am also a founding member and Southwest Director of BACHome.

In March of 2008, my Japanese wife, of seven and a half years, Reiko Nakata Greenberg Collins, and I were beginning the process of a divorce. Being concerned for my son's safety, and after I learned of numerous news stories related to Japan's permissive acceptance of international child abductions, I obtained a Superior Court order on June 13, 2008; whereby my wife was to turn over my son's passport to the Japanese Consulate and neither of us was to remove our son from Orange County, California. I immediately notified the Japanese Consulate in Los Angeles that afternoon. When I told the Consulate of the order the exact words I got were, "We don't care". When I made mention that I had concerns for my son's safety and of his possible abduction, by his mother, I was told, "They are Japanese citizens and are free to go wherever they wish". I told the Consulate official my son was born in the United States, not in Japan.

On June 16, 2008, just three days after the court ruling, my wife abducted our five year old son, Keisuke, in blatant violation of the court's orders and fled to Japan, to live with her parents. It should also be noted that evidence is very strong, in that my in-laws assisted in the abduction of my son. They came to the United States in November 2007. This was the first time they had visited us in our home since our marriage. They stayed until January 1, 2008. They returned January 21, 2008 and stayed until late May, 2008. Two weeks later, Reiko fled the country. It is the contention of my attorney and me that my in-laws came to the U.S. to begin the planning and her eventual kidnapping, of my only child, in October 2007. My In-Law's then returned to Japan to get their large home ready for my ex-wife and Keisuke's imminent arrival to Japan. When my in-laws returned for the last time in January 2008, it was to finalize the abduction. It should be noted that my ex-father-in-law is a retired pilot with Japan Airlines; the airlines Reiko used to flee the country. Because of my ex-wife's illegal abduction, the Orange County Sheriff's Department, FBI, as well as a Red notice on Interpol have issued warrants for my ex-wife and a Yellow Notice for my son.

In the months following the abduction of my son, I found numerous secret bank accounts my wife set up; which she then systematically stole over $80,000.00 from our Home Equity Line of Credit. She had also been cash advancing her credit cards and then paying them off via my personal income. In a three year period, she stole over $200,000.00. Reiko Nakata Greenberg Collins stole everything from me! She kidnapped my son and my savings, leaving me with an empty home; in which her friend had removed all of our belongings. I literally had nothing, except my life.

I have spoken with the State Department, Department of Justice, the Federal Bureau of Investigation, my congressional representative, and both senators. Of all of these entities, the most useless has been the F.B.I. After my local assistant district attorney finalized the case, I was given an F.B.I. case worker. I called this caseworker for eight months and she never returned a phone call. Both senators and my congressional representative called this woman three times each over an eight month period. Neither myself, nor any of the senators or congressional representative received a phone call in reply or acknowledgement. When I finally did get a call back from an agent, I was told, "Our office gets over 5000 calls per week". I told him that I found that interesting because that would mean, the Orange County office receives over 250,000 calls concerning abduction per year. He then told me, "Well, we are working on cases in which we have a chance of getting the child back". In which I replied, "So now you are saying my son is an insignificant statistic."

These are not the sort of people—state and federal law enforcement agents—parents of abducted children need. We need people in a position who have an understanding, or at least an interest in international parental child abduction issues. This kind of arrogance and insensitivity only creates more of a problem; one that can be avoided.

It will be three (3) years next month, in which I have not seen or heard from my son, Keisuke. I have requested five "Welfare" and "Whereabouts" visits. None of them have come through. Five out of these six requests, the State Department never followed up with the letters I sent. It wasn't until after I called several months later that I got an answer of, "Oh, we never heard back." This is not acceptable! My son is a born, United States citizen.

I demand that the U.S. government do whatever it takes, to see how my son is doing. I should not have to make follow up calls to the State Department for them to do their job. Secondly, this should not fall under the State Department's jurisdiction. This is a criminal and civil legal issue, not diplomatic. Japan has not signed the Hague Treaty; therefore, these abductions are a matter of law enforcement, resulting from violations committed at the state and federal levels. It appears the Department of Justice is deferring this issue to the State Department; when the law is clear on what the D.O.J. is to do in non-compliant and non-Hague signing countries.

Reiko Nakata violated U.S. laws on U.S. soil. When I asked Michelle Bond of the State Department why my wife could not be extradited, I was told it was because Japan doesn't consider parental child kidnapping a crime. I don't care about what is or isn't a crime in Japan. She violated the laws in this country. The United States Permanent Resident Card, "Green Card", she signed, stated she would abide by all the laws of this country. I was told by the State Department, that if a thirty-five year-old Japanese man came to the U.S., had sex with a thirteen year-old girl, and then fled back to Japan, the U.S. would seek extradition for statutory rape. The problem with this scenario is that having sex with a thirteen year-old child is not illegal in Japan. So I beg the question, why would the U.S. seek extradition for Statutory Rape but not International Parental Child Abduction? Both are crimes in the U.S., and yet neither are crimes in Japan.

Finally, I want to address Japan's possibility of becoming a signatory to the Hague Treaty. Whereas, it looks good on paper and good public relations for Japan to sign the Treaty, this is not at all a good thing. Simply reading any newspaper from Japan, you can see Japan is not being forthright. Japan is working diligently to pass legislation to make the signing of the Hague Treaty a complete waste of time. Some of these changes Japan wants to make are:

1. If an abducting parent has criminal charges against them now or in the future, the child will not be returned
2. If the abducting parent cannot find employment, the child will not be returned
3. If a parent cannot find suitable living arrangements, the child will not be returned
4. If any domestic violence have been *ALLEGED*, the child will not be returned

These loopholes are not in the spirit or the intent of the Hague Treaty. My child was unlawfully abducted to Japan. Japan has no right to tell me or any other parent under what parameters our illegally abducted children shall be returned. Japan must adhere to the terms of the Hague treaty, which are already in place. Japan also must grant full and unfettered access to our children.

I have not seen or heard from my son in nearly THREE years. I did everything my government expected me to do, in order to protect my son from being abducted. The system and this government failed me and my son Keisuke. Keisuke's United States Constitutional and Human rights have been stripped away from him. He has been deprived of a father. I have been deprived of my only child. It is time the United States starts standing up and doing what is right. Bring Our Children Back Home!

