

**RESOLVING INTERNATIONAL PARENTAL
CHILD ABDUCTIONS TO NON-HAGUE
CONVENTION COUNTRIES**

HEARING

BEFORE THE

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

OF THE

COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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RESOLVING INTERNATIONAL PARENTAL CHILD ABDUCTIONS TO NON-HAGUE CONVENTION COUNTRIES

THURSDAY, MAY 9, 2013

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

The subcommittee met, pursuant to notice, at 10 o'clock a.m., in room 2172 Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the subcommittee) presiding.

Mr. SMITH. The committee will come to order, and I want to thank all of you for joining us this morning to focus once again on the persistent and devastating problem of international parental 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.

The damage to the child and the left-behind parent is incalculable, and often lifelong. The children especially 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. These victims are American citizens who need the help of their Government when normal legal processes are unavailable or failed.

In 1983, the United States ratified the Hague Convention on the Civil Aspects of International Child Abduction to try to address this serious issue. This convention creates a civil framework for a quick return of abducted children, and for rights of access to both parents. Absent extenuating circumstances, the child is to be returned within 6 weeks to his or her country of habitual residence for the courts there to decide on custody, or to enforce any previous custody determinations.

The Convention has helped return many children, but it is far from a silver bullet. Even in countries where the Convention is allegedly working, only about 40 percent of the children are returned. Other cases are "resolved" but too often with dubious application of the Convention. Susceptible to abuse by taking parents or unwilling judges, the Convention has too often been stretched to provide cover for the abduction, rather than recovery of the child.

Taking parents have figured out that they can drag out hearing after hearing, appeal after appeal, for years, until the courts can

claim yes, the child should have been returned, but that the child has settled in a new country by that point and does not have to be returned under an exception in the Convention.

Some Hague Convention signatories are simply not enforcing legitimate return orders. The State Department's 2012 Hague Convention Compliance Report highlights five countries—Argentina, Australia, France, the Netherlands, and Romania—for failing to enforce return orders. Other countries—Costa Rica, Guatemala, the Bahamas, Brazil, and Panama—are non-compliant with the Convention, or showing patterns of non-compliance. In other words, abducted American children are not coming home from these countries, and American families, I would respectfully submit, need other options.

The same is true for many countries that have not signed the Hague Convention. In 2012 alone, more than 634 children were abducted to countries that have not signed the Hague Convention, countries like Japan, Egypt, and India. More than 300 children have suffered abduction from the United States to Japan since 1994. Congress does not know of a single case in which the Government of Japan has issued and enforced an order for the return of an abducted child to the United States.

According to the U.S. Department of State's statistics, the United States is monitoring 54 ongoing cases involving 74 children who were abducted from the U.S. to Japan, and 21 additional children from the United States who may not have been abducted, but who are being denied access to their American parent. Although Japan has taken steps, including this morning, to join the Hague Convention, Japan's ratification will not address current cases for return. Moreover, experts question whether the ratification includes reservations that will make it nearly impossible for even new abduction cases to be resolved with returns.

The United States does not have a bilateral or other agreement with Japan to facilitate the return of American citizen children who are currently abducted, citizens like Jade and Michael Elias, whose father will testify before us today.

Under the Convention alone, if ratified by Japan, the best that American parents of currently abducted children can hope for is, perhaps, a visit with their child. Such visits are projected to look like 1 hour, once a month, in a secure facility. Hardly dignified or unfettered.

Despite our multi-billion dollar investment in Egypt, neither the Mubarak government nor the Morsi government has seen fit to return abducted American children Noor and Ramsay Bower. They, along with 30 other American children in Egypt, are forced to live without half of their culture, half of their identity, and without the love and guidance of an American parent who fights daily for their return. The United States does not have a bilateral agreement with Egypt to facilitate the return of American citizen children, and has so far been unwilling to make prioritization of these cases a condition for the continued funding of the Egyptian Government.

India has also been a source of immense frustration and grief for American parents. In 2012, 32 more children were abducted to India, bringing the total number to 78 open abduction cases involving 94 children. Although some Indian courts make Hague-like de-

cisions to return some children, returns are at best uneven. Parents attempting to utilize India's courts for the return of abducted children report corruption and incessant delays. The United States does not have a bilateral agreement with India, either, to facilitate the return of American citizen children to the United States.

In the last Congress, I introduced legislation which we entitled the Sean and David Goldman Child Abduction Prevention and Return Act, and I will reintroduce it shortly, to impress both upon the Hague and non-Hague Convention countries alike that the United States will not tolerate abduction or have patience with countries that hide abductors behind the Hague Convention.

The bill would empower the President and the Department of State with new tools, and I would say necessary tools, and authorities, to secure the return of abducted American children. When a country has shown a pattern of non-cooperation in resolving child abduction cases, the President will be able to respond decisively with a range of 18 actions and penalties. Based on past experience, particularly with the Goldman case in Brazil, we know that penalties manage to get the attention of other governments and help them prioritize resolution.

The bill also calls for the State Department to work out memorandums of understanding with countries that have not signed the Hague Convention in order to create agreed-upon routes to abduction resolution between countries, rather than the neverending and torturous maze Americans are currently forced to run.

The status quo, despite best intentions, is simply not adequate. And while well-meaning and sincere, current policy has failed far too many children and their left-behind and brokenhearted parents. To combat the cruelty and exploitation of human trafficking, over a decade ago I authored the Trafficking Victims Protection Act. To tangibly assist abducted American children—and this is a human rights violation—and their left-behind parents, I again am introducing the Sean and David Goldman Child Abduction Prevention and Return Act of 2013. The United States can, and I believe must, do more to protect innocent American children and their left-behind parents from the absolute horrors of international child abduction.

I now turn to my friend and colleague, Mr. Cicilline.

Mr. CICILLINE. Thank you, Chairman Smith, for holding today's hearing on a topic that deserves this committee and Congress' full attention. Chairman Smith, I also want to commend you for your efforts to address this ongoing issue and the many challenges to ensuring that abducted children are returned to loving, caring and safe homes.

And while today's hearing is on international child abduction, I think it's an important moment to acknowledge the extraordinary and harrowing developments of the three young women who won their freedom earlier this week in Cleveland. These people have endured a horrendous ordeal, and their nightmare is now over. We can all breathe a sigh of relief that they are back with their families and a new brighter chapter in their lives can begin. They will continue to be in our thoughts and our prayers.

I would also like to offer my gratitude to the witnesses for their testimony today—I would particularly welcome Ambassador Ja-

cobs—and for the important work that is being done on this critical subject.

Today's hearing is vitally important because children who have been abducted internationally can experience extreme stress and confusion. Not only have they been taken from a parent, but they must also live and adapt to a place that is foreign to them in many ways. These are terrible events that no parent or child should ever have to endure, and as we approach International Child Abduction Day on May 25th, I am pleased that we are able to address the full complexity of these challenges around this issue.

The complications associated with returning abducted children to the United States from countries that are non-signatories to the Hague Convention are very difficult and troublesome, yet not unresolvable, and holding this hearing is one step in the right direction. I hope the committee will also focus on the occurrence of domestic violence and child abuse in child abduction cases. There are many examples where parents who flee with a child do so to escape environments that are unsafe and, frankly, dangerous. This, too, deserves our critical attention and focus.

I look forward to hearing your thoughts and recommendations on resolving international parental child abductions, and I thank you again, Mr. Chairman, and would like to yield to my colleague—

Mr. SMITH. No, I will yield.

Mr. CICILLINE. Okay. I yield back.

Mr. SMITH. I would like to yield to Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman, for conducting this hearing on this important topic. And I want to thank the witnesses, obviously, and Ambassador Jacobs, thank you for being here. The witnesses that will testify in our second panel, we appreciate your willingness to tell your story.

This seems to be a problem that simply is not addressed by current law or policy, and what I look forward to hearing from you, Ambassador Jacobs, is, as we start to look at that—we know that you are in a difficult situation where you have got law, policy, regulations—how we can be the heavy, how Congress can be the heavy and say, “This must stop, and this is the law of the land,” and how we can do that to help facilitate you on doing your job. Because obviously you wouldn't be here today if you didn't have a heart for these children, and we appreciate your willingness to be here.

We know that as of January, the number of open cases in the international parental child abduction in the Office of Children's Issues was some 1,113 cases involving some 1,575 children, and of these cases 649 of them, or 941 of the children, were in Hague Convention partner countries. But another 464 of those, or 634 children, were in non-Hague Convention countries. And so that presents an issue, and obviously this means that there is a significant portion of these abducted kids who are going to countries where there is virtually no ability for them to reach out to their families, and for their families to reach them. And this situation is just unacceptable.

We obviously live in a global world, and perhaps a global solution is part of this particular issue. But we want to act as Congress, and I want to support the chairman in his efforts to make sure that we have legislation, and bring and highlight the fact that it

needs to be addressed. And you know, child abduction is really child abuse. And when we see that—we have seen the effects of child abuse. And what we cannot do—we have a moral obligation to not allow that to happen.

So I thank the ranking member here today for his willingness to join in a bipartisan way to address this issue, and I'm hopeful that we can develop some effective solutions that not only attack this difficult issue, but puts forward a way that we can move forward so that we can reunite these families.

And I thank you, and I yield back, Mr. Chairman.

Mr. SMITH. Thank you very much, Mr. Meadows. I need to go to members of the committee first, and then I will go to Mr. Kennedy. Mr. Weber, Randy Weber.

Mr. WEBER. Well, thank you, Mr. Chairman. I am good. I am really here to listen and to learn. I applaud you, Madam Ambassador, for being here, and I look forward to the testimony, and being able—as my colleague, Mr. Meadows, said—to help make a difference. So I am anxious to listen. Thank you.

Mr. SMITH. Thank you. The chair recognizes Mr. Kennedy, not a member of the committee, but most welcome.

Mr. KENNEDY. Chairman, thank you very much for allowing me to speak this morning and join all of you, even though I do not sit on this subcommittee. I am honored to welcome Colin Bower, a constituent from Newton, and most importantly a devoted father to his two sons, Noor and Ramsay. Mr. Bower will be joining us on a panel a little bit later this morning.

As this panel knows, Mr. Bower has worked tirelessly to try to bring his two children home to the United States, after they were abducted by their mother in 2009. Despite a court ruling that gave him full custody and a subsequent Egyptian court order granting him the right to visit with his children, Colin has continually been denied the opportunity to visit his sons.

Well, he has never given up hope. We must do more than just hope. As elected officials, every person on this dais feels a passionate responsibility to help our constituents, and we must remain vigilant and committed to all American children who are far from home, far from their families, through no fault of their own.

Mr. Chairman, thank you for the opportunity to join you today. I look forward to hearing the testimony of Ambassador Jacobs and the families later this morning, and to the commitment of the members of the panel. Thank you.

Mr. SMITH. Thank you, Mr. Kennedy.

It is now my privilege and honor to welcome to the committee Ambassador Susan Jacobs, who currently serves as Special Advisor in the Office of Children's Issues at the U.S. Department of State. Ambassador Jacobs has had a long and distinguished career in the Foreign Service, in which she has served around the world, including in Papua New Guinea, where she was the Ambassador. And she has also held a number of senior positions with the State Department here in Washington, serving as liaison to both Congress and the Department of Homeland Security.

Ambassador Jacobs, the floor is yours.

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

Ambassador JACOBS. Thank you, Mr. Chairman. Mr. Chairman, distinguished members of the subcommittee, thank you for the opportunity to testify again before you on the Department of State's efforts to prevent international parental child abduction, to resolve existing cases, and to encourage all sovereign nations to join the United States in membership in the Hague Abduction Convention.

I would like to speak about the two main points of my written statement: The important work of the Bureau of Consular Affairs Office of Children's Issues in promoting the Hague Abduction Convention and our work in ensuring compliance with the Convention. I ask that my full written statement be entered into the record.

Mr. SMITH. Without objection, so ordered.

Ambassador JACOBS. Thank you. The Department of State has no higher priority than to safeguard the welfare of children who have been wrongfully abducted across international borders. My experience over the past few years, as the Special Advisor for Children's Issues, has convinced me that the Hague Abduction Convention is the best tool for resolving cases of international parental child abduction, or IPCA. Of course, the prevention of IPCA is our priority as well, and my written testimony describes the work of our dedicated officers on this front. In those unfortunate circumstances where an abduction does take place, we turn to the Convention whenever it is available as a possible remedy. This has been the focus of my work since Secretary Clinton appointed me in 2010.

The Hague Convention is a multilateral international treaty that allows us, in our highly interconnected world, to work harmoniously across cultures, borders, and legal systems. As you all know, however, there are many cases involving children abducted to countries where the Convention is not an available remedy. One of our top priorities is to engage bilaterally and multilaterally with those foreign governments to explain why the Convention is beneficial and to encourage expanded Convention partnership throughout the world.

Last year, the United States welcomed Singapore and Morocco as new treaty partners, and we were pleased to see several other nations, including South Korea, Russia, and Lesotho, accede to the Convention and take steps to institute effective implementation.

Parents, of course, want to know what we are doing specifically to help their children when the Abduction Convention is not an option for them to seek their child's return. In those cases, unfortunately, the options for seeking the return of a child are far more limited, thus underscoring why the Convention membership is critical as we move forward.

The Office of Children's Issues works closely with those parents to provide information about domestic and foreign resources that may help them to resolve their children's cases. We raise individual cases with foreign governments, requesting through diplomatic channels that they return abducted children to the United States. We assist parents to obtain access, confirm their children's welfare, and understand their options. We monitor legal proceedings as the case unfolds in the court, and we attend hearings when appro-

priate. We also engage child welfare authorities and advocate for counselor and parental access.

In addition, we coordinate with law enforcement authorities when parents choose to pursue criminal remedies and work every day to explore all available and appropriate options for the return of children to their habitual residence.

In countries where the Convention is available, the Office of Children's Issues works to promote Convention compliance. Again, we have a variety of tools at our disposal. Among these are judicial seminars, legal information and infrastructure guidance, and ongoing monitoring as part of the annual compliance report to Congress. We follow individual cases very closely. We coordinate with parents and their attorneys to provide information and updates. We also review judicial decisions for compliance.

But it is important to keep in mind that there are times when proper application of the Convention does not result in a child's return to the United States. When this happens, we stand by to provide parents with information about pursuing access to the child under the Convention, as well as providing all other appropriate assistance.

Today, the Office of Children's Issues provides full support to my efforts, as well as those of Secretary Kerry and the entire Department, to increase the number of children returned to their parents, to advocate for membership in the treaty, and to create safeguards that will minimize the risk of international parental child abduction.

Mr. Chairman and members of the subcommittee, in conclusion I want to assure you that we continue to develop programs and outreach to prevent abductions through increasing awareness of this issue. Your support remains a key element to our success. Congressional interest is crucial as we encourage other countries to join the Convention and continue bilateral discussions to resolve existing cases that fall outside the Convention framework. I will be very happy to take your questions.

[The prepared statement of Ambassador Jacobs follows:]



DEPARTMENT OF STATE

**STATEMENT
OF
AMBASSADOR SUSAN S. JACOBS**

SPECIAL ADVISOR FOR CHILDREN'S ISSUES

**BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL
HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS**

**HEARING
ON
INTERNATIONAL PARENTAL CHILD ABDUCTION**

MAY 9, 2013

Chairman Smith, Ranking Member Bass, and distinguished Members of the Committee – Thank you for the opportunity to address you today regarding international parental child abduction (IPCA), a matter of critical concern affecting the well-being of many children and families.

The Department of State values the ongoing interest and support on this issue from Members of Congress. We appreciate the efforts of Chairman Smith and the interest from Ranking Member Bass, as well as the many Members who advocate in support of their constituents affected by IPCA and parental child abduction in general.

Secretary Kerry has demonstrated his deep concern regarding international parental child abduction and his commitment to children by extending my tenure as the Bureau of Consular Affairs' Special Advisor for Children's Issues to ensure high-level attention stays focused on this important topic. Secretary Kerry, one of the leading advocates for combating IPCA during his time in the U.S. Senate, has now brought his passion and foreign affairs experience to bear as our Secretary.

The Department of State has no higher priority than to safeguard the welfare of children who have been taken wrongfully across international borders. For these reasons, the Department takes all appropriate steps, including at the highest levels, to seek the return of these children. Resolving IPCA cases is a priority for

the Department, and every day my colleagues and I press for tangible solutions to these cases.

The Office of Children's Issues

The Department of State is the U.S. Central Authority for the 1980 Hague Convention on the Civil Aspects of International Child Abduction (Convention). The Bureau of Consular Affairs' Office of Children's Issues, which executes U.S. obligations under the Convention as the U.S. Central Authority, develops and implements policies and practices to promote the welfare and safety of children involved in international parental child abduction. Office of Children's Issues country officers provide many services; they provide left-behind parents with information about foreign and domestic IPCA-related resources, process Hague Convention applications, monitor Convention proceedings, provide lists of attorneys in the country where the abducted child is located, coordinate with U.S. embassies and consulates to monitor the welfare of abducted children, and facilitate communication with state and federal government agencies as well as relevant foreign government authorities.

On May 16, 2012, the Office of Children's Issues held a global International Parental Child Abduction Open House to allow left-behind parents to interact with their assigned country officers, hear from senior Department of State officials, and learn more about the resources available through presentations about reunification,

mediation, law enforcement, welfare and whereabouts visits, and services available through the National Center for Missing and Exploited Children.

The 1980 Hague Abduction Convention

The U.S. Government recognizes the 1980 Hague Abduction Convention as the best tool for resolving IPCA cases. It is a multilateral treaty that provides protection for children from the harmful effects of abduction and wrongful retention across international borders. The Convention is not a tool for custody determinations. It provides a legal framework for securing the prompt return of wrongfully removed or retained children to the country of their habitual residence where a competent court can make decisions on issues of custody and the child's best interests.

Our diplomatic efforts increase the likelihood that our current and future treaty partners will be able to meet their responsibilities under the Convention. Some countries have few resources to implement the Convention effectively. In the spirit of strengthening and expanding the Convention worldwide, we routinely invite and welcome foreign governments to observe how we exercise our authority under the Convention. Additionally, we routinely identify opportunities to work multilaterally with countries that already implement the Convention effectively to press more countries to join.

Through the Hague Convention process, hundreds of children are returned to the United States each year. For example, Mexico is a critical Convention partner for the United States, with far more children abducted from the United States to Mexico than to any other country. This is an understandable result of our shared border and our close cultural ties. For the second consecutive year, Mexico was not cited as noncompliant in the 2013 Hague Convention compliance report. This is the result of our cultivation and maintenance of close and productive communication with the Mexican Central Authority on the challenging issues of judicial and law enforcement performance. Overall numbers of reported cases to Mexico have declined and our caseload is at the lowest level in years. The number of longstanding cases to Mexico listed in the compliance report went from 77 to 69, and a number of new cases submitted to courts in Mexico have been resolved within weeks.

Countries across Europe have continued to demonstrate strong treaty partnership while dealing with national fiscal crises through a commitment to continue to use valuable resources to implement treaty obligations. Greece, for example, despite tenuous local economic conditions, recently exhibited its continued commitment to the Convention by enforcing a court order that a U.S. citizen child be returned to his habitual residence in the United States. Such

progress shows that even under challenging circumstances, our Hague partners remain dedicated to the Convention.

To enhance bilateral cooperation and to encourage treaty compliance of our partner countries, over the last year we have held digital video conferences with Panama, Peru, Chile, Argentina, Italy, and Australia. These meetings have provided opportunities for bilateral exchanges between judges and Central Authorities on Convention issues and created an environment to share best practices. We also have used them to discuss strategies to address partners' compliance issues, such as case processing delays.

There are, however, many cases involving children abducted to countries that have not yet joined the Convention or with which the United States does not yet have a treaty relationship. Policy-wise, one of our top priorities is to engage bilaterally and multilaterally with these foreign governments to explain why the Convention is beneficial and to encourage expanded Convention partnership throughout the world. In those cases, options for seeking the return of a child are far more limited, thus underscoring why Convention membership is so critical as we move forward.

The Office of Children's Issues works closely with left-behind parents to provide information about domestic and foreign resources that may help parents to resolve their children's cases. We raise individual cases with foreign governments,

requesting through diplomatic channels that they return abducted children to the United States and assist parents to obtain access, confirm their children's welfare, and understand their options. We monitor legal proceedings as the case unfolds in the court, attend hearings when appropriate, engage child welfare authorities, advocate for consular and parental access, coordinate with law enforcement authorities when parents choose to pursue criminal remedies, and work day-to-day to explore all available and appropriate options for seeking these children's return to their countries of habitual residence.

The Hague Compliance Report

The Department of State is required to submit an annual report to Congress on the compliance of other parties to the Hague Abduction Convention pursuant to 42 U.S.C. § 11611. In the report, the Department identifies its concerns about partner countries in which implementation of the Convention appears to be incomplete or in which a particular country's executive, judicial, or law enforcement authorities may act in a manner inconsistent with proper application of the Convention principles. In accordance with that law, the Department places such countries into one of two categories, "Countries Not Compliant with the Convention," and "Countries Demonstrating Patterns of Noncompliance with the Convention." The law also specifically requires reporting on any cases that have not been resolved for 18 months or longer. The Department of State utilizes the

Compliance Report as a roadmap to identify and engage specific Hague partners in order to assist in the proper implementation and application of the Convention. I am pleased with our progress in engaging those Convention partner countries that have been cited repeatedly in our compliance reports to Congress.

In the 2013 Compliance Report, Costa Rica was cited as “Not Compliant” in the areas of central authority and judicial performance. In reviewing Convention cases in Costa Rica, the Department noted significant delays in the commencement of judicial proceedings and the rendering of court decisions, the Costa Rican Central Authority’s inability to expedite cases internally, and the Costa Rican judiciary’s consideration of issues outside the narrow scope of the Convention in Hague cases.

In October 2012, I traveled to Costa Rica and met with members of the Supreme Court of Justice and other judges and with representatives from the Costa Rican Central Authority and Ministry of Foreign Affairs to discuss these issues and to express concern regarding a 2011 precedent-setting Costa Rican Supreme Court decision that is inconsistent with Convention principles.

Expanding the Hague Abduction Convention

While we are intensely monitoring the compliance of our current Hague Abduction Convention partners, currently we also are seeking to expand our Convention partnerships. Our acceptance of newly-acceding partner countries

broadens the availability of the Convention's civil legal mechanism for parents seeking the return of their children to the United States.

In December 2012, the Hague Permanent Bureau opened the Asia Pacific Regional Office in Hong Kong in response to an increased membership base in the region and with the purpose of encouraging membership in the Hague Conventions. I recently visited the Asia Pacific Regional Office and met with Hong Kong government officials to discuss efforts to expand the Hague Abduction and Adoption Conventions in Asia and to develop working relationships with several new Central Authorities in the region.

Secretary Kerry recently traveled to Japan to meet with Japanese Foreign Minister Fumio Kishida to discuss the U.S.-Japan bilateral relationship and global challenges. In public remarks after the meeting, Secretary Kerry encouraged Japan's immediate ratification of the Hague Abduction Convention and urged Foreign Minister Kishida to continue working to resolve existing cases that may fall outside the Convention framework upon ratification.

On April 23, the Lower House of the Japanese Diet voted to ratify the Hague Abduction Convention. Once Japan ratifies, the Convention will enter into force between Japan and the United States automatically. Until Japan ratifies, however, parents whose children have been abducted from the United States to Japan or

wrongfully retained in Japan will be unable to invoke the Convention to pursue their children's return or to seek access to them.

The Republic of Korea is one of only a handful of East Asian countries that has acceded to the Hague Abduction Convention. The Republic of Korea acceded to the Convention in December 2012, and the Convention went into force for the Republic of Korea on March 1, 2013. The Convention will not enter into force between the Republic of Korea and the United States, however, unless the United States decides to accept the Republic of Korea as a partner. The Department currently is conducting a review of the Republic of Korea's implementation of the treaty, including its domestic legislation and institutions responsible for executing the country's responsibilities under the Convention, in order to determine whether the United States should accept the Republic of Korea as a partner under the Convention.

In South Central Asia, a large number of children are abducted to India from the United States. India appears to be taking slow steps towards acceding to the Convention. I visited New Delhi in April 2012 to meet with relevant Ministries and to offer our support as they move forward. Presently, many left-behind parents file cases in Indian courts to seek custody or the return of their children. Our Embassy and consulates in India monitor these cases, looking for signs that Indian courts will respect the principle of habitual residence when determining its

jurisdiction over the custody case. We are encouraged by a recent decision in the High Court of New Delhi to return a child to her country of habitual residence for a final determination of custody. We communicate closely with our multilateral partners facing similar challenges on international parental child abduction in India.

In 2010, Morocco became the first country in the Arab world to accede to the Hague Abduction Convention. The Department of State accepted Morocco's accession in December 2012, and we strongly believe Morocco can be an effective and strategic treaty partner. The United States will benefit from having a partner in the Near East that can bring its influence in the region to help persuade other countries to join the Convention.

In Egypt, we are not aware of any cases where Egyptian courts have recognized a U.S. court order, and we are not aware of any criminal prosecutions in Egypt for international parental child abduction. During my recent trip to Egypt, we met with representatives from the Ministry of Justice, the Prosecutor General's office, and the Constitutional Court to discuss international parental child abduction to Egypt and to encourage accession to the Hague Abduction Convention. I am encouraged that all parties understood the gravity of the issues presented and stated their willingness to review the Convention and to cooperate with the United States, within their legal authorities and capacities.

Prevention of IPCA

The most effective means of stemming the growth of IPCA is prevention. The Office of Children's Issues' Prevention Branch routinely conducts outreach to federal and state law enforcement, third-party organizations, and the general public to raise awareness of IPCA issues. Furthermore, the Prevention Branch actively engages with domestic law enforcement agencies to stop abductions-in-progress.

