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House Committee on Foreign Affairs
Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations
November 19, 2015 Subcommittee Hearing: The Goldman Act to Return Abducted American Children:
Ensuring Administration Action

Good morning Members of Congress. I am honored to be here today and thank you for the opportunity to address this committee.

Let me start with a brief history of my case. 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. Where was my son? Where was my child? He had been abducted. He was being held illegally. He was being psychologically, emotionally and mentally abused. I needed to help him. I needed to save him. He needed me, his father. It was our legal, our moral, our God given right to be together as parent and child. I did everything humanly possible, leaving no stone unturned, but for many years the result remained the same. Sean was not home.

Although, I remained determined and hopeful, I must admit, the outcome for a permanent reunion with my abducted child seemed bleak at best. I felt like a dead man walking. This void left me a shell of the man I once had been. There were orders in place. There were many orders from U.S. courts demanding the immediate return of my child. The courts in Brazil acknowledged that my child had been held in violation of US and international law, however, he remained in the possession of his abductors. Why were so many laws being ignored? Why were the abductors and in my case, the government of Brazil, allowed to flagrantly violate international law with no consequences? Why were my child and over 50 other American children still in Brazil, another 100 plus in Mexico, and thousands of other American children also held illegally in other countries in clear violation of The Hague Convention on the Civil Aspects of International Child Abduction? It would take four and one half years, numerous court hearings, extraordinary work from my attorneys in Brazil and the US, a tremendous amount of political pressure applied publicly and internally, and House, Senate and state resolutions for me to finally be able to visit my abducted son for a few short periods of time. My son had been abducted by my wife and her parents and held illegally for over four years. It wasn't until the tragic passing of his mother that my son's abduction became "newsworthy." This finally brought it to the attention of those who could and would actually assist me. It took Congressman Smith traveling to Brazil with me. It took Senator Lautenberg holding up a bill that would have given Brazil nearly three billion dollars in trade preferences for my son to come home.

As I prepared for today's hearing, I began by reviewing my own testimony from previous hearings, as well as the testimony of others who have given powerful and moving accounts of their own experiences with this issue. In past testimony, what was obvious was that our government lacked the tools they so desperately needed to help bring abducted American children home. That's not the issue any longer. It has been over a year now since the President signed the Goldman Act into law – a law which provides our government with a number of options to persuade countries to return abducted American children. One of the first duties of our government is to protect its citizens and The Goldman Act does just that.

We no longer need one Senator holding up a trade bill (Generalized Preference bill) in which 131 countries would see tariffs on their imports to the US rise sharply and billions of dollars of their trade disrupted. The Goldman act is designed to work on a country to country basis and may impose punitive measures against individual nations harboring abducted American children. Our government need not be so concerned about upsetting a country that harbors child abductors of American citizen children. We must demand their return. We're not asking for any favors. We're expecting the rule of law to be followed and if it isn't then let them see there are tangible consequences.

The Goldman Act is intended to work side by side with the Hague Convention on the Civil Aspects of International Child Abduction, ensuring countries honor their treaty obligations. In this way, the law acts almost like a bodyguard to the treaty, protecting it and ensuring that it is followed as was intended. It took several years and several mark-ups before becoming law. We now have the ability to help bring home this country's abducted children – with both Hague signatory countries as well as non-Hague countries.

I would also like to address the criminal approach to resolving these abduction cases. Many times, first instincts are to pursue criminal remedies, go to the police, hunt down the abductors, and hope for a return of the child through law enforcement. I understand and sympathize with that approach. In fact, those were my first instincts when Sean was abducted.

Unfortunately, that approach adds another layer of complexity to the process. What the Hague treaty does, in simple terms, is put all signatory countries in agreement on how the issue of international child abduction should be resolved without complicating it on the basis of cultural differences or domestic laws.

There are two extremely important issues that arise from criminal proceedings and demands for extradition for child abductors.

1. Domestic courts will often refuse to return an abducted child, knowing that the taking parent will face criminal prosecution by coming back to the country where the child was abducted from and;
2. Many countries will not extradite one of their own citizens.

With regard to the Hague Convention itself, there are two areas which are most often abused by foreign judges when deciding Hague cases.

Article 11

“The judicial or administrative authorities of Contracting States shall act *expeditiously* in proceedings for the return of children. If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay.”

So as you can see, clearly the spirit of the Convention is to have these cases handled swiftly so that there is as little disruption as possible in the life of the abducted child. We all know that is not what happens most of the time when American children are abducted.

Because of the endless legal delays resulting from motions filed by the abducting parents, the Convention's intent is thwarted and the spirit of the Convention is lost. As an example, Article 13(b) of the Convention is perhaps the most common reason for denying returns.

Article 13(b)

"... 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 which opposes its return establishes that there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."