Randy Collins

Father of Keisuke Christian Collins

Abducted June 16, 2008

Help Bring Gabriel and Isabel Home

Left Behind Parent: Robert Makielski (Father)
Abducting Parent: Maria Rivera Estevez (Mother)
Abducted From: Culpeper, VA, USA
Abducted to: Dominican Republic
Date of Abduction: 20 January 2011

If you have information on the whereabouts of Gabriel, Isabel, or their mother, Maria Rivera Estevez
Contact: National Center for Missing and Exploited Children 1-800-THE-LOST (1-800-843-5678) or
If you have any information about anyone providing Maria Rivera Estevez with assistance **Contact:** Culpeper County Sheriff's Department (Virginia) 1-540-727-7520
Email: IGMakielski@comcast.net
Website:http://home.comcast.net/~igmakielski
Twitter: @IGMaklielski
Face book: Bring Gabriel & Isabel Home

January 20th, 2011 year my two children, Gabriel Leonardo Makielski Rivera and Isabel Marie Makielski Rivera, where illegally taken to the Dominican Republic by their mother. A Hague application is filed with US State Department, which has been processed by the Dominican Central Authority (CONANI). The facts are as follows:

- The mother removed the children from Virginia and took them to the Dominican Republic without the father's authorization as required by the court order.
- An existing court order is place detailing custody, visitation, travel, and the United States as habitual residence.
- On March 11th, 2011, the Culpeper JDR Court ordered the mother to return to Virginia with the children.
- Maria Rivera Estevez failed to return the children to their home state of Virginia.
- The Mother has not allowed the father or the Guidian Ad Littem any contact with the children.
- There are ongoing legal proceedings in Culpeper Virginia concerning, Children in Need of Services (CHINS), divorce, and custody.
- The Mothers last known location as of April 11, 2011 is Calle Activo 20-30, Casa # 13, Ensanche Ozama, Provincia Santo Domingo, Dominican Republic.

How you can help:

- **Contact** all of your state's Representatives in the House and ask them to cosponsor HR 3240. Simply click this link to Contacting the Congress and input your state and zip code for your elected officials.
- **Support** The Bring Sean Home Foundation

Submission for the Record

"International Child Abduction: Broken Laws and Bereaved Lives"
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515-0128
Subcommittee on Africa, Global Health and Human Rights
Christopher H. Smith (R-NJ), Chairman
May 24, 2011

In May 2007 in Kent, WA, I filed for divorce from "Chi" Michiyo Imoto Morehouse. At the same time I filed for custody of our son, "Mochi" Atomu Imoto Morehouse.

While we were still married my ex-wife displayed outbursts of violent behavior. One time she rammed a 10-inch blade knife through a loaf of bread and left it on display for when I returned home. She later admitted in court documents that she was trying to send me a message. She also turned to alcohol to self-medicate. Sometimes this resulted it catatonic withdrawal. During the final year she threatened to take our son permanently to Japan and find a new father for him, as though I were easily replaceable. This threat was both in writing and verbally.

I presented as much evidence as I could about the risks of abduction to Japan. There were copies of Senator Boxer's letter regarding abductions to Japan to then President Bush, notices from the Department of State and anything else I could find to convince the court of the dangers.

My attorney advised me that best chance I would have at obtaining permanent custody would be through having psychological parenting profiles done by a court-appointed expert.

Though the court found serious concerns regarding her violence and drinking, it was the flight risk that they did not give as much weight to. I was granted temporary custody and she was provided with supervised only visitations pending parenting evaluations. Additionally travel restraints were placed on our son and all passports were surrendered to my attorney.

Immediately after filing in May 2007 and again in October 2007 I faxed all the Japanese consulates in the U.S. and the Japanese embassy in Washington, D.C. I informed that that I had custody and requested that they deny any passport request that she makes for Mochi.

4220 South 289th Place • Auburn WA 98001 • tel 206-353-2428 • fax 866-580-0051

In January 2008, the psychologist recommended that I retain permanent custody of Mochi, however she did not believe that Chi was a danger to him and that the supervision should be lifted. Also she didn't find her to be a serious flight risk. It was her recommendation that Chi be restrained from traveling outside the State of Washington with Mochi or from holding or obtaining a passport for him for two years from when the divorce is finalized.

My attorney advised me that it would be very hard to fight against the doctor's recommendations. I tried to convince myself that it would all be okay. That Chi would eventually start to communicate better with me or at least try to for Mochi's sake. She never did.

She proceeded to try to poison Mochi's relationship with me and his grandmother. He would usually come back from a visit quite stressed and agitated. A few times he said, "Chi-chan says you are evil." He knew better than that, but it was confusing for him to be told such things by his mother.

Japan has a history of violating it's own policies with regards to child abduction. In April 2010, the Japanese Ministry of Foreign Affairs, Passport Division, Consular Affairs Bureau issued the following policy statement titled *"To Parents with Children of Japanese Nationality: Notice: Passport Application for Japanese Minors"*

It states, "An application signed by one parent will be accepted under the assumption that the signature is a representation of consent from both parent(s)/guardian(s). However, if one parent/guardian submits a written refusal to passport offices in Japan or Japanese Embassies and Consulates-General abroad, a passport will be issued only after it has been confirmed that there is consent from both parents/guardians."

In April 2010 my ex-wife, who was living in the U.S. as a resident alien and who had agreed to abide my U.S. laws, attempted to obtain a passport for Mochi from the Seattle Consulate. She was refused because of the two letters I had written and sent to all Japanese consulates in the U.S. requesting any passport attempts be denied on the basis that she was legally restrained from traveling outside the State of Washington or holding a U.S. or Japanese passport for the child.

Upon learning this, I immediately filed a motion to extend the travel restraints until he turned 18. She retained and attorney to fight the motion. Then on June 21, 2010, Chi violated the court's orders and traveled to the Portland Consulate where she was issued the passport. Two days later she abducted Mochi to Japan and he has not been heard from since. My son's whereabouts remain unknown.

Serious state and federal crimes have been committed by my ex-wife. Charges have been filed. My son is still missing after being ripped from the only life and country he had known. He was taken away from his friends and family and his father's love and care. What kind of parent would abduct their child knowingly and willingly? What kind of stories does she tell him? Is he told I am dead? Is he told I don't want him anymore? Will he ever know the truth?

For 11 months, Hirofumi Murabayashi, Consulate General of Japan in Portland has provided very little information beyond acknowledging that they issued the passport. He wasn't sure why they did not have my letters in their system when the Seattle consulate clearly did. Nothing they could do about it now. If I wanted a copy of her passport application, I would have to hire and attorney in Japan and request it. I had to spend time trying to build a rapport with him over several weeks. During my conversations with him, it became clear that Chi had also violated a Japanese law regarding passport fraud. Under Japanese law it is punishable by up to five years in prison and 30,000,000 yen. I requested they charge her and return my son. Mr. Murabayashi said he would ask headquarters in Tokyo to study it. They have been "studying" it since September 2010.

Each morning since I last saw my son, I wake up with a fragment of a moment of peace. Then it is shattered as the reality comes back to me. My son is missing. As hard as I tried, all the proactive steps I took, I could not protect him from his kidnapping mother.

I and the other Left-Behind Victim Parents continue to have to navigate the waters of this constant horror feeling that hardly anyone within our government cares. Law enforcement tries to pan us off in favor of the cases they believe they have a chance to solve. Ours are just not worth the extra effort. That's how many of us feel.

Serious crimes have been committed by the kidnappers, but The Department of State minimizes this by using terms like the "taking parent." It is frankly, insulting. My ex-wife did not take my son anywhere, she broke the law, and she abducted him. Many of us believe that The Department of State is way too concerned about how Japan would feel if confronted more directly. But that is what Japan needs. It needs to be shamed into doing what is right.

I implore Congress to request in the strongest possible and unambiguous terms that the President and The Department of State ***demand*** the return of children taken in violation of U.S. Court orders. It is imperative that these demands are made forcefully, openly, publicly, and fervently until Japan returns each and every child back home.

