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The Goldman Act Turns 10: Holding Hague Convention Violators Accountable and Bringing Abducted American Children Home

Chairman Smith, Ranking Member Wild, and Members of the Committee: thank you for inviting me to participate in today's hearing and thank you for your attention to a topic that is very important to so many families globally. This is a topic that has comprised a large part of my law and mediation practice for almost two decades. Through my international caseload, I have had significant opportunity to engage with Taking Parents, Left Behind Parents, and their children, and I see the complicated and nuanced elements that make up these very personal and emotionally fraught family disputes.

Background on International Parental Child Abduction

The Goldman Act became law in 2014, with the stated goal of ensuring other countries' compliance with their legal obligations to return to the United States children who, through the unilateral actions of one parent, found themselves relocated to another country. The concern was, clearly, that some countries were not returning children who were abducted into that country. At present, some of the compliance concerns for individual States, outlined by the U.S. Department of State in its Annual Report mandated by the Act, range from foreign Central Authorities that fail to fulfill their responsibilities, to foreign judiciaries that fail to implement the Convention, to countries that fail to work with the United States to resolve cases.

In January of 2020, the U.S. Department of State, Bureau of Consular Affairs reported that an estimated 9 million U.S. citizens were residing overseas, and 66,595 U.S. citizens had been born in another country the prior year.[1] Increasingly, Americans are living overseas, moving their families to other countries, starting a family in another country, marrying a foreign national, and, at times, availing themselves of the legal system in another country to resolve a family dispute. One of the most acrimonious and emotionally draining of those family disputes involves the movement of children.

Pursuant to the Goldman Act, the U.S. Department of State is required to report statistics that relate to children who had been unilaterally removed from the United States to another country. This statistical report is perhaps the most visible part of the Act to U.S. lawyers and their clients, and is often consulted as part of custody cases where one parent is concerned about their child's potential abduction. However, these statistics have some shortcomings. They only include cases reported to the U.S. Department of State by a presumptive Left Behind Parent, but do not include cases filed directly in courts without notification to the Department of State or that are in

[1] https://travel.state.gov/content/dam/travel/CA-By-the-Number-2020.pdf, last accessed 08/27/2024

negotiation without a formal judicial or administrative proceeding. Cases marked as "resolved" in the report may include cases that are resolved voluntarily. A voluntary resolution, while seemingly a good thing, may include situations where a parent simply abandoned their attempt to seek their child's return, including in situations where the foreign litigation was too onerous, time-consuming, or expensive. For some countries that meet the criteria of a "pattern of noncompliance" under the Act, this conclusion is drawn from only one or two cases, and with the subtleties in each case, that statistic may be misleading. Additionally, the countries listed as not compliant on the most recent report are chronic "offenders" according to the report, with most being listed in 2023 and 2022, and almost as many having been listed several more times since the report was first prepared in 2015. The report is an excellent tool. It provides a good starting point when assessing issues that may exist diplomatically with other countries that should provoke additional deeper investigation, but it should not be the final conclusion as to whether a country will return an abducted child. In reality, parental child abduction is founded on the bad acts of a private individual, and less so on those of a foreign country. Each case and each family will have unique characteristics that cannot be accurately reflected in a few pages of incomplete statistics.

The United States, along with most other Contracting States to the Hague Abduction Convention, voluntarily provides case statistics to the Hague Conference on Private International Law approximately every five to six years, in advance of that organization's Special Commission meetings to analyze the practical operation of its Hague Abduction Convention.[2] The most recent statistical report, presented at the 8th Special Commission meeting in October 2023 analyzing statistics from 71 countries from calendar year 2021, provides some additional details that may be at odds with some of the Annual Report's statistics. Most notably, in the Hague Conference's analysis, is the stark statement that most countries, with the United States included, significantly miss the mark in how quickly these cases are resolved. While the most recent statistics are from a year when some countries were only just starting to re-open their borders after COVID lockdowns, they do give some instruction, and, frankly, are not so far off past statistics as to disregard them. For 2021, the overall global return rate of children using the Hague Abduction Convention was 39%. The average number of days to resolve a case globally, from filing an application with the Central Authority to a final outcome was 207 days. Cases where parents pursued an appeal increased from 31% in 2015 to 42% in 2021. However, appellate courts reached the same conclusion as trial courts 81% of the time.

