

NO ABDUCTED CHILD LEFT BEHIND: AN UPDATE ON THE GOLDMAN ACT

HEARING

BEFORE THE

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

OF THE

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WEDNESDAY, APRIL 11, 2018

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 2:00 p.m., in room 2200 Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the subcommittee) presiding.

Mr. SMITH. The hearing will come to order, and good afternoon to everybody. Thank you for being here.

I would just like to make one introduction. Sue Kiley, who's the mayor, now deputy mayor of Hazlet, and her husband, three decades on the police force as well as number two there, is also with us today.

I want to thank them for joining us and would like to thank all of you for being at this hearing, which is one of a large number of hearings we have held on child abduction and pretty much a series on it.

And, of course, we will be focusing on this afternoon a continuing and excruciatingly painful crisis of international parental-child abduction and what the Trump administration can and must do to stop it.

As many of you here today have experienced, international parental-child abduction rips children from their homes and whisks them away to a foreign land, alienating them from the love and care of a parent and the family that has been left behind.

Child abduction is child abuse and continues to plague families across the United States and, really, around the world.

According to the U.S. Department of State and their statistics, almost 800 children are today held hostage in a foreign country, separated from their American parent.

Several hundred additional children join their ranks each and every year. If past is prologue, only 16 percent of these children will be returned to the United States.

In 2014, Congress adopted legislation that I wrote known as the Sean and David Goldman International Child Abduction Prevention and Return Act, Public Law 113150, to change the status quo.

Its template was the Trafficking Victims Protection Act and the International Religious Freedom Act, and on the former I was the author of that.

Frank Wolf authored the International Religious Freedom Act and what we did was come up with ways of holding countries to account, and then prescribing a series of increasingly strong, or stronger, sanctions to try to change the behavior of offending countries.

Since 2014, we have seen the reduction in new abductions of children but not an increase in percentage of returns of ongoing cases. Despite the new legislation, the State Department has persistently refused to use the return tools contained in the Goldman Act as envisioned by Congress.

Moving beyond letters and meetings, the Goldman Act is an enforcement tool for the Hague Convention on the civil aspects of international child abduction and leverage for return agreements with non-Hague countries.

The Goldman Act takes the lessons again from not only other legislation but from the successful return of Sean Goldman from Brazil and lays out actions like delaying or canceling of one or more bilateral working meetings or state visits, the withdrawal limitation or suspension of U.S. development, security, or economic support assistance and extradition.

To my knowledge, extradition has been used only once and the other options not at all. The Obama administration said in the past that sanctions will not work.

But in one case where sanctions were employed by Congress, they worked, and they've certainly worked in other programs both domestically and internationally and, frankly, all of our civil rights laws have enforcement that includes significant sanctions and that has worked as well.

The inaction by the Obama administration has been noted and challenged. On February 14, 2017, 1 month into the new Trump administration's tenure, Japan's Minister of Foreign Affairs, Kishida, noted in the Diet discussion of abduction that, and I quote him, "Until now, there is not a single example in which the U.S. applied the Goldman Act sanctions toward foreign countries."

He went on to note that, "According to the United States, Japan is not included in the category of the noncompliant countries." In other words, no fear. Hasn't been used, will not be used, and Japan is off the list.

Three days later, the Osaka High Court overturned a return order for the four American children of James Cook, who will be testifying today, in flagrant violation of the Hague Convention, Japan's own Hague implementation guide, and U.S. law.

The court has reopened the case because Mr. Cook has moved into an apartment after the enormous legal bills from years in court in Japan.

When did sharing a bedroom with a sibling—and this is something that has become part of his concerns—become a grave risk to a child's physical or psychological wellbeing? It's not, and yet that now is being thrown in his face.

I believe and I urge the new administration to do more on behalf of these parents and especially on behalf of these children.

At least 300 to 400 children have suffered abduction from the United States to Japan since 1994 and more than 35 currently wait

reunification with their American parent. Most of these are left over from the previous administrations.