Since November 2011, our prevention staff exclusively administers the Children's Passport Issuance Alert Program (CPIAP), which allows parents and legal guardians to enroll their children in a Department of State database to help protect against passport issuance without parental consent or notification. If a passport application is submitted for a child who is registered in CPIAP, the Department contacts and alerts the parent. The Prevention Branch is responsible for reviewing and resolving, in conjunction with Overseas Citizens Services' Office of Legal Affairs, all child custody passport alert entries that "hit" during the passport application process. On average, the Prevention Branch reviews more than 300 hits per month. Since November 2011, we have managed more than 10,000 CPIAP cases.

Mediation

Mediation is an important method for helping families resolve international child abduction cases and custody battles where the Convention is not available to

settle the dispute. The Hague Permanent Bureau formed the Working Party on Mediation in the Context of the Malta Process. The Working Party originally consisted of six Convention countries and six non-party States. Currently, Australia, Canada, Egypt, France, Germany, India, Jordan, Malaysia, Morocco, Pakistan, the United Kingdom, and the United States are Working Party members. The Working Party, co-chaired by Canada and Pakistan, developed a document called the Malta Principles, which provides a framework for structured mediation programs in cases where the Convention does not apply. One of the principles is for each country to designate a Central Contact Point (CCP) for international family mediation. The CCP performs certain functions and serves as a contact point for individuals and mediators working on cross-border family disputes. In August 2012, the Office of Children's Issues became the CCP for the United States.

As the CCP for international mediation, the Office of Children's Issues has developed a mediation project in conjunction with two law school clinical mediation programs that will provide cost-free mediation and pro-bono counsel for both parties, in appropriate cases. The Office of Children's Issues is working with the American Bar Association's Task Force on International Family Mediation to design training materials for mediators involved in these cases.

The United States supports the idea of inviting other members into the Working Party if they are committed to the goals and to participating in the work. To this end, I recently visited Bangladesh with British and Canadian authorities to invite its participation in the Working Party and encourage accession to the Hague Abduction Convention. We received a very positive reception from Bangladeshi authorities, who expressed an interest in attending Working Party meetings. In addition, our Embassy extended an invitation to the State of Qatar to join the Working Party. The current initiative of the Working Party on Mediation and the Hague Conference Permanent Bureau is to engage stakeholders in the Gulf region and solicit interest in a regional workshop on mediation.

The Role of Congress

With the global expansion of the Hague Abduction Convention and the Office of Children's Issues' efforts to raise awareness of IPCA, congressional support and participation in IPCA issues has become a crucial factor in preventing and resolving these cases. As IPCA awareness increases across the country, we have noted an increase in left-behind parents contacting congressional constituent services offices to seek assistance with resolution of their children's cases. Country officers from the Office of Children's Issues will participate in a webinar on May 15 to provide information to district congressional staffers on how the Department of State and consular officers overseas can assist their constituents.

The Bureau of Consular Affairs' Congressional Liaison office organized the webinar, which will include speakers from the Office of Children's Issues and Congressional Liaison Office, the National Center for Missing and Exploited Children, and the National Targeting Center.

Conclusion

Mr. Chairman, Ranking Member Bass, distinguished Members of the Subcommittee, over the course of the past five years, I have traveled around the world raising combating IPCA as a policy priority and pressing for a tangible resolution to these cases. In the Bureau of Consular Affairs, we are committed to finding a viable solution for resolving each and every case. International parental child abduction is the realization of every parent's worst fear, and Office of Children's Issues staff work hard to provide options and resources in a time of crisis. The Department of State has no higher priority than to safeguard the welfare of children wrongfully removed from the United States.

Thank you. I am pleased to take your questions.

Mr. SMITH. Thank you very much, Ambassador. Let me thank you for your testimony, and for the work of your office and yourself.

Part of the concern that many of us have is that your office, assuming and believing that there is nothing but good will there, doesn't have the sufficient tools to get the job done. And I would hope—and you may not want to comment on it today, but I know you have seen the legislation. But as I said in my opening statement, our hope is to empower you, and empower the Secretary of State and the President, as we did with the International Religious Freedom Act—and as you know, the penalties, starting with a simple demarche on to very significant penalties, is derived verbatim from the IRFA legislation of 1998, which went through my committee and is authored by Congressman Frank Wolf. And it parallels very closely what we did on the Trafficking Victims Protection Act.

Both of those initiatives were strongly opposed, especially IRFA, by the Clinton administration, but he signed them at the end of the day, both of those pieces of legislation. I know that human rights enforcement, if we assume good will on the part of a country, without a penalty phase, becomes somewhere between slim and none in most cases. That was a lesson learned from those two landmark laws that we are trying to apply now to child abduction.

If you wanted to comment on the legislation, because the new bill will be very similar to the old, but with some significant upgrades. Would you like to comment on it?

Ambassador JACOBS. Thank you, sir. We look forward to working with you on it. We would welcome seeing the new legislation and discussing it with staff at your earliest opportunity.

Mr. SMITH. Okay. I would hope you would. And I hope—you know, because time delay is denial for a left-behind parent and for a child. I mean, this legislation can move and should move quickly. It has been delayed far too long for whatever reasons, so we really need to, on both the congressional side and the executive branch side, come to a consensus and get this done.

I noted in your testimony you talked about Japan, and we are all looking forward to a ratification. I am very concerned that the caveats and the reservations may be onerous, and may lead to very few resolutions where the child is actually returned. But you noted in your testimony that it will be entered into force automatically, it will immediately be applicable to the U.S. situation.

And yet, when you talked about Korea, you said that the Department needs to study the Republic of Korea's implementation of the treaty, its domestic legislation, institutions and the like. It seems to me that Japan, with its sole custody laws and other hindrances, particularly in its family law, raises very significant barriers to a successful—I am wondering why the difference between Korea and Japan.

Why isn't Korea entering into force now?

Ambassador JACOBS. The reason is because Japan was a member of the Hague Conference when the treaty was written in 1980, and every country that was a member of the conference, of the Hague Conference, automatically becomes a party to the Convention without anyone else having to do anything.

Mr. SMITH. So regardless of how infirm their laws might be?

Ambassador JACOBS. Regardless, that is the way the conference works. Korea was not a member of the Hague Conference then, and so we have to check that the central authority has proper authorities, that there is a judicial system and law enforcement to make sure that the treaty will work.

So there is a big difference, and I can understand the concern.

Mr. SMITH. Congress has made several requests to be informed of the number of children returned to the U.S. in 2011 and 2012, as had previously been the practice of the State Department, but we have not received a response. Do you know why?

Ambassador JACOBS. I am sorry, but I don't. I will find out for you and let you know.

Mr. SMITH. Okay. And more importantly, if we could get those numbers—

Ambassador JACOBS. I will see what I can find out.

Mr. SMITH [continuing]. That would be very good.

Ambassador JACOBS. I think one of the things that is important to remember is that there is always something behind the numbers. The numbers are not the complete story. And so we look forward to working with your staff—

Mr. SMITH. Well, we are concerned about a breakout with actual returns, and then others that are deemed resolved but really there was no return. And that differentiation is something that it would be very helpful for policymakers to know. So if you could include that?

Ambassador JACOBS. I will see what I can find out.

Mr. SMITH. Okay. Could you get that to us?

Ambassador JACOBS. I will get you an answer.

Mr. SMITH. Let me ask you about memorandums of understanding and bilateral agreements. When I went with the Eliases to Japan, I met with members of the Diet, members of the government, our own Embassy people, who obviously were very empathetic.

But as you know, children are not coming home from Japan. Whether the abductor is a father or a mother, it continues to be a serious, serious problem. In the case of Michael Elias, as you know, his former wife worked for the Japanese Government. And the judge, when custody was being decided, took the passports and said, "No travel." She went and had a duplicate set made, because she worked for the government, and then whisked off with the two children. And as far as I know, there has been no real investigation, no penalty, no sanctioning, of that young woman for that terrible act of not just abduction, but also fraud, in terms of the passports.

And one of the several conversations that I have had with your office, and with Ambassadors around the world who are dealing with this, particularly in non-Hague countries, is the compelling need to have a bilateral agreement. We do it on adoption in many cases, where there are gaps, even with those that have signed the inter-country adoption Hague Convention. But with Japan, it seems to me, the opportunity is ripe for an agreement.

Good will, you know, only goes so far. And like I said, for Michael Elias, who is sitting there, and all the other left-behind parents,

delay is denial. And why not an agreement? Hammer out an agreement for a modality to work this out.

You know, the British have such an agreement with Pakistan, and it works. And it works well. Patricia Apy, in her testimony, will be speaking to that later on today. I mean, it is a vehicle that will undoubtedly yield positive results. I see no downside.

Ambassador JACOBS. Well, I am going to have to disagree with you, sir. We have three bilateral—we have three memoranda of understanding with Egypt, Jordan, and Lebanon. There is no enforcement mechanism, and we have had no returns under those memoranda. We believe that the Hague Convention provides the best opportunity for resolving these cases. And it took Japan—I think that the problems, one of the problems in Japan, is their belief about custody, that one parent is supposed to drop out of the child's life when there is a divorce. But we see that these things are changing, and that Japan is moving to a more global understanding of what custody is, and how both parents need to participate in a child's life.

So we hope that, when they are soon a party to the Convention, we will be able to work with them on compliance and access, and make sure that parents do get to see their children for more than an hour a week. I agree with you that that is not access.

Mr. SMITH. But I would just say, even though the examples with Egypt, Lebanon, and Jordan—I mean, Egypt went from a dictatorship that was elected but maybe falsely, under Mubarak, and I met with him so I know what he was like, to Morsi who has gone from bad to worse. Jordan is a good friend. Lebanon, obviously, has many problems.

I mean, against those examples, Japan and India are mature democracies with functioning Parliaments. I mean, the Diet and the Parliament in New Delhi have checks and balances. It seems to me that they are major world players. They purport to follow the rule of law. For the life of me, I can't understand why the reluctance. It can only be value added. It can only add an additional mechanism. If it brings home one child, it will be well worth the effort. I believe it would bring home many children, and that it would start a process that might even have a chilling effect on future abductions.

One of the things that Bindu will testify to—do you agree with that?

Ambassador JACOBS. I think that we will have better success with Japan and India when they are members of the Abduction Convention.

Mr. SMITH. But again, all of the current cases with Japan are grandfathered out. And to assume that there will be a reservoir of good will created, I think, given their past—past is often prologue—we need some game-changers. And an MOU, I believe, would do that.

Ambassador JACOBS. I think, for the cases that are not covered by the Convention, that we do need to reach an agreement with Japan. I agree with you, and we will be working with them to see what we can do, and also with our partners, who were incredibly helpful in working with us to persuade Japan to join the Convention.

Mr. SMITH. So then you would be for an agreement with Japan.
Ambassador JACOBS. We will explore every avenue to get those children home.

Mr. SMITH. Okay. Again, I would hope that the sooner that is initiated, because the agony—as you know so well—I don’t know how people—and you have met many of these people as well, as have your staff. When you sit and look them in the eyes, and realize that they lose hope, one of the—again, Bindu will testify that, when she went for help to our folks in India, that is to say U.S. Embassy personnel, she was told that there was very little they could do because she didn’t have custody. She then got custody, and she has told me and, I believe, will testify to that, but she told me earlier today, because I asked her, that she still hasn’t gotten help.

And in your testimony, you cite a case: “We are encouraged by a recent decision in the High Court of New Delhi to return a child to her country of habitual residence for a final determination of custody.” I mean, it is one case. I don’t know what country you are talking about. Is it the U.S.?

Ambassador JACOBS. It is a return to the United States, yes.

Mr. SMITH. Oh, it is? Okay. Do you see a precedent in that?

Ambassador JACOBS. I see hopeful signs that judges are making the right decisions. And we will continue to work with India to encourage them to continue to make those kinds of decisions while they write their implementing legislation to join the Convention.

Mr. SMITH. Okay. Again, it takes effort, but a bilateral agreement there as well could bring these two children home. I mean, based on all of the available court evidence, this man has acted—her ex-husband—with absolute impunity, which is why she is here today to testify. And so I would hope our efforts in-country would be redoubled on her behalf as well, if you could commit to that. That would be very helpful.

Ambassador JACOBS. Absolutely.

Mr. SMITH. I do have other questions, but I will yield to my friend, and then come back. Thank you. Mr. Cicilline?

Mr. CICILLINE. Thank you, Mr. Chairman. Thank you, Ambassador Jacobs, for your testimony.

I just want to focus for a moment on the Hague Convention and compliance with that, because I agree that ensuring as many countries as possible become signatories of the Convention is the best and most effective way to ensure the return of American children, and so I was struck by a comment you made about some examples where compliance with the Hague Convention does not result in the return of the child.

I take it that is not because of a failure in the current drafting of the Convention requirements, but just the parent who was seeking return is not—I mean, I am looking for an example of where that might happen. Is there something we need to address or revisit with the Convention protocols, in particular?

Ambassador JACOBS. No. Thank you for that question. There is a section of the Convention, and it is called 13(b). Where there is a grave risk to the child, the child doesn’t necessarily have to be returned to its habitual residence.

Mr. CICILLINE. Okay. Great. And I noticed in your written testimony that in June 2011, the parties to the Hague Convention did

an examination and made some conclusions and recommendations, and some of those conclusions were that applications for returns had increased, but the number of returns had decreased.

What is the reason for that? Are there things we can be doing about that? And are you sort of satisfied with the current provisions of the Hague Convention, that if parties are signatories and comply, it does what it is expected to do?

Ambassador JACOBS. If countries—that is a great question. Because if countries comply, it works very well. And we are—the treaty is a living thing, and we are constantly working with our partners in the Convention to help them comply better with it, which is why we have the compliance report and we cite countries when they aren't doing the right thing, when the central authorities don't communicate with us or when law enforcement doesn't enforce what the courts are doing, or, in many countries, where court delays really delay the return of a child.

And what you are citing in June 2011, there was a special commission meeting where we had the opportunity to meet with all of our partners and to talk about compliance and best practices. And this is something that we continually strive for. We try to improve our practices, and we certainly try to educate other countries on how they can do a better job in enforcing the Convention.

Mr. CICILLINE. But are we still seeing increased applications, meaning people are relying on or having confidence that this is a mechanism by which they will have the children returned, but in fact seeing a decrease in the number of children that are actually returned?

Ambassador JACOBS. We have seen an increase in returns, especially from Mexico. We have a very productive relationship with Mexico. We have worked very hard at it. And we are getting much better at cooperation. There are some Hague countries where we do have problems, and where we have problems we work with them, we visit them and talk to them very frankly about what they need to do. Sometimes it works. It worked with St. Kitts. It was only one case, but they finally wrote their implementing legislation and now are enforcing the Convention.

But it is an ongoing process. We have working groups with a number of countries. We meet jointly and we do everything we can to persuade countries to implement the Convention properly.

Mr. CICILLINE. And Ambassador Jacobs, what are your thoughts on the use of sanctions against countries that either violate the Convention and are signatories, or as a condition of United States assistance being required to become a signatory? For example, obligating in exchange for U.S. foreign aid, or some preferential trade status, that there be a condition that you be a signatory on the Hague Convention as it relates to abducted children. I mean, is that effective?

Ambassador JACOBS. Thank you for the question. I think that sanctions are a two-edged sword. I think that threatening countries is often an unsuccessful way to get them to cooperate with us, because most of the relationships that we have are very complex and involve many issues. So to use Japan as an example, we have defense arrangements with Japan. We have trade arrangements.

The return of these children is incredibly important to us, and we pledge to work to do the best we can to get these children returned, but I don't think that we are going to sanction Japan, or threaten them with sanctions, because I think that would be detrimental to our bilateral relationship.

Mr. CICILLINE. But how about countries in which, for example—just to use Egypt as an example—that are significant recipients of foreign aid?

Would it be an effective—I mean, I don't know whether those conversations take place at a much higher level than both of us, but it seems like an obvious question to say, in the moment when we're providing substantial foreign aid, that while it may not warrant or it may be difficult to have an individual conversation about an individual case, a broader policy requirement of sort of signing on to a treaty such as this might be something that would yield some results.

Ambassador JACOBS. It might, but it might also mean that they won't cooperate with us at all if they feel that they're being threatened. Egypt is a country in transition, and we are mightily trying to influence the direction that it takes. This is one of the issues that we raise constantly.

The Ambassador—we have 20 cases in Egypt, and she raises this issue with the President, with the Foreign Minister, and with others all the time. I have made a number of trips to Egypt, most recently in March, to raise these issues. And the Egyptians listen. I think they hear the message. And we are hoping that they will be able to do something about it.

One thing that I think will help us is when we become a party to the 1996 Hague Convention on Protection of Children, which includes the recognition of foreign court orders, and then we might not have to go through all the Hague procedures, but we would be able, with our partners, to present a court order and that would be recognized.

Mr. CICILLINE. Thank you for raising that. I agree with you, and I hope we will join that. And I yield back, and thank you, Mr. Chairman.

Mr. SMITH. Thank you. I will yield to myself for just a moment to make a point.

You know, with Egypt, there is no MOU dealing with abduction. There is no MOU with Egypt, or bilateral agreement. It has to do with access, not with return, according to the Department of State's Web site. Not with return, it has everything to do with just having access to the child.

So I think, just a point of—if I could just make a point on the sanctions issue. Sitting right where you sit, John Shattuck, Assistant Secretary for Democracy, Human Rights, and Labor under Bill Clinton, testified against the International Religious Freedom Act, citing opposition to sanctions. Madeleine Albright was unalterably opposed to sanctions when it came to combatting human trafficking. At the end of the day, Bill Clinton signed the bill. He was presented a bipartisan bill, and I know, because I authored it.

But we had total bipartisanship. Sam Gejdenson, from nearby Connecticut, was the prime co-sponsor, and we worked hand in glove together on that legislation. But the administration was

against sanctions, and they made the exact case, exact, verbatim, that you just made, that sanctions are two-edged sword and can be counterproductive.

We give the President tools. He doesn't have to use them. Hopefully he will, the threat of sanctions, and then when you have an egregious violator—and remember, these are American kids. American human rights are being violated, and American parents.

Ambassador JACOBS. I understand that, and I appreciate your passion for this. But I would argue that abduction and trafficking are two very different things. Trafficking in children is horrible. Abduction is horrible. But they are very different.

Mr. SMITH. Evidence clearly suggests that the child is injured very seriously, particularly psychologically.

Ambassador JACOBS. I didn't say they weren't.

Mr. SMITH. Okay.

Ambassador JACOBS. But the trafficking, it is my understanding that our laws cover trafficking for sex or for labor.

Mr. SMITH. Yes.

Ambassador JACOBS. And this isn't that. This is a wrongful removal from the other parent's custody, and I think that we would be better off trying to enforce civil remedies to find a solution to these problems. And if we can do this outside of the Convention, I think that would be great, but we have had very limited success in doing that.

Mr. SMITH. Can I just say, with deep respect, that—and David Goldman will testify to this—that the return rates are almost identical for non-Hague and Hague countries, just below 40 percent. I am all for the Hague Convention, but it has proven itself to lack enforcement, and we are saying that when it comes to our children and our left-behind parents, we want additional tools in the toolbox to provide for enforcement, because their human rights have been egregiously violated. As you know, you now have Brazil back on the list. I am not sure why there have been problems there. It is another question. But I really should yield to Mr. Meadows, and then I will come back.

Mr. MEADOWS. Thank you, Ambassador. And I understand some of your diplomatic issues that you have to deal with from trying to balance diplomacy at the same time as trying to make sure that we protect the rights of parents, U.S. parents and children that have been abducted.

And so I want to follow up a little bit on my opening statements. And it has been mentioned here about sanctions and aid, and those kinds of things. We have to figure out legislatively, and as I look at the numbers from the Hague Convention, if you exclude some of the results—well, if you exclude Mexico, where we have had some successes, there, if we start to look at this, it doesn't look like there is really a big difference in terms of the return rate, whether they are in one or the other. We still have a third of the children that are in non-Hague countries, according to your testimony, and I think two thirds of them in Hague Convention countries, that are still not being returned.

But as you look at that, is there a huge difference in terms of the return rate with regards to it? There doesn't appear to be, and maybe I am looking at it wrong.

Ambassador JACOBS. No, I am sorry, you are not looking at it wrong. But the returns are not always under the Convention. Some of them are mediated agreements between the parents. Sometimes the parents just do the right thing and return the child. But in a Hague country, there is a legal framework for resolving these issues that are not available in non-Hague countries.

Mr. MEADOWS. I understand the legal framework, but if the results are no different, then what benefit is the legal framework? I mean, if we have a legal right to get them back, and it is not doing anything better, then it doesn't matter?

Ambassador JACOBS. Well, without Hague, the parents are really on their own. They have to hire an attorney. They have to go to court—

Mr. MEADOWS. So you are saying that it is cheaper on the parents to get non-results?

Ambassador JACOBS. It is not cheaper, it is more that there is a clearer path to a resolution in a Hague country, and we can provide a lot more assistance.

Mr. MEADOWS. Okay. And again, I want to remind you of my opening statement. I believe your heart is to return these kids, and so I am just trying to be—I need you to be the diplomat. I need to be the jerk. Okay? To put it from an international point of view, what I want you to do is say, “Golly, I would be with you, but those guys in Congress are holding your funds,” or, “The guys in Congress are doing”—what I need is, I need to provide you the tools where there is some motivation.

I mean, I get requests every day from foreign nations, because we sit on the Foreign Affairs Committee, wanting money. And yet, that is not my decision. But if it were, where you bring up these issues, there has to be a—if you got paid based on the number of kids that came back from abroad, it would be every day you were saying, “Well, how many people have come back?” And I am not saying that changes your motivation. It just highlights it some.

And so I want to provide you the tools, and if you can give me some of those—I am a little troubled when we start talking about international law and its attack on U.S. sovereignty, when we start saying, “Well, we have got an international court that is going to decide this.” And I am not saying that you are saying that. But what I am concerned about is that, from a sovereignty standpoint, what can we do, in America, to provide an incentive for these countries to return our children?

Ambassador JACOBS. First of all, your interest and having hearings like this send a very strong message to other countries.

Mr. MEADOWS. Right.

Ambassador JACOBS. And believe me, when I go, and I travel a lot, to Hague and non-Hague countries, I tell them that Congress is watching this closely, and that this is an incentive to do the right thing.

Mr. MEADOWS. Okay. Well, let me give you this, so we are clear on this, Ambassador, so you can take this and you can play this little short YouTube video wherever you need to play it.

We are serious. And even if it goes beyond the normal just waiting, Congress is serious about resolving this. We have a bipartisan resolve in terms of wanting to resolve this, and so that you can

take that message that, not only are you here today, but we have other witnesses that will be testifying, that we are going to continue to highlight it until the rule of law prevails. And we are not asking for some non-rule to be enforced. We are just saying the rule of law must be enforced, whether we have a bilateral agreement or not.

And so that really is not a question as much as it is a statement that I want you to be able to use. So let me go on a little bit further. Because what we talked about, it sounds like most of what has been done is judicial seminars, compliance reports, those. And that can be very frustrating to a parent when they start to look at "Okay, what do you need to do?" Well, you need to go and go to this judicial compliance review.

And it is kind of like saying that, if you go to a seminar, it is going to get better. And what I want to make sure of is that I provide the tools that are necessary, not only from a prevention standpoint, but what do we have to do to make it going forward?

Can you and your staff provide me with some recommendations that we might look at to introduce as legislation that might help you?

Ambassador JACOBS. Absolutely.

Mr. MEADOWS. All right. And then I want to finish up, because I think they are calling votes here, what would you say, in terms of that relationship, the only—you mentioned Mexico as being the one that you had the best options with, just because of our relationship with Mexico. What other countries would you say we need to model, from a standpoint of return rates, and how that could happen? I mean, is there anything to be learned from Mexico in terms of that, or is it just that we have a good relationship?

Ambassador JACOBS. We have a good relationship with Mexico because we work very hard at it, and we do that with every country.

And when we say judicial seminars, we have a Hague network of judges who travel at our request and work with the judges of other countries to explain how the treaty should be implemented and judged, and how cases should be decided. We have international visitors that come to meet with us, and we have lots of bilateral meetings to talk about the importance of the Convention and proper implementation. But we have some ideas on other things that can be done, because, as I said, it is a living document, and it can always be improved upon, as can the compliance of every country that is a party to it.

Mr. MEADOWS. Okay. Well, I believe my time is up, and so I will yield back to the chairman from Texas. But as I do that, I want to say thank you for coming. Again, I look forward to those specific recommendations, and I can assure you that, from a legislative standpoint, I will work with my colleagues opposite here to make sure that we act on those. Thank you.

Mr. WEBER [presiding]. Thank you. Now, without objection, I will yield to my colleague, Mr. Kennedy from Massachusetts.

Mr. KENNEDY. Mr. Chairman, thank you very much. It sounds good to say that.

Ambassador Jacobs, I want to thank you again for your testimony this morning. You have worked with my office for the safe

return of both Noor and Ramsay to their father, and I want to thank you again for all of your work. As you know and as you have mentioned, the political situation in Egypt at this moment is complex and complicated, but we can't let that stop us from working for the safe return of abducted Americans.

You mentioned in your testimony the lengths to which Secretary Kerry will go through his diplomatic channels to fight for the rights of Americans, and that nowhere has that been more evident than with his efforts as both Senator and now as Secretary of State, with regards to Mr. Bower. Egypt, as you also mentioned, is an emerging democracy that is struggling with the transition from decades of dictatorship. It has a long history with the United States, and is an important stabilizer to a volatile region.

However, the United States has an obligation to its citizens to see that our laws are enforced, and that the rights of our citizens will not be infringed by blatantly illegal acts. A father has a right to expect that he can see his children, and a citizenry has the right to expect that its government will do all it can to enforce the legal obligations on its people.

Given that dynamic, how do you balance our role in the international community with the obligation to reunite two young American citizens with their father? I ask for your renewed commitment today to continue that fight against child abduction, and will be interested in hearing your thoughts on how we can move forward. And only a couple of moments, unfortunately, because our time is limited. But thank you.

Ambassador JACOBS. I will speak quickly. Thank you, sir. We will continue to advocate in every country for the return of children who have been abducted. The Secretary has been very strong on his first trip, I think the trip to the Middle East was one of his first trips. He met with President Morsi and he raised all the abduction cases in Egypt. We are not going to forget about these cases. We are constantly thinking of ways that we can use our influence to persuade the Egyptians that this is something that they should do and recognize.