Additionally, since felonious crimes are involved. I call upon the U.S. government to place the Department of Justice in charge of our cases.

Sincerely,

Jeffery Morehouse
Pacific Northwest Regional Co-Director, BAC HOME

Trevor Richardson
817 BUSH STREET
SAN DIEGO, CALIFORNIA 92103

May 21, 2011

Subcommittee on Africa, Global Health and Human Rights
Room 2203
Rayburn House Office Building
Washington DC

Dear Members of the Subcommittee on Africa, Global Health and Human Rights:

Thank you for the opportunity to share my story and opinions with you. The fact that our government is interested in holding a hearing involving the growing problem of international parental child abduction gives us left-behind parents hope that we will someday soon be reunited with our children.

My name is Trevor Richardson and I am one of those left-behind parents. In August of 2007, my now ex-wife abducted my son, Andrew to Mexico where he has been retained ever since. Although I was granted full custody of Andrew in a US court, Mexico treats my case as a custody case which continues to be dragged out in court, bogged down by psychological evaluations, appeals and *amparos* (a claim of a violation of constitutional rights that halts all proceedings in a specific court case until such claim is resolved).

In the 4-plus years since Andrew was abducted, I have enjoyed only five hours of visitation with him in an enclosed playground adjacent to the family court in Queretaro Mexico, the city where he lives with my ex-wife. During each visitation I experienced complete joy and utter despair. The agony that my son has visibly grown a year older without me and the fear that he may not remember me the next time I am granted a visitation haunts me daily.

The Hague Convention on the Civil Aspects of International Parental Child Abduction (herein called the Hague Treaty) is the only tool I and other left-behind parents have to reclaim our children. It is here that I should remind you that Hague cases are not about determining child custody, rather they are about acknowledging the proper jurisdiction of a custody case; a concept which is continually lost on or blatantly ignored by countries that are labeled non-compliant with the Hague Treaty.

Mexico is one such country. As you are likely aware, in 2010 the State Department labeled Mexico 'non-compliant' with the Hague Treaty. This is not only unfortunate but also extremely alarming due to our shared borders and the ever-increasing number of children that are abducted by a parent across them.

This means that that the children abducted across our shared borders are unlikely to be returned to their custodial parents.

While the State Department has a line of action for left-behind parents that helps them open a Hague case, know their rights and identify their options for recovering their children, it is extremely limited, thereafter, in enforcing compliance with the Hague Treaty when countries refuse to comply with their obligations. It is astounding that other treaties have grave consequences for breaches of compliance while disregard for this treaty bears no consequences. There is no time of greater need for our country to pass legislation and give us the power to levy sanctions against countries that continually demonstrate non-compliance with the Treaty.

It is my sincere hope that the creation of an ambassador at large will deliver us a means of enforcing the Hague Treaty so that our children will not continue to grow up without knowing their left-behind parents who celebrate their children's birthdays without them; that write them letters in their absence; that miss them deeply; and that think about them every hour of every day.

Sincerely,

Trevor A. Richardson

STATEMENT OF

TOM SYLVESTER
4389 Woodlands Place
Cincinnati, Ohio 45241
tsylvester@fuse.net
(513) 967-7322

PARENT OF ABDUCTED CHILD, CARINA SYLVESTER

BEFORE THE U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH AND HUMAN RIGHTS

International Child Abduction:
Broken Laws and Bereaved Lives

May 24, 2011

I am Tom Sylvester, father of Carina Sylvester, my American-born daughter and only child who was taken by her Austrian mother from the United States to Austria on October 30, 1995. That was Carina's last day on American soil. She was then 13 months old. She is now 16 years old and remains in Austria. In the intervening 15 years, I have seen her just 75 days, only in Austria, and always under the supervision of a third-party or the mother.

Many years have passed since those early days but my passion to know my daughter and to be a parent to her has remained steadfast. Over the years, I sought and obtained diplomatic assistance, contemplated criminal action, testified before Congress, met with members of Congress, met with successive Secretaries of State, and addressed my case to President George W, Bush. I have litigated in the Austrian court of first instance, the Austrian appellate court, the Austrian Supreme Court, the Michigan Circuit Court and the European Court of Human Rights. I have had successful judgments in each and every court in which I have litigated. I have been the beneficiary of a host of orders directing my ex-wife to either return my daughter to the US or produce her for visitation in Austria. None of these orders were enforced. I have obtained two human rights judgments against the Republic of Austria requiring them to take all affirmative and necessary measures to repair the relationship between my daughter and me. Even these, sadly, appear to be unenforceable. For the past 15 years I have lived in a world where right is wrong and wrong is right. A world where victory but not justice is attainable in the courts. And, somewhere in a place far, far

away, stands my daughter, who has grown up deprived of the love and care of a father who adores her.

My saga began with the filing of a Hague Convention case in Graz, Austria. The Austrian trial court issued a prompt favorable order that Carina be returned to her home in the United States. This decision was affirmed by the Austrian Supreme Court. However, when the abductor refused to comply with the court order, the Austrian legal system provided no effective mechanism to compel her compliance. The one and only attempt at enforcement failed. In the end it was merely a knock on the door and a request for the child.

Time passed. Austrian legal procedure called for stays of proceedings while any matter before the court was on appeal. The mother's legal team maneuvered to flood the court with frivolous motions, the appeals of which led to years of delay of any further possible enforcement of the return order. The delay itself created a change in circumstances, namely that my daughter was now well-settled into the local environment and that it would be traumatic to send her back to the United States. Thus, several years after the abduction and initial order, the Austrian court determined it would not enforce its own "valid and final" order to return Carina home. This situation is best described with circular logic: *The child was not returned because the order was not enforced; now the order will not be enforced because the child was not returned.* The Austrian court proceeded to grant the mother custody in contravention of an existing Michigan custody order to the contrary.

Gaining access to my daughter under these circumstances has been a nightmare. When it was ordered by the court at Christmas 1995, the mother did not comply and no enforcement mechanisms were available to me. As a result, I did not see my daughter from the time of her abduction in October 1995 until 1997 when I was granted one-hour visits with my daughter on three successive days in June and December of that year at the Institute for Learning in Graz, supervised by its Director. Throughout all of 1998, I made requests for access to my daughter through the Austrian court and none was granted. Late in 1999, I negotiated directly with the mother and agreed to pay her a monthly stipend in exchange for visits supervised by her in her home. This is the period I dubbed "pay per view." Under these terms, I was able to

obtain three visits with my daughter at the end of that year, each time from approximately 6:00 to 9:00 pm on Friday night and from 10 am to 7 pm on Saturday and Sunday. Never could I leave the mother's house with Carina alone. The mother even held my car keys during the visits.