In almost all cases, the child is completely cut off from contact with the left-behind parent. Most have aged out of the system without ever being reunited with their left-behind parent and, of course, then that's a closed case.

Some parents have won in court only to find that Japan's law enforcement could not return their children unless the taking parent agreed to abide by the decision and the taking parent did not.

That is underscored in James Cook's testimony today, if I can find it. It certainly will make the point and it's worth repeating what he will be telling us shortly.

Numerous enforcement attempts have been made in Japan using all legal means of enforcement—talking about his own case—starting in February 2016 through September 2016. All attempts were unsuccessful.

At the heart of Japan's enforcement articles for Hague is required voluntary compliance from abductor for enforcement. When abductors says no, the enforcement ends. In contrast, if we were to go to see our children in Japan without permission, I risk arrest and being held for 23 days in jail before any changes need to be filed, after which I could be denied entry into Japan in the future.

This is just one example he points out of systemic deterrents against left-behind parents attempting to have a relationship with their abducted children or effectuate foreign court ordered returns.

So enforcement, even when the courts do the right thing, enforcement stands out like the sword of Damocles that says there is no way you're getting your child to come back.

The systemic non-enforcement of access and return orders is so bad in Japan that 26 EU countries recently issued a joint demarche to Japan asking Japan to fix the problem.

Although non-enforcement has plagued many U.S. cases, the U.S. did not join in that demarche. However, in the upcoming Goldman report, the U.S. has the chance, the opportunity, to hold Japan accountable for its failures in the Cook case as well as so many others, like that of the Elias children taken from my home state of New Jersey after their mother obtained duplicate passports from the Japanese consulate in contravention of a judge's order in New Jersey.

The report can and must better reflect the reality of the child abduction issue and the suffering of American children separating from their American parent every day in Japan.

According to the Goldman Act, the country can find itself on the noncompliance list and eligible for sanctions if the country regularly fails to enforce return orders in Japan.

The State Department should also put the country on the list if the judiciary fails to properly apply the Hague Convention, as we have seen in the Cook case in the past.

Finally, a country should be put on the noncompliance list if 30 percent of more of the cases in the country are unresolved or cases that have been pending for more than a year.

Notably, the definition of an unresolved case makes no mention of a country's Hague status. In other words, all of the cases that began before Japan's ascension to the Hague Convention and that

were communicated to the Japanese Government should be counted against Japan.

No child should be left behind. We received assurances from the State Department years ago as they myopically pursued Japan's ascension to the Hague Convention, knowing that the convention would not cover the existing cases grandfathered out of more than 50 children that they would not leave these children behind—that they would find ways to resolve those cases.

How many of these children have come home 4 years later? How many have even had access to their left-behind parent. Almost zero.

The Goldman Act directed the State Department to develop an agreement with Japan for the previous children that were already abducted. The Goldman Act made a way for the State Department to hold Japan accountable for these cases.

Four years later, we have no agreement, no MOUs with Japan for these cases. We have no action against Japan for these cases or current cases and we have yet to see the department even list Japan as noncompliant in the annual report.

Every day these children are separated from their U.S. parent the damage compounds. It's bad in the beginning. It gets worse, gets worse, then gets even worse.

As the State Department's own 2010 report on compliance with the Hague Convention on the civil aspects of intentional child abduction observes,

“[A]bducted children are at risk of serious emotional and psychological problems. Research shows that recovered children often experience a range of problems including anxiety, nightmares, mood swings, sleep disturbances, aggressive behavior, resentment, guilt, and fearfulness.

“As adults, individuals who have been abducted as children struggle with identity issues, personal relationships, and experience problems in parenting their own children.”

We must do better by our children. We must not leave any abducted child behind. Congress is currently looking at new ways to put pressure on countries with low resolution rates, like Japan, Brazil, and India.