Mr. KENNEDY. And Madam Ambassador, just to be a little more concrete on that—and I understand that you have been. You have been vocal about bringing these issues up through diplomatic channels. I have brought them up with the Egyptian Ambassador. I know Mr. Bower has, Secretary Kerry has.

What more can we do, seeing that you have done much, but we are still not getting there? What are some concrete actions we can take moving forward to try to move the ball a little bit here?

Ambassador JACOBS. I think we just have to keep talking to the Egyptians. And you know, eventually diplomacy can work. And that is what we have to do. I don't think that threatening the Egyptians is going to be effective. I don't think that—we aren't going to break relations with them. We are going to continue to talk to them, because we have to keep the channels of communication open so that they understand, yet again, how serious we are about resolving all of the cases in Egypt.

Mr. KENNEDY. Thank you. I will yield back. Thank you, Mr. Chairman.

Mr. WEBER. Thank you, Madam Ambassador. And I have a couple of questions for you. You mentioned in your earlier testimony that abduction of children by one parent is not really viewed in the same light as trafficking, for example, and that it is more of a civil instance, I think you said, than a criminal.

Is that accurate?

Ambassador JACOBS. Parental abduction is a crime in the United States.

Mr. WEBER. And that is the point I want us to get to, that under the International Parental Kidnapping Act, it is a crime.

Ambassador JACOBS. It is.

Mr. WEBER. And so what would you say if I highlight the fact that, when you take a child, and one parent, who is supposed to be a trusted overseer, or guardian, if you will, uproots that child from the other parent, would you agree that that is pretty heinous? I mean, the child has got to be really confused, because here that child was in a loving, stable, hopefully stable, nurturing relationship with the other parent, in a safe environment, and now one parent has taken that child from the only home they have ever known to a foreign place.

And not only that, but if they get to the point where they feel like our country has deserted them, the only home they have ever known, then is it safe to say that they would actually feel the double whammy, double effect, if you will, of the fact that one of their parents has betrayed them now, not only by uprooting them from the other parent and the only home they have ever known, in most instances, but now the only country they knew, it seems like, has turned their back on them.

How do we mitigate that? What do we do about that?

Ambassador JACOBS. Well, I completely agree with you that it is a heinous act to abduct your child. But we haven't forgotten about them, and we work in Hague countries with the central authorities for the return of children under the Convention, and bilaterally and multilaterally in countries that are not parties to the Hague. We do not forget about these children.

Mr. WEBER. Well, I—

Ambassador JACOBS. We work for them every single day.

Mr. WEBER. Well, you, of course, certainly have been doing that through your work, and the very fact that we are passionate about that also. But does the child know that?

Ambassador JACOBS. I don't know what the child knows.

Mr. WEBER. But what does—

Ambassador JACOBS. I think that the child is probably scared and confused and troubled—

Mr. WEBER. And kept in the dark.

Ambassador JACOBS [continuing]. And kept in the dark about what has happened. We know that the taking parent often lies to the child, and says that the other child is not interested in them anymore. I just can't imagine anything worse. I'm a mother and a grandmother, and it would be incredibly awful to have had one of my children abducted.

Mr. WEBER. Okay. Well, thank you for that. Unfortunately, I am out of time. They are calling votes. I have got to go. So I am going

to have to recess. Chairman Smith will be returning shortly. So if you don't mind, stay put and stay tuned. Thank you.

[Recess.]

Mr. SMITH. Thank you for your patience. And Ambassador, sorry for that break.

Let me just ask you, if I could. I kind of hinted at this before, but Brazil is listed as demonstrating a pattern of non-compliance with the Hague Convention in the most recent abduction report. Can you explain what has happened there in Brazil?

Ambassador JACOBS. I will be happy to.

Mr. SMITH. Please.

Ambassador JACOBS. While we have an excellent relationship with the central authority and meet with them frequently, judicial decisions take an awfully long time and we often find that they, in our view, are misinterpreting the Convention. And then, once there is a return order, it takes a long time for it to be enforced. So there is the law enforcement problem and the judicial decisions.

Mr. SMITH. How many cases do we have in Brazil now?

Ambassador JACOBS. One moment and I will look it up.

Mr. SMITH. Sure.

Ambassador JACOBS. I am not sure, sir. I am going to have to get you that information.

Mr. SMITH. I appreciate that.

Ambassador JACOBS. I don't want to keep you waiting.

Mr. SMITH. No, thank you. As I think you may know, the Japanese Foreign Minister reportedly said that if there is any chance that a taking parent could be prosecuted in the country of habitual residence, even if there is no pending charges, the child will not be returned. If that is accurate, that would mean that no children can be returned to the United States, where parental child abduction is a criminal offense.

What is the State Department doing to ensure that the Japanese implementing legislation does not undermine the core principles of the Convention, or otherwise give the Japanese Government an excuse not to return an American child?

Ambassador JACOBS. Thank you for that question. The Convention does not have criminal penalties in it, because it is a private international law convention. So the idea is that the child is returned for a custody hearing in the country of habitual residence. The problems would arise if the parents had chosen to go to the FBI and filed a criminal case against the taking parent.

Mr. SMITH. So they would be precluded an opportunity to use the Hague, as the Japanese see it, to permit that child to come home?

Ambassador JACOBS. I am not sure. We would have to look at that.

Mr. SMITH. Well, is it something that your office could raise, if you haven't already? Because it seems to me that becomes a veto power. I mean, who can blame a left-behind parent for using every potential remedy at their disposal, including criminal sanctions, when such a horrible act has occurred?

I mean, many have done that. And now they will be told "Tough luck." I mean, that makes ratification of the Hague by Japan even more suspect, more of a sense of Japan—I mean, a sense of Con-

gress-type legislation that we have here. But how will it be implemented? Not well.

Ambassador JACOBS. That is the question. We are going to have to work very hard with Japan on proper implementation. But criminal charges against a taking parent often lead to a reluctance to return the child to the habitual residence, because they don't want the parent thrown in jail. I mean, the whole idea of the Hague is to find civil remedies that will encourage the return of children.

Mr. SMITH. Okay. Again, all the more reasons why a bilateral agreement could iron out those issues. Because I think the left-behind parents, like Michael Elias and all the others, Patrick Braden, all of them, will find themselves in even more of a maze, particularly if they took some legal action.

Okay. So if you could take that back.

I do hope, and I know it has probably been asked by my friend and colleague Mr. Kennedy, but I was wondering when Secretary Kerry was last in Egypt and provided a check to the tune of a quarter of a billion dollars, was the issue of child abduction on the table?

Ambassador JACOBS. It was.

Mr. SMITH. And was there any sense of movement on the part of Morsi to resolve these cases?

Ambassador JACOBS. He said he would look into it, that he would take action. We are waiting.

Mr. SMITH. And again, I know Mr. Cicilline mentioned this in talking about conditionality. I mean, Egypt does get an enormous amount of foreign aid from the U.S. Government, \$1.3 billion, approximately. When we fought last year to include religious freedom conditionality, it was opposed by the administration. It got in, but it has been waived, regrettably, particularly because of the mistreatment of the Coptic Christians.

But do you think conditionality on aid would be a wise tool? Again, it's conditionality, it can be waived. The President would have that authority. But it would allow you and your staff, and our Ambassadors, and all those involved, to have additional clout. Because, again, I don't assume good will with some of these governments when they show a pattern of either non-cooperation, or they are not compliant, if they are Hague signers.

Ambassador JACOBS. That is a question I am going to have to get back to you on.

Mr. SMITH. Okay. Do the others have any questions? No, they are all voting.

Again, I thank you. I look forward to your answers, including some of the more just bookkeeping-type, accountability, as to children that have been returned, those that resolved that were not returned and what that means, if you could get back to us on that.

Because there always seem to be some questions about what are the numbers, even when we have worked on legislation and we put findings, we get one number, and before the ink is dry it seems—not because—I mean, huge differences, disparities. So please, get those numbers back to us. It would be very helpful.

Ambassador JACOBS. I will take the issue back to the office.

Mr. SMITH. Okay. I appreciate that.

Ambassador JACOBS. Thanks.

Mr. SMITH. I am planning a follow-up hearing, and maybe you or the Assistant Secretary for Asia might want to testify. Has that person been selected, do you know?

Ambassador JACOBS. For what, sir? I am sorry.

Mr. SMITH. For East Asian and Pacific Affairs, the Assistant Secretary.

Ambassador JACOBS. Not that I am aware.

Mr. SMITH. Or maybe the DAS would come up, to talk about Japan again, especially since things are happening there. And we do plan on having additional members, family members who have been left behind, testify. So I do hope you will just work with us on this, if you would.

Ambassador JACOBS. Absolutely.

Mr. SMITH. Thank you.

Ambassador JACOBS. I pledge that to you.

Mr. SMITH. I appreciate that. Thank you, Madam Ambassador.

I would like to now invite to the witness table our next panel, and maybe if they wouldn't mind, we will wait until the other members come back, because they will want to hear what you have to say as well. So we stand in recess.

[Recess.]

Mr. SMITH. The hearing will resume its sitting, and I again apologize to our witnesses and to all here for the delay because of the voting on the floor. Some of our members are en route, coming back.

And I will now introduce our witness table, beginning first with Patricia Apy, who is a partner in the law firm of Paras, Apy & Reiss, which specializes in complex family litigation, particularly international and interstate child custody litigation.

Her qualifications for testifying at this hearing are unbelievably impressive and extensive. She has litigated and been qualified as an expert witness and consultant 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 was also one of the lead attorneys for David Goldman, and provided expert advice and counsel in his long, arduous case, and has been, I would say, a very, very important and very wise guide to our deliberations as a subcommittee with regards to technical issues, because she has litigated and has been all over the world dealing with these issues. So I thank you, and I welcome her back.

Bindu Philips came to the United States in 1996 and became a U.S. citizen in 2009. Ms. Philips has lived in New Jersey since 2000, where her twin boys, Alfred and Albert were born 12 years ago. She is an electronic engineer by training, and works in central New Jersey, and will be testifying on behalf of her sons in an appeal to our Government, and of course to the Indian Government, to do the right thing and allow her not just access, but to allow her to have her sons back.

We will then hear from Mr. Colin Bower, who is the father of Noor and Ramsay Bower. Noor and Ramsay were abducted by their mother from Boston to Egypt in August 2009. Colin remains com-

mitted to the safe and swift return—swift is now an oxymoron in his case—of his children.

I am pleased to have joined Barney Frank last year in sponsoring H.Res. 193 with regard to their particular case in the last session of Congress, and we welcome him back to the committee.

We will then hear from Michael Elias, who 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. I traveled to Japan with Nancy and Miguel Elias, Jade and Michael's grandparents—and Nancy is here with us today—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, the Eliases were—there was an empathetic ear, especially from some of the members of the Diet, 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.

And then, finally, our cleanup batter, if you will, is David Goldman, who is the father of Sean Goldman, who was born in Red Bank in 2000. Sean 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 beloved son. In December 2009, I had the privilege of being with David and Sean when they were finally able to return to the United States.

Mr. Goldman has been a trailblazer in opening the eyes of our country to the agony endured by left-behind parents. I can say without any fear of contradiction, he did it like the left-behind parents who are here with us today, with great tact, with discipline. I remember being in a court where a man who was not the stepfather, but had custody, made so many disparaging remarks about him, and yet he remained steadfast, eyes fixed on the judge, and made the case as to why he absolutely had the right to have his son returned to him.

So we welcome him back, and I would just note parenthetically that the legislation that we are introducing is named the Sean and David Goldman International Child Abduction Prevention and Return Act because there are successes that can be had, but levers need to be pulled, especially when you have a government that is, at best, indifferent.

I would like to now ask, if you could, our first witness, Patricia Apy, if she would testify.

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

Ms. APY. Congressman Smith, thank you so much for permitting me to come back and address the subcommittee as it confronts international parental abduction, particularly abductions involving jurisdictions which have not ratified the Hague Convention on the Civil Aspects of International Child Abduction.

Interestingly enough, in listening to the testimony and the questions from members and Congressman Kennedy, I noticed that I have litigated cases, non-Hague cases, from each of the districts that are represented on the panel today.

I have chosen two cases as demonstrative of the precise issue that we have here. I have been representing Michael Elias, one of the witnesses on this panel, in a pro bono capacity in response to the request of the former Commandant of the United States Marine Corps, General Conway. This battle-wounded Marine discovered his two children had been abducted by their mother. Mr. Elias' wife worked for the Consulate of Japan in New York, and with the help of the Japanese consulate authorities in Chicago was able to obtain the replacement of the children's court ordered surrendered Japanese passports and abduct his children.

Mr. Elias will share in his testimony that the Japanese Government not only failed to address the clearly criminal behavior of his wife, the complicity of their consulate in Chicago, but their duplicity in telling yourself, a member of this subcommittee, along with the grandparents of these children, that they were actively investigating the criminal behavior—which would have provided a basis for extradition, I might add—when in fact they had already determined that they had no intention of doing so. And that information would be purposely withheld from Mr. Elias, as well as from this committee, for over a year.

Christopher Dahm's daughter Gabrielle was abducted from her home in Florida to the United Arab Emirates, specifically Abu Dhabi, by her dual national Belgian mother. Gabrielle's mother brazenly obtained a Belgian passport for her daughter without the knowledge of Gabrielle's father, despite a Florida order which prohibited the issuance or the removal of Gabrielle from the United States. She abducted her with the assistance of the maternal grandfather, a pilot for Eithad Airlines, the national airlines of Abu Dhabi. That case is being prosecuted by the United States Attorney in Miami, which participated in issuing Interpol red orders.

I chose those two countries, first of all, because they would be described, I think by every individual, as countries with whom we enjoy positive relationships. We are partners in issues of commerce and in issues of security. No one would identify them as behaving purposefully inappropriately. And it is in that context of non-Hague cases that the legislation that is proposed is the most important, because by having legislation that provides a construct of available tools, these countries have a mechanism with which they can have a political will and a legal will to do what we know they want to do, which is partner with us to address this issue.

I think it is missing something if you see this merely as punitive, because in fact the type of remedies and the type of sanctions that are suggested are those that, in many cases—and I am thinking particularly of the use of memoranda of understanding—those are the kinds of things that can be educative and positive and level the playing field in negotiating for a remedy.

One of the most important things to know about non-treaty cases is that they present the most expensive and challenging cases for the left-behind parent. Parents are consigned to live in legal limbo for fear that their chance to locate or retrieve their child will be diminished by their actions.

For example, fearful of ruining their case, in many countries they cannot be divorced from the kidnapping parent, because to do so would cease their ability to seek a return. There has been reference

to criminal prosecution, and the implication of those references were that a parent might choose to engage in criminal prosecution rather than use the treaty—for example, the Hague Convention—or other remedies. It is missing the point that, many times, the only way to locate a missing child is with the assistance of the Federal Bureau of Investigation, Interpol, and other law enforcement agencies. Unless a parent is extraordinarily wealthy, they certainly can't have their own private investigation of where their child might be located.

And so it is a situation, as we believe it is in Japan at this moment, where if a parent engages in criminal prosecution in order to have the ability to locate their child, by definition, they will have lost the opportunity to use the civil remedies, which are being touted as being the most responsive.

One of my colleagues—and in advance of this testimony, I had an opportunity to reach out to colleagues of mine who practice in this area as I have, and ask them their issues and concerns. And in addressing the issue in Japan, one of my colleagues, David Blumberg, who practices in Glendale, Wisconsin, said the following, and I think it is entirely appropriate for where we are today.

“The truly scary part of this whole question is that, because in this case Japan was technically a participating country to the original promulgation of the Hague Convention, if their legislature ratifies the Convention it will automatically go into force between the United States and Japan, even if nothing is done to set up effective enforcement processes or to change their legal system. In my view, such an eventuality could make our problems with Mexico or Brazil look like idyllic strolls in the park.”

In fact, I agree with my colleague, and must indicate that my testimony would be that the ratification of the Hague Abduction Convention in Japan has to be considered now illusory at best, and deceptive at worst. The April 17, 2013 article in Japan Times described the situation and said what international family lawyers already know, and that is that Japanese authorities have repeatedly stressed that in any case where an unsubstantiated claim of domestic violence is voiced, the children will not be sent back “regardless of the Convention.”

Japanese family courts, as that article went on to propose, have seen an exponential jump in reported cases, going from, in 2001, 409 reported cases, to 1,985. Now, those are cases in which a parent has the temerity to actually file something in the family court in Japan which, as my written testimony provides, is a fruitless application. There is no alternate remedy.

The enabling legislation has demonstrated that, as a practical matter, there are significant obstacles to the reciprocal protections upon which the other 89 treaty partners, and most importantly our American judges, are expected to rely. See, American judges are going to be told that the Hague Convention is in effect between the United States and Japan when they assess applications for international access. They will believe, and they will follow the Convention here, returning American children to Japan when there is an application made here.

But more importantly, when there is an application for access to visit a parent in Japan, they will be told that Japan is a signatory to the Hague Convention, and therefore when they assess risk they should permit that removal when, truthfully, as it stands right now, there is no reasonable expectation that a child under the current circumstances will be returned.

If this were an accession case, if this were a situation in which we were talking about a country where we had the ability, as the Ambassador referenced in her testimony, the ability to review their processes and to assure that there is reciprocity, then we would clearly have to take time in order to do that. That situation is one that American judges are going to have to know is a situation in force.

In listening to the testimony of the Ambassador, one of the things that struck me was the colloquy that occurred with the member from Rhode Island in addressing the decisionmaking process, and I believe that the Ambassador and the member both agreed that decisionmaking in some of these areas are above their pay grade or level.

I respectfully must say that I believe that the decisionmaking process with respect to this issue is in this body, because the client for the Ambassador is not the left-behind parent. It is the diplomatic status of the United States of America which, as she continued to repeat, is a broad, systemic sort of issue.

As someone who has practiced in this area for 20 years, the only people watching the shop on the individual needs and the potential redress for American children in parents is found in the Congress of the United States. The legislation that is being proposed provides extraordinary tools which we presume will be utilized well by the executive branch and by the Department of State. Nothing that the Ambassador said gave us any reason to believe that our confidence could not be placed in utilizing those tools properly. But it is ridiculous to assume that you can negotiate with countries and not have any possible level playing field in doing so. It makes no sense.

And in this status of the legislation that has been proffered, you have a range of possibilities that, frankly, provides the genuine opportunity to sit down with countries like, for example, Pakistan, where you have a common law based Sharia court system where the judges have been indicating that they want an opportunity to sit down and seek bilateral agreements.

The Ambassador has referenced, both in this testimony and in her prior testimony, that quiet diplomacy is used in the return of these children. In fact, there is not much that can be said other than "Please, oh, please." Ultimately, in addition to the strong and positive diplomatic work, what has to happen is the governments abroad have to be sure that this is, in fact, an issue that is taken quite seriously.

One of the concerning aspects of the Ambassador's testimony—and frankly, I think it reflects my experience as well—is the belief that there is a difference between the crime of international parental abduction and the human rights concerns that were referenced by other pieces of legislation. Demonstrative of this is, as it is contained in my testimony, the case of Christopher Dahm.

Christopher Dahm had no choice, because of the way that the law is structured in the UAE, but to file criminal charges. To the credit, the United States Attorney in Miami initiated prosecution and, for the first time, indicted not only the abducting mother but the abducting grandparents who were as co-conspirators in that process.

However, once that was done, the ability to criminally prosecute that case fell into, very frankly, disrepair. Mr. Dahm had to continually ask for reports, for assistance in the location of his child. Eventually, we requested a private meeting for the second time after 2½ years had gone by with no action. Let me say that again. Two and a half years.

Meeting with the United States Attorney now assigned to the case, the second, asking for the FBI agents to be there—they weren't—and then being in a situation in which the U.S. Attorney on the case indicated that they didn't know who the FBI agent assigned was, they had no idea whether the child was still in the United Arab Emirates, they could not provide an explanation as to the response of the judge to the extradition request, or to the pick-up on the red order.

When this issue was raised, and we requested that the FBI agent be produced for the meeting, we were told that there was none assigned at that time. Finally, the young Assistant U.S. Attorney on the case said, "Well, I think that the pictures we have of the child are all from," and then she went on to describe the location, at which point my client starts to cry, because he has not seen his daughter for 3 years, and he says—and I indicated, "Do you mean to tell me you have photographs in the file that this parent hasn't seen?"

As it turns out, the Assistant U.S. Attorney didn't know who had taken the photographs and under what circumstance. But the point is that on non-Hague cases in particular, right now the only aspect of being able to raise the criminality of this issue—and I appreciate the comments of Mr. Meadows in addressing that issue—is the prosecution by the United States Attorneys, who don't like these cases.

I get that. I understand, as a former prosecutor, that the very last thing that they want to be involved with is anything that remotely looks to them like family law. However, I think that the idea—and this is how it gets translated. And I am not attributing this to the Ambassador, but I think that this is the default feeling. "Well, after all, how bad is this really? I mean, the child is with the other parent."

I have been doing this for over 20 years. I remember the day when people said to me that intercountry adoption would have no impact on international foreign policy. Well, actually, as it turns out, that isn't the case. And international parental abduction has an impact on foreign policy because, while most of constituents have no idea what is involved in the decisionmaking process that goes on here, and frankly it would boggle most of their minds just what all of those moving parts are, what they know is "Somebody took my grandchild and the United States of America is powerless to do anything."

I mean, the folks from the greatest generation who I deal with look at me like I am insane. How is it possible we don't have Marines, never mind sanctions. The fact of the matter is that David Goldman's case and other cases that have successfully used quiet diplomacy also used the specter of having a threat behind it. Not a punitive threat, but a recognition that American children are important, that the fact that they have been abducted and are not being returned in accordance with the rule of law or a criminal prosecution, where one is necessary to locate the child, is something that we will not ignore.

With the fact that the Japanese cases, over one third are American military members who we sent there, it is mind-boggling to me that we would actually not consider placing in articulable form the potential remedies of the use of a memorandum of understanding in those places where it will be effective and will lead to the application of rule of law, and potentially treaty signatory down the road.

I served as a delegate of the United States of America at the Hague for the negotiation and the signing of the Protection Convention that was referred. The Protection Convention is not a panacea. We are going to have enough trouble getting it enacted in the United States of America, never mind creating a reciprocal relationship that allows for mutual enforcement.

As the judge in the United Arab Emirates said to me, "You don't care about these cases. Why would you expect that we would politically go out on a limb to do so?" Clearly—and I said it a moment ago, but I do think it bears repeating. The place where the decisionmaking that is most protective of the American parents whose children have been abducted takes place is not in some office away from all of us. It is in the Congress of the United States.

This bill, for example, would require that Members of Congress would know that someone in their district has a pending abduction case. For reasons that pass understanding, that provision has been opposed by the Department of State on "privacy grounds."

Well, very frankly, the fact of the matter is, I have never met in my 20 years of representing cases, particularly involving abductees in non-Hague cases, where a parent didn't want everyone they could tell. And it would be much easier to opt somebody out than to say—so that a Member would know that they have a pending case, so that when they are considering rule of law issues involving a country, they know how American citizens in that context are being treated.

Again, it is my privilege to return and to have an opportunity to address this subcommittee to address what I consider to be extraordinary issues. I must say, the Japanese situation is a current, immediate danger. It is going to contribute, as we are right now sitting here, to a creation of a safe haven. American judges will not know that there is a risk of a child not being returned, because they will see the Japanese, appropriately so, as "signatories."

I am hoping that the legislation which provides genuine diplomatic tools will be used, that this body will seek to oversee this issue as they should. And if there are any questions that I can answer to enhance that process, I stand ready to do so. Thank you.

[The prepared statement of Ms. Apy follows:]

**TESTIMONY
OF
PATRICIA E APY**

**BEFORE THE
SUBCOMMITTEE ON AFRICA
GLOBAL HEALTH, GLOBAL HUMAN RIGHTS AND
INTERNATIONAL ORGANIZATIONS**

UNITED STATES HOUSE OF REPRESENTATIVES

**HEARING
ON
RESOLVING INTERNATIONAL PARENTAL ABDUCTIONS
TO "NON-HAGUE" CONVENTION COUNTRIES**

MAY 9, 2013

Chairman Hon. Christopher H. Smith (NJ); Ranking Member Hon. Karen Bass (CA) and distinguished Members of the Committee;

My name is Patricia Apy. It is my privilege to be permitted to address this Subcommittee as it confronts the issue of International Parental Abduction, particularly abductions involving jurisdictions which have not ratified the Hague Convention on the Civil Aspects of International Child Abduction (Non-Hague). As reflected in the information outlining my professional experience much of the last two decades I have concentrated my practice primarily on international child custody litigation, with particular attention to cases of the wrongful removal and retention of children in Non-Hague countries .

I have litigated child custody disputes including cases with allegations of child abduction in numerous non Treaty countries and written extensively on managing child custody cases involving Non-Hague Contracting states. It is that perspective that I hope to share in my brief remarks.

Today I wish to highlight the international diplomatic and legal issues implicated in Non-Hague abductions,

. To illustrate the issues I would share two demonstrative cases. I have been representing Michael Elias, one of the witnesses on this panel, in a pro-bono capacity in response to the request of the former Commandant of the United States Marine Corps, General Conway. This battle wounded marine discovered his two children had been abducted by their mother to Japan. Mr. Elias' ex-wife worked for the Consulate of Japan in New York and with the help of Japanese consulate authorities in Chicago was able to obtain the replacement of the children's

court ordered surrendered Japanese passports and abduct his children. Mr. Elias will share in his testimony that the Japanese government not only failed to address the clearly criminal behavior of his wife, the complicity of the their consulate in Chicago but their duplicity in telling a member of this subcommittee, along with the grandparents of these children, that they were actively investigating the criminal behavior, when in fact they had already determined that they had no intention of doing so. That information would be purposefully withheld for over a year from Mr. Elias.