These statistics do not reflect practices of countries that are not Contracting States to the Hague Abduction Convention. Additionally, not every Contracting State responded to the Hague Conference's request for data. Further, some countries have so few cases overall that it is hard to draw meaningful conclusions. But even countries that are considered compliant in the most recent State Department Annual Report take significant time in resolving cases. Australia, for example, reported 309 days to a final outcome; Ontario, Canada reported 248 days; Colombia at 296 days; Cyprus at 307 days; Georgia at 320 days; and the United States at 253 days. These delays are not appreciably different from delays reported by countries considered not compliant by the State Department Annual Report, such as Argentina at 218 days; Bulgaria at 281 days; and Romania at 221 days. In fact, in looking at a handful of cases in the past three years, filed in U.S. District Courts pursuant to the International Child Abduction Remedies Act (ICARA), many courts in the

[2] https://assets.hcch.net/docs/bf685eaa-91f2-412a-bb19-e39f80df262a.pdf, last accessed 08/29/2024

United States set trial 100 to 200 days after the filing of the initial petition, and then took several more months after the trial to issue a final order. When an appeal was lodged, the appellate process routinely took 1 to 2 additional years. This does not even account for some cases, similar to Mr. Goldman's case, that had several appeals and took between four and six years to resolve.

There are a wide range of reasons why many U.S. district courts will take upwards of a year to reach a conclusion. The United States does not have specialist judges, and some districts see so few Hague Abduction Convention cases that it is not a priority to train judges in Hague Abduction Convention cases, or to put in place different docketing and administrative processes to expedite these cases. In the private bar, there are presently about a dozen experienced Hague Abduction Convention litigators or mediators in the country. In litigation, some parties have incentive to delay, and some lawyers may use aggressive litigation tactics that perpetuate those delays. Some Taking Parents may hide, making it complicated and time-consuming to find the child to pinpoint the courthouse in which a lawsuit should be filed. Furthermore, the most recent two Hague Abduction Convention cases addressed by the U.S. Supreme Court established law that has resulted in more expansive litigation. *Monasky v. Taglieri,* 589 U.S. 68 (2020), has led to significantly expanded trials so that parties can put forth sufficient evidence to meet the amorphous, judge-dependent principle for deciding where a child is habitually resident. *Golan v. Saada*, 596 U.S. __ (2022), has created a need in many cases, where the Taking Parent argues that a child would be exposed to a grave risk of harm upon return, to gather evidence in the other country and address what ameliorative measures exist, which routinely includes a need for expert witnesses, including psychological evaluations, which are time-consuming and expensive.

I applaud Congress for taking proactive steps in trying to address this topic head-on, using the resources it has at its disposal. Today, I hope to highlight, from my practice, potential paths to continue improving the situation for these families, who find themselves caught between multiple legal systems and vast geographic divides. By improving the system, we remove the incentive to create delays and abuse existing law and practice.

Proposals to Address International Parental Child Abduction

The Goldman Act combines countries that have very distinct legal obligations to the United States and countries that have no international legal obligation to the United States in regard the problem of parental child abduction. I distinguish between those countries in this written testimony.

The Hague Abduction Convention

Of the 103 Contracting States to the Hague Abduction Convention, the Convention is in force between the United States and eighty of those countries.

I would like to note that the Hague Abduction Convention, while premised on an expedited return of an abducted child as the outcome, does not mandate the return of all abducted children in all situations. There are some situations where children are not returned, and the legal system has worked. The concern of this body should focus on those countries where the other country's

legal system may not work – there are significant and unjustified delays; there are biased arbiters who do not apply the law properly; there are Central Authorities who fail to meet the basic Convention requirements. These situations are best analyzed on a country-by-country basis and require a bona fide analysis to determine the shortcomings in each legal system. These shortcomings are best addressed by encouraging legislative changes and having engagement and education among the members of other countries' independent judiciaries, rather than a cursory review of incomplete statistics.