Last year, I introduced H.R. 3512, the Bindu Philips and Devon Davenport International Child Abduction Return Act of 2017, to amend the generalized system of preferences system so that any country named as noncompliant would use their trade benefits.

The loss of trade preference would be automatic and not dependent of the administration choosing to apply sanctions. Currently 11 of the 13 noncompliant countries receive trade benefits from the United States. That has got to change.

In addition, I am working on a bill that would limit H-1B and other business visas for countries that have low abduction resolution rates and, again, that would affect Japan, Brazil, and India, among others.

We have 13 egregious long-term cases pending in Brazil including Dr. Brann and Davenport cases. More than 90 American children were separated from their American parent in India. India

will not even appoint a person to receive the applications and they have refused to join the Hague Convention.

We asked in our hearing last year when is enough enough. We hope that the State Department will do its job and implement the Goldman Act robustly.

We hope the Trump administration will be different than the last administration. But we are—so I do—would like to yield.

We are joined by Dr. Harris of Maryland and I thank you for being here. I'd like to now introduce our first witness. We have two panels today, beginning first with Ms. Suzanne Lawrence, who is the new Special Advisor for Children's Issues, having assumed the role late last year.

Ms. Lawrence has previously served as the Deputy Chief of Mission at the U.S. Embassy in Athens, Greece, and as a Senior Advisor for the Assistant Secretary in the U.S. Department of State's Bureau of Consular Affairs.

Her career at U.S. Foreign Service has given her a wide breadth of experience to apply to child abduction cases and we are very grateful that she's here and look forward to her tenure in office, and without objection her full resume will be made a part of the record.

Ms. Lawrence, the floor is yours.

STATEMENT OF MS. SUZANNE LAWRENCE, SPECIAL ADVISOR FOR CHILDREN'S ISSUES, OFFICE OF CHILDREN'S ISSUES, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Ms. LAWRENCE. Thank you.

Chairman Smith, other members of the subcommittee, thank you for the opportunity to speak about the work we do to prevent and resolve international parental-child abduction. My written statement, which I ask to be entered into the congressional record, provides—

Mr. SMITH. Without objection, so ordered.

Ms. LAWRENCE [continuing]. Comprehensive review of our accomplishments and challenges. I will highlight the most critical of these in my opening statement. Allow me first to take a moment to thank Ms. Patricia Apy and Mr. James Cook for their commitment to our shared objectives.

I also want to acknowledge the parents who are here today and who work to resolve their cases with my colleagues in the Office of Children's Issues.

I have had the pleasure of meeting many of them in the past 7 months. My colleagues and I are encouraged by the continued interest and support from the American public and from Congress. As we advocate on behalf of the children and parents affected by the heartbreak of abductions, congressional involvement and oversight are unique tools we can use in our diplomacy.

The 1980 Hague Abduction Convention remains one of the best methods for resolving abduction cases. Over the past 10 years, more than 4,500 children have returned to the United States.

Further, the existence of the convention's return mechanism has deterred an untold number of abductions, and we are heartened to

see the number of new abductions reported to the Department of State has declined by more than 60 percent over the past 10 years.

Allow me to mention three examples of the effectiveness of the convention. From 2014 through 2016, 95 percent of abduction cases to the United Kingdom, one of our biggest partners in terms of cases, closed in less than 1 year.

In Mexico, our largest convention partner, more than 73 percent of abduction cases were closed within 1 year, and more than 340 children returned to the United States from 2014 through 2016.

And in Japan, there has been a 46 percent decrease in reported abductions since 2014. There is additional detail on the convention's successes in my written statement, and these outcomes underscore our goal to encourage all countries to join and properly implement the convention.

The Sean and David Goldman International Child Abduction Prevention and Return Act has supported our efforts to promote accession to, and implementation of, the convention.

For example, since 2014, seven countries that previously did not adhere to any established protocols to resolve abduction cases have acceded to the convention, and we are in the process of moving toward partnership with some of these countries.