Christopher Dahm', daughter Gabrielle was abducted from her home in Florida to the United Arab Emirates specifically Abu Dhabi, by her Belgian mother. Gabrielle's mother brazenly obtained a Belgian passport for her daughter, without the knowledge of Gabrielle's father, despite a Florida order which prohibited the issuance of the passport, or the removal of Gabrielle from the United States. She abducted her with the assistance of the maternal grandfather, a pilot for Eithad airlines. That case is being prosecuted by the United States Attorney in Miami Florida, which issued Interpol red orders and indictments for the abducting mother and her parents.

Non- Treaty cases present the most expensive and challenging cases for the left behind parent seeking the return of wrongfully removed or retained children. Parents are often consigned to live in legal limbo for fear that their chance to locate or retrieve their child will be diminished by their actions. Fearful of ruining their case, they avoid divorcing the kidnapping spouse, or resist filing criminal complaints as such action might cut off legal remedies under foreign law. Some must seek law enforcement assistance to physically locate their children, and of necessity must file an application in the country to which the child has been taken, seeking a custodial determination that a court in the United States had already rendered.

Left-behind parents seeking the return of their children or the ability to simply visit children endure endless legal battles, conducted in languages they do not speak and suffer emotional and financial ruin.

The cases of the Elias and the Dahm families are particularly demonstrative in that the countries to which these children have been taken, we would identify as ones with whom we enjoy strong ties of cooperation and economic partnership, and the reputation of a culture of respect for the rule of law.

Non-Hague Countries:

Japan: The current status of the resolution of existing abduction cases and the promise of the ratification of the Hague Abduction Convention must be considered illusory at best and deceptive at worst. As illustrated in the very recent April 17th 2013 article in the Japan Times, Japan is described “finally being poised to join the 89 other member states, if the Diet approves related bills as early as next month.” However, the article goes on to acknowledge what practitioners of International Family law and left behind parents already know. Japanese authorities have repeatedly stressed that in any case where an unsubstantiated claim of “domestic violence” is voiced, the children will not be sent back “regardless of the Convention”. According to the Japanese family courts, in 2001 there were 409 cases of parents seeking the return of their abducted children within the court system. By 2011, that number had jumped to 1,985. Keep in mind that this is a number conceded to be low, as it represents only those cases acknowledged by the courts.

A cursory review of the proposed enabling legislation demonstrates that as a practical matter it contains significant obstacles to the reciprocal protections upon which the other 89 Treaty partners and American judges are expected to rely. Notably, the current text of the enabling

legislation provides that if an abducting parent has been subjected to any criminal sanctions as the result of their behavior and is being criminally prosecuted such prosecution will be an absolute defense to a return. Thus, this legislation expressly encourages self help and potentially criminal behavior by assuring the abducting parent a safe haven where Japanese parents that they will not be prosecuted.

Actions of OCI/ State Department Japan Desk: Parents who have pending abduction matters have been sent, from time to time, “urgent” time- sensitive updates , repeatedly announcing the proximity of the Hague ratification and the launch of various “Hague Convention pilot programs”. Japan’s Ministry of Foreign Affairs offered to “familiarize parents whose children had been abducted with Japan’s family court system as part of their expected ongoing function as Japan’s prospective central authority under the Treaty. The program was described in the e-mail as being “in direct result of the U. S. Department of State’s request for Japanese government assistance with existing cases.” The State Department sent in an email “while *the US Department of State cannot recommend or endorse any specific program we encourage parents to consider participating in this unique, cost free opportunity to learn more about Japan’s legal system.*” Keeping in mind, that this is going to desperate parents, who have had no contact with their children in years the “encouragement” to participate by our government “ in preparation for joining the Hague Abduction Convention” seems as though advocacy for the left behind parent is about to occur. In fact, parents were “encouraged” to abandon their request for the return of their abducted children and to offer to support the abducting parents with financial assistance.

Again on December 6, 2012 parents were forwarded an “urgent- time sensitive Update announcing the start of a mediation program. Parents were given a little over a week to indicate

they wished to participate by filing a declaration of interest in the program on or before December 13, with applications being open only between December 7 to December 26. Once again, parents were encouraged to participate. However, a careful reading of the fine print made it clear that the goal of the program was not genuine mediation but more akin to theatre.

- The notice indicated that it provided that it only one, one hour session.
- The notice provided that as a condition of having any possibility of seeing their abducted child a parent would have to abandon the issue of parental abduction and waive the remedy of return completely. Nevertheless the issue of the ongoing financial support of the child could be included in the mediation discussions.
- The left behind parent would bear the expense for the mediation, which would be conducted in Japanese, foreign lawyers, including those who might have litigated or prosecuted the case in the left- behind jurisdiction were not permitted to participate.

In its most recent letter to left behind parents in April, they are informed that Principal Deputy Assistant Secretary Bond and OCI director Payne travelled to Tokyo to encourage the ratification of the Abduction Convention and to “continue to raise the question of how Japan intends to resolve the existing cases.” They indicate in the message that PDAS Bond and CI Director Payne “encouraged Japanese government officials to continue ‘bilateral discussions’ on how to resolve existing cases that “may fall outside the Convention framework upon ratification in accordance with Convention principles.” In fact, both women, and Ambassador Jacobs realize that as a matter of law the Hague Abduction Convention may by its terms *only* be prospective in application. The historic position of the Department of State has been against the use of Memoranda of Understanding or other bi-lateral agreements in favor of the ratification of the

Abduction Convention. However in the instant case one must wonder regarding language in the proposed Hague Abduction legislation that will not provide appropriate reciprocal protections.

Abu Dhabi: Where personal status law regarding children and child custody implicate the application of religious law, consideration of bi-lateral agreements providing a unique mechanism of mutual recognition and enforcement of orders must be considered. The Dahm case, however, provides an example of the deficiencies in the international criminal prosecution of child abduction cases and a lack of commitment to aggressive prosecution of such cases where appropriate.

In the case of Christopher Dahm, although a red order was issued, and acted upon, the UAE judge declined to order the arrest, despite the fact that neither the victim nor the alleged perpetrators were from the Emirates. Mr. Dahm has been repeatedly assured by UAE authorities that if United States law enforcement or government officials indicated that they were serious about the arrest and extradition of parental kidnapping cases, or other diplomatic sanctions attached for harboring such fugitives, they might be better persuaded.

In the summer of 2010 after receiving a disfavorable decision from the court, Leslie Delbecq with her parents abducted her daughter. It would not be until late June of 2011, after Mr. Dahm and counsel personally met with the Assistant United States attorney in Miami, that indictments were issued. Thereafter virtually nothing happened to confirm Gabby's location, or to continue the prosecution. Meetings were scheduled and cancelled at the last minute and the FBI agents investigating the matter would not return Mr. Dahm's phone calls. Eventually it was clear that whoever had been working on the case was no longer doing so. In February 2013 Mr. Dahm insisted on a meeting with the AUSA assigned to the case and her supervisors... At the meeting, it was clear that no FBI involvement was continuing, nor was law enforcement or Interpol

providing any pressure upon the UAE authorities to facilitate the location of Gabrielle, let alone her retrieval. When pressed about the concern about his daughter's whereabouts the US Attorney represented that an update would occur. A month later, after Mr. Dahm's counsel again sought a response and almost two years after the indictment Mr Dahm was finally given the name of an FBI agent but told that since they had no agency presence in Abu Dhabi, his quest for the location of his daughter would be better asked of the State Department. Our client still has no confirmation that his daughter is in the UAE, and it appears that nothing has been done by the FBI to assure that the indicted and fleeing felons have been prevented from travelling out of the UAE.

Conclusion:

Particularly in addressing the threat of international abduction to Non Treaty countries the partnership of the FBI and the United States Attorney is crucial in those cases warranting it. I propose that where the child has been located, and indictments issued, the message to the foreign government must demonstrate that here in the United States we value our children and will work tirelessly for the return of every abducted child. The actions of the United States attorney in prosecuting pursuant to the International Parental Kidnapping Crime Act makes it clear that international parental kidnapping is a crime and should be treated as such. That MOU's and bilateral agreements are seen as part of an arsenal available to the Department of State to address the unique legal and cultural framework of international family law. Finally that legislation which provides genuine diplomatic tools to insure and enforce reciprocal treaty obligations is enacted by this Congress.

Thank you.

Patricia E Apy

Fellow International Academy of Matrimonial Lawyers

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Mr. SMITH. Ms. Apy, thank you so very much for that very comprehensive and, I think, very incisive look, and for reminding us that the accession to the Hague, illusionary and deceitful at best, I thought that was a very profound statement. Because my sense is that there will be a breaking out of the champagne bottles, and—I won't say euphoria, but there will be an enormous amount of celebration. But people will not understand what this might actually portend for the abducted children and their parents, especially those to whom it has already happened. So, thank you so very much for that.

Ms. Philips?

**STATEMENT OF MS. BINDU PHILIPS, MOTHER OF CHILDREN
ABDUCTED TO INDIA**

Ms. PHILIPS. Thank you, Mr. Smith. Good afternoon, ladies and gentlemen of the Congress. It is my honor and privilege to testify before you today, and I thank you for taking your valuable time to hear of my plight. My name is Bindu Philips, and it is my ardent hope that my story shall capture your attention today.

While I have held many roles in life, none has been more meaningful to me than that of motherhood. Twelve years ago, I was blessed to be the mother of twin boys, my precious children, Albert Philip Jacob and Alfred William Jacob. When my children were born, my ex-husband, Sunil Jacob, and I made a joint decision that I would stay home and be their primary caretaker.

I was an active and loving mother in every aspect of our children's life. My children came first in everything I did, and in every decision I made. Tragically, my world and that of my innocent children was violently disrupted by my ex-husband, Sunil Jacob, in December 2008, when he orchestrated the kidnapping of the children during a vacation to India. I would note that the children are American citizens and that the children were born in America, which is the only nation they identified as home.

Sunil Jacob worked in the financial industry and was laid off by his employer, Citigroup, late in 2008. My ex-husband pressed me to agree upon this family vacation to India during the children's winter break. My ex-husband was both physically and emotionally abusive to me, and I feared the consequences of refusing him. I had seen return tickets for our flight on January 12, 2009, and I had every reason to believe that we would be home in a few weeks to resume our life in the United States. Had I known what would follow, I would have never boarded that flight to India.

On reaching India, I was not only physically and emotionally abused by my husband, but also by his parents. I was finally very cruelly separated from my children with no means to communicate with them. I could not bear the separation from my children, and on learning that they were admitted to a local school in India I approached the principal, requesting that I be allowed to see my children, and I was granted permission.

As soon as my ex-husband learned about this, he transferred them to another school and gave the school strict orders to neither allow the mother or any of her maternal relatives to see or communicate with the children. I contacted the U.S. Consulate in Chennai, India for assistance, yet, absent an order granting me

custody of the children, there was little that the consulate could do for me.

I would like to point out that Sunil Jacob's plan to kidnap the children and sequester them in India out of my reach was not a decision that was quickly or lightly reached. Subsequent events showed how carefully he had planned his actions.

Unable to communicate with my children, I finally returned to the United States 4 months later, on April 9, 2009. I literally came home to an empty house. Our residence in Plainsboro was devoid of all furniture and possessions, and our cars were gone from the garage. While in India, my ex-husband had his three friends strip the entire house of everything inside. They took everything, leaving me with not a single photograph of my children. He had not paid the mortgage on the home, our Plainsboro home, nor the utilities, nor the equity line of credit which he had transferred to India and left me with additional financial burden.

Heartbroken and impoverished, I had to start from scratch and initially survived on the graciousness of good people. My neighbors allowed me to move in with them briefly, and a local church provided me a car. Shortly thereafter, I found employment, secured an apartment, and purchased my own car.

Over the last 4½ years, I continue to uncover information that shows how deceptive my ex-husband, Sunil Jacob, is. The investigation report from the Plainsboro Police Station showed that he had planned the move to India as early as March 2008. He had communicated his intentions to the principal of the children's elementary school without my knowledge. In November 2008, 1 month prior to the trip to India, Sunil Jacob had obtained a status for him and the children known as OCI, overseas citizen of India, that would allow him and the children to stay for an extended period of time in India, since the children are American citizens.

Sunil Jacob, an American citizen, deceptively abducted my American citizen children and is staying in India, out of my reach and that of the Hague Convention indefinitely. Please note that India does not honor dual citizenship. I came to know that he has two software firms in India, and recently got information that he is the owner of a resort in India that was registered in 2007. That was when we were still married. I also came to know that he is remarried. Very recently, Sunil Jacob's family member confirmed with the Plainsboro Police that the separation of the children from me was planned well in advance.

Frustrated but determined, on May 14, 2009, I filed a petition with the Superior Court of New Jersey for the custody of our children. Sunil Jacob tried to delay the matter by arguing that the U.S. did not have jurisdiction to hear the case, but the American courts, both at the Superior Court and appellate levels, have held that jurisdiction was indeed proper in the Superior Court family part. My ex-husband was in contempt of the court order granting me parenting time over the children's winter break, although he participated in the hearing over the phone. The flight information was conveyed to Sunil Jacob by the U.S. Consulate, my American attorney and me.

The honorable New Jersey Superior Court granted me residential and legal custody of the children. The Plainsboro Police and the

FBI have issued arrest warrants against Sunil Jacob. Please note, in 2007, while Sunil Jacob was working at Citigroup, he was involved in an unknown incident at his office that resulted in an FBI inquiry on him.

It is significant that Honorable Barry A. Weisberg, judge of the Superior Court family part in New Jersey, not only granted me sole custody of the children and demanded their immediate return to the United States, but also said that Sunil Jacob must comply with a psychiatric evaluation and risk assessment upon return of the children. Clearly, Judge Weisberg, an experienced jurist in the family part, felt that Sunil Jacob's conduct was evident of a man who was disturbed.

I fear for the safety of the children, and their emotional well-being, in their father's care. Despite having kidnapped our children, Sunil Jacob filed for custody of the children in the Indian courts. The case is currently pending at the Honorable Supreme Court of India. In addition to wrongfully keeping the children from me, Sunil Jacob has thwarted every effort I have made even to speak to my children and say that I love them.

Beyond the kidnapping, Sunil Jacob continues to file false cases against me and my family in India, and is brainwashing the children against their own mother. He believes that if the campaign of harassment becomes too much for me to bear, we will back away from the quest to regain custody of my children.

He must learn that this will not happen. He must be held accountable for his actions. I have put everything I have in my mission to be reunited with my children. I have rebuilt myself financially and made a viable career path for myself. I have made a new home for my children to return to, as I was forced to sell the marital home to satisfy the debts my ex-husband created.

It must be remembered that America is the children's home. It is where they were born. The children went to school in America, in the culture that they love. They must be brought home to the American soil. I implore the Congress to assist me in righting the wrongs that have been done to me and to my children by my ex-husband, Sunil Jacob. Every day I awaken with the heartwrenching reality that I am separated from my children whom I love more than anything else in this world.

I have done everything I can think of in this nightmarish situation, and I will never give up on my children. Yet I am here because I can no longer fight the good fight on my own. I respectfully request you, the Members of Congress, to help me make my voice heard in a way that shall be meaningful and allow me to be reunited with my children, who need the love and the nurturing of their mother.

Please help me to put an end to the nightmare that Sunil Jacob has created for my family. Please help my precious children and me. I do not want to know, and cannot imagine, a meaningful life without them. Please act, not just for the benefit of the two innocent children and their brokenhearted mother. Please think of all the other children and parents caught in similar nightmarish situations due to hostile-minded parents who abduct the children to overseas nations.

Thank you from the bottom of my heart for hearing my humble and fervent plea during your otherwise pressing schedules. I shall always be grateful for the time and the opportunity to share my story and that of my children. Thank you.

[The prepared statement of Ms. Philips follows:]

Bindu Philips

House Committee on Foreign Affairs

May 9, 2013

Resolving International Parental Child Abductions to Non-Hague Convention

Countries

Good morning Ladies and Gentleman of the Congress. It is my honor and privilege to testify before you today and I thank you for taking your valuable time to hear of my plight. My name is Bindu Philips and it is my ardent hope that my story shall capture your attention today.

While I have held many roles in my life, none has been more meaningful to me than that of motherhood. Twelve years ago, I was blessed to become a mother of twin boys – my precious children, Albert Philip Jacob and Alfred William Jacob. When my children were born my ex-husband, Sunil Jacob, and I made a joint decision that I would stay home with them and fulfill the role of their primary caretaker. I was an active and loving mother in every aspect of our boys' lives, from: taking them to their activities; serving as their classroom mom at school; making them meals; and attending to their daily routines. This role came naturally to me and was one I fulfilled with joy. My children came first in everything I did and in every decision I made.

Tragically, my world and that of my innocent children, was violently disrupted by my ex-husband, Sunil Jacob in December of 2008, when he orchestrated the kidnapping of the children during a vacation to India. I would note that the children and I are American citizens and that the children were born in America, which is the only nation they identified with as home.

By way of background, I can advise that my ex-husband, Sunil Jacob, pressed me to agree to take a family vacation to India during the children's winter vacation in Plainsboro, NJ, where they were attending the local elementary school. Despite my having reservations to this last minute international travel, my ex-husband was both physically and emotionally abusive towards me, and I feared the consequences of refusing him.

However, at the time that the trip to India was planned, my ex-husband had recently been laid off by his employer, Citi Group. My ex-husband, Sunil Jacob, misled me as to his intentions, telling me that we would be home in the United States no later than January 17, 2009, as that would be the deadline by which he would have to file for unemployment benefits. Given Sunil Jacob's employment background in the financial industry and that we owned a home in Plainsboro, NJ, I had every reason to believe that we would be home a few weeks later to attend to our financial affairs and resume our life in the United States.

Had I known any of what would follow, I would never have boarded that ill-fated flight to India with my children in December of 2008. It would become painfully clear to me shortly upon our arrival that Sunil Jacob intended to separate me from our children and create a new life for the boys in India. It would be a life that would not include me.

Sunil Jacob has remarried and I presume sought to place his new wife into the role as mother to our children. It breaks my heart to share that he is brainwashing our children and telling them that I have abandoned them. He has made it impossible for me to see or speak to my children – more than a handful of times – in the last 4 and a half years. Only once at Supreme Court of India, I was able to spend 15 minutes personal time with my children. Every day I awaken to the heart-wrenching reality that I am separated from the children that I love more than anything in the world. I implore you, the members of Congress, to help me in my quest to be reunited with my children. I pray that the story that I shall continue to recount to you will move you to help me seek justice for my family; that you will decide that Sunil Jacob should no longer be permitted to act with such callous impunity and harm our children in the process. I have done everything that I can think to do in this nightmarish situation, and I will never give up on my children. Yet, I am here because I can no longer fight the good fight on my own. I respectfully request that you help me to make my voice heard in a way that shall be meaningful and allow me to be reunited with my children who need the love and nurturing of their mother.

With respect to the trip the family took to India, I had seen our return ticket to the United States, which was reserved for January 12, 2009. Hence I believed that we were merely taking a 3-week vacation to India. Upon our arrival in India, Sunil Jacob treated me particularly harshly, and would not allow me contact anyone. He sought total isolation of me. I could not go anywhere alone with the children (despite being of Indian descent myself and able to travel otherwise,) and Sunil Jacob would not even permit me to take the boys to see their maternal grandparents.

The horror of the experience truly began on the date that we should have flown home to the US. When I inquired of Sunil Jacob why we were not getting ready for the return flight, he both verbally and physically assaulted me by violently slamming my head into a wall several times. I was terrified. I then learned that Sunil Jacob had enrolled our children in a local school in India. My ex-

husband additionally cut off my access to funds while in India and threatened me not to contact my family during this time. His father in fact, physically assaulted me by choking and slapping me for answering my brother's phone call on January 30, 2009.

On the same day, Sunil Jacob sent me to my cousin's home for the weekend. Given the recent physical violence and my cousin's concern for my safety, I felt that I had no choice but to comply. I begged Sunil Jacob to send the children with me to see my family that day, but this request was refused. Sunil Jacob promised to pick me up the next day and I thought he would do it.

I would wake up to a more frightening reality the following day. My husband was not coming back for me, and rather, had abandoned me at my cousins' home as part of a more devious plan to permanently separate me from our children. I filed a police report in India on February 5, 2009, but despite the filing of the report, I was not able to regain custody of my children. Yet, in retaliation for my action, Sunil Jacob then filed false restraining orders against my father and my cousin, both being based on false allegations. I know that it is Sunil Jacob's plan to harass me and my family in India, so as to wear me down in the hopes that I will abandon my quest for custody of our children.

The more I sought answers in the midst of my nightmare, the more devious conduct I uncovered on the part of Sunil Jacob. When I contacted the children's elementary school in NJ, I learned that Sunil Jacob had already communicated his intentions to the principal there. Thereafter, on March 4, 2009, I contacted the US Consulate in Chennai, India, for assistance. I was directed to the Office of Children's Issues. Yet, absent an Order granting me custody of the children, there was little that the consulate could do for me.

Frustrated but determined, on May 14, 2009, I filed a petition with the Superior Court of NJ for custody of our children. Sunil Jacob tried to delay the matter by arguing that the US did not have jurisdiction to hear the case, but the American Courts (both at the superior court and appellate levels,) held that jurisdiction was indeed proper in the Superior Court Family Part.

In fact, on December 18, 2009, the Family Court held that the children were to be returned to the US by Sunil Jacob so as to allow them to spend their Winter Break with me. Sunil Jacob was well aware of this, as he participated in the hearing that lead to such decision via telephone. The Superior

Court Judge, Honorable Barry A. Weisberg, specifically advised Sunil Jacob that he must send the children for this parenting time and that I would be entitled to emergency relief if his compliance was not forthcoming.

Arrangements were made for the children to board a flight out of India on December 26, 2009, and my father went to the Trivandrum airport, India, to see that the children made the flight. The date for the flight and Sunil Jacob's attendant responsibility to get the children to the airport on that day was made clear to Sunil Jacob by the US consulate and my American attorney. My father and I even took the time to further confirm this with Sunil Jacob by every mode imaginable: via email, regular mail, courier, and telegram. Yet, with his typical impunity and disregard for Court Orders, Sunil Jacob refused to send the children and they never got on that flight.

In addition to the relief that was granted to me concerning parenting time over the winter break, The Family Court further held on December 28, 2009, that I would have legal and residential custody of our children in NJ. The Child custody petition and court order were served to Sunil by the Ministry of Law and Justice, New Delhi, India. Given that Sunil Jacob was blatantly in contempt of a Court Order, the Plainsboro police department issued two arrest warrants for Sunil Jacob's arrest. The first warrant was issued for the kidnapping of my children Albert and Alfred and the second warrant was for interference with custody. The FBI has also issued a warrant against him for unlawful flight against prosecution. Please note in 2007, while Sunil Jacob was working at Citi Group as a Director, Global Equities Technology Risk Control, he was involved in an unknown incident at his office that resulted in an FBI enquiry on him. I have knocked on every door I can think of. The National Center for Missing and Exploited Children has created a poster concerning the children. I have an active case with the Department of State, Office of Children's Issues in Washington DC. I have been to the Indian consulates in New York and contacted their Washington DC branch. The New York consular office advised me to utilize the services of the US consulate in India in Order for help with enforcement of my court orders. The Middlesex county prosecutor's office had issued arrest warrants for interference with child custody and kidnapping at state level. However, years later, in 2013, the Middlesex county

prosecutor, Honorable Bruce J. Kaplan, has administratively dismissed the case. The Plainsboro Police are now seeking to file charges for custodial interference.

Yet, while I extend such profound efforts to assert my rights to our children, I am repeatedly undermined by the efforts of Sunil Jacob in India. Despite having kidnapped our children, he had filed for custody of the children in the Indian Courts. In addition to wrongfully keeping the children from me, Sunil Jacob has thwarted every effort I have made to even speak to our children and let them know that I love them. When Sunil Jacob first enrolled the children in a local Indian elementary school in January of 2009, I went to the school to visit with the children, as my ex-husband would not permit me to even communicate with my children. The school took pity upon me and extended me the kindness of visiting the children there. Yet, when my ex-husband discovered that I had seen the children even briefly, he immediately transferred the children to a new school. I would soon thereafter discover that the second elementary school was strictly advised that neither me nor anyone in my family, even the children's maternal grandparents, were not permitted contact with the children. Thus, my ex-husband forcibly shut down my last avenue of communication with the children. I would advise the Congress that I was a loving and devoted mother to our children and that my care of the children was unquestioned during the marriage. There is no explanation for Sunil Jacob's isolation of me and my family from the children other than his cruel nature.

Regrettably, I know that Sunil Jacob feels empowered by the passage of time, as it has been four years and our case in India is currently pending before the Honorable Supreme Court of India, while I have been separated from our children all this time due to his cruel and vicious actions against our young children, my family, and me. Beyond the kidnapping of the children, Sunil Jacob continues to file false court cases against members of my family and me in India. He believes that if his campaign of harassment becomes too much to bear, we will back away from the quest for me to regain custody of our children. He must learn that this will not happen; he must be held accountable for his reprehensible actions. I previously filed a civil contempt case against Sunil Jacob and his parents for precluding me from communicating with the children; this was filed in September of 2011

in India. Yet, moral accountability is not enough; I must be reunited with my children and I need the help of our honorable Congress to do so.

It is significant that the Honorable Barry A. Weisberg, Judge of the Superior Court Family Part in New Jersey, not only gave me sole custody of the children and demanded their immediate return to the United States, but also held that Sunil Jacob must comply with a psychiatric evaluation and a risk assessment upon his return of the children. Clearly, Judge Weisberg, an experienced jurist in the Family Part, felt that Sunil Jacob's conduct was evident of a man who was disturbed. I fear for the safety of our children and their emotional well being in their father's care. I was the one who took the emotional and physical abuse during the marriage, effectively sheltering the boys from their father's ill temper. I am not there to do so now and I do not know how the children are faring in my absence.