The Goldman Act provides for remedies, many of which were already legally available to the Executive Branch. Those remedies authorize engagement in productive dialogues with government officials and practitioners from Convention partners, which requires appropriate funding to ensure our U.S. Department of State is able to have these conversations, such as when the United States sent a delegation of diplomats, judges, and lawyers to Japan immediately after Japan's ratification of the Hague Abduction Convention to discuss its implementation, and how our U.S. Department of State has continued to engage in productive conversations with their Japanese counterparts in the Ministry of Foreign Affairs with regard to amendments to Japan's implementing legislation.

While the U.S. Department of State has been able to engage in robust dialogue with its Convention Partners, some countries may better receive statements of concern and offers of assistance from an independent organization, such as the Hague Conference on Private International Law. The Hague Conference engages in post-legislative work. Voluntary contributions from the United States should be considered to support targeted, enumerated activities by the Hague Conference, such as collecting better, more frequent, statistics and having more outreach to countries who are experiencing implementation problems, and to enable a more productive and robust working of this Convention.

While I encourage the appropriation of funds for targeted dialogue and work, I caution against funneling money to organizations that are intending only to justify their existence, feed into false narratives, and that are not vetted and dedicated to undertaking the task at hand from a neutral standpoint. Any funding decision by Congress or the Executive should require a more focused approach that addresses the clear delays and inefficiencies in resolving Hague Abduction Convention cases. I am concerned about the proposed Goldman Act amendment that qualifies its appropriation of funds towards a vague analysis of the "grave harm" (a term that can easily be conflated with a term in the Convention) that befalls children and Left Behind Parents. While both children and Left Behind Parents might suffer, if this provision remains in the proposed amendment, a focused and more directed instruction will lead to better equipping our U.S. government in seeking the data it needs to engage in its diplomatic dialogue with other countries.

The United States tends to lead by example. Our implementation of the Hague Abduction Convention should not be an exception. We should set the gold standard for ourselves and other countries. This will best enable our diplomats to engage others and encourage other countries to fulfill the obligations of the Convention. In this regard, I have several suggestions.

In the United States, Hague Abduction Convention cases may be filed in any courthouse in the United States – state or federal – depending on where the child is located after the abduction. Because of the widespread nature of abductions to the United States, many courthouses and judges will never see a Hague Abduction Convention case in their career, making proper training on this complicated legal issue a low priority. The Federal Judicial Center publishes a guide to handle these cases, but training should be more widely available, and quick, easy access to legal resources in the United States should be readily available and kept current for our bench and bar. The clerk's office within each courthouse, as the office who may be responsible for the expedited docketing of these cases, could also benefit from training.

Aside from a small specialized private bar that handles cases under the Hague Abduction Convention routinely, many lawyers who handle these cases are undertaking their work without access to training. The U.S. Department of State maintains a list of lawyers who agree to undertake these cases pro bono or at low cost, but these attorneys are left mostly to their own devices to educate themselves about the law. They need training and continuing education and could be offered free training and resources to maintain their place on the U.S. Department of State's roster. Likewise, aside from this roster of volunteer lawyers, many legal aid agencies in different U.S. states have existing relationships with large law firms, to whom they refer cases, often to assist the Taking Parent on a pro bono basis. These large law firms, while offering a vital service, can often overwhelm the litigation process by adding a half a dozen or more lawyers to their side of the case. They often lack the prerequisite knowledge to settle the case because they are not trained in the underlying legal issues that require resolution, such as cross-border parenting, custody plans, and state court jurisdiction in family law matters. Training should also exist for these legal aid organizations, and the firms to whom they refer cases, to ensure lawyers discharge their duties in the most economical and civil manner, including through pursuing bona fide voluntary resolutions.

It goes without saying that all courts in the United States are overwhelmed with litigation. Statistics show that, at trial, Hague Abduction Convention cases rarely conclude within the Convention's aspirational six weeks, and often take nearly one calendar year to an outcome at the trial level. U.S. state and federal courts should be encouraged to designate a judge within each courthouse to be assigned these cases who is specially trained and best equipped to handle these cases quickly and expeditiously. Florida and California state courts have already been employing this technique with some success. The International Hague Network of Judges, organized by the Hague Conference, has three U.S. judge liaisons, all who are state court judges (not federal), who are often called on to reach out to judges within the United States. The American Bar Association recognized the sensitive ethics rules that are implicated in direct judicial communication and the complicated process in pinpointing an appropriate judge because of the disparities in how courts are organized state-to-state and approved a Resolution in 2013 supporting such a judicial network. Courts throughout the United States should be encouraged to designate a point of contact for these cases, and a network of contacts should be created, trained, and engaged, to streamline an exchange of information within the United States.[3] Further work could be done through the American Bar

[3] See ABA Resolution 107B encouraging the establishment of a network of U.S. federal and state judges, https://www.americanbar.org/content/dam/aba/directories/policy/annual-2013/2013-annual-107b.pdf, last accessed 08/31/2024

Association's Judicial Division, the Federal Judicial Center, and the National Center for State Courts. Again, court administrators should also be engaged in this discussion.