Quarterly visits under these same terms continued in 2000 and throughout 2004 with some variations due to the events of September 11. When in 2004 I asked the mother for more time with Carina she declined and threatened that if I went through the courts one more time, "You'll see, you will get nothing." I was given one more voluntary quarterly visit with Carina in early 2005 and filed an access request with the court thereafter. The Austrian courts did indeed follow through on her threat. The hearing on my request took place in July 2005. The judge ordered a "trial" visit to be overseen by a child psychologist who would provide a report to the judge on how the visit went. For the first time in nearly 10 years, Carina behaved very badly with me, creating chaos for the child psychologist to see. No visits were ordered as a result of the report. In 2006, I asked Carina if I could come to visit at Christmas and I was allowed to see her for the three-day weekend along the lines of the quarterly schedule. I have continued to ask Carina for further opportunities to visit her, but have not been welcome to do so.

My daughter has never been alone with me and has never met her American relatives. I have not seen Carina since December 31, 2006; nearly four and half years.

During the protracted litigation that followed my favorable Hague decision, I availed myself of the remedies available from the European Court of Human Rights, known as the ECHR, an independent, international tribunal which acts as the enforcement arm of the European Convention on Human Rights. In the late 1990s, I filed two cases against the Republic of Austria in the ECHR. The first was based on the court's failure to enforce the valid and final return order from 1995 violating my daughter's and my Article 8 right to a private family life free from unwarranted interference by the state. The second was based on the years of time that had passed during the stay of proceedings while the frivolous motions were appealed, ultimately violating our right under Article 2 to a speedy trial on the issue of the enforcement of the return order. Carina and I together won favorable judgments against Austria in both cases in 2003 and 2005 respectively.

The Judgment of the ECHR in the case of Sylvester v. Austria (no. 1) became final on April 24, 2003 and reads as follows: "The Court concludes that the Austrian authorities failed to take, without delay, all the measures that court reasonably be expected to enforce the return order, and thereby breached the applicants' rights to respect for their family life, as guaranteed by Article 8. The Court unanimously holds that there has been a violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms."

The Judgment of the ECHR in the case of Sylvester v. Austria (no. 2) became final on February 3, 2005 and reads: "The Court unanimously holds that there has been a violation of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms."

Judgments of the ECHR, like the decisions of the US Supreme Court, become the supreme law of the land. These judgments, known as *Sylvester v Austria I and II,* mandated affirmative responsibilities on the part of the government of Austria 1) to pay of a modest money judgment; 2) to undertake general measures to ensure that a violation such as mine would not occur again within their legal system; and 3) to undertake individual measures to repair the torn relationship between my daughter and me. The Committee of Ministers of the ECHR Department of Execution of Judgments oversees the "execution" or enforcement of the *Sylvester v Austria* judgments in Strasbourg, France.

Despite the clear mandate of *Sylvester v Austria I*, now the supreme law of Austria, that the Austrian government utilize all reasonable measures to reunite father and child, the Austrian government has taken no step whatsoever to achieve that goal. Instead, the government has unwaveringly held the position that they could do nothing, informing the Department of Executions that it was up to me to initiate a motion in the Austrian court "if I *wanted* to have access to my daughter." Despite travel to Strasbourg to speak to the Directors of the Department of Execution of Judgments, repeated lengthy submissions concerning the futility of my going again into the very same court which had either failed to order access or failed to enforce its own orders, and seeking

diplomatic and Congressional assistance, I could make no headway whatsoever to convince them that it was Austria, not I who bore the responsibility to provide restitution by restoring the family relationship between my daughter and me. As an act of desperation, I acquiesced to the pressure and opened a case in Austria for post-*Sylvester v Austria I* access to my daughter. This occurred in July of 2005 when the disastrous "trial" visitation took place. The judge in the case at the outset made it clear in an open courtroom in which my daughter sat that she did not appreciate my involving what she called "international authorities" in "her" case and that I would not see Carina if Carina herself did not desire it.

Carina used the opportunity to lash out at me declaring boldly by both word and deed that she did not want to see me. The mother had made good on her promise that "I would get nothing." With the exception of the following Christmas, I have been cut off from seeing Carina ever since. I can get no relief from the court on access even after *Sylvester v Austria I*, the supreme law of their land, and my requests of Carina to visit have been unsuccessful since 2006.

And then came another experience with the broken legal system. The Austrian government moved to close the case of Sylvester v Austria 1 as I have informed them that I will not continue any further litigation in the Austrian court on access. Such a move is read as an adversarial measure by mother and daughter, is in fact harmful to my relationship with my daughter, further violates our right to a private family life and has yielded significantly less time with my daughter than did the "pay per view" method. The Council of Europe Committee of Ministers which determines compliance with the ECHR judgments met to discuss the matter in Strasbourg December 1 through 3. The Department for the Execution of Judgments of the European Court of Human Rights closed the case on the execution of *Sylvester v Austria I* as to individual measures, finding that the government of Austria has *fulfilled* its affirmative obligation to mend the relationship between my daughter and me. At the end of the day, the Human Rights judgments can apparently be tossed on the pile with all the other orders of the various courts which will not be enforced.

I am a parent who has won not only his Hague Convention case, but also two prized Human Rights judgments against Austria for it's failure to timely enforce the Hague

Convention return order, and yet I cannot and do not even see my daughter. After 15 years, I am no closer to her than I was in the months that followed her abduction in her infancy.

International parental child abduction is indeed a Human Rights issue. I am reminded of the statement made by Former First Lady Hillary Clinton at the launch of the International Centre for Missing & Exploited Children on April 23, 1999 when she said: "Ultimately these matters are not just about individual children and the pain of victim parents, but they really are a question of human rights and whether or not we will enforce our laws evenly and fairly to anyone who comes within our jurisdictions. This is an international and it is a human rights issue."

Carina is being denied her most basic human right – that of having both parents in her life. If you have rights that are not able to be exercised, it is as if you have no rights at all. She is not being exposed to her birth country, native language or her extended family. She has a right to have a continuing relationship with me, her father. Carina has the right to respect for family life. I am fighting for her fundamental human rights.

I am a dad, just a dad with a precious little girl. Yet, instead of being an expert on raising a child, I have become an expert on international parental child abduction. Instead of spending my time taking my daughter to school, helping her with her homework, or reading her bedtime stories; I spend my time with lawyers, government officials and reading mountains of documents and paperwork.

As Carina's dad, I want to be in her life on a daily basis. I want to help expand her mind and enrich her heart. I want to be a resource to her. I want to add value to her life. I want her to have more, not less. I want her to have both her mother and her father in her daily life. I want her to know her Austrian family and her American family. Carina has dual nationality. I want her to know Austrian culture and American culture. I want Carina to have the best of both worlds. As a loving parent, I want Carina to have the maximum opportunities and possibilities for her life. As an American-born citizen, I strongly believe that Carina has the right to love and be loved by both parents.

There is nothing more fundamental than the right of a parent to a normal relationship with his or her child. When that right is interfered with by the state, there must be some effective recourse. I have taken every legal step available and have won every major decision except the one that made the difference--the decision not to enforce the order that Carina be immediately returned to the US. US citizens are often helpless in foreign courts with systems wholly unlike our own. I ask that you apply pressure on these recalcitrant governments to come into compliance with the international requirements of the Hague Convention in mandating enforcement of return orders.