I would like to point out that Sunil Jacob's plan to kidnap the children and sequester them in India out of my reach was not a decision that was quickly or lightly reached. The planning on the part of Sunil Jacob was involved and done long in advance of that fateful trip in December of 2008. I would learn that in November of 2008 (1 month before the trip to India,) Sunil Jacob obtained a status for him and the children, known as OCI, Overseas Citizen of India. Since India does not permit dual citizenship, his attainment of OCI status for him and the children allows him to remain overseas (and out of my reach and that of the Hague Convention,) indefinitely. Yet, OCI status requires the signatures of both parents on the application. Somehow, Sunil Jacob found a way to circumvent this legal requirement, and disregard the rule of law and the Courts, as he so often has done in the last 4 years. Without my knowledge, Sunil Jacob has transferred a substantial sum of money to India in 2007 and 2008 prior to our vacation to India. He is the managing director and owner of a software business Ambael Informatics Pvt Ltd in India since 2009. He is the CEO of Fingent Technology in India since 2007. Recently, I came to know he is the director and owner of Dream Castle Resort registered in 2007, without my knowledge. Very recently, Sunil Jacob's family member confirmed the pre planning and separation of the children from me.

When I ultimately returned to the United States four months later on April 9, 2009, I literally came home to an empty house. Our residence in Plainsboro was devoid of all furniture and

possessions and both cars were gone from the garage. I would discover that during what was promised to be a 3-week Indian vacation, my ex-husband had 3 friends clean out the entire house of everything inside. At least one of these friends of my ex-husband had a Power of Attorney to sell the cars on his behalf. Sunil Jacob had contacted the shipping company, LTV relocation services, as early as March 2008 as per the Plainsboro Police Investigation Reports.

The contents of our home were shipped to India and stored in the residence that Sunil Jacob had purchased in 2005 from the \$300,000 home equity loan on the residence in Plainsboro, without my knowledge. He was able to take the \$200,000 equity withdrawal without my knowledge prior to going on vacation to India. He had me sign a Power of Attorney to home prior to the vacation, on the representation that we would need to sell the home and downsize on our return from India. I assumed he was being responsible, as he had recently lost his job; in retrospect, I was also controlled by him and afraid to contradict him as well. If you can only for a moment imagine my heartbreak, I came home without my children to discover that my home was nothing more than a shell – I had no possessions and I was in the middle of the suburbs without so much as a vehicle to drive. Despite not working since our children were small, the bank accounts had been cleared out as well – leaving me with literally nothing to fall back on.

I had to start from scratch and survived initially on the graciousness of good people. My neighbors allowed me to move in with them briefly and a local church gave me a car. Shortly thereafter, I found employment, secured an apartment and purchased my own car. In addition to disregarding the support orders of the Family Part, which compelled him to pay \$11,528.00 a month in alimony, Sunil Jacob's cruelty has involved leaving me without my precious children or a roof over my head, all while burdening me with all of the marital debt, which he chooses not to pay from his residence in India. He has not paid the mortgage on the former marital home, nor the equity line of credit or utilities. In the midst of trying to destroy me emotionally and devastate me financially, he has left me to be hounded by various creditors for debts that he largely created and from which he has taken the sole benefit. The stress under which I have labored the last 4 years has been almost unbearable at times, but I have continued on in the sole hope of being reunited with my children –

from whom I never spent a day apart from prior to their father's kidnapping of them in December of 2008 in India.

I have put everything I have into my mission to be reunited with my children. I have rebuilt myself financially and made a viable career path for myself. I have made a new home for the children to return to, as I was forced to sell the marital home to satisfy the debts my ex-husband created. It must be remembered that America is the children's home – it is where they were born, where the children attended school, and the culture that they love. They must be brought home to American soil. I implore Congress to assist me in righting the wrongs that have been done to the children and me by my ex-husband.

The New Jersey Courts gave me residential and legal custody of the children 4 years ago. The same courts ordered that the children be immediately returned to this country. Sunil Jacob has disregarded all of these orders, despite being keenly aware of them and their import. He will not return the children to this country voluntarily. Please help me to end this nightmare that Sunil Jacob has created for my family. Please help my precious children and me – I do not want to know and cannot imagine a meaningful life without them. Please act not just for the benefit of two innocent children and their broken-hearted mother; please think of all the other children and parents caught in similar nightmarish situations due to hostile-minded parents who abduct children to overseas nations.

Thank you from the bottom of my heart for hearing my humble and fervent plea during your otherwise pressing schedules. I shall always be grateful for this time and for the opportunity to share my story and that of my children.



Mr. SMITH. Ms. Philips, thank you so very much for that very moving testimony. We are here because we want to be here. When someone says that they don't have the time, they have stated not a fact but a priority.

And the idea behind not just this hearing, and the series of hearings that we have had to build the case, to have cases that have failed because civil remedies proved to be ineffective and inadequate, is that we need to take it to the next level. Reasonable people, a reasonable man or woman, would say, "Okay, if that didn't work, what else do we have? What other tools might we put into that toolbox?" And that is what the legislation is all about. Because there are far too many people just like this very distinguished but harmed panel that are not being well served. So, thank you for your testimony.

Mr. Elias?

**STATEMENT OF MR. MICHAEL ELIAS, FATHER OF CHILDREN
ABDUCTED TO JAPAN**

Mr. ELIAS. Congressman Smith and distinguished members of the subcommittee, my name is Michael Elias and I would like to thank all of you once again for this opportunity to share my personal experience involving international parental child abduction with you once again.

From August 2003 to November 2007, I was a sergeant in the United States Marine Corps. I am currently employed as a Bergen County Sheriff's Officer in the State of New Jersey. I was stationed at Camp Foster, Okinawa, Japan, from 2004 to 2005, where I met my future wife, Mayumi Nakamura. Shortly thereafter, my unit returned to Camp Lejeune, and Mayumi returned to her hometown of Saga, Japan. We remained in constant contact, and in late September I received a startling phone call from Mayumi informing me that she was 5 months pregnant.

I was stunned. However, at the same time I was excited at the prospect of becoming a father. Therefore, in October 2005, Mayumi came to the United States and we were married at an intimate ceremony in Rutherford, New Jersey. I then purchased a home for us in Jacksonville, North Carolina, and our first child, Jade Maki Elias, was born on January 5, 2006.

In March 2007, I was deployed to Iraq for a 9-month tour of duty while Mayumi was expecting our second child. She then moved in with my parents in Rutherford, New Jersey, so Mayumi and Jade would have full support and the assistance of my family.

On August 2nd, 2007, my son Michael Angel Elias was born at the Hackensack Medical University. During my deployment, Mayumi started a relationship with a Japanese national. His name was Kenichiro Negishi. He worked as a travel agent in Manhattan. Sadly, a few months after my return, Mayumi and I separated, and on October 29, 2008 I was awarded joint custody of my children.

On that day, the judge clearly ordered that the children's passports, both American and Japanese, be turned over because it had clearly been demonstrated that my wife was a flight risk. I felt I did everything I could to ensure the safety and well being of my children. I was confident that I had the reasonable expectation that

my American-born children would be protected from being kidnapped to Japan.

Mayumi was an employee of the Japanese Consulate in New York City, issuing visas and passports. She used her position at the Consulate as a tool to carefully collaborate the kidnapping of our children. Mayumi and Kenichiro flew to Chicago with the two of my children to obtain illegal replacement passports at the Japanese Consulate in Chicago, where she and her boyfriend Kenichiro exited the country via Chicago's O'Hare Airport on December 6, 2008 with Jade and Michael. I still have in my possession their original passports.

My family and I were horrified and sickened by Mayumi's actions. We have repeatedly attempted to contact Japanese Consulates in New York, Chicago, Washington, DC, and continue to receive no cooperation whatsoever. Shortly after she arrived in Japan, Mayumi contacted me and told me that she had unilaterally decided that she would raise our children in Japan. When I explained to her that she had kidnapped our children, she maintained, and I quote, "It's not kidnapping. My country will protect me."

Thereafter, I was awarded full custody of our children in the Superior Court of Bergen County, New Jersey. The judge ordered the immediate return of the children to the United States from Japan by means of the Hague Convention. Unfortunately, the judge was unaware that Japan was not a signatory of the treaty, something that Mayumi seemingly understood.

Since the kidnapping, my family and I have pleaded with Mayumi to return our children to the United States, assuring her that there was no criminal charges pending. Since January 2009, my family and I continue mailing gifts, cards, care packages to the children, with no responses or acknowledgement. After numerous emails and telephone calls, on January 5, 2010 I was granted the privilege to see my children via Skype on my daughter's fourth birthday. Although it was very hard to see my children through the monitor, it was very satisfying to see them 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 back, and that was the last time I saw my daughter's face.

Prior to our final contact on Jade's birthday, Mayumi assured my parents, and only my parents, they would be allowed to visit Jade and Michael. In February 2011, my parents flew to Japan with the assistance of the United States Embassy in Tokyo, accompanied by Congressman Smith, his Chief of Staff, Mary Noonan, and my attorney, Patricia Apy.

Congressman Smith, along with Ms. Noonan and Ms. Apy, spent every waking moment meeting with Japanese officials, trying to convince Japan to sign and ratify the Hague Convention. However, the Hague is not retroactive, so it would provide no benefit to the nearly 400 children abducted prior to the Hague implementation. So they urged Japan to prepare a memorandum of understanding to accompany their signing Hague which would cover the hundreds of pre-existing cases.

They also contacted Mayumi to ask my parents if they could visit their grandchildren. However, Mayumi denied any access for it. She told the Embassy she would not accept their calls, and she told them to go home. While in Japan, my attorney, Ms. Apy, spoke with the Deputy Foreign Minister of Japan, and he informed her that the Japanese Government was moving forward with the prosecution of Mayumi. After numerous requests, we had still not received any information about the investigation or prosecution of Mayumi's case until December 2012.

I received a call from my case worker from the Office of Children's Issues, Ms. Leah George, informing that she had received information regarding Mayumi's prosecution. However, she was unable to open the document or read Japanese, so we waited until February 21, 2013 for the letter I hold before you today from the Saga District Prosecutor's Office in Japan.

And it says, "Notice," and I quote, "This notice is in response to your inquiry regarding the criminal case of violation of the Passport Act. With regard to this case, after conducting necessary and sufficient investigation, the prosecutor decided not to institute prosecution. Decision of the non-prosecution was made on October 29, 2010. If you have any further questions regarding this notice, please contact International Affairs Division, Criminal Affairs Bureau or Ministry of Justice, Japan. Yours truly, Takuya Komagata, the public prosecutor."

The timing on this decision clearly demonstrates the total disregard that Japan has for Americans and our children. This decision was made 2 years ago, and only now I am receiving the outcome? My only hope was that Japan would hold Mayumi responsible for her crimes, but like she so calmly stated, "My country will protect me." And they have.

Since December 2008, there has been no visual confirmation on the whereabouts or the well being of my children in Japan. Mayumi had agreed to a welfare visit by the Office of Children's Issues. This occurred a few years ago, and at the last minute Mayumi informed the case worker she would meet them at a local mall. Mayumi showed up with a photo album of the children that was good enough for the case worker. However, it was highly unacceptable for me.

Right up to this day, no one from the State Department or the American Embassy in Japan can say they have seen my children, know their whereabouts, and are certain of their well being. Mayumi is running the show, and she is being permitted to do so. It is haunting to know that my children, along with thousands of other children from around the world, will suffer in silence because they are afraid to ask about their families who were left behind, in fear of disappointing and upsetting their abductor. It appears that their fate has already been determined.

I cannot think of anything more important than the fate of my children. What about all the American citizens who have been ripped from their homes in this country against their will? What about my children? I don't know how to pick up the pieces and move on. My pieces are in Japan, a country that has willingly, knowingly aided and abetted the abduction of children from all over the world, a country that refuses to prosecute my wife for

crimes that are recognized worldwide as fundamental human rights violations.

Does the word parental in front of kidnapping make it less of a crime? If so, for whom? You, or the children involved, the children who have been silenced, sacrificed and brainwashed, the very children who have been ripped from their only life they ever knew, the family, the love, and now will be programmed to never look back? This is what it becomes, not only parental cruelty, it becomes child abuse. Can it be Japan has always felt this way, a private family mater, and never really looked at it from the eyes of children, my children?

I often wonder when I look in the mirror why I don't see me anymore. I see a reflection looking back at me, watching me look at him. It makes me wonder if this happens to my children. What do my children see when they look in the mirror? Will they ever know who they really are? Do they think like me? Do they act like me? Do they dream with me? What does Mayumi tell them?

As long as our Government allows Japan to continue to disregard our children, the number of parental kidnappings will continue to rise. Countless families will suffer the same heartache again and again, and Japan and its abductors will remain in control. It is time for a change. I have been waiting for 4½, along with hundreds of other parents, some who have been waiting for decades. There is not a day that goes by I don't pray for the return of my children. I am depending on Congress and the State Department to make that change.

Thank you.

[The prepared statement of Mr. Elias follows:]

“Resolving International Parental Child Abduction to Non-Hague
Convention Countries.”

United States Congressional Subcommittee on Global Human Rights
and International Organizations.

May 9, 2013

Congressman Smith and distinguished members of the subcommittee, my name is Michael Elias and I would like to thank you all once again for this opportunity to share with you my personal experience involving International Parental Child Abduction.

From August 2003 to November 2007, I was a Sergeant in the United States Marine Corps. I am currently employed as an officer with the Bergen County Sheriff Department in the state of New Jersey. I was stationed at Camp Foster in Okinawa, Japan from 2004 to 2005, where I met my future wife Mayumi Nakamura. Shortly thereafter, my unit returned to Camp Lejuene and Mayumi returned to her hometown of Saga, Japan. We remained in constant contact, and in late September I received a startling phone call from Mayumi informing me she was five months pregnant. I was stunned, however, at the same time I was excited at the prospect of becoming a father. Therefore in October, 2005, Mayumi came to the United States and we were married at an intimate ceremony in Rutherford, New Jersey. I then purchased a home for us in Jacksonville, NC, and our first child, Jade Maki Elias was born on January 5th 2006. In March 2007, I was deployed to Iraq for a nine month tour of duty while Mayumi, expecting our second child, moved in with my parents in Rutherford, NJ, so Mayumi and Jade would have full support and the assistance of my family. On August 2nd 2007, my son Michael Angel Elias was born at Hackensack Medical Center in New Jersey.

During my deployment, Mayumi started a relationship with a Japanese national Kenichiro Negishi, who worked as a travel agent in Manhattan. Sadly a few months after my return, Mayumi and I separated, and on October 29, 2008 I was awarded joint custody of my children. On that day, the Judge clearly ordered that

the children's passports, both American and Japanese, be turned over because it had clearly been demonstrated that my wife was a flight risk.

I felt I did everything I could to ensure the safety and well-being of my children. I was confident and had every reasonable expectation that my American born children would be protected from being kidnapped to Japan.

Mayumi was an employee of the Japanese Consulate in New York City issuing visas and passports. She used her position at the Consulate as a tool to carefully collaborate the kidnapping of our children. Mayumi and Kenichiro flew to Chicago with my two children to obtain illegal replacement passports at the Japanese Consulate in Chicago, where she and her boyfriend Kenichiro exited the country via Chicago's O'Hare airport on December 6, 2008 with Jade and Michael. I still have in my possession their original passports. My family and I were 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 what so ever.

Shortly after she arrived in Japan, Mayumi contacted me to tell me she had unilaterally decided that she would raise our children in Japan. When I explained 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 in the Superior Court of Bergen County, New Jersey. The Judge ordered the immediate return of the children to the United States from Japan by means of "The Hague Convention". Unfortunately, the judge was unaware that Japan **was not** a signatory of the treaty, something that Mayumi seemingly understood.

Since the kidnapping my family and I have pleaded with Mayumi to return our children to the United States assuring her that there were no criminal charges pending. Since January 2009, my family and I continue to mail gifts, cards and care packages to the children, with no response or acknowledgement. After numerous emails and telephone calls, on January 5th 2010, I was granted the privilege to see my children via Skype on my daughter's 4th 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 heart ache 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 black and that was last time I ever saw my daughter’s face. Prior to our final contact on Jade’s birthday, Mayumi assured my parents and only my parents would be allowed to visit Jade and Michael.

In February 2011, my parents flew to Japan with the assistance of the United States Embassy in Tokyo, accompanied by Congressman Smith, his Chief of Staff Mary Noonan, and my attorney Patricia Apy. Congressman Smith, along with Ms. Noonan and Ms. Apy spent every waking moment meeting with Japanese officials trying to convince Japan to sign and ratify the Hague Convention. However, the Hague is not retroactive, so it would provide no benefit to the nearly 400 children abducted prior to Hague implementation, so they urged Japan to prepare a Memorandum of Understanding (MOU) to accompany their signing of the Hague which would cover the hundreds of pre-existing cases.

They also contacted Mayumi to ask if my parents could visit their Grandchildren, however Mayumi denied any access for. She told the Embassy she would not accept their calls and she told them to go home! While in Japan my attorney, Ms. Apy, spoke with the Deputy Foreign Minister of Japan and he informed her that the Japanese Government was moving forward with the prosecution of Mayumi. After numerous requests we had still not received any information about the investigation or prosecution of Mayumi’s case until December 2012. I received a call from my case worker from the Office of Children’s Issues, Ms. Leah George, informing me she had received information regarding Mayumi’s prosecution. However, she was unable to open the document or read Japanese, so we waited until February 21, 2013 for the letter I hold before you today from the Saga District Prosecutors Office in Japan. .

NOTICE: And I quote “This notice is in response to your inquiry regarding the criminal case of violation of the Passport Act.

With regards to this case, after conducting necessary and sufficient investigation, the prosecutor decided not to institute prosecution. Decision of the non-prosecution was made on October 29, 2010.

If you have further questions, regarding this notice, please contact the International Affairs Division, Criminal Affairs Bureau, Ministry of Justice, Japan ([Email: info@moj.go.jp](mailto:info@moj.go.jp), Tel+81-3-3592-7049).

Yours truly,

Takuya Komagata

Public Prosecutor

The timing of this decision clearly demonstrates the total “**disregard**” Japan has for Americans and for our children. This decision was made two years ago and only now I receive the outcome! My only hope was that Japan would hold Mayumi responsible for her crimes. But like she so calmly stated “My country **will** protect me” and they did.

Since December 2008, there has been no visual confirmation on the whereabouts or well-being of my children in Japan. Mayumi had agreed to a Welfare Visit by the Office of Children’s Issues . This occurred a few years ago and at the last minute Mayumi informed the Case Worker she would meet with them at a local Mall. Mayumi showed up with a photo album of the children and that was good enough for the case worker, however, it was **highly unacceptable for me**. Right up until this day no one from the State Department or the American Embassy in Japan can say they have seen my children, know their whereabouts and are certain of their well-being. Mayumi is running the show and she is being permitted to do so. It is haunting to know that my children, along with thousands of other children from around the world, will suffer in silence because they are afraid to ask about their families who were left behind in **fear** of disappointing and upsetting their abductor. It appears their fate has already been determined.

I cannot think of anything more important than the fate of our children. What about all the American citizens who have been ripped from their homes in this country **against** their will. What about MY children? I don’t know how to pick up the pieces and move on. My “pieces” are in Japan! A country that has knowingly aided and abetted the abduction of children from all over the world. A country that refused to prosecute my wife for crimes that are recognized worldwide as fundamental human rights violations.

Does the word “**Parental**” in front of **Kidnapping** make it any less of a crime? If so, for whom, YOU or the children involved. The children who will be silenced, sacrificed and brain-washed. The very children who have been ripped from the only life they ever knew, the family they love and now will be programmed to **never look back**. This is where it becomes not only parental cruelty, it becomes child abuse. Can it be Japan has always felt it was a “private family matter” and never really cared or looked at it from the eyes of the children, my children.

I often wonder, when I look in the mirror why I don’t see “ME” anymore. I see a reflection looking back at me, watching me...look at “HIM”. It makes me wonder if the same thing happens to my children. What do my children see when they look in the mirror. Will they ever know who they really are? Do they think like me? Do they act like me? **Do they dream *with* me?** What does Mayumi tell them? How does she silence them? Am I dead? Did I abandon them? Did I not love them enough? Did I do something **so** wrong for her to hate me **more** than she loves our children? How will I ever face them? WILL I ever face them? And most of all,, will they **ever** love me AGAIN?

As long as our government allows Japan to continue to “**disregard**” our children, the number of Parental Kidnappings will continue to rise. Countless families will suffer the same heartache. And Japan and its abductors will remain in control. **It is time for CHANGE!**

I have been waiting four and a half years, along with hundreds of other parents, some who have been waiting for decades. There is not a day that goes by that I don’t pray for the return of my children. I am depending on Congress and the State Department to make that change.

As a nation that is always ready and willing to help all other countries, and shed the blood of our young men and women to protect their citizens, I cannot help but ask myself why we are not fighting harder for OUR most vulnerable citizens, our children. Why do I feel like I have to BEG for my Country to address this issue and resolve it!

I fought for this country, I did everything I was told to do no matter what the

outcome; so that every American can have a free, safe life and be able to **kiss their children goodnight**. While I have lost the ability to do so myself, I can only imagine what that would feel like. Forgive me if I sound angry and disappointed however four and a half years have passed and I have no idea where my children are! I am not a part of their lives or their hopes and their dreams. Japan and their abductors are in control.

If Japan adopts the Hague Convention, without a Memorandum of Understanding, it still does not give us the mechanism for the return of the hundreds of children abducted over the past 20 years. Japan's refusal to address those cases in any way, shape or form, clearly demonstrates that Japan is only signing the Hague to ease international pressure and make this issue go away. Japan needs to agree to an MOU to address the hundreds of existing cases, including the cases of my own children and provide for the return of our criminally abducted children. Even **Cuba**, who is not a party to the Hague Convention, returned **two** American children to the United States a few weeks ago with the assistance of the Cuban government! How many American children has Japan returned with the assistance of their government?? The answer *is still 0!*

Mr. SMITH. Thank you very much, Mr. Elias. Thank you for your service to our country in Iraq. And there are some folks that stayed back from the Office of Children's Issues, and I do hope they will take your letter back. Because I had asked while I was in Japan, asked it at hearings, if we were pressing the prosecution of your wife for the passport fraud, among other things, what was the investigation? And I am wondering if we ever got a response back, and if not, why not. And to realize that a decision made on October 29, 2010 was not conveyed to us, the U.S. side, and to you for so long, is absolutely unconscionable.

And leaving every other issue aside, that kind of nonresponsiveness suggests a relationship with an ally that is not what it purports to be. So we will follow up on this, and I do hope you folks will take back that letter and check into that, because that is 2 years.

Mr. Bower?

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

Mr. BOWER. Thank you, Chairman Smith and honorable committee members. Thank you for allowing me to be here today to testify in front of you.

My name is Colin Bower. And I am here today for one reason: To ask the U.S. Government to please stop giving Egypt billions of dollars until they release my two American, kidnapped children. David Goldman and the respected chairman can attest to the fact that this has worked before. And I think that, once you have heard the facts in this testimony, you will be compelled to agree that we can't continue to blindly fund a state that has sponsored, aided and abetted crimes against not only Americans, but defenseless American children.

In the way of background, despite my having sole legal custody of my sons, Noor and Ramsay, they were kidnapped from the United States to Egypt in August 2009. Today's testimony marks the second time in the past 2 years I have testified in front of this honorable committee. Meanwhile, my boys remain illegally held in Egypt, as do 20-plus other American children, including Blake Cleveland, whose father just called me yesterday. All in danger, suffering child abuse and having their human rights compromised.

To these children, their parents, and to Noor and Ramsay, when you watch or read this, please know that you are in my prayers, and it is my sincere hope that this testimony leads to the U.S. Government acting to bring each and every one of you home.

Year after year, the U.S. Government sends billions of taxpayer dollars to the Government of Egypt with the U.S. Department of State using waivers under the guise of national security to get around conditions Congress tries to put on the aid. As to whether Egypt deserves this aid, please note some of their behavior since 2009, when my children were abducted, during which they continued to receive their annual billion-plus dollar stipend.

They have engaged in state sponsored crime by aiding and abetting the kidnapping and illegal detention, child abuse, of at least two American children. They provided the false passports and transportation for the kidnapping, and they have abetted the kid-

napper through ongoing protection. They have directly threatened U.S. national security. They issued false Egyptian passports for the purpose of committing a crime in the United States. And for nearly 4 years, they have refused to respond to formal requests from the U.S. Government for information around how or why these passports were issued. This is in direct contravention of the bilateral mutual legal assistance treaty. The Government of Egypt has refused to acknowledge the Hague Convention principles, or to commit to joining the Convention, and they continue to regularly commit flagrant human rights violations.

If supporting this country without conditions is American foreign policy, then American foreign policy isn't working. Not only are we not getting what we pay for, Egypt has thumbed its nose at real reform and at our leaders. I have seen my boys less than a handful of times since they were taken. Each visit was in Egypt, and each was attended by a large band of Egyptian relatives and government security personnel who watched the boys' every move, scrutinized the boys' every word. The boys were understandably anxious, and they behaved unnaturally.

My last visit with them was in January 2012. Both my mother and myself, and the U.S. Embassy personnel who attended this meeting, noted that it was clear the boys wanted to interact with me. They wanted to be with me. And that is precisely, I believe, the reason why Mirvat el Nady, their mother, has forbidden me any contact with them since that time.

I practice one-way communication in the form of posts that I send to them on a committed Facebook page every week. It is all I can do.

In 2010, I fought for and won an Egyptian court order allowing me to visit my children regularly. I have made eight separate trips to Egypt to see my boys with no success despite this order. On these trips, I sat alone in a park with bags full of letters, toys, magazines, sports equipment, other mementos, waiting 6 hours hoping to see, speak with and hold my boys again. They were never brought to these visits.

I have been forced to retain new counsel in Egypt at the behest of the State Department with no recourse. I don't know when I will see them again next. I don't know if they will ever come home. All I know is that I will never stop fighting.