What happens in many Hague Convention countries is that the courts interpret the delays in the legal proceedings as grounds for denying the return of the child based on the assumption that the passage of time somehow eliminates the urgency of returning that child to their country of habitual residence. In other words, the courts are penalizing the left-behind parent and abducted child under the twisted logic that the child is now settled due to the slow judicial process in that country. There is one case ongoing in Brazil in which a decision denying the return of Nico Brann, to his father Chris, was denied by the judge (Arali Maciel Duarte) solely based on a previous decision made in my case rendered over nine years ago, in which it was acknowledged that my son was being held in Brazil illegally and in violation of the Treaty but denying the return on the basis that he was now settled. The judge cited the passage of time that it took the court to hear my case, allowing them to conclude that my son was now settled in his new environment and that it would be of grave harm to uproot him from his newly established environment and thus rewarding the abductors, keeping my son and I separated and prolonging his eventual return for another four years. Apparently Judge Duarte doesn't realize that the initial decision in my case was later overturned by the Brazilian Supreme court and my son, Sean, has been home for nearly six years.

Another example of an egregious injustice in Brazil is the case of Nadia Davenport. It's been more than 7 years since Devon Davenport's baby daughter was abducted from North Carolina to Brazil. Devon has fought admirably to bring his daughter home and even testified before this same committee last year, making an impassioned plea for help. The Brazilian Supreme court has ordered the return of Nadia and all legitimate appeals have been exhausted yet nearly two years have passed since that decision, without enforcement of the return. Nadia remains in Brazil illegally and Devon Davenport is apparently no closer to being with his child.

These parents, like so many others, suffer so much it is beyond words to describe. I know because I was one of them. Again, I was a dead man walking – lifeless, struggling day to day to get through the most meaningless of tasks. I am now so fortunate to be on the other side, having been reunited with my son. To my knowledge, Sean Goldman is the only American child ever to return from Brazil by a court order under the provisions of the Hague Convention. We are lucky. We can't recover the years we have lost, but we can enjoy our time together now. We can live as parent and child. I can watch him grow, evolve and become a young adult. We can interact with each other, participating, educating, encouraging and disciplining as a parent should be able to do with their own child. So many other left-behind parents were given hope and painfully celebrated the return of Sean, without their own children at their side. Please don't allow their hope to be a cruel and anguishing false hope that their children may one day come home.

Accompanying me to this hearing today are my son and step son, Sean and Jesse. They are brothers and good buddies. Sean can grow up as a normal boy, with family and friends like it was intended. I was able

to assume my role as his father and he as my son. It is our legal and God given right to be father and son. Next to me is Captain Paul Toland. The empty chair behind him awaits his abducted daughter Erika. It is this government's duty to protect its citizens – to protect the rights of Erika and allow her to come home to America and grow up in the care of her father, her only living parent. The tools are in place, please use them. Help Paul reunite with Erika. Please help these suffering mothers and fathers reunite with their abducted American children. Our country is about keeping families together. They desperately need your help. You have the tools.

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With regard to the reporting requirements of the State Department, I have read the 90-day supplemental report on IPCA and see lots of discussion of quiet diplomacy, such as meetings and demarches. What is absent is any direct action authorized through the Goldman Act to compel these countries to return these children. We need to do more. Please use the tools you now have at your disposal.

The success of the Hague Convention can only be measured by the number of abducted children returned. All of these meetings, discussions, working groups, while it all sounds good, are meaningless if they do not result in more children coming home. It is simply and obviously not enough.

In Brazil, we have heard about high level meetings and demarches, yet as far as we know, Sean is still the only abducted American child to be returned to the US under the Hague Convention, by means of a court order. The Nadia Davenport case is a prime example of the abject failure of Brazil to enforce a return order.

I would also like to make a general comment about the content of the most recent annual compliance report. It is very difficult, if not impossible, to make sense of this report. For starters, the reporting is inconsistent from year to year in terms of the most pertinent data. I reviewed the annual statistics on the issue of IPCA and in particular, was interested in the following:

1. The number of new outgoing cases of IPCA and number of children involved
2. The number of children physically returned to the US (separating Hague and non-Hague returns, if possible)
3. The number of cases closed (and number of children involved in those cases)

Unfortunately, it was difficult to find this information. I had to use a calculator to sum the country data for 66 countries. The data was inconsistent from year to year. For example, the 2013 report showed both the number of new outgoing abduction cases and the number of children involved in those cases. The 2014 data only shows the number of cases – not the number of children involved. How are our lawmakers supposed to grasp the magnitude of the problem if the data does not do a sufficient job of summarizing the situation?

Specifically, one of the statistics that puzzled me was the large percentage of cases either “closed” or “resolved” in 2014. The number of cases open at any point in 2014 was 1,467. The open cases at year-end 2014 was 758, suggesting 709 cases were either closed or resolved in 2014, meaning 48% of the open cases were closed in that calendar year. Could that really be the case and if so, how is that possible and what does it say about the rate these cases are being closed for reasons other than a physical return of these children.