We have also welcomed five other countries into our community of convention partners, which now include 77 members committed to the shared purpose of resolving child abduction.

In countries where the convention has not been embraced, we turn to other tools. Non-convention cases are extremely complex, and we work with left-behind parents, interagency partners, and foreign counterparts to resolve those cases.

Since my arrival in September of last year as the Special Advisor for Children's Issues, I have traveled the Hague, to India, to Japan, and to South Korea to personally engage in elicited cooperation.

In India, I urged the government find a resolution for the many abducted children located there and for India to join the convention.

In Japan, I raised our concerns about the enforcement of convention court orders and also urged the Government of Japan to find a resolution for the children involved in pre-convention cases.

In South Korea, I addressed potential areas of improvement in their handling of convention cases and explored opportunities to strengthen multilateral efforts to advance the convention in that region, and at the Hague, I worked with the Hague Permanent Bureau and representatives from dozens of member countries to improve implementation of the convention around the globe.

The act has also bolstered our ability to manage a robust prevention program which continues to be a key priority.

In 2017, we enrolled over 4,000 children in the Passport Alert program, which is a 13 percent increase from the previous year, and thanks to the act, the department continues to meet biannually with the Interagency Working Group, which has had a daily direct impact on preventing abductions and has improved the U.S. Government's response to combating abduction.

In conclusion, Mr. Chairman, please be assured that the act has significantly reinforced our work to address international parental/child abduction around the world.

We constantly strive to increase our effectiveness and always look for ways to collaborate with our partners, including you, Members of Congress, who have committed so much time and energy to addressing this very important and urgent issue.

Thank you, and I look forward to answering your questions.
[The prepared statement of Ms. Lawrence follows:]



DEPARTMENT OF STATE
STATEMENT
OF
SUZANNE I. LAWRENCE
SPECIAL ADVISOR FOR CHILDREN'S ISSUES
BUREAU OF CONSULAR AFFAIRS
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL
HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS

HEARING
ON
APRIL 11, 2018

Chairman Smith, Ranking Member Bass, and distinguished Members of the Subcommittee
– Thank you for the opportunity to be here and address you today.

My colleagues and I welcome your continued interest in the work we do to prevent and resolve international parental child abductions (IPCA). We recognize the importance of your efforts to advocate on behalf of the families affected by the heartbreak of abductions. We look forward to our continued collaboration on our shared goals of preventing abductions, expeditiously resolving cases, and strengthening and expanding our partnerships under the 1980 Hague Convention on the Civil Aspects of International Child Abduction (Convention).

The tools you gave us in the Sean and David Goldman International Child Abduction Prevention and Return Act of 2014 (the Act) are critical to aiding us to leverage our diplomatic engagement with countries, and we are getting results.

I would like to start by recognizing my hard-working colleagues in the Bureau of Consular Affairs at the Department of State. They advance the foreign policy goals of the Department by assisting thousands of U.S. citizens affected by political crises, natural disasters, abuse, mental illness, and crime in all parts of the world. The Office of Children's Issues (CI) in the Bureau of Consular Affairs, which serves as the U.S. Central Authority for the Convention, leads the U.S. government's work in attempting to prevent and aid in the resolution of hundreds of international abductions each year. In 2017, the Office of Children's Issues opened cases for almost 500 children who were reportedly abducted by a parent from the United States to another country or retained in a foreign country.

Overall, our efforts are a success story. In the past 10 years we assisted in the return of over 4,500 children to the United States. Further, we believe the existence of the Convention's return mechanism deterred an untold number of abductions. In fact, the number of new abductions reported to the Department of State has declined by over 60 percent in the past ten years. However, there are still many cases where the children have not been returned. Many of these cases, in some countries, pre-date the entry into force of the Convention between the country and the United States. I want to assure you, Mr. Chairman, and Members of Congress, that we are redoubling our efforts and looking at all available options to resolve these cases.