My attempts to maintain a life with my daughter began in 1995 and continue to this day, although I now know there is little hope of seeing her again until adulthood, if then. Although mine is an extreme case, as you see from the testimony today, it is not an isolated case. Left-behind American parents need Congress' help.

Carina will likely not know of our victory in the European Court of Human Rights for many years to come. The loss of her life with her father, and the loss of her American heritage, extended family, and culture will have been the price she paid for bringing on the legal reform that will ensure that what happened to her will not happen to any other child abducted by a parent to Austria.

In closing, I want to take this opportunity to express my sincere gratitude for Congressman Steve Chabot for his steadfast support of my case throughout the years. I recall the words of Congressman Chabot to U.S. Secretary of State Madeleine Albright at the U.S. House Committee on International Relations hearing on February 16, 2000: "Tom Sylvester has played by the rules. He has followed the law. He believed in the system. Well, if Mr. Sylvester has lost faith in that system, he certainly could not be blamed. Because the system has failed." Unfortunately, these heartfelt words continue to remain true to date.

I want to thank the Subcommittee on Africa, Global Health, and Human Rights for holding a hearing on this very important subject, and for considering my statement to be submitted into the official Congressional records.

Submission for the Record
"International Child Abduction: Broken Laws and Bereaved Lives"
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515-0128
Subcommittee on Africa, Global Health and Human Rights
Christopher H. Smith (R-NJ), Chairman

My name is Paul Toland. I am a Commander in the United States Navy, and have been selected for promotion to the rank of Captain. I am also the only living parent to Erika Toland, born on 17 October 2002 and abducted on 13 July 2003 from Negishi US Navy Family Housing in Yokohama, Japan. On 31 October 2007, my wife Etsuko committed suicide in Tokyo, Japan, leaving me as Erika's only living parent. Since that time, Erika has been held unlawfully by her Grandmother in Japan, Akiko Futagi, in violation of my Constitutional rights. All attempts to gain access to Erika have failed.

I previously testified before Congress at the Tom Lantos Human Rights Commission on 9 December 2009. At that hearing, I provided full details about my daughter's abduction case. Rather than repeat those details, I would like to use this opportunity to make a specific request to Congress.

My daughter Erika has suffered an injury to her leg. I am unable to determine the extent or exact nature of the injury, and the abductors are denying all requests for me or any third-party to visit Erika. I would like Congressional intervention on this specific issue, to include contacting the State Department, the Japanese Ministry of Foreign Affairs and any other specific Japanese agency, such as their Child Protection Services equivalent in Japan if at all possible.

On Tuesday, 15 February 2011, ABC News Nightline aired a story on International Child Abduction to Japan. That story showed footage of my daughter walking to school in Japan, and it was clearly evident that my daughter had suffed from some kind of leg injury where her left leg turned inward with every step, causing a severe limp. Similar footage of Erika again aired on ABC World News Tonight with Diane Sawyer on 16 February 2011. On 17 February 2011, I

sent an email to the producers and reporter for ABC News, and received confirmation that "yes, Abbie and I both noticed the same thing you did about her leg. It appeared to us that there did seem to be some physical issue with that one leg -- looks to be something perhaps structural? That one leg did seem to be curling in and causing the limp that you saw." (see attached email from ABC News)

On 20 February 2011 I sent an email to the State Department's Office of Children's Issues asking them to visit Erika to assess the nature and extend of her injury (see attached email request). The State Department attempted for several weeks to visit Erika to assess the extent and nature of her injuries, however, they were turned away. I received a letter from the State Department on 4 May 2011 notifying me that they have been unable to visit Erika or assess the nature and extent of her injuries. The abductor's American attorney, Ms. Judy Dugger, had advised the abductor to not allow the State Department to visit Erika, and had additionally advised the abductor to not have any further contact with the State Department. The State Department official advised me that they would try to make another request to visit Erika in "August or September." That is unacceptable. Erika is injured and as her only living parent I have a right to know the extent and nature of her injuries. Apparently, the State Department bureaucracy is content to drag this issue out for months at a time, but I am not.

I implore you to please do all that you can to find a way to have some neutral third party visit Erika to check on the extent and nature of her injuries. Erika is a military dependent and is entitled to free medical care under the TRICARE system. Her injury could have long-term health effects, possibly even affecting her ability to walk straight as an adult. Without knowing the nature and extent of these injuries, I have no way to provide the care necessary to protect her from these potential long-term effects. Thank you. Sincerely,

Commander Paul Toland, US Navy
National Coordinating Director
Bring Abducted Children Home (BAC Home)
www.bachome.org

From: Netter, Sarah M.
To: Toland, Paul P. CDR JTF CAPMED; Boudreau, Abbie
Subject: RE: Thank you and question about Erika"s walking stance
Date: Thursday, February 17, 2011 12:00:44 PM

Hi Paul,

You are most welcome. And thank you for sharing your story. It's a powerful one and we hope that we were able to make a difference along the way.

A couple of things:

This is not a story that is over for us. We are planning follow ups. If you hear anything from the state department or anything happens in the courts on your end, please let us know.

On Erika -- yes, Abbie and I both noticed the same thing you did about her leg. It appeared to us that there did seem to be some physical issue with that one leg -- looks to be something perhaps structural? That one leg did seem to be curling in and causing the limp that you saw.

We also noticed what a beautiful little girl she is.

Talk to you soon,

Sarah

-----Original Message------
From: Toland, Paul P. CDR JTF CAPMED [redacted]
Sent: Thursday, February 17, 2011 8:47 AM
To: Netter, Sarah M.; Boudreau, Abbie
Subject: Thank you and question about Erika's walking stance

Sarah and Abbie, First, I want to thank you from the bottom of my heart for the great stories of the last few nights. You have indeed made a difference. There are many actions underway already as a result of your broadcast, so please know that you both have made a difference.

I wanted to bring something to your attention about Erika. Two different physician friends of who saw the video of Erika came to me concerned about her the way she was walking. They said there appeared to be a problem with her left leg. It seemed to be curling inward with each step. I captured and attached a screenshot from the footage for you to look at. My question is, do you remember anything specifically wrong with her gait. Did she seem to be limping? Did her left leg seem to be curling in? I figure with all the adrenaline, you might not have even noticed. I'm planning to ask the State Department and my attorneys to find a way to check on Erika do to this, but I wanted to check with you first to see if you noticed anything.

Thanks again for all you have done for us. Sincerely, Paul

From: Toland, Paul P. CDR JTF CAPMED
To: "Brooks-Lindsay, Joanie"
Cc: "reganmb@state.gov"
Subject: FW: Thank you and question about Erika"s walking stance
Date: Sunday, February 20, 2011 9:16:17 PM

Joanie, This week I saw Erika walking on the ABC Investigative Report on Japan International Child Abduction. There is something distinctly wrong with her, and she has obviously had some kind of injury to her leg. Can you please contact the Futagi Family to investigate. Please see below email string for more details. Thank you. Sincerely, Paul Toland

-----Original Message-----
From: Netter, Sarah M. [mailto:Sarah.M.Netter@abc.com]
Sent: Thursday, February 17, 2011 12:01 PM
To: Toland, Paul P. CDR JTF CAPMED; Boudreau, Abbie
Subject: RE: Thank you and question about Erika's walking stance

Hi Paul,

You are most welcome. And thank you for sharing your story. It's a powerful one and we hope that we were able to make a difference along the way.

