

*Testimony by Christopher S. Brann
Before the Subcommittee on Africa, Global Health,
Global Human Rights, and International Organizations
House Committee on Foreign Affairs
Of the United States House of Representatives*

Hope Deferred: Securing Enforcement of the Goldman Act
to Return Abducted American Children

July 14, 2016

Good afternoon. Thank you to the House Foreign Affairs Subcommittee for giving me the opportunity to share my story with you today. My name is Chris Brann. My son, Nico, was abducted from Houston, Texas, and taken to Brazil by my ex-wife three years ago in July 2013.

Before I begin, I would like to personally thank you Chairman Smith for your tireless advocacy on behalf of Nico and all other left-behind parents. I am extremely grateful for your unwavering support of my case and for your holding this hearing today.

Additionally, I must note that Ambassador Michelle Thoren Bond, Assistant Secretary for Consular Affairs, Ambassador-at-Large on Children's Issues Susan Jacobs, and US Ambassador to Brazil Lillian Ayalde have been involved in my son's case for many years and have expressed continued interest in seeing Nico returned home.

My son Nico was born September 14, 2009. He was a cheerful, playful, beautiful little boy – and I love him deeply.

My ex-wife, Marcelle, and I separated in 2012. While there were irreconcilable differences, one thing we agreed on was our love for Nico and our desire to do whatever was best for him. We agreed on joint custody so that both of us could be in Nico's life.

I did everything I could do to protect Nico. When Marcelle asked if she could travel with Nico to Brazil to see her family, I was hesitant. I had heard the horror stories and I was familiar with Sean Goldman's case. But I said yes – on the condition we had a Travel Agreement in place making clear that she would bring Nico home. And I knew all the Texas Court orders made clear that Nico's permanent domicile was in Texas. The law, I thought, was on my side.

I was so incredibly wrong.

In Brazil, I learned much later, Marcelle immediately filed for sole custody of Nico. In doing so, she hid from the court that we already had a joint custody agreement in Texas. These proceedings were conducted *ex parte*, and I was left in the dark until it was too late. Worse yet, it turned out Nico's abduction was premeditated. Marcelle had enrolled Nico in a Brazilian school three months earlier – a school owned and run by her family – and she had accepted a job

offer there. This meant that for months, she had been lying to me and to the Texas court when she signed the Travel Agreement. She never planned to bring Nico back.

When I found out what had happened, I again put my faith in the law, believing there was no possible way that my ex-wife's blatantly illegal abduction of our son would be allowed to go unchecked. I immediately filed a claim under the Hague Convention on the Civil Aspects of International Child Abduction and challenged the Brazilian court order of sole custody.

That was three years ago. Today, there is no end in sight.

In July 2015, a Brazil Federal Court issued its final decision under the Hague Convention. Presiding Judge Arali Duarte wrongfully found that Nico was "well-settled" and refused to order his return. Under the Hague Convention, that exception to prevent a return can only be invoked by a judge if the left-behind parent waited more than a year to file their case. I did not. It did not matter that he was stolen from his home in Texas. It did not matter that there have been ten independent assessments demonstrating that I am a loving father, including from the Brazil Central Authority, Brazil's Office of the Attorney General, a Brazilian court-appointed psychologist, and Judge Duarte herself. It did not matter that the only precedent Judge Duarte cited to justify her action was an old decision in the Sean Goldman case, which was later overruled by the Brazil Supreme Court. It did not matter that Sean Goldman had been back in New Jersey for more than five years.

I am now looking at years of more appeals. Meanwhile, the State Court in Brazil that gave my ex-wife sole custody has refused to revisit that decision. It has even issued further rulings on custody, visitation, and child support. It is beyond belief to me that Brazilian courts are rewarding Marcelle for illegally abducting my son.

There have been some small steps forward. The Government of Brazil agrees that Nico was abducted and must be returned to the US. In January, based on a request from the Federal Bureau of Investigation, INTERPOL issued a Yellow Notice for Nico, declaring him missing. And the Brazil Prosecutor General has opened two investigations – one criminal and one civil – into Marcelle's wrongdoing. But despite these developments, Nico is still not home – and there are no prospects he will be returned anytime soon.

Today, I only see Nico less than one percent of the time, and only in the presence of armed guards. When I do see Nico, it is painfully clear that I'm losing my son. He doesn't speak English anyone and he won't discuss even the most innocuous things about his current life such as what subjects he likes in school, who his friends are, or how much he likes to play soccer. Whatever I ask, he responds like a robot: "Mommy doesn't want me to talk about that."

These have been the three longest years of my life. I am fighting against forces larger than myself, with deep pockets and even deeper political influence in a foreign country. My former father-in-law Carlos Guimarães is the CEO of a global multinational company ED&F Man Brasil, whose headquarters are in London. The Federal Judge in Brazil noted in her ruling that he helped facilitate my son's abduction – using company resources, he had his assistant at his company book plane tickets for Marcelle and Nico to make it appear like they were returning to

Texas, even though he knew they were never coming back, as only a few days earlier the judge in Brazil had granted Marcelle sole custody. Repeated requests for answers from ED&F Man by my counsel have gone unanswered. Perhaps this Committee or journalists here might ask ED&F Man why company policy allows their executives to use company resources to abduct children across international borders.

Brazil's disregard of its international obligations and the unwillingness of our own government to use maximum resources at its disposal only add to my intense pain. While I am grateful that the State Department has been engaged on my case, I am incredibly disappointed that it has failed to take any action against Brazil for its persistent non-compliance with the Hague Convention for more than a decade. I cannot understand how Brazil is allowed to continue to flaunt international law so blatantly without any repercussions. The Goldman Act provides eight different options to the State Department, up to serious trade sanctions. In Brazil's case, we have used only one: repeated "demarches." This has about the same level of force as a post-it note stuck to a window. Unless Secretary Kerry fully utilizes the Goldman Act's arsenal, the legislation is meaningless.

More can be done. More has to be done.

I will never give up on Nico. I implore my government to not give up on him either. Nico is a US citizen. He should be home in the US with his family who loves him. I urge you, President Obama, Secretary Kerry, and Ambassador Jacobs, to act in my case and that of all left-behind parents as if our children were your own. I need your help. Nico needs your help. Please find a way to bring him home.

Thank you.