It is important to note that the el Nady family has direct ties to the Egyptian Military. They started the only private sector yeast factory in Egypt in 2005 through a company called EGYBELG. Like the production and distribution of all Egyptian necessities, this remains under the control of the Egyptian Military. The ties between the el Nady family and the military were strong under the Mubarak regime, and they have persevered into the Morsi regime. The el Nady family has been allowed to ignore both Egyptian and U.S. court orders, and refused communication with me, U.S. Embassy personnel, and the Good Intentions Subcommittee, which is a committee which includes senior Egyptian officials appointed to address issues specific to American children who have been abducted to Egypt.

The majority of U.S. aid is directed to the Egyptian Military, which has been the bedrock of the Egyptian side of our bilateral

relationship since the Camp David Accords in 1978, and the U.S. Government has seemingly served at the pleasure of the Egyptian Military, apparently not wanting to upset the status quo since the kidnapping.

Now, this is not to say that the U.S. Government has not made substantial efforts on behalf of Noor and Ramsay. On the contrary, pleas for Noor and Ramsay's return have been made, both face to face and in writing, by many senior officials in our Government, including the Vice President, two Secretaries of State, the Attorney General, two U.S. Ambassadors to Egypt, the chairman of the Foreign Relations Committee, and ranking members of House committees and subcommittees.

In Congress, resolutions calling upon Egypt to return Noor and Ramsay passed in both the House—thank you, Mr. Chairman—and the Senate, including through this committee. Further, as the chairman of the Senate Foreign Relations Committee, now-Secretary of State John Kerry, said, his last conversation with President Mubarak was what he called a half-hour shouting match on this issue. His call to President Mubarak, and his call on President Mubarak to return the two boys, was to no avail.

Secretary Kerry has continued to focus on this issue directly at the highest levels in his dealings with Egypt since he has become Secretary. Yet, I can't tell you where my boys are, when I will see them again, or when or if they will ever come home. Since 2009, these pleas from the U.S. Government have been made directly to former President Mubarak, current President Morsi, the Supreme Council on the Armed Forces, SCAF, the Egyptian Minister of Foreign Affairs, the Egyptian Minister of Justice, and other various Egyptian ministers and leaders.

I remain incredibly grateful for all the assistance of all U.S. officials involved, all Members of Congress involved, the chairman of this subcommittee, as well as Secretary Kerry, in their sustained attention to bringing home Noor and Ramsay.

Despite all of this, the Government of Egypt has been completely nonresponsive. They have refused to give the location of the children. They have refused to allow welfare visits with the children. They have refused to abide by the terms of MLAT. They have refused to enforce court orders. They have refused to acknowledge the rights of Noor and Ramsay. They have refused to return the children. They, along with the el Nady family, continue to aid and abet a wanted felon.

And this nonresponsiveness has gone entirely without consequences. In fact, the United States has rewarded Egypt during this time by continuing to send them billions of U.S. taxpayer dollars and acting as if it is business as usual. The State Department has simply said, in a TV interview recently and in private, that our relationship with Egypt is complicated, and there are other important issues on the table.

I have to ask the basic questions: What is more important than the safety of our children? What message are we sending to the perpetrators of crime against American children when we continue to support the perpetrators, unchecked and without consequences? Obviously, as Noor and Ramsay's father, I am devastated. But as

an American, I am appalled. The inability of Mirvat el Nady to responsibly parent is outlined in our divorce judgment.

It is also outlined in more detail in the House Resolution 193, which includes analysis from various mental health and other professionals who evaluated Mirvat el Nady during the divorce proceeding and recommended that she receive inpatient care. I don't want to disparage the boys' mother in this forum, but the text in this resolution is chilling, as are the implications of allowing an unfit parent to watch over Noor and Ramsay in such a volatile social, political and religious environment such as exists in Egypt today.

Obviously, a fit parent would never have kidnapped her children, alienated them and forced them to be estranged from their legal guardian, myself, a healthy father who provided for them and simply loves them more than anything else in this world. The combination of the instability of Mirvat el Nady, the instability in Egypt, and the nature of the recent events at the marathon in my hometown of Boston make my stomach churn with fear for the underlying safety of my boys. I am literally scared to death to whom she is outsourcing the parenting or mentoring of my children, what they are being taught, how they are being treated.

What will be their future if I am not able to protect them, if their government has forsaken them for other important issues? Will they be led down a dark and mortal path? To Ambassador Jacobs' point earlier on, I don't see how this is any less terrible than trafficking. I don't see the difference. I actually cannot bring myself to articulate my fears on this front. All I can say is I pray my Government will change tack and do what is necessary to help me protect my boys before these fears become a full, or even a partial, reality.

There are many things we can do immediately to protect our children. With regard to Egypt, not surprisingly, several include withholding U.S. and U.S.-controlled financial assistance pending certain actions. Of course, I understand the de facto services contract we have with Egypt, which is the most populous and strategically important Arab State. But I have to say, when one side kidnaps your children and ignores your leader, I say all bets are off. We have to start holding Egypt accountable. It is not a question of applying financial pressure to influence their politics, but of doing the right thing for us as Americans, to protect our citizens, to protect our children, and to protect our own moral credibility.

I have some recommendations, Mr. Chairman. The first recommendation regards prevention. I think we need better controls in place to protect against the unlawful removal of our children to foreign countries. This includes better checks at the point of departure by Homeland Security and agreements with foreign carriers. Prevention is the easiest way to help cure and protect our children from being subjected to what is very much a nightmare.

In the case of Noor and Ramsay, for example, Mirvat el Nady kidnapped my children despite the following flags: The boys were providing Egyptian passports in false last names. These Egyptian passports had no U.S. entry visas, leading to the obvious observation that my boys were in the United States under another, legitimate, auspice. These Egyptian passports were issued in a family name different than that of el Nady, therefore providing no connec-

tion between the children and the kidnapper. The kidnapper had no U.S. court or other documentation denoting her legal standing to be with the children. The airline tickets were purchased at the ticket counter, in cash and one way. The National Transportation Safety Board and airlines operating in the United States need to be held responsible for failing to act on any and all of these flags. Failure to do so is an inexcusable breach of security and, frankly, remains a huge risk to our children.

Law enforcement. The FBI just did not act quickly enough to gather information tied to this crime, including identifying those who aided and abetted. This evidence, primarily email records, was deleted by the time the FBI started looking more deeply into this matter. If they had moved with the requisite urgency, further leverage could have been brought against those responsible, which could have aided in the return of the boys. Further, neither have the FBI been aggressive or committed enough in finding those that are aiding and abetting this fugitive and bringing them to justice.

The enforcement of existing treaties. Because Egypt provided false passports for the purpose of committing this crime in America, a technique used in multiple terror attacks against our country, they must be held accountable to the MLAT agreed to by both our countries to protect our citizens from crimes just like this one. We need to see the MLAT enforced, the extradition of Mirvat el Nady and her co-conspirators, before we provide ongoing meaningful financial assistance to Egypt.

Probate orders. We must tie U.S. financial aid to Egypt's agreement to recognizing their existing probate orders involving custody decisions. We have acted in that capacity in the United States, and I believe that we should act the same way, and the country harboring the fugitive should issue a mirror order consistent with that preexisting order.

Human rights and the Hague Convention. We have to tie U.S. financial aid to Egypt's demonstration of commitments to human rights, including the rights of children, as evidenced by acceptance generally of the terms of the Hague Convention, adherence to the probate orders mentioned above, as well as Egypt's ultimately becoming a signatory to the Hague. In abduction cases, this can be sequentially evidenced by immediate wellness visits, normalized parental visits, and, where probate orders exist, by the immediate return of the children to their rightful home in the United States.

Sixth, preclusion of blanket waivers. When Congress ties U.S. aid to protections for human rights and other like measures, neither the U.S. State Department nor the White House should be able to toss aside these congressional conditions via general waivers under the cloak of national security. Often, these congressional measures speak to the heart of our national security, including the protection of our children, which I consider to be our national treasure.

Seventh, freeze Egyptian assets in the U.S. In conjunction with tying aid to Egypt to specific measures, Congress should similarly freeze Egyptian assets held in the United States pending compliance with these measures.

And lastly, Mr. Chairman, I would like to request a report by the U.S. Government Accountability Office, the GAO, to conduct a study focusing on the issue of all child abduction in Egypt, includ-

ing the role of the Government of Egypt in the abduction and the ongoing abetting of the abductors.

Mr. Smith and other committee members, I thank you for the invitation to speak today, for your attention to my testimony, and for your consideration of this most important of issues.

[The prepared statement of Mr. Bower follows:]

May 7, 2013

The Honorable Chairman Edward R. Royce
US House of Representatives
Committee of Foreign Affairs
2170 Rayburn House Office Building
Washington, DC 20515

Re: Colin Bower - Written Testimony
US House of Representatives
Committee on Foreign Affairs
Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations
Christopher H. Smith, Chairman
Hearing on "Resolving International Parental Child Abductions to Non-Hague Convention Countries"
Room 2172 Rayburn House Office Building
May 9, 2013, 10.00 am

Chairman Royce, Chairman Smith and Honorable Committee Members:

My name is Colin Bower, and, in August 2009, my two American children, Noor and Ramsay, were kidnapped from the United States to Egypt.

Today marks the second time I have testified in front of this honorable committee on this issue, and I deeply appreciate the opportunity to do so.

Unfortunately, however, my boys remain illegally held in Egypt.

As do nearly 20 other American children.

And, while I am here today to talk about my sons, I would like to acknowledge at the outset that my heart goes out to each of those children and the left behind parents. I hope and pray this testimony helps each family in a meaningful way.

Year after year, the U.S. government sends billions of taxpayer dollars to the Government of Egypt. It would seem that American foreign policy is to send our tax dollars to Egypt unchecked and on a virtually unconditional basis, with the U.S. Department of State or the White House using waivers which blithely refer to national security in order to get around Congressional conditions on said aid.

To put this in some context, I would like to note the behavior the Government of Egypt has exhibited since 2009, when my children were kidnapped, and while they have continued to accept billions of taxpayer dollars from the U.S. government:

- Egypt has aided and abetted the kidnapping and illegal holding of at least two American children (my sons)
- Egypt has created a direct threat to U.S. national security when they issued false Egyptian passports for my sons for the purpose of committing a crime in the United States
- Egypt refuses to acknowledge the Hague Convention principles or to commit to joining the Convention; and,
- Egypt openly enables ongoing human rights violations

Regardless of whatever moral, fiscal, or political balance you use, providing uninterrupted aid to a partner that acts this way is quite simply wrong. If this is American foreign policy, it's flawed and it isn't working. We aren't getting what we pay for. While we have given this money away, Egypt has thumbed its nose at real reforms, and at issues our leaders have asked them to address which are critical to the American people.

Congress has the ability to withhold taxpayer dollars and other financial support until the Government of Egypt returns our children and acts within the principles of democracy, freedom, and respect for human rights that those taxpayer dollars demand. I respectfully request that this Committee take action to curb the endless flow of taxpayer dollars until direct steps to bring these children home are undertaken in concert with the Government of Egypt's adoption of the aforementioned principles. Ask David, Goldman, this approach works.

As requested, I will provide some background and a description of my experiences with the U.S. and Egyptian governments during this tragedy.

First, several notable facts which frame my situation.

- **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. In fact, the mother of my sons, Mirvat el Nady, was represented by six different high-powered U.S. divorce attorneys. I was awarded sole legal custody in the divorce judgment.
- **This is a federal crime** – the FBI issued a subsequent federal warrant for the arrest of Mirvat el Nady, and, Interpol followed by issuing a red notice.
- **This is a matter of U.S. national security** - Mirvat el Nady obtained Egyptian passports for my boys in false last names. Passport fraud is an extraditable offense under the Mutual Legal Assistance Treaty (MLAT) between the United States and Egypt, as false passports are very simply used to commit horrible crimes in other countries. The prevention and prosecution of these crimes is the very reason for the MLAT.
- **This is a matter of child abuse and a violation of human rights** - The U.S. Supreme court and other international bodies deem both child abduction and parental alienation child abuse.
- **This is a state-sponsored crime** - The Government of Egypt: issued false Egyptian passports; owns the airline that ignored obvious flags by letting Mirvat el Nady kidnap the boys to Egypt; has provided el Nady security through the State Security Agency; has maintained a business relationship with the el Nady family through the military; and, has therefore aided and abetted the initial crime of kidnapping, and continues to aid and abet the fugitive, despite her clearly demonstrated inability to care for the boys.

I have seen my boys three times since they were taken. Each visit was in Egypt and each was closely scrutinized by a band of Egyptian relatives and government security personnel, who watched their every move and listened to their every word.

The boys were understandably anxious and behaved unnaturally. My last visit with them was in January 2012. I haven't had any contact since that time, except for one-way communication in the form of posts that I send to them on a committed Facebook page every week.

In 2010, I fought for, and won, an Egyptian court order allowing me to visit my children regularly. Despite this order, I have made more than ten trips to Egypt to see my boys with no success. On these trips, I sat alone, with bags of letters, toys, books, magazines, and other mementos, waiting six hours hoping to see, speak with, and hold them again. They were never brought to me for those visits.

I remember being in Egypt on the night of the revolution. From my hotel balcony, along with the rest of the world, I watched the crowds cross the Qasr al-Nil Bridge and enter Cairo's Tahrir Square. I was hopeful that night, as were many Egyptians, that it was dawn of a new era. So far, this has not been the case.

The el Nady family, empowered by the Government of Egypt, the Egyptian military, and Egyptian courts, has refused to communicate with U.S. embassy personnel, the Good Intentional Subcommittee (a committee which includes senior Egyptian officials appointed to address issues specific to American children who have been abducted to Egypt), or me. Further, the Egyptian government has empowered them to ignore both Egyptian and US court orders.

It is relevant that the el Nady family started the only private sector yeast factory in Egypt in 2005. Because yeast is used to make bread, an Egyptian staple, its production and distribution, like all Egyptian necessities, was and remains under the control of the Egyptian military. The ties between el Nady and the military were strong under the Mubarak regime and have persevered into the Morsi regime.

It cannot be a coincidence that the majority of U.S. aid is to the Egyptian military, which has been the bedrock of the Egyptian side of our bilateral relationship since the Camp David accords in 1978. However, it would seem that despite this aid, in the case of my American sons, the U.S. government has served at the pleasure of the Egyptian military, not wanting to upset the status quo.

This is not to say the U.S. government has not made substantial effort on behalf of Noor and Ramsay.

On the contrary, pleas for Noor's and Ramsay's return have been made face to face, at the highest levels, multiple times, including by:

- The Vice President
- Two Secretaries of State
- The Attorney General
- Two U.S. Ambassadors to Egypt
- The Chairman of the Senate Foreign Relations Committee
- Ranking Members of House Committees and Subcommittees
- Many Members of Congress – both here in the United States and in Egypt.

During the 112th Congress, resolutions calling upon Egypt to return Noor and Ramsay passed in both the House and Senate: H.Res.193, introduced by then-Rep. Barney Frank (D-MA) and co-sponsored by 35 Members of the House passed on December 31, 2012; and S.Res.477, introduced by then-Sen. John Kerry (D-MA) and co-sponsored by Sen. Scott Brown (R-MA) passed the Senate on June 05, 2012.

Further, as Chairman of the Senate Foreign Relations Committee, now-U.S. Secretary of State Kerry has said his last conversation with President Mubarak was what he called a half-hour shouting match on this issue – calling on President Mubarak to return the boys to no avail. Secretary Kerry has been a consistent champion for the return of Noor and Ramsay for more than three years, but has not been able to get the Egyptian Government to move on this issue.

After the kidnapping, the U.S. Department of State revoked the U.S. visas of Mirvat el Nady, her parents, and her brother for their involvement in the crime.

The FBI and Interpol have issued warrants for the arrest of Mirvat el Nady.

Since August 2009, these pleas from the U.S. government have been made in person and in writing to former President Mubarak and current President Morsi, along with the Supreme Council of the Armed Forces (SCAF), the Egyptian Minister of Foreign Affairs, the Egyptian Minister of Justice, and other various Egyptian ministers and leaders.

I remain incredibly grateful for the assistance of U.S. officials and Members of Congress, as well as Secretary Kerry's sustained attention to the case of Noor and Ramsay.

Despite all of this, however, the Government of Egypt has been non-responsive. They have refused to give the location of the children. They have refused to allow welfare visits with the children. The Egyptian government, and the entire el Nady family, continue to aid and abet a wanted felon, itself a federal crime with a minimum sentence of five years in prison. They refuse to acknowledge the rights of Noor and Ramsay.

And, this non-responsiveness has gone entirely without consequences.

In fact, the United States has rewarded Egypt during this time by continuing to send them billions of U.S. taxpayer dollars and acting as if it is 'business as usual'.

Responses from the State Department in a TV interview and privately include that our relationship with Egypt is 'complicated', and there are 'other important issues' on the table.

I have to ask the basic questions:

- What is more important than the safety of our children?
- What message are we sending to the perpetrators of crime against American children when we continue to support them, unchecked and without consequences?

Obviously, as Noor's and Ramsay's father, I am devastated. As an American, I'm appalled.

The inability of Mirvat el Nady to responsibly parent is outlined in our divorce judgment, and in more meaningful detail in H.Res.193, which was drafted after Members of the House reviewed theretofore restricted reports and analysis from professionals who evaluated Mirvat el Nady during the 20-month divorce proceeding. I do not want to disparage the boys' mother in this forum, but I encourage you to read the text of this resolution so that you understand why this situation includes critical issues beyond child abduction, such as crimes of terror and national security.

I can't imagine any parent kidnapping a child or precluding a child's right to love both parents; that is a sickness I do not understand. But, the combination of the instability of the mother, the instability in Egypt, and the nature of the recent events at the marathon in my hometown of Boston, make my stomach churn with fear for the underlying safety of my boys.

Mirvat el Nady always outsourced parenting and has consistently done or said whatever needed to be said to get what she wanted. This is in the public record as part of our divorce decree. In an unsure political environment, with social, political and religious volatility, I am scared to death of who is parenting or mentoring my children, what they are being taught, how they are being treated – especially given that they are only part Egyptian.

What will be their future if I am not able to protect them -- if their government has forsaken them for 'other important issues'? Will their paths turn dark to a mortal and violent end – like others whose minds have been tainted or who have lost their way? I pray to God this will not happen. I pray my government will change tack and do what it must to protect my boys. I can't speak any more about this possibility. Merely acknowledging it is difficult enough.

There are many things we can do immediately to protect American children and promote basic human rights. With regard to Egypt, not surprisingly, several include withholding U.S. and U.S.-controlled financial assistance to Egypt pending certain actions.

Of course, I understand the *de facto* services contract we have with Egypt, the most populous and strategically important Arab state, but when the other side kidnaps your children and ignores your leaders, I say all bets are off. We have to start holding Egypt accountable. It isn't a question of applying financial pressure to influence their politics, but of doing the right thing for us, as Americans, to protect our citizens. And, frankly, appeasement doesn't work, nor is it respected in the Arab world.

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 a power structure that doesn't recognize their rights.

Noor and Ramsay are a case in point which states loudly and clearly that our government, if it doesn't stand strong, will lose whatever moral credibility it has left in this world.

Some areas where the U.S. government can act immediately to help preclude abduction and serve to bring our children home, include the following:

- **First**, prevention – we need better controls in place to protect against the unlawful removal of our children to foreign countries. This includes, for example, better checks at the point of departure by the U.S. Department of Homeland Security and agreements with foreign carriers. Prevention is the easiest cure to help protect other children from being subjected to this nightmare.

In the case of Noor and Ramsay, for example, Mirvat el Nady kidnapped my children despite the following flags:

- The boys were provided Egyptian passports in a false last name;
- These Egyptian passports had no U.S. entry visa, leading to the obvious observation that my boys were in the United States under some other auspices and that further investigation was required;
- These Egyptian passports were issued in a family name different than that of Mirvat el Nady, therefore providing no familial connection between the children and the kidnapper;
- The kidnapper had no U.S. court or other documentation denoting her legal standing to be with the children outside of Massachusetts;
- The airline tickets were purchased at the ticket counter in cash; and,
- The airline tickets were one-way.

The National Transportation Safety Board (NTSB) and airlines operating in the United States need to be held responsible for failing to act on any and all of these flags. The failure to do so is an inexcusable breach of security and remains a huge risk to our children.

- **Second**, law enforcement - the FBI did not act quickly enough to gather information tied to this crime, including identifying those who aided and abetted. This evidence (primarily email records) was deleted by the time the FBI started looking more deeply into this matter. If they had moved with the requisite urgency, further leverage could have been brought against those responsible which could have aided in the return of my boys.

- **Third**, enforcement of existing treaties - because Egypt provided false passports for the purpose of committing a crime, a technique used in multiple terror attacks against our country, they must be held accountable to the MLAT agreed to by our countries to protect our citizens from crimes like this one. We need to see the MLAT enforced, and extradition of Mirvat el Nady and her co-conspirators take place before meaningful financial assistance is continued.

- **Fourth**, probate orders – we must tie U.S. aid to Egypt’s agreement to recognize and mirror existing probate orders involving custody decisions reached in residential jurisdictions where both parties were active participants and legally represented. We should act the same way, and the country harboring the fugitive should issue a mirror order consistent with the existing order in the country of the children’s primary residence.

- **Fifth**, human rights and the Hague Convention – we must tie U.S. aid to Egypt’s demonstration of its commitment to human rights, including the rights of children, as evidenced by acceptance generally of the terms of the Hague Convention and adherence to the principles specifically mentioned above, as well as Egypt’s ultimately becoming a signatory to the Hague. In abduction cases, this can be sequentially evidenced by immediate wellness visits and normalized parental visits, and, where probate orders were pre-existing, by the immediate return of children to their rightful home in the United States.

- **Sixth**, preclusion of blanket ‘national security’ waivers – when Congress ties U.S. aid to protections for human rights and other like measures, there should not be the ability of the U.S. Department of State or the White House to toss these conditions aside via general waivers under the cloak of ‘national security’.

These Congressional measures speak to the heart of our national security, including the protection of our children - our national treasure.

- **Seventh**, freeze Egyptian assets in the United States – in conjunction with tying aid to Egypt to specific measures, Congress should similarly freeze Egyptian assets held in the United States pending compliance with said measures.

- **Eighth**, request a report by the U.S. Government Accountability Office (GAO) – I would ask this committee to request the GAO to conduct a study focusing on the issue of all child abduction to Egypt, including the role of the Government of Egypt in the abduction and ongoing abetting of the abductors.

Chairman Smith, Committee members, I thank you for your invitation to speak today, for your attention to my testimony, and for your consideration of these most important issues.

Best regards,

Colin Bower
Father of Noor and Ramsay Bower

Mr. SMITH. Mr. Bower, thank you very much not only for the very moving testimony, but also for those very significant recommendations, including the last one, the GAO. We will follow up on all of those, and the red flags that you referenced, I think, were telltale signs.

Mr. BOWER. Absolutely.

Mr. SMITH. And all were missed.

Mr. BOWER. Yes.

Mr. SMITH. So thank you.

Mr. BOWER. Thank you, sir.

Mr. SMITH. Mr. Goldman?

**STATEMENT OF MR. DAVID GOLDMAN, FATHER OF CHILD
ABDUCTED TO BRAZIL**

Mr. GOLDMAN. Good afternoon. I am David Goldman, and I am honored and privileged to be here today, and I thank you for having me. And thank you for recognizing the fact that there is a tragic issue upon us, and hopefully we will be able to figure out a way to get you the support that you need from your colleagues, across the aisle and on your side of the aisle.

And I think that is what we really need to do here, is create a movement. It is imperative that we don't continue to have parents that just suffer on a daily, on a moment-to-moment basis, just looking for any second of relief from the pain that is constantly searing in them.

I first would like to just point out a couple of things that I heard before I go into my testimony. Mr. Cicilline, and I hope I am pronouncing his name correctly, he mentioned the fact that often times that these abducting parents are actually fleeing from an abuse case.

Well, more often than not, these abducting parents create an alleged abuse to keep or thwart the return of the child, even after maybe months of years of custody disputes within this country, when there is not one evidence or report of abuse, which is very alarming in the fact that that is like a front and center loophole in the Japanese acceptance of their signing onto the Hague, is that if there is abuse, the child stays. So that is basically opening the door for any parent to come and say, "I am abused," and the child never returns. That is very alarming, and that is a big red flag in my assessment.

As well, Mr. Meadows mentioned that we are a global society, and in this global society we are going to have companies that are working with each other. Johnson and Johnson is working with Brazil, all these airlines and what have you, and there are going to be marriages. There is going to be love; there are going to be marriages. And in our own country, the divorce rate, unfortunately, is greater than 50 percent. You put two cultures together, and they are going to have issues as well.

And the rate of abductions is growing at an alarming, exponential rate, and we really need to address this. And thank you, again, for holding this hearing, and for you recognizing the importance of this issue.

The tools that we keep talking about that Ambassador Jacobs didn't seem to favor, more often than not if we do have them in

our toolbox, just knowing that we do have them to use would be enough for these countries to return our children, especially if we start to use the tools, as are pointed out initially in the Sean and David Goldman Abduction Prevention and Return Act.

There is a list right here, and it starts out with a private demarche, an official public demarche, a public condemnation. And they can see, "Uh-oh, we are getting to the big ones. They are using them. Let us get these children. This is a thorn. We don't need these children. They are not ours."

We are not asking, Americans are not asking these countries for a favor. We are expecting them to abide by the rule of law. And I keep hearing about these delays and these stall tactics, and somebody mentioned Article 13(b), grave risk, and I had to really point that out. That is the biggest misuse of a denial to return a child. Grave risk is, in fact, an abuse or a hostile situation that that child would be returned to, not because the abducting parent had been allowed to delay and obfuscate the court system in the country where they had kidnapped the child for so long that the court could now say, "It is a grave risk to return the child back to its home state, back to its habitual residence, back to the competent court of jurisdiction, because our courts have been delayed for so long that the child is now settled, to return them back to their home where they were abducted would be a grave risk, because it would disrupt the children's life," as they were supposed to return that child within 6 weeks of the abduction.

So to use that, and these judges that use that so often, saying the child has settled, that is something that is completely wrong and it needs to be addressed, and that Article 13(b) really needs to be outlined on what the purpose of it is.

So I will go back to my written testimony now.