On Erika -- yes, Abbie and I both noticed the same thing you did about her leg. It appeared to us that there did seem to be some physical issue with that one leg -- looks to be something perhaps structural? That one leg did seem to be curling in and causing the limp that you saw.

We also noticed what a beautiful little girl she is.

Talk to you soon,

Sarah

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Sent: Thursday, February 17, 2011 8:47 AM
To: Netter, Sarah M.; Boudreau, Abbie
Subject: Thank you and question about Erika's walking stance

Sarah and Abbie, First, I want to thank you from the bottom of my heart for the great stories of the last few nights. You have indeed made a difference. There are many actions underway already as a result of your broadcast, so please know that you both have made a difference.

I wanted to bring something to your attention about Erika. Two different physician friends of who saw the video of Erika came to me concerned about her the way she was walking. They said there appeared to be a problem with her left leg. It seemed to be curling inward with each step. I captured and attached a screenshot from the footage for you to look at. My question is, do you remember anything specifically wrong with her gait. Did she seem to be limping? Did her left leg seem to be curling in? I figure with all the adrenaline, you might not have even noticed. I'm planning to ask the State Department and my attorneys to find a way to check on Erika do to this, but I wanted to check with you first to see if you noticed anything.

Thanks again for all you have done for us. Sincerely, Paul

United States Department of State

Washington, D.C. 20520

May 4, 2011

Dear Cmdr. Toland:

Our office received a report from the U.S. Embassy in Tokyo concerning its efforts to conduct a welfare visit with your daughter, Erika. Below is the Consular Officer's report.

"On February 25, 2011, Ms. Futagi, Erika's grandmother, agreed to meet with the Embassy, but asked if the meeting could take place during Erika's spring vacation. We arranged to talk again in mid-March regarding the date and meeting place. When asked, Ms. Futagi also stated that Erika has no health problems.

When we contacted Ms. Futagi to confirm the well-being of Erika after the earthquake, she informed us that she had no objection to meeting with us. However, her lawyer, Ms. Judy Dugger, had instructed her not to comply with our request due to letters the lawyer had been receiving from Mr. Toland. Ms. Futagi chose to follow her lawyer's advice and cancelled the meeting.

On March 30, 2011, the Embassy received a fax from Ms. Judy Dugger, Ms. Futagi's lawyer, asking us not to contact Ms. Futagi directly. Ms. Dugger requested that all contact with Ms. Futagi go through Ms. Dugger. Ms. Dugger also asked us to cancel any appointment, if we had any. On April 14, 2011, the Embassy faxed a letter to Ms. Dugger requesting to meet with Erika. However, to date we have not heard back from Ms. Dugger."

As always, should you have any questions about your case or anything you would like to discuss, please feel free to contact me by phone or e-mail at (202) 736-9084 or Brooks-LindsayJ@state.gov. The Consular Officer can attempt to schedule a visit with Erika again in August or September.

Sincerely,

Joanie Brooks-Lindsay
Office of Children's Issues

Statement for the Record of Mr. Douglas Trombino
Subcommittee on Africa, Global Health, and Human Rights
Committee on Foreign Affairs, U.S. House of Representatives
Hearing: "International Child Abduction: Broken Laws and Bereaved Lives"
May 24, 2011

My name is Douglas Trombino and I reside between Naples, Florida and Yardley, PA. I am the father of Morgana Gray Trombino, a beautiful 3 year old girl who captured my soul and my love from the day she was born – on Father's Day June 15, 2008.

Unfortunately, my wife Adriana abducted our daughter Morgana into Cali, Columbia on November 17, 2010 with the intent to never be returned to her father, or the United States. I have been fighting to get her back home for 6 painful months, but it has been a battle with little progress. With my faith in God, the love of my family and dear friends and the unwavering support of my politicians in both my home states, I have gotten much aid -- but it hasn't proved enough to get my daughter home yet.

I, and the thousands of other parents in my heart breaking situation, need to know what the US government is doing to protect the lives of our children who have been illegally abducted to foreign countries who profess to be members of the Hague convention?

I, and the thousands of other families in my heart breaking situation, need to why doesn't our government assist those who are left behind when our children have been illegally abducted which is paramount to kidnapping?

As a country, we need to ban together and stop this phenomenon. What is happening to me, and thousands of others, can't continue. Families must remain families. The family unit is critical to the success and growth of a child. I want to be Morgana's dad. I want to touch her, smell her, love her, interact with her. Not through a computer screen. I don't want to blow bubbles to her via Skype. I don't want to send Easter baskets via FedEx. And I don't want to have to go through customs for a mere 24 hours of "daddy/daughter" time. That to me is not being a father. I want to be Morgana's dad. Her hero. Her go-to, 24/7 best friend and father.

I beg of you to help me. To help my daughter. And to help everyone like us. Please help bring Morgana home safely.

Douglas Trombino

Submission for the Record

By:
Brett Weed
Pacific Northwest Regional Director for Bachome
Father of Takoda & Tiana Weed, abducted to Japan

Presented to: United States House of Representatives
Washington, DC 20515-0128

Committee on Foreign Affairs

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

Subject:
"International Child Abduction: Broken Laws and Bereaved Lives"

May 24, 2011

Written statement submitted to Subcommittee on Africa, Global Health and Human Rights
By Brett Weed, Pacific Northwest Regional Director for Bachome

Thank you for the opportunity to submit these statements.

My name is Brett Weed. I am the Pacific Northwest regional Director for Bachome. I am also the father of Takoda Tei Weed (aka Tei Oda) and Tiana Kiku Weed, (aka Kiku Oda) both U.S. citizens, abducted and held in Japan since January 2004.

I initiated a separation and divorce with my ex-wife because her dishonesty and morals were setting a bad example for our children. She was living a double life with 6 months in the U.S. and 6 in Japan. My son informed me prior to his abduction that he "had a Japanese daddy". Unbeknown to me until just recently, I discovered my ex had divorced me October 10, 2001 in Japan and was effectively a single woman in Japan while still being married in the U.S..

Our divorce in the U.S. was final at the end of 2003, and the Court allowed my former wife Kyoko Oda to relocate to Japan with the children. As recommended by the custody evaluator, the Court ordered that I was to have unlimited contact by phone, mail, and webcam as well as three vacations each year in the United States and in Japan with my two children. I never expected what was to come next. Soon after leaving the U.S. on January 16, 2004, Kyoko severed all contact, communication, and court ordered visitation with me. This was in clear violation of Court orders regarding custody and visitation that were part of our final divorce decree. She also cut off all contact and communication with all of Takoda and Tiana's extended family and friends in the U.S..

In accordance with the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, which Japan signed in 1970, my attorney tried to serve Court documents to the mother through official channels three times. Japan designated the Ministry of Foreign Affairs as the Central Authority, the entity authorized to receive and effect service of judicial documents in accordance with The Hague Service Convention. One by one the Ministry of Foreign Affairs returned them, through the local Japanese Consulate General. The first time they said simply "Enclosed are documents that you sent to the authorities in Japan, in accordance with the "Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters." The documents were not delivered to the appropriate person(s). The address is not correct."