The United States should set the bar and encourage each federal and state court where a Hague Abduction Convention case is filed, to report directly to the U.S. Department of State when a petition for a child's return is filed, and when a final order is entered, so the government can have more robust and accurate statistics, and stave off potential problems that may exist in certain courthouses. This could be done administratively, including through clerk's offices when cases are filed and closed. U.S. trial courts are, however, not responsible for all of the time taken to resolve Hague Abduction Convention cases. A parent who loses in their Hague Abduction Convention trial has an automatic right to appeal in any U.S. state or federal court, and the appellate court process can be lengthy, often taking another year to resolve the case, and, many times, if overturned, resulting in a remand and a new trial. Therefore, any engagement that the U.S. Department of State has with the domestic judiciary should not overlook appellate courts.

When a judge in another country is examining whether or not to return a child to the United States pursuant to the Hague Abduction Convention, it is becoming more routine that they want to understand what measures exist in the United States to protect the child upon that child's return. It is difficult for foreign courts to understand the complicated legal and social service systems within the United States. This can add time to the foreign proceeding while that foreign judge attempts to collect information about the relevant U.S. state's laws, legal system, access to justice, social services, etc. There should be better access to information about our complicated, yet highly protective resources for families in the United States, so that foreign courts can quickly and confidently access this information, whether through the U.S. Central Authority, through a public facing website, through the International Hague Judicial Network, or elsewhere. This can serve to assist foreign courts in more expeditiously returning children to the United States. These same courts who are exploring protective measures in the United States may also have questions, and concerns, about the criminalization of child abduction in the United States, and this information should also be available to courts overseas.

Finally, while our U.S. Department of State undertook an audit of its public-facing website within the past decade, and made improvements, there remain problems with the information found on the website, including inaccuracies as to whether the Hague Abduction Convention even applies between the United States and another country. A parent trying to gather sufficient information to start their long journey towards seeking their child's return should not be at the receiving end of inaccurate information from what is an otherwise reliable government entity.

Situations Not Involving the Hague Abduction Convention

Perhaps some of the more complicated international parental child abduction cases are those where there are no international legal obligations in the other country to return an abducted child to the United States.

The Hague Conference recognized that there will simply be countries that may never become a Contracting State to the Hague Abduction Convention, and therefore embarked on what

it calls the Malta Process. The Malta Process was developed to promote cooperation among States with legal systems based upon or influenced by Islamic law for the resolution of complex trans-frontier family conflicts, including parental child abduction cases. The Malta Process had been stagnant in recent years, most likely due to a lack of funding and a shift to other priorities. It is, however, the subject of a meeting on September 24-27, 2024[4] with the hope that future work may come from that meeting, if funding permits.

One of the biggest suggestions that previously arose from the Malta Process and one that was a focal point in the work of International Social Service (ISS), a nongovernmental organization headquartered in Geneva, Switzerland, was the use of family mediation in complex cross-border family law cases. Particularly where there are no legal remedies available to families, family mediation may be a tool that could help some families achieve an outcome that, while not always perfect, is an improvement on the family's situation. There is no global training scheme or standards for international family mediators. ISS created a template for a global network of cross-border family mediators, to establish criteria for their training and engagement, but lacked funding to pursue the network further. ISS's U.S. Branch in Baltimore, Maryland, previously sought funding to create a network of U.S.-based international family mediators but was met with rejection because there is an absence of accurate statistics on these cases to justify providing money to this type of project. Right now, a cross-border family who wants to use mediation as a process, is left with very few options to locate a competent and skilled mediator. I have even discussed, with the National Center for State Courts, whether it could offer, at a minimum, video mediation training about these cases to state court mediation offices (knowing that court-annexed mediation programs may be the only or best option to mediate these cases), but the continuing concern was that there were no available statistics to justify the funding of this undertaking.