And I just want to say, my beginning is, I understand what these three parents are going through. I walked in their shoes for 5½ years. I did live in a world of despondency and desperation, with that searing pain through my entire being. Everywhere I turned, I did see 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 a store, a park, on television, anywhere, it killed me. It killed me. It was too painful. For the longest time, I couldn't be around my own family members because they had children. I couldn't be around my nieces and my nephews, it was too painful. "Where is my son? Where is 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 so many years the result remained the same: My son, as these parents' children, remained kidnapped, abducted, in a foreign country. They are not home with them. And it is a crime. Every second, every day, the crime continues.

Finally, after Congressman Smith, who is chairing this hearing today, became directly involved with my case, he traveled to Brazil with me on multiple occasions. Sean and I were reunited after a nearly 6-year separation as a result of his abduction. But it took

not only Congressman Smith's direct involvement, having meetings with high officials in Brazil, but it took worldwide media attention, the personal outspoken support of former Secretary of State Clinton and President Obama, and ultimately U.S. Senator Frank Lautenberg, after the urging of Congressman Smith was saying, "Hold this trade bill. Hold this trade bill."

There was a trade bill that was coming up, and Congressman Smith kept asking him to hold it. Finally, Senator Lautenberg did decide to hold the trade bill to make it possible and help return my son. And I must say that countless others also became involved and joined in my fight, making it essentially their fight, which made it our fight. And I am forever indebted and humbly grateful for every ounce of their support.

Which leads to my last point of this paragraph, why I wanted to say all the help I got. I also know it is next to impossible for any single left-behind family to garner the support which my family was so extremely fortunate to receive. These folks don't have it. But I hope, today, collectively, we will start to change that. We move mountains. We all came together. Somehow, it was a perfect storm that helped me. But these folks are like I had been, and they need help. Their pleas are falling on deaf ears, as mine were for so many years. And these are just three of the faces of thousands upon thousands.

This is my fourth time testifying before Congress on this issue, and I am disappointed to report that the situation with international child abduction to both Hague and non-Hague countries continues to worsen since the return of my son, Sean, December 2009. This hearing today, by my count, is at least the 20th hearing—the 20th hearing—on this issue, dating back to the 1980s. Yet today, over 30 years later, the problem persists. The number of abducted children continues to rise at an alarming rate, and precious little is being done about it.

As I prepared to testify today, I spent time looking back at the extensive record of congressional testimony on this issue over the years. So many important and meaningful statements have been made that I felt the most effective way to communicate my message is to quote these officials and their testimony.

I would like to start with a brief quote from Congressman Walter Jones of North Carolina from a session on the House floor when my son Sean's case was being discussed which I believe accurately sums up the issues we are here to discuss today. Congressman Jones said, "The world should be about bringing families together." Simple. And he is absolutely correct. Let us work together to bring more children home and more families together. These American children, left without a voice as a result of their abductions, they deserve better. They don't have a voice. We are their voice.

The following is a quote from former Congressman Barney Frank, from remarks made at a July 2011 congressional hearing on international child abduction. And this is very important. This goes again to what we were discussing with Ambassador Jacobs.

"We sometimes hold back in using our legitimate moral authority because we worry about somehow alienating other countries. Now, I want America to be reasonable and fair in its dealings with other people, but as a general rule, it does seem

to me that most countries in this world need us more than we need them. I don't want to abuse that, but I think we sometimes assume that we can't press hard because people will get mad at us. A reasonable assessment of what the relationships are should allow us to press cases on their merits and not be held back by some fear that we will somehow lose influence."

That was from Mr. Frank, very profound and still to this day very pertinent and relevant.

Now I turn to the remarks made by Ambassador Susan Jacobs at that same hearing.

"In non-Hague countries we rely on quiet diplomacy, knowledge of local conditions and respect for local customs, and often less visible means to try to resolve an international abduction case. The Hague Convention," as she said again today, "remains our best hope of resolving international abductions. It is the first subject that I bring up with foreign governments during my travels on behalf of the Secretary."

Well, these mechanisms, these quiet diplomacies, while they may be effective, we need more. Obviously, these mechanisms used to date to return our children are failing.

We have some statistics here. Over the last 5 years, 2008 to 2012, over 7,000 American children have been abducted from the U.S. I mean, 7,000. If they were all abducted at one time, we would have the U.S. forces to go invade wherever they are and bring them home. But because there are 500 here, there are 200 in this country, 100 in this country, it is not that big of a deal. Mexico is a great return, she said? It is not. Five hundred are taken every year, and what is the Ambassador to Mexico? His first thing is looking at arms, arms control, border crossing, the handful in his mind of children aren't a priority, and they need to be.

For the calendar year of 2008 to 2010, the State Department reported an increase of almost 3,000 abducted children, yet the number of children—this is one you need to pay close attention to. In the last 2 years, there has been an increase of 3,000 abducted American children, yet the number of children whose cases are active dropped from 2,800 to 2,400, and are now 1,900.

So what they are saying is, we have more cases, more children and more cases being opened every year, yet the amount of open cases is dropping. That does not add up. These figures do not add up. And it is in their stat sheet. And we need transparency. That is one thing that we asked before. Some of these statistics, they don't show any longer. And we need complete transparency from the State Department on all the open cases.

And these are only the reported cases, and the reported cases that they have. We also don't know exactly what quantifies a report. An agreement between two parents closes a case, or they count it as a return? The parent losing the case. I know they close cases because the case is lost. The country where the abducting parent takes the child decides they are not bringing their child home, so they close the case. And then they check that off as one less case they are working with.

But in the meantime, that parent is still somehow begging on his knees every night, praying for the return of the child, even though the state and our country failed them and gave up on them.

And there are some more stats, but I will go back into what we need to do in our State Department as a complete cultural change. And nothing short of being extremely bold and principled is going to do much to change the status quo and the corresponding playbook for handling international child abduction cases.

Left-behind parents, especially ones whose children have been abducted more recently, often make the mistake of thinking that the State Department is competently handling their cases and that countries routinely return children as expected. And that is one of the things that Ms. Apy said. Judges here, if they look at a country and they say they are a signatory to the Hague, when a parent is in a divorce or a custody dispute and that parent goes to the judge and says, "I want to go back to, say, Brazil, because that is where my family is," and the judge says, "Okay, Brazil is a Hague country." And the other parent is saying, "No, they have already said they are going to go and they are not going to return my child," and the judge is going to say, "Yes, this is a Hague country. The parent can go back, because then they will return them if the child is"—no, it doesn't work that way.

So we need to educate our judges as well, and they need to see that these countries aren't abiding by the law and returning the children as the Hague Convention requires, which is also a very important aside.

In reality, the State Department and Foreign Services have been involved in these cases almost since the founding of America. We have always been a country of immigrants, and these issues have always existed and been escalated to the State Department. But what these parents, and what I failed to appreciate, is that it is not incompetence or ignorance that leads to the mishandling of abduction cases, but rather failure to enforce our policy.

All the things that I was listening to today, the State Department does quiet diplomacy, they pass information, they gather information, they monitor the cases. But there is no advocacy. We need an advocate. We need an advocate. We need our State Department to advocate on our behalf. I mean, we do have to find our own attorneys, here and in the country of the abducting parent where they are taking our children, and we don't have an advocate unless we are our own advocate and we are our own voice, and then we have to find ways to hire attorneys, which most of the time we end up giving up because these cases drag on.

Because there is almost a playbook that these abductors have, where they can figure out a way to keep having delays, delays, delays in the courtrooms, until finally they get a decision that they want. And they appeal every turn that looks like they might be losing, or they will just go run and hide, and then the judge will say, "Yes, the child is here. Even though they were abducted, the child has been here for so long that they are settled. Sorry." And it is very, very sad, and it is continuing.

Here is one from Secretary Clinton. This was to commemorate National Missing Children's Day in May 2011.

“We are committed to preventing child abduction and to helping the children and families caught up in these very complex situations. Our dedicated staff in the Office of Children’s Issues work every day to support families and children at risk. We help parents access the tools available to prevent international abductions, such as our Passport Issuance Alert Program.”

Well, Secretary Clinton deserves credit for addressing this issue, but unfortunately the tools her staff has to work with are woefully inadequate to bring the majority of these abducted children home. Yes, preventing abductions is critical, as Colin pointed out, but we cannot give up on these children once they have been taken out of the country. Parents don’t have the resources to fight this battle in two countries on their own. They need real advocacy. They need real action. They need the commitment and the resolve to bring these children home, not platitudes and talk about how much we care.

I would also like to share a quote from Bernard Aronson, former Assistant Secretary of State for Inter-American Affairs, from his December 2009 testimony before the Tom Lantos Human Rights Commission. Mr. Aronson stated that—and this is very key, and we touched on this, too—“a diplomatic request for which there are no consequences for refusal is just a sophisticated form of begging.”

The success rate of using the Hague Convention for a left-behind parent is abysmally low, and the number of abducted children is increasing at an alarming rate. The main reason the Hague is not working is that there are no material consequences for abusing it, and the U.S. has to do more to change that.

Publishing a list of non-compliant countries does not create much incentive for such countries to change their behavior, and essentially that is all we are doing. We send a list: Non-compliant, compliant, non-compliant, better, almost getting there. What is that? That is not going to make a country return our children if they don’t want to.

Now let us look at the cases of thousands of American children who have been wrongfully removed from the United States. Could the U.S. find ways to put pressure on these countries to honor their international obligations? Do we trade with these countries? Do the leaders of our Government understand the difference between a custody dispute and an abduction? Do they really want to make the Hague Convention an effective treaty to minimize international child abduction? If the answer is yes, the case of my son can serve as a blueprint for what can and should be done.

Our newly appointed Secretary of State, John Kerry, is intimately familiar with international child abduction, specifically the case of Colin Bower’s two children who remain in Egypt. As a U.S. Senator, Secretary Kerry authored a resolution admonishing the Egyptians for their abduction of Colin’s children, Noor and Ramsay, and advocating for their immediate return. He also called on all governments to assist in the safe return of children abducted from or wrongfully retained outside of the country of their habitual residence.

Once again, the intentions are good, but there is no action to see that these children are returned. We should stop talking and start

acting. If we are sincere in our desire, as I believe you are, Mr. Chairman, as I know you are, and the rest of us here, if it is really, really, really that we sincerely desire to see our children brought home to their loving families where they belong, then let us do something about it.

At his swearing-in ceremony in February, Secretary Kerry made the following remarks:

“We can protect children as we did in Africa. We can keep students learning even after an earthquake destroys their schools, as we did in Pakistan. We can help young girls pursue their dreams of education, as we did in Afghanistan and other places in the world.”

Well, that is what the State Department can do, and should do. Certainly, American children are no less deserving of protection than children of Africa and other countries. Because the problem of IPCA is not being addressed in an effective manner, thousands of abducted American children and their parents are suffering daily. We can, and need, and should do better.

At a Senate hearing on international child abduction, Vice President Biden, then Senator Biden, remarked:

“The act of taking a child in violation of a custodial order, whether across state lines or across international borders, is a heinous crime which is extremely heartwrenching, for the parent left behind and for the child affected.”

These folks are still in office, and their positions have heightened. They should step up. We have now a Secretary of State, we now have a Vice President, and we know that they spoke about it. They know about these cases. Let us call them to action. Now is the time. Now is past the time. That was 15 years ago, and the same holds true today. With the passage of time, the only difference between then and now is the names and faces of the grieving parents here today before us telling their stories. These cases are different, but all too similar in so many ways. We are failing these parents and their abducted children, again and again.

If Congressman Smith hadn't traveled with me to Brazil, I wouldn't have been able to see my son after more than 4 years of being separated because of his abduction. These cases typically drag on for months, which soon turn into years, as the abductor creates the home field advantage with endless appeals and delay tactics in their home country's legal system. This is the norm, not the exception. These cases are abduction cases, and laws have been broken. They are not custody cases.

Right now, as I sit here, Sarah Edwards, a suffering mom whose child, Eli—her son, Eli, was kidnapped to Turkey. She sat next to all of us, actually, in 2011, pleading for her son's return. It was a black and white abduction case, absolutely unquestionable. If you put it in a legal class, 101 Law, abduction, put her case up. Unquestionably that boy was abducted, should be returned. She lost her case. She is there in Turkey, right now, as we are here, looking to see her son, Eli.

We failed her. We failed her.

We are not asking for anything other than the rule of law, again, to be followed.

Let us be clear what we left-behind parents and families are asking for. Some people mistakenly believe we are asking our Government to intervene in custody disputes. We are not. All we are asking is that, when our children are kidnapped to thwart a proper resolution of custody, the law governing their return to our country is upheld. We Americans proudly proclaim that we are a nation of law, not of men. But when it comes to the international law that deals with children abducted from the United States to other lands, a law embodied in the Hague Convention, which our country helped convince other nations over the world to adopt, there is no rule of law. And the broken lives and broken spirits of left-behind parents across American, whom we represent here today, stand as a living rebuke to that failure to enforce the rule of law.

The issue is not whether Ambassador Jacobs and her colleagues are trying their best. I have no doubt they are. The issue is that, after more than two decades, more than 20 years of failure, Ambassador Jacobs and her colleagues still have no effective tools to accomplish their objective. They are like combat troops sent into battle with no weapons or ammunition. The plain fact is that nations who refuse to return America's children pay no price for defying the law, and unless we arm the State Department with the tools they need to do their job, and unless nations who break the law flagrantly and repeatedly suffer real consequences, nothing is going to change.

Nothing is going to change, and we will have another hearing in another year or another 2 years, and there will be a new line of faces of parents who are just completely broken, and their kids remain abroad, abducted, psychologically tortured, emotionally battered, and we will be spinning our wheels. Hopefully, we will change.

Thank you.

[The prepared statement of Mr. Goldman follows:]

David Goldman

May 9, 2013

House Committee on Foreign Affairs

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

Resolving International Parental Child Abductions to Non-Hague Convention Countries

Good morning Members of Congress. I am honored for the privilege to testify before you and commend you for holding this important hearing.

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.

Finally, after Congressman Smith became directly involved with my case and traveled to Brazil with me on multiple occasions, Sean and I were reunited after nearly a six-year separation as a result of his abduction. But it took worldwide media attention, the personal, outspoken support of former Secretary of State Clinton and President Obama, and ultimately U.S. Senator Frank Lautenberg's decision to place a hold on trade with Brazil, to make it possible. I must say that countless others also became involved and joined in my fight, making it essentially their fight, which made it our fight. I am forever indebted and humbly grateful for every ounce of support. I also know it is next to impossible for any single left-behind family to garner the support which my family was so extremely fortunate to receive. Today, I hope collectively we will start to change that.

This is my fourth time testifying before Congress on this issue and I am disappointed to report that the situation with international child abduction, to both Hague and non-Hague countries, continues to worsen since the return of my son Sean in December, 2009. This hearing today, by my count, is at least the 20th hearing on this issue dating back to the 1980s. Yet today, over thirty years later, the problem persists, the number of abducted children continues to rise at an alarming rate, and precious little is being done about it.

As I prepared to testify today, I spent time looking back at the extensive record of Congressional testimony on this issue over the years. So many important and meaningful statements have been

made that I felt that the most effective way to communicate my message is to quote some of these government officials.

I would like to start with a brief quote from Congressman Walter Jones of North Carolina from a session on the House Floor when my son Sean's case was being discussed, which I believe accurately sums up the issue we're here to discuss today. Congressman Jones said "the world should be about bringing families together" and he's absolutely correct. Let's work together to bring more children home and more families together. These American children, left without a voice as a result of their abductions, deserve better.

The following is a quote from former Congressman Barney Frank, from remarks made at a July 2011 Congressional hearing on international child abduction.

"We sometimes hold back in using our legitimate moral authority because we worry about somehow alienating other countries. Now, I want America to be reasonable and fair in its dealings with other people, but, as a general rule, it does seem to me that most countries in this world need us more than we need them. I don't want to abuse that, but I think we sometimes assume that we can't press hard because people will get mad at us... a reasonable assessment of what the relationships are should allow us to press cases on their merits and not be held back by some fear that we will somehow lose influence."

What he is saying, quite accurately, is that other countries look to America as a leader on moral issues concerning human rights. We have an opportunity to lead on this issue and we shouldn't be shy about it or fearful that we will hurt our bilateral relations with other countries by demanding compliance with international treaties and adherence to basic human decency in terms of how we treat the most vulnerable among us – especially our children.

Now I turn to the remarks made by Ambassador Susan Jacobs at that same hearing in 2011:

"In non-Hague countries we rely on quiet diplomacy, knowledge of local conditions, and respect for local customs, and often less visible means to try to resolve an international abduction case. The Hague Convention remains our best hope of resolving international abductions. It is the first subject that I bring up with foreign governments during my travels on behalf of the Secretary."

The mechanisms used today to return our children are failing. Let's look at some facts based on statistics compiled by the State Department.

1. Over the last five years (2008-12), over 7,000 American children have been abducted from the U.S. How many of those children have ever come home? Not nearly enough. The State Department used to provide return statistics to the public, through its annual

Hague Convention compliance report, but stopped doing so in 2010. We haven't heard an explanation for why the public is no longer entitled to this information.

2. For calendar years 2008-2010, the State Department reported an increase of almost 3,000 abducted children yet the number of children whose cases were active dropped from 2,800 to 2,400. What that means is that many cases are being closed but the children are never returned. That doesn't make sense.
3. The return rate (children returned as a percentage of abducted children) over the last 11 years (2001-2011) for Hague countries is exactly the same as with non-Hague countries – 36%.
4. Over the last 3 years (2009-2011), return rates for Non-Hague countries have actually been higher than with Hague countries (50% vs. 38%). What does that say about the effectiveness of the Hague Convention?
5. During the same three-year period (2009-2011), the number of children abducted has increased by 22% compared to the previous three year period of 2006-2008.

What is required at the State Department is a complete culture change. Nothing short of being extremely bold and principled is going to do much to change the status quo and the corresponding playbook for handling international child abduction cases. Left-behind parents, especially ones whose children have been abducted more recently, often make the mistake of thinking that the State Department is competently handling their cases and that countries routinely return children as expected. In reality, the State Department and the U.S. Foreign Service have been involved in these cases almost since the founding of America. We have always been a country of immigrants and these issues have always existed and been escalated to the State Department. What these parents often fail to appreciate is that it is not incompetence or ignorance that leads to the mishandling of abduction cases, but rather a failure to enforce policy.

To commemorate National Missing Children's Day in May 2011, then Secretary of State Clinton stated:

"We are committed to preventing child abduction and to helping the children and families caught up in these very complex situations. Our dedicated staff in the Office of Children's Issues works every day to support families and children at risk. We help parents access the tools available to prevent international abductions, such as our Passport Issuance Alert Program."

Secretary Clinton deserves credit for addressing this issue, but unfortunately the tools her staff has to work with are woefully inadequate to bring the majority of these abducted children home. Yes, preventing abductions is critical but we cannot give up on these children once they've been taken out of the country. Parents don't have the resources to fight this battle, in two countries, on their own. They need real advocacy and real action – a commitment and the resolve to bring these children home – not platitudes and talk about how much we care.

I would like to share with you a quote from Bernard Aronson, former Assistant Secretary of State for Inter-American Affairs, from his December 2009 testimony before the Tom Lantos Human Rights Commission. Mr. Aronson stated that “a diplomatic request for which there are no consequences for refusal is just a sophisticated version of begging.”

The success rate of using the Hague Convention for a left-behind parent is abysmally low, and the number of abducted children is increasing at an alarming rate. The main reason the Hague is not working is that there are no material consequences for abusing it, and the U.S. has to do more to change that. Publishing a list of non-compliant countries does not create much incentive for such countries to change their behavior.

Now, let's look at the cases of the thousands of American children who've been wrongfully removed from the United States. Could the U.S. find ways to put pressure on these countries to honor their international obligations? Do we trade with these countries? Do the leaders of our government understand the difference between a custody dispute and an abduction? Do they really want to make the Hague Convention an effective treaty to minimize international child abduction? If the answer is yes, the case of my son can serve as a blueprint for what can, and should, be done.

Our newly appointed Secretary of State, John Kerry, is intimately familiar with international child abduction, specifically the case of Colin Bower's two children who remain in Egypt. As a U.S. Senator, Secretary Kerry authored a resolution admonishing the Egyptians for the abduction of Colin's children, Noor and Ramsey, and advocating for their immediate return. He also called on “all governments to assist in the safe return of children abducted from or wrongfully retained outside the country of their habitual residence.”

Once again, the intentions are good but there's no action to see that these children are returned. We should stop talking and start acting, if we're sincere in our desire to see these children brought home to their loving families, where they belong.

At his swearing in ceremony in February, Secretary Kerry made the following remarks:

“We can protect children as we did in Africa. We can keep students learning even after an earthquake destroys their schools, as we did in Pakistan. We can help young girls pursue their dreams of education, as we did in Afghanistan and other places in the world. That is what the Department of State can do.”

Certainly American children are no less deserving of protection than the children of Africa and other continents. Because the problem of IPCA is not being addressed in an effective manner, thousands of abducted American children and their parents are suffering daily. We can do better.

At a Senate hearing on international child abduction then Senator Joseph Biden remarked:

“The act of taking a child in violation of a custodial order – whether across States’ lines or across international borders – is a heinous crime which is extremely heart-wrenching for the parent left behind and for the child or children affected.”

That was 15 years ago but the same holds true today. With the passage of time, the only difference between then and now is the names and faces of the grieving parents here today before you, telling their stories. The cases are different but all too similar in so many respects. We are failing these parents and their abducted children again and again.

If Congressman Smith hadn't traveled with me to Brazil I wouldn't have been able to see my son after more than four years of being separated because of his abduction. These cases typically drag on for months, which soon turn into years as the abductor creates a home field advantage with endless appeals and delay tactics in their home country's legal system. This is the norm, not the exception. These cases are abduction cases and laws have been broken!!! Let's remember that these cases are not custody disputes.

Let us also be clear what we left-behind families are asking for: Some people mistakenly believe we are asking our government to intervene in custody disputes. We are not. All we are asking is that when our children are kidnapped to thwart a proper resolution of custody, the law governing their return to our country is upheld. We Americans proudly proclaim that we are a nation of law, not of men. But when it comes to the international law that deals with children abducted from the United States to other lands – a law embodied in the Hague Convention which our country helped convince other nations of the world to adopt – there is no rule of law. And the broken lives and broken spirits of left-behind parents across America, whom we represent here today, stand as a living rebuke to that failure to enforce the rule of law.

The issue is not whether Ambassador Jacobs and her colleagues are trying their best. I have no doubt they are. The issue is that after more than two decades of failure, Ambassador Jacobs and her colleagues still have no effective tools to accomplish their objective. They are like combat troops sent into battle with no weapons or ammunition. The plain fact is that nations who refuse to return America's children pay no price for defying the law, and unless we arm the State Department with the tools they need to do their job and unless nations who break the law flagrantly and repeatedly suffer real consequences, nothing will change...nothing will change.

Mr. SMITH. Thank you very much, Mr. Goldman. Thank you for being an inspiration, I think, to other left-behind parents that success can be had. But as you said, herculean efforts, even when applied—and Mr. Bowers certainly has had the Secretary of State in his corner solidly fighting aren't always enough.

What we are trying to do with the legislation is to make a systemic change to empower the diplomats, the executive branch and anyone else concerned, who goes country to country, and say that this has meaning. You sanction what you care about. If you don't care about it enough to sanction it, that sends a very clear, unmistakable message to an offending country, especially when there is a lack of good will on the part of that country.

So we are trying—and I know you know this, but I think the record needs to clearly state it—to make this a country-to-country fight, so you don't have David versus Goliath being replicated time and time again for Americans.

And I do believe, I find it disheartening that the administration may not support this. I do hope that, if presented with the bill, President Obama will sign it. But it is value added at the very least. What is it that they would oppose? Being much more robust when we deal with non-Hague countries? Promoting MOUs so that we have a mechanism, as well as with Hague countries, to effectuate positive results?

I mean, as you pointed out, Mr. Goldman, we have had years of ineffective results. Reasonable people will then say we need to go back to the drawing board and find some ways of fixing it. So I do think, and I do hope, I wish—I did mention it, but I will mention it even further now. There is a myth that parental abduction is somehow not as egregious as other kinds of behaviors. As the author of the trafficking law, and as horrific as that is, this is right there, side by side, because parental alienation is a horrible outcome for that child. And of course, it is cruelty to the left-behind parent as well.

So I would hope that that myth would be shattered immediately, if it is harbored by the Ambassador or anyone else, about how bad parental abduction actually is. It is awful, and those who have suffered from it, as you have done so today, can speak volumes as to what—

Mr. GOLDMAN. Yes, Mr. Chairman. If I may, I believe—or I know it is in our country—parental abduction within our borders is a crime punishable by law. As a matter of fact, most of the Amber Alert signs that you see are from one parent, a non-custodial parent in a divorce that takes the child.

And I know most of these other countries that I have experience with, it is a crime punishable by jail time. So when you have domestic parental abduction, it becomes a crime in that country, for example Brazil, but when a parent who is a Brazilian national takes an American child over to Brazil, all of a sudden it is not a crime. And these parents also use the Hague Convention as a double-edged sword, because it is civil and the parent has nothing to lose. If they go to the court here, they have a chance of having to do a shared custody. If they go back to their country where they want to go—for example, I use Brazil, because that is the one I am most familiar with—the worst that they feel will happen is they

will get sent back to have a custody hearing in the country where they abducted the child from.

So they figure they have nothing to lose. "Let me give it a shot. I will break this guy. I will break him financially, I will break him mentally, I will break him emotionally. I will create a home court advantage, and go on and on and on," and the worst that will ever happen is they return the child, they return our son, our child, and she will have to come back, or he will have to come back, whoever the abductor may be, and go through a regular custody hearing.

So there is no deterrent. There is no deterrent.

Mr. SMITH. You know, an important point, and anything you would like to add. Mr. Meadows did want to come back and ask a question or two, if he can get here. He is doing a radio interview.

In your testimonies, because you have lived this, you have answered most of the questions. And you gave all of us on this committee and other Members of Congress the case histories, if you will, of why we have to do more and why we have to do it immediately.