While my ex-wife had been living in the U.S., she stayed with her mother while visiting Japan, so I used her mother's address on the first attempt. Since the Ministry of Foreign Affairs refused to deliver to this address, I confirmed her new address by alternate means, which turned out to be in the same neighborhood as her mother. We tried again to use the Hague Service Convention. This time they were returned with the same note, but the last sentence was modified: "The documents were (NOT) delivered to the appropriate person(s). The address is correct but no one is ever there."

By this time, I had had no contact with my children for over a year and a half. A third attempt was returned with nearly the same explanation as the first, but without the last sentence: "The Document [sic] were not delivered to the appropriate person(s)."

Each of the attempts also included a notation on the "Certificate Attestation" (the service documents) from the Tokyo District Court. These notes all indicated that in order to serve the documents, they had simply sent it thru the postal service and waited for the "retention period set by the post office" to expire before returning the documents as undeliverable.

Japan objected to paragraphs (b) and (c) of Article 10 of the *Hague Service Convention*, meaning that outside of the Hague Service Convention, my only alternative is the postal service. Yet they themselves only use the postal service, which apparently allows the recipient to refuse service simply by refusing the mail. This makes service of foreign judicial documents to an unwilling recipient impossible. It seems that the Japanese government and the Japanese Courts are actually using the Hague Service Convention to *prevent* delivery of International Court documents.

Unsurprisingly, the U.S. Courts allowed alternative service, and we tried the postal service, email, and faxes to both her brother and her lawyer. Email and faxes are difficult to confirm accurately, but we documented all attempts (email was not rejected and returned, and we believe that some fax attempts were successful although some were also terminated during transmission). I noted that one attempt by fax was to a Japanese lawyer, who previously asked for information about me, implying that he was representing Kyoko Oda. He claimed later that he was not retained by Kyoko Oda concerning this matter and returned the documents.

When trying to use the postal service for alternate service, we received a note in Japanese saying the following: "[The addressee] is not currently living here. Since the sender is considered to be a dangerous person, the Metropolitan Police Department has intervened and a temporary injunction and refusal of delivery have been issued by a Court. Please do not accept the delivery. Delivery refused. {Takada} [stamped] Agent. [Handwritten]"

This time, it appears that Japan's Postal Service and the Tokyo Metropolitan Police obtained a Japanese court order prohibiting delivery of these United States court documents. Obviously, they knew that the contents were merely documents; otherwise the postal service, police department and the Court would not have collaborated to do this in the first place. The claim of the sender being dangerous is doubly ridiculous since these were sent directly by my attorney, and by the Crowe Foreign Services Corporation, a well known overseas legal process services company. Clearly, not only is the Japanese government (Ministry of Foreign Affairs) preventing me from using the Hague Service Convention, but the police department and the Japanese courts are preventing me from delivering documents directly by the only legal means possible.

On July 21, 2005, the court in Oregon that handled our divorce granted me full legal and physical custody of the children. This occurred in the place of Takoda and Tiana's habitual residence, the place they had lived most of their lives. The Court also terminated all support obligations and issued a warrant for the Japanese mother on related contempt charges. My attorney, however, says that since we were "forced" to use an alternate means of service this ruling would not be valid in Japanese Family Court. Yet there is no possible way a foreign parent can send Court documents to a Japanese parent who has abducted their child.

The Japanese government, the Tokyo Police Department, and the Japanese courts have established a convenient procedural excuse to refuse to return the children if I try to get them back through their legal system. The mother was never served any notice of trial or any legal proceedings within the requirements of the Hague Service Convention. Therefore, I will certainly fail in Japanese Court. This is clear discrimination against a foreign father; discrimination that seems to have been well coordinated by the Japanese Ministry of Foreign Affairs, the Tokyo Metropolitan Police Department, and the Japanese court system.

The Japanese government is helping Kyoko Oda to abduct my children. I am deeply concerned for the long-term mental well-being of my children. I fear they have been brainwashed and/or told numerous lies (possibly that I am dead). My children are now living with a wanted fugitive, who is being aided by her government. My children are being denied their American heritage by Japan's racial discrimination against foreign parents.

Not a day goes by that I do not think about my children. In spite of the thousands of hours spent in the recovery effort of my children, I still question if I am doing enough to secure their recovery. I cannot help but wonder how they have been deprived and the long term effects this will have on them. I fear that my children will be of legal adult age before our governments actions result in their return.

The Japanese's government has clearly committed human right violations under the Universal Declaration of Human Rights of December 10, 1948. By definition contained within Section 502(b), any participating country which allows the abduction of children is in gross violation of internationally recognized human rights. Please note the term ''gross violations of internationally recognized human rights'' includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person. It also states "except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of inter-nationally recognized human rights."

The U.S. Department of State inherently has a conflict of interest between its diplomatic role and enforcement of international child abduction; unfortunately diplomacy takes

priority over our children. This is apparent in the way OCI has handled my case (and many others) since my children were abducted:

- My case file has been lost.
- There has been a failure to keep me informed of my case status (required under United States Code: Title 42: Section 11608a).
- They attempted to close my case file without resolution.
- They keep low counts on cases by criteria required for opening and maintaining a case.
- There is a lack of meaningful responses to my request for information.
- There is a lack of satisfactory overall performance and results.

Congress needs to hold the Department of State accountable and eliminate the inherent conflict of interest.

After the Earthquake, Tsunami and Radiation Emergency March 11th 2011, I was relying on OCI and the U.S. Department of State to verify the wellbeing of my children. In spite of repeated requests to date I still have not receive any word on my children. On April 7th, 2011 I received an e-mail from my case worker at OCI stating: *"The Embassy suggests you might be able to get a copy of the family register by working with an attorney. From my understanding, they use the permanent address as a record locator, and from the register, you might be able to trace the children's current address. Let me know if you want the list of attorneys sent to you."* In other words they are telling me to privately fund, locate and investigate the wellbeing of my children. At the present time the status of my children's wellbeing is still unknown.

Left behind parents do not have a point of contact in the U.S. Department of Justice to advocate cases on their behalf. Even with persistence, some cases are taking nine years to acquire Interpol notices. This is due to a lack of attention to this escalating crime. Normally, international parental abductions cases are designated to a subsidiary within the Criminal Division called the Child Exploitation and Obscenity Section (CEOS). This division was created in 1987 to protect the welfare of America's children and communities by enforcing federal criminal statutes relating to the exploitation of children and obscenity. According to its website, "CEOS attorneys respond to inquiries from left behind parents and other members of the public regarding the resources available relating to international parental kidnapping." This is not true as of today. According to a senior official from the National Center for Missing and Exploited Children, CEOS lacks attorneys trained to handle international parental kidnapping cases. We respectfully request Congress to correct this. We need the Justice Department to protect our children from being kidnapped.