Complementary Legal Issues

There should also be dialogue on complementary legal issues, such as international family relocation. A consistent complaint of Taking Parents is that they engaged in unilateral self-help because they felt that the legal system of the country in which they were sitting prior to an abduction was ill-equipped to address their request to legally relocate their child to another country. It is true that there is inconsistent practice and law when it comes to international family relocation, even within the United States. The Hague Conference adopted a set of principles in a document called the Washington Declaration[5] almost 15 years ago that has gone under-utilized but can be the foundation of a discussion about how to address this concern.

There remains a concern among U.S. practitioners that even a family that has a valid U.S. custody order, that dictates parenting arrangements and legal rights to their child, may have significant hurdles in seeking that order's enforcement in another country. Whether a child travels to another country for a holiday or legally relocates to that other country, leaving one parent in the United States, if the parental relationship sours, there may be need for legal remedies that are unrelated to seeking an abducted child's return. Parents need to have confidence that their custody arrangements are recognized, and will be enforced, globally. In 2010, the United States signed the

[4] https://www.hcch.net/en/publications-and-studies/details4/?pid=9048&dtid=46, last accessed 08/31/2024
[5] https://assets.hcch.net/docs/8a45655a-c8fa-4789-8df8-d5187d69512f.pdf, last accessed 08/31/2024

1996 Hague Child Protection Convention, which is another international treaty that may provide assistance in this area of concern. It has not yet taken steps to ratify this Convention. The U.S. Department of State may benefit from additional research and discussion with other States as to the obstacles to the recognition and enforcement of U.S. custody orders overseas, to bolster debate as to the next steps to be taken, or not, towards ratification of this Convention.

Finally, as is likely evident to everyone in this room, the United States, even with the most robust legal tools at its disposal, cannot dictate what another sovereign nation does. Therefore, it is incumbent that U.S. courts, lawyers, and parents have options, in appropriate circumstances where a parent presents a legitimate risk of abducting their child, to seek a U.S. court order that prevents that child's travel overseas. The U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention last undertook research in this area in 2007[6]. The Uniform Law Commission drafted the Uniform Child Abduction Prevention Act, enacted in seventeen U.S. states and the District of Columbia[7]. The U.S. Department of State has an Abduction Prevention team, and a collaboration with U.S. Customs and Border Protection where, if a parent has a clear court order that prevents a child's removal from the United States, the government can assist in stopping that child's removal in violation of that court order. The gap, however, is that parents are not getting sufficient information about the potential legal pitfalls before they relocate overseas. They are confused as to where to go for assistance after a legal problem arises. The first line of defense for some are U.S. consular officers in U.S. embassies and consulates overseas, who need robust training. These family members may seek assistance from their employer, who may have been the entity that sent the family overseas for a work assignment. There must be training before parents move overseas, and for the individuals who work with these families from the beginning of their legal concerns and who need to expeditiously advise their expatriate staff and nationals. Without proper education, these parents seek out any information they can find, which may be inaccurate. Their legal advocates likewise need sufficient training, and many lack knowledge of even the most fundamental resources (and what those resources do and do not do) that exist within the U.S. government, including the Prevent Abduction Program with U.S. Customs and Border Protection and the Child Passport Issuance Alert Program with the U.S. Department of State.

Conclusion

Overall, Congress has an opportunity to improve the processes in place in the United States and to equip our U.S. diplomats with the information and resources to actively engage other countries in resolving these cases. To secure resources and have the data-driven diplomacy that is necessary to persuade other countries, the United States needs better, more accurate statistics from legitimate organizations that have been engaged in these efforts for years and who have a track record of respect and reliability. The Goldman Act is the beginning. I applaud this Committee's ongoing efforts and I thank you for inviting me to share my views.

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[6] https://www.missingkids.org/content/dam/missingkids/pdfs/publications/pdf2a.pdf, last accessed 08/31/2024
[7] https://www.uniformlaws.org/committees/community-home?CommunityKey=c8a53ebd-d5aa-4805-95b2-5d6f2a648b2a, last accessed 08/31/2024