But Ms. Philips mentioned a very important point, which all of you have done, and she says, "I know that Sunil Jacob feels empowered by the passage of time." I think the sense of urgency, if we don't have it now, we will never have it. So all the more reason why we have got to do more in this Congress, this session, within months if not weeks, to get this legislation passed.

So you have given us a lot of ideas. I think the GAO report, all those other ideas, Mr. Bower, that you conveyed to the committee, we will take every one of them up, look at it, see if we can do something with it. I just would yield to Mr. Meadows, and then anything you want to say in closing.

Mr. MEADOWS. Thank you, Mr. Chairman. And I thank each one of you for your testimony and highlighting this issue, and I do believe that we have got to remain vigilant, but that we don't continue, Mr. Goldman, just to have hearing after hearing after hearing. Hearings with actions make sense. Hearings with inaction are really a waste of time. And so my commitment to the family members here is, we want to find real solutions and a real bipartisan way to come up with legislation that gives tools, and actually gives them some incentives.

And so with that, I would like to go to Ms. Apy. If you could share, because I know as we were talking earlier and in some of the testimony, it sounds like you have got a number of years of experience here. And so if you were the Ambassador at the State Department, what are some of the things that you would like to see that would help out in this situation?

Ms. APY. Well, that is a luxurious question, actually. First of all, I believe that using the tool of a memorandum of understanding, and using diplomatic means to begin to craft agreements, both for Hague countries that are having difficulties in compliance and reciprocity, as well as non-Hague countries, would be number one on my list. I know there was reference in the Ambassador's testimony about what she characterized as unsuccessful MOUs involving Egypt, Jordan and Lebanon, and there is some question about whether or not there is actually an MOU involving Egypt. There are some access agreements.

But the real issue is that when we have agreements, even like in the British agreement with Pakistan, you have a situation in which judges that are making decisions know that this agreement exists. Parents who are making agreements know that this exists. So there is an opportunity to have their behavior, the decisions that the court makes, reference this agreement. It changes the legal culture. It provides an interim step.

Being able to not only have those agreements, but then be able to say, "We are serious about this, and if we are not able to do this by agreement, we are going to have to tell our judges," American judges, for example, "that a reciprocal agreement does not exist right now. That despite the fact that we have entered into the treaty, they cannot rely upon that reciprocal relationship until the following things have been dealt with." That would be one of the first things.

As I mentioned earlier in my testimony, and I think is crucial, the partnership between the Congress of the United States, the decisions that you make, and this issue. By knowing who in your district has a pending case, and having a non-defensive response from the Department of State with respect to those issues. You should know 15 minutes after they get the application that there is a pending case in your district, what country is involved, and what the issues are. If law enforcement is involved, you should get a list so that you know, when you are hearing testimony about dangers in these places, about other aspects—that, I think is something that lawyers, for example, can't address in the same way that you would be able to.

Additionally, there has been discussion about having judicial training and having other means, which go on in any event, and they should continue. But being able to represent that, on behalf of the United States of America, there are positions that need to be taken with regard to these issues, and having the Ambassador who is serving in that capacity go to Pakistan, or the United Arab Emirates, or Japan, or other places in Asia—and we haven't even talked about the number of cases there right now, and the number of the countries implicated—and be able to sit down and negotiate, identify the issues, fine tune those issues for that legal system.

The other thing is, when our SOFA agreements are being negotiated, our Status of Forces Agreements involving American servicemembers, if we are putting them in a country we have to ask the question as to what protections will be available for them. If it is a country that is non-compliant with the treaty, or if it is a country that will not provide them remedies with respect to child custody disputes, if we are negotiating a SOFA agreement we have to sit at the table and say that. And that is not being said.

So again, I could warble on. But those are the things that, if I were to identify the things that are the most important, that would be what I think is the next level of what we are talking about.

Mr. MEADOWS. And probably what I would ask of you, if you could get to the committee, is really how we address the notification process without violating privacy. Because any time that we look at this, we have got to look at it in the hands of not only those that are well intended, but those that perhaps are not. And so I want to be sensitive to the privacy side of that, but yet at the same

time, if you can come up and provide some thoughts on that, since you have experienced that on a regular basis, that would be great.

Ms. APY. And simply enough, for the purposes of your decision-making, for example, the information could be provided without indicating names and simply giving you the heads-up that we have a pending case that has been filed. Because it has been filed with the government.

Mr. MEADOWS. Right.

Ms. APY. "We have a pending case of an abduction of a child from your district out to Country X," giving the parent the opportunity to expand on that information.

Mr. MEADOWS. Well, what about some piece of legislation—

Mr. SMITH. Will my friend yield on that?

Mr. MEADOWS. Yes, I would be glad to.

Mr. SMITH. In the appropriations cycle in the last Congress, we actually put some language together and got it passed in the House. It basically said that the Office of Children's Issues will notify a Member of Congress of an abduction case, but they would pre-clear it with the family member, thereby meeting the obligations of privacy.

It was not accepted by the Senate, watered down to nothingness. But why can't it just be done by OIC on its own? I mean, you don't need an authorization by Congress to ask the parent, "Would you mind if we told so-and-so?" Because that parent will then have an advocate who will, when he or she travels, when he or she meets with delegations, especially on our committee, will say, "I have someone here in my district, and I want to raise that case." And then he or she becomes an advocate for them.

Ms. APY. Well, may I just say, even beyond the advocacy piece, which may be within the purview of a parent, the other piece is, you are in possession of information and decisionmaking that you should know, as you are listening to that information and making those deliberations, what the status of those issues are involving your district. Without the names of the individuals. You wouldn't have to have that.

Mr. SMITH. Right.

Ms. APY. The other issue is, the current reporting requirements in the existing legislation provide that you are to be reported to by the Office of Children's Issues and provided an accurate reflection of cases that are in existence. And, of course, we have country reports. There have been some changes in the way that information has been recently submitted to you.

I need to tell you that the use of that information in the practice of family law is extraordinarily important. The judges hearing these cases now, requests for access and other deliberations, rely upon it. The fact that it is not being provided now is—I just don't understand. But parents who don't have the ability or the resources to hire international experts to testify to judges rely on the information that is provided to you to educate judges. We heard about educating judges. That is how they know. They look at the information provided to you in compliance with the existing statute.

That information, I understand now, we are not having the number of cases in the same way, we are not having—that information

is crucial to American judges to assess risk of removal and to, frankly, be able to apply the law, both the substantive law of the state as well as, obviously, the Federal law, from both a criminal perspective and, certainly, the Hague Abduction Convention. Without that information, it is very difficult for a judge to be a country expert on every single country.

And they rely upon that communication, so I would strongly urge that, again, in the legislation that is being contemplated, and any other deliberations that you will make, keep in mind that the information that you receive gets disseminated to our judges around the country, across the jurisdictions, and it is extraordinarily important for them to be able to access it.

Mr. MEADOWS. So if we had a congressional liaison that would work with these type of cases, to work with some of our other colleagues, to inform them and keep this in the forefront, is that something that would be useful?

Ms. APY. I think it would be extraordinarily useful. I think, to the extent that it provides a conduit of information by the body that is most familiar, if it is possible to say, with how these individual problems can be worked. For example, we have been talking about the role of the Justice Department in the prosecution issues. Well, that is DOJ, and that is a whole—that is an area, though, that having a congressional liaison could be able to act in the capacity where it isn't always within the bailiwick of the Department of State, very frankly.

Mr. MEADOWS. Right.

Ms. APY. And sometimes that disconnect can mean months or years of waiting on the part of parents. Again, having a private lawyer make numerous phone calls a day is not a practicable answer for many, many people.

Mr. MEADOWS. Well, and it is costly. I mean, as you know, every phone call that you make—my time is a lot cheaper, I can tell you. And so in doing that, we want to be an advocate and find a way to do that. But I thank you for your testimony.

Mr. Goldman, you seemed to agree with what she was saying. Would that be fair to say?

Mr. GOLDMAN. Yes. It is almost like we did have the introduction of the Ambassador-at-Large. Anyone who is going to almost be an independent liaison or conduit can only help.

And it is great that Ambassador Jacobs was appointed, but she was appointed almost a day before we had another hearing, after we already introduced legislation for an Ambassador-at-Large, almost as another reason—remember, I am not a politician. I am just a guy who sees what is going on and says it like I see it. Almost as if to say, “We don't need the legislation with the Ambassador-at-Large now, because we have this new position.” And you can see, as history is repeating itself, it is failing. So absolutely. Thank you.

Mr. MEADOWS. Thank you, and I will close with this for our three witnesses. As you see areas that, even though none of you to my knowledge, are in my district, if you see areas that would be meaningful, please feel free to call our office and call on us for suggestions that you might have. And with that, I would yield back to the chairman. I thank you.

Mr. SMITH. Mr. Meadows, thank you so very much for your questions and for your keen interest.

Just a quick question to Ms. Philips, if I could. Will Sunil Jacob be prosecuted in New Jersey for parental kidnapping? Why or why not? And you mentioned in your testimony the pre-planning that Sunil Jacob put into the abduction, and that the Plainsboro Police investigation showed the involvement of three of his friends in the abduction. Has there been any legal sanction against the friends for their participation in the abduction?

Ms. PHILIPS. Thank you, Mr. Smith. Yes, the Plainsboro Police did have two arrest warrants on Sunil Jacob. One is for parental kidnapping, and the other is for interference with custody. We have Sergeant Blanchard from the Plainsboro Police Station here today.

And also, they did take actions on one of the friends who was in New Jersey. So he was arrested. And what happened later is the prosecutor, they had their case open since 2010, and there was a Federal arrest warrant on him for unlawful flight against prosecution. When the FBI wanted to execute the prosecution, they requested the U.S. Attorney's office which held the case for about 1½ years, and then gave the decision over to the Middlesex County Prosecutor's Office. And the Middlesex County Prosecutor's Office, in February 2013, they administratively dismissed the case after keeping it open for more than 3 years. And so the Plainsboro Police are going to work to file for interference of custody again.

Mr. SMITH. Ms. Apy, what do you think of that? Dismissing the case?

Ms. APY. It is certainly not limited to New Jersey. It is a common problem. And again, part of it is that this is not the standard case. It is not the standard type of prosecution. Some of our U.S. Attorney's offices are brilliant at it. The U.S. Attorney's office in Chicago, for example, has prosecuted a number of cases. Once a prosecutor knows how to do it and an FBI agency gets used to doing it, you find that you have that kind of follow-up. It is like anything else. If it is a job we are not used to doing, we kind of—we are not as facile at it.

One of the concerns is the interjurisdictional fight that goes on. The United States Attorney, of course, when evaluating these cases, as well as the state courts, look at the expense involved. I mean, when you are putting together a case to beyond a reasonable doubt, you are talking about having to get somebody in India, or the witnesses involved. You know, there is that push-back. And there is the context that "Well, this is just a parent. The child is not really in danger."

It is consistent and across the board, even in the Dahm case that I mentioned in my testimony. Here is a situation where orders against leaving, the U.S. Attorney indicts, but then they basically do nothing on the case and we have to ask them to have another meeting, the FBI doesn't show. When people come in from out of state—I mean, it is appalling. And ultimately, I think it is a reflection of the systemic story that you are hearing, and that is a lack of understanding that, not only is it an academic rule of law issue, it is a crime.

And from the standpoint of deterrence and all the things that you all would talk about if we were talking about drug trafficking or sex trafficking or other issues—

Mr. SMITH. Child abuse.

Ms. APY. Absolutely. Deterrence is one of the primary issues. You know, if we are not going to take it seriously—and countries know what that looks like when we take things seriously—and U.S. Attorneys know that their careers are not going to be advanced on a case that is tough if it is not at the priority of those watching, then you have to be constantly on it, and you have to constantly be asking them what to do next.

Frankly, the latest movement in the Dahm case came because I indicated that I was going to be testifying about the case to this body, because I am at a loss as to what we can do to encourage and inspire the Department of Justice to be active and supportive to the victims of these crimes. And by the way, a footnote on this. To get the case queued up before the U.S. Attorney, it has got to be a good case. They would have dumped it. It gets dumped quickly otherwise. If it has been brought before—and I champion the U.S. Attorney in Miami for issuing the indictments they did. No small feat.

But there is a huge reluctance across the board. Getting them to do it and keeping on it is extraordinarily important. And again, your interest for future hearings, or in your deliberations, or in dealing with congressional liaison contexts, would be to partner with DOJ and make sure that there is a seamless application of these issues.

Mr. SMITH. Thank you

Ms. PHILIPS. Can I add something?

Mr. SMITH. Yes, please.

Ms. PHILIPS. Also, the FBI was involved when I sent a letter to the President, Barack Obama, in 2009. So they are willing to go ahead and extradite my children, but they are waiting for the approval from the U.S. Attorney's office. And when the prosecutor administratively dismissed my case, like Mr. Ramisar and Mr. Preston Findlay from the National Center for Missing and Exploited Children, they spoke to the right people in the prosecutor's office and gave them the right information, and told them why this case has to be open. But they didn't reopen the case.

Mr. SMITH. Thank you. Anything else before we close?

Yes, Mr. Bower?

Mr. BOWER. I just had one point I wanted to call out a little bit more, and it is the issue of financial burden. I think a lot of times we are talking about the politics here, and we are talking about legislation here. And a lot of times, I know myself, for instance, I have been told I need to retain local counsel. And after fighting a fight for 3½ years on multiple fronts I will tell you that local counsel, even in Egypt, doesn't come cheap. And particularly not if you are going to get the right kind of local counsel that can stand up to the various forces in a country like that.

And I didn't know whether or not there were mechanisms for USAID or through their funding of certain NGOs locally that might be considered or put in place that would allow that financial burden for families like ours to be eased a little bit. And I just heard

reference to it, and I don't think that we had really talked about it. I know I hadn't before, but I think it is an important issue, and I just wanted to bring it up to you before we close, Mr. Chairman.

Thank you.

Mr. SMITH. Thank you, Mr. Bower.

Mr. GOLDMAN. And a couple more things. I am sure we can keep going and going, because there are always more issues. One thing Ambassador Jacobs said is that she considered sanctions as extortion, and I liked how Mr. Meadows put it, maybe not sanctions, but incentives. I mean, if it has to be a play on words to get something going, you return our children and here is an incentive for returning our children. Maybe that is how we can get it in somehow in a positive way.

And the other thing that is also disturbing is, she was appointed as somebody to monitor and work with these cases solely as her position, and doesn't see international child abductions as a heinous crime. Doesn't even put them on the same playing field as human trafficking and those other things that we have laws about. And I think that is quite alarming, too.

I just wanted to make that point. Thank you.

Mr. SMITH. I appreciate that. Thank you. And I would agree. That is why I spoke of the myth that somehow child abduction by a parent means "that child is now in safe hands." It is a terrible myth, and the science that even led to the Hague Convention itself, the psychological data about what parental alienation does and the consequences for that child, it just shatters that myth. So you know, the act of abducting puts is just like child abuse. You wouldn't say, "Well, at least the child is in good hands, even though he or she is getting beaten every day by a child abuser." And this is a pernicious form of child abuse.

Mr. GOLDMAN. Absolutely.

Mr. SMITH. So I do thank all of you for your testimonies. It will be very helpful as we move to markup on the legislation, which I suspect will be opposed at least at some level, by the administration, as was every other human rights bill I have ever seen go through this body. I exaggerate a little, but that has been true for the ones I have worked on. But we will persist, and it will be bipartisan, I can assure you, because there is good buy-in from both sides of the aisle on the need to do this now.

So I thank you, and the hearing is adjourned.

[Whereupon, at 2:05 p.m., the subcommittee was adjourned.]

A P P E N D I X



MATERIAL SUBMITTED FOR THE HEARING RECORD

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

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

May 1, 2013

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held by the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations in Room 2172 of the Rayburn House Office Building (and available live on the Committee website at www.foreignaffairs.house.gov):

DATE: Thursday, May 9, 2013

TIME: 10:00 a.m.

SUBJECT: Resolving International Parental Child Abductions to Non-Hague Convention Countries

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

Panel II
Ms. Patricia Apy
Attorney
Paras, Apy & Reiss, P.C.

Ms. Bindu Philips
Mother of Children Abducted to India

Mr. Colin Bower
Father of Children Abducted to Egypt

Mr. Michael Elias
Father of Children Abducted to Japan

Mr. David Goldman
Father of Child Abducted to Brazil

By Direction of the Chairman

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

COMMITTEE ON FOREIGN AFFAIRS

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

Day Tuesday Date May 7, 2013 Room 2172 Rayburn HOB

Starting Time 10:00 a.m. Ending Time 2:05 p.m.

Recesses 2 (11:00 to 11:04) (11:11 to 12:08) (to) (to) (to) (to)

Presiding Member(s)

Rep. Chris Smith, Rep. Randy Weber

Check all of the following that apply:

Open Session
Executive (closed) Session
Televised

Electronically Recorded (taped)
Stenographic Record

TITLE OF HEARING:

Resolving International Parental Child Abductions to Non-Hague Convention Countries

SUBCOMMITTEE MEMBERS PRESENT:

Rep. Mark Meadows, Rep. David Cicilline, Rep. Randy Weber

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

Rep. Joseph P. Kennedy III*

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.)

Questions submitted for the record by Chairman Smith
Question submitted for the record by Rep. Meadows

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED 2:05 p.m.


Subcommittee Staff Director

**Question for the Record Submitted to
Ambassador Susan Jacobs by
Representative Chris Smith (#1)
House Committee on Foreign Affairs
May 9, 2013**

Question:

Congress has made several requests to be informed of the number of children returned to the United States in 2011 and 2012, as had previously been the practice of the State Department, but we have not yet received a response. The number of returns, while not the only measure, is a highly relevant measure of the success of the Hague Convention. Will the State Department provide Congress with the number of returns to the U.S. from Hague and non-Hague countries, respectively, for 2011 and 2012?

Answer:

The purpose of the Hague Convention on the Civil Aspects of International Child Abduction (Convention) is to return expeditiously a child who was wrongfully removed from the country of habitual residence in violation of rights of custody. The U.S. Department of State considers the Convention to be successful when the court's decision is consistent with the country's treaty obligations. In some cases, denial of return is allowable under the Convention. For instance, Article 13(b) states the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body that opposes the return establishes that there is a grave risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. In other cases, parents reach an agreement outside the Hague hearing to return the child or allow the child to remain with the taking parent. Therefore, because the circumstances of each international parental child abduction case are highly individualized and widely varied, we don't consider the number of returns to be a useful measure of the Convention's success.

The number of new cases reported to the Department in CY 2010, CY 2011 and CY 2012 are available on the Bureau of Consular Affairs website at http://travel.state.gov/abduction/resources/resources_3860.html. The statistical data are based on proactive reporting from parents and do not represent the total number of international parental child abductions involving U.S. citizen children.

**Question for the Record Submitted to
Ambassador Susan Jacobs by
Representative Chris Smith (#2)
House Committee on Foreign Affairs
May 9, 2013**

Question:

How many cases of American children abducted to Brazil do we have right now?

Answer:

As of July 1, 2013, the Office of Children's Issues had 19 open outgoing abduction cases in Brazil. Of those cases, the U.S. Department of State's Office of Children's Issues, as the U.S. Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction (Convention), has forwarded 18 Hague abduction case applications to the Brazilian Central Authority. For the remaining case, the left-behind parent is completing the Hague application, and the Department of State's Office of Children's Issues is providing all appropriate assistance.

**Question for the Record Submitted to
Ambassador Susan Jacobs by
Representative Chris Smith (#3)
House Committee on Foreign Affairs
May 9, 2013**

Question:

What does it mean if a child abduction case is considered resolved but that no children were returned?

Answer:

The U.S. Department of State considers an international parental child abduction (IPCA) case to be resolved under any of the following circumstances:

a) the child is returned to the country of habitual residence, pursuant to a court order under the Hague Convention on the Civil Aspects of International Child Abduction (Convention); b) the court's denial of return is consistent with the Convention; c) the child's parents reach a voluntary agreement either to return the child to the country of habitual residence or allow the child to remain in the country to which he/she was taken; d) the left-behind parent withdraws the request for assistance in seeking the child's return; or e) the child reaches the age of 18.

**Question for the Record Submitted to
Ambassador Susan Jacobs by
Representative Chris Smith (#4)
House Committee on Foreign Affairs
May 9, 2013**

Question:

Do you think conditionality on aid would be a wise tool for the U.S. to apply when seeking the return of abducted children?

Answer:

No, the U.S. Department of State does not think conditionality on aid, or any other form of punitive action, would be effective in achieving the return of abducted U.S. citizen children. In countries where the Convention is not an available remedy, foreign courts rely on their own domestic law to determine whether they may take jurisdiction over a matter and whether a U.S. court order may be recognized and enforced. In nations with independent judiciaries, the executive branch has no power to compel courts to take specific action in individual cases. In many countries, international parental child abduction is viewed as a private matter to be worked out within families rather than a legal or criminal issue. Diplomacy, rather than sanctions or withholding of aid, is the most effective strategy for shifting cultural and political ideologies that are necessary to engender changes in the law.

In addition, the threat of sanctions from the United States will discourage other countries from joining the Convention. Even if not imposed, the existence of a U.S. sanctions regime in cases of international parental child abductions will put the United States out of step with the international community and chill our relationships with existing Hague partners, causing strain on bilateral relationships and making multilateral efforts on IPCA difficult, if not impossible. Countries already party to the Convention may object if the United States creates a barrier to accession in countries where they, too, have challenges with international parental child abduction. Employing sanctions means we risk losing leverage to work multilaterally on this issue. It also means losing credibility within the community of governmental and other professionals seeking to address the worldwide problem of international parental child abduction.

**Question for the Record Submitted to
Ambassador Susan Jacobs by
Representative Chris Smith (#5)
House Committee on Foreign Affairs
May 9, 2013**

Question:

What are the standard steps case officers are required to take for the resolution of abductions to countries that have not signed the Hague Convention? What are the additional steps case officers or their superiors may take on a case by case basis? Can you provide examples?

Answer:

After a parent or legal guardian contacts the Office of Children's Issues to open a new abduction case, the country officer will review the resources and options available to the parent. If the country to which the child is abducted is not partnered with the United States under the Hague Abduction Convention, the country officer explains that there are no civil mechanisms in effect between the United States and the other country to facilitate the abducted child's return and will inform the parent of other possible options. The country officer encourages the left-behind parent to consult with an attorney before making any decisions so that the parent is fully informed about the legal options and the possible ramifications of any action to be considered.

Options that a left-behind parent may consider include filing for an emergency custody order in the United States and then seeking recognition of that order in the non-Hague country; the country officer will caution the left-behind parent that not all foreign courts will recognize U.S. custody orders. Another option may be for the left-behind parent to file for custody in the local court of the non-Hague country.

A country officer will inform the left-behind parent about possible criminal remedies that could pressure a parent to return a child, outlining the possibility of making a request to law enforcement to have the abducted child placed on the registry of missing persons in National Crime Information Center (NCIC). This serves to document the child's abduction and could assist in locating the child should s/he cross U.S. or international borders in the future. The country officer will explain the possibility of working with U.S. law enforcement and prosecutors, explain the pros and cons of criminal remedies, refer the parent to the appropriate authorities, and facilitate communication if necessary.

In every abduction case, the country officer will:

- 1) offer the left-behind parent the option to request a welfare and whereabouts visit with the U.S. citizen child performed by U.S. Embassy consular employees in country (keeping in mind that U.S. consular officers have no legal means to compel a visit) and provide the left-behind parent with a report summarizing the consular officer's visit with the child;
- 2) enter the abducted child's name into the Children's Passport Issuance Alert Program (CPIAP);

- 3) review the case to see if the taking parent (and possibly others who assisted in the abduction) meet the eligibility criteria for the application of the visa ineligibility for child abductors, Section 212(a)(10)(C) of the Immigration and Nationality Act, and if so, the country officer will have the ineligibility entered into the appropriate databases;
- 4) facilitate coordination with the National Center for Missing and Exploited Children (NCMEC); and
- 5) refer the left-behind parent to online and other resources for country-specific information about international parental child abduction.

The country officer will maintain contact with the left-behind parent through regular communication to provide updates, review recent actions, and discuss possible next steps. If the parent is able to realize the child's return to the United States, the country officer will coordinate travel arrangements with local immigration authorities and U.S. Customs and Border Protection officials to help ensure the smoothest transition possible. We may call on consular staff to escort the child to the airport, the FBI's Office of Victim Assistance to request funding for international travel, or NCMEC to help provide a reunification counselor and/or translator.

Additional steps that may be taken when indicated are demarches to foreign government officials informing them of the abduction and requesting assistance returning the child to the United States, requests to foreign government officials to help the Department locate a missing child or that the foreign government investigate a potential passport fraud, and requests to facilitate consular access to children to verify their well-being.

Other possible steps that depend on the specific circumstances in the non-Hague country may include referring a parent to local mediation services, attempting to locate or visit the child using the local social services system, or requesting that Interpol Washington ask for "humanitarian assistance" from the local Interpol to find or visit an abducted child and report back to the left-behind parent.



**Question for the Record Submitted to
Ambassador Susan Jacobs by
Representative Mark Meadows (#1)
House Committee on Foreign Affairs
May 9, 2013**

Question:

Can you and your staff provide me with some recommendations that we might look at to introduce as legislation that might help you?

Answer:

We are grateful to the Committee on Foreign Affairs for its continued interest in supporting the U.S. Department of State's efforts to pursue the return of abducted children to the United States and to promote and improve compliance with the Hague Abduction Convention. The Department believes that the current legislation, the International Child Abduction Remedies Act, provides the Department with sufficient authorities to achieve its goals successfully.

We would welcome coordination with Congress in promoting the Convention in non-member countries. The Bureau of Consular Affairs' Office of Children's Issues stands ready to brief individual or groups of Members or staffers on specific areas of legislative interest and on developments in specific cases, countries, or regions. We encourage Members to meet with Parliamentarians during overseas travel to discuss U.S. laws and our approach to resolving international parental child abduction.