On May 20, 2011 Japan announced it would sign the Hague Convention on the Civil Aspects of International Child Abduction. According to information I have received it appears Japan is signing the Hague but it is not retroactive to our cases. Also, they have figured out a way to sign and not comply at the same time, with its intent by adopting exceptions and procedural excuses. They have had 31 years to figure this out.

Visitation concerns: My family does not want me to travel to Japan for fear of prosecution resulting from false accusations made by my ex-wife. As a case in point

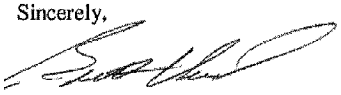
regarding Japan not honoring its treaty obligations, Japan does not adhere to the Geneva Convention regarding detention and incarceration of detainees and has been admonished on UN reports.

In Conclusion: The Universal Declaration of Human Rights of December 10, 1948, Article 16 (3) states: "The *family* is the natural and fundamental group unit of society and is entitled to protection by society and the State."

I would like to convey and emphasize to this Committee that both countries involved in international cases of abduction are in violation of this article if uncompromising efforts are not made in the recovery efforts of an abducted child. All abducted children and their left behind families have had their fundamental human rights and Constitutional rights blatantly violated. The United States must hold these host countries of child abduction and human rights violators accountable by every means available.

It is a known fact that the President of the United States and the Secretary of State have not made a formal demand for the return of our children from Japan. This needs to be done. I believe: the United States needs to stand as role model to promote the increased observance of internationally recognized human rights by all countries. These fundamental rights, reflected in the United Nations Universal Declaration of Human Rights, constitute what the White House has called the "non-negotiable demands of human dignity."

Sincerely,



Brett Weed
Pacific Northwest Regional Director for Bachome
Father of Takoda & Tiana Weed, Abducted & held in Japan since January 2004

SUBMISSION FOR THE RECORD
"INTERNATIONAL CHILD ABDUCTION:
BROKEN LAWS AND BEREAVED LIVES"

May 27, 2011

The Honorable Christopher H. Smith
Chairman, Subcommittee on Africa, Global Health and Human Rights
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515-0128

Re: Statement of Paul Wong, Father and Sole Surviving Parent of Kaya Summer Xiao-Lian Wong

Dear Mr. Chairman:

I thank you for the opportunity to submit this statement about my daughter, Kaya Summer Xiao-Lian Wong.

My name is Paul Wong. I am Kaya's natural father and sole surviving parent. Kaya's mother, Akemi Yokoyama Wong, died in December 2005, after a six-year battle with cancer. We had a loving marriage until that day she left Kaya and me behind.

Kaya was born on July 20, 2003, in San Francisco, California, and is a dual citizen of the United States and Japan. She lost her mother when she was just 2 years old, and then she lost her father and sole surviving parent when she was kidnapped. I have not seen or heard from my daughter since August 2007.

Kaya's kidnappers are her maternal grandparents, Satoru and Sumiko Yokoyama, of Kyoto, Japan. They falsely accused me of horrific acts of abuse against Kaya to terminate my parental rights. The Yokoyamas offered no proof other than their own self-serving allegations. Despite eyewitness and witness statements, statements by Kaya, and other objective evidence, including the court's own investigation report, clearly establishing that the allegations are false and made up, the Japanese courts still terminated my parental rights by stating that the Yokoyamas' statements must be believed while ignoring and making no mention of all of the contrary evidence.

Kaya's mother was an only child, and when the Yokoyamas die, she will become an orphan of Japan, and, as Kaya's natural father and sole surviving parent, I still cannot get Kaya back because the Japanese courts have permanently terminated my parental rights to my own daughter.

I do not use the term "kidnap" lightly. What the Yokoyamas have done is to kidnap my daughter with nothing but lies, and the Japanese courts, being the arm of the "State," assisted them with their action.

My daughter's case is not the usual custody case, where both parents with equal parental rights to the child are present. I am the sole surviving parent to Kaya, and the only way the Yokoyamas could kidnap my daughter is to terminate my parental rights. As courts in the United States have consistently stated, the permanent termination of parents' rights to their child is the family law equivalent of the death penalty in criminal law. The U.S. Supreme Court stated in Santosky v. Kramer, 455 U.S. 745 (1982), that the fundamental liberty interest of natural parents to their child is so great and protected under the 14th Amendment of the U.S. Constitution that only proof by clear and convincing evidence must be established before any parents' rights to their child can be terminated.

In my case, there was no evidence, but I was still sentenced the death penalty by Japanese courts. As a California licensed attorney (practicing overseas), I understand the utmost importance of my ethical obligations as an officer of the court. Through Kaya's case, I have discovered that blatant lies are tolerated in Japanese courts because perjury is virtually non-existent and there is no discovery. Indeed, false and unsubstantiated claims are accepted at face value by the courts, and it is the modus operandi employed by lawyers and their clients in custody cases. My Japanese lawyers told me that the reason my parental rights to Kaya were terminated is because of racism as a foreigner.

As a parent, I can imagine no greater pain than to know that my own daughter will grow up with no parents in her life and to one day become an orphan. All the while, I am helpless and can do nothing to save her.

As this Subcommittee is aware, international abductions of American children by citizens of Japan are becoming too common. It is not only American children that are being abducted and kidnapped, but no children of any foreign parent have ever had their children returned to them once inside Japan. Japan stands alone among the community of nations with such a reprehensible record and is truly a black hole where no abducted child will ever return home.

While Japan allows its citizens a "free pass" to steal our American and other foreign children from their parents, they will punish any foreign parent who tries to abduct his/her children even if such parent has no choice but to take matters into his/her own hands. Just over a year ago, one of Japan's main newspaper s reported about a Chinese father who had abducted his children. In sentencing the father to jail, the Japanese court remarked that, "It is impossible to imagine the mental anguish [of the mother for] being separated for such a long time from the children she loved."

The mental anguish to me, and all parents who have lost their children to Japan, is unequally unimaginable. Japan's actions to allow its citizens to freely abduct and

kidnap children are abominable and a gross violation of fundamental human rights of children and their parents. Even Japan's recent announcement that it intends to become a party to the Hague Convention on the Civil Aspects of International Child Abduction shows that Japan still refuses to accept the seriousness and harms associated with child abductions. The various conditions that Japan will require before signing the Hague Convention effectively means no abducted child will ever be returned to the habitual home. This modern day travesty cannot be allowed to be tolerated anymore, as I and all parents can do nothing but stand on the sidelines hoping that one day our children will come looking for us after they grow up.

I urge this Subcommittee to do all that it can to get Congress and the President to remedy this modern day travesty and demand that Japan return our children back home to their parents. In addition, I urge this Subcommittee to implore that the Department of State, particularly the American Citizens Services personnel at the U.S. Consulate in Osaka, Japan, to assist parents with children under its jurisdiction. I have been treated rudely, threatened, and continuously ignored by the personnel at Osaka Consulate. Unfortunately, this type of experience has happened to other parents. We have already lost our children, but we certainly should not have to feel that we now have to beg our own American Citizens Services personnel to serve us regarding the welfare and whereabouts of our children.

Very truly yours,

/s/ Paul Wong
Paul Wong
Father and Sole Surviving Parent of
Kaya Summer Xiao-Lian Wong

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