Each day we work tirelessly both in the United States and at our embassies and consulates abroad on behalf of children involved in IPCA cases. Our dedicated staff perform welfare and whereabouts checks, help locate missing children, and issue passports to children returning home.

Diplomatic Efforts

Much of the day-to-day diplomatic engagement on abduction matters is handled by country officers in the Office of Children's Issues. Our team of experts, based here in Washington, is continuously in direct touch with foreign counterparts abroad and embassies in Washington, and our U.S. diplomatic missions overseas.

We work with parents, counterparts in foreign governments, and the interagency to help resolve individual IPCA cases. Each country, like our own, has its own judicial system, law enforcement entities, and cultural and family traditions. We tailor our strategy to deploy the most effective approach toward resolving each abduction case, including facilitating a child's return to their country of habitual residence or parental access to children.

As we elicit cooperation from foreign governments on abduction cases, we actively encourage countries to become party to the Convention, which, in addition to being the best option for parents seeking the return of their children, is also the best means of ensuring that countries share the same objectives for resolving IPCA.

Since his confirmation last year, Assistant Secretary for Consular Affairs Carl C. Risch has personally raised IPCA in bilateral meetings with the governments of India, Brazil, and Indonesia. I can assure you that Assistant Secretary Risch is highly engaged with the issue and raises IPCA at every available opportunity both in Washington and overseas.

In February of this year, I traveled to India to encourage government officials there to resolve the numerous abduction cases they have, and for India to join the Convention. Although India is not party to the Convention and has demonstrated a pattern of noncompliance as defined in the Act, I believe, based on my recent trip, and due to persistent engagement on IPCA from other officials, India is beginning to work with us to find practical solutions for children who are abducted between our two countries.

Also in February, the Director of Children's Issues, Ted Coley, traveled to South Africa, Botswana, and Zambia with a member of CI's Africa team. As partners under the Convention, our meetings with South Africa's Central Authority, and other government offices served to strengthen our relationship and promote the Convention in the region. The visits to Botswana and Zambia were to determine the viability and development of accession to the Convention and partnership under the Convention, respectively. All three countries positively received the visit, and we came away with optimistic messages and a plan for forward action in the region.

In addition to my work and the work of CI, our embassies and consulates around the world play an important role in addressing IPCA. From the highest levels within our embassies to the dedicated staff of American Citizens Services sections, our colleagues abroad work tirelessly to raise the profile of this serious issue while advocating for local laws to assist parents seeking their children's return to the United States, accession to the Convention, and effective implementation of the treaty.

In 2017, we welcomed Fiji as our 76th partner under the Convention, and we welcomed Jamaica's, Pakistan's, and Tunisia's accession to the Convention. Our work, therefore, in 2018 has been to build on this success and strive to bring additional countries into the Hague community.

Our goal is to see abducted children returned to their communities as quickly as possible and in accordance with the Convention.

The Annual Report on International Parental Child Abduction 2018

Since 2007, we have reported the impact of IPCA around the world. Our 2018 Report will be released soon. We continue to strive to not only meet the requirements of the Act, but also to provide useful information to parents, courts, and organizations to help prevent and resolve these heart wrenching cases. We have taken feedback from previous years and are committed to providing a valuable resource to the American public. We believe the 2018 Report will be a responsive and helpful tool for all stakeholders.

Continued Efforts for Resolutions

Despite the progress made, there are families that continue to suffer as their children are wrongfully removed or retained across an international border. We continue to use all appropriate tools to help facilitate the resolution of abduction cases globally.

The judicial delays that affect most of our Convention cases in Brazil are unacceptable. First instance courts often take one to two years to make determinations, and the appeals process can add years to the life-cycle of a case. We raise these issues publicly and with senior Brazilian officials whenever appropriate. In 2017, we continued our persistent efforts to resolve cases and improve compliance throughout the year. The Brazilian government also undertook initiatives to improve judicial compliance with the Convention. Over the last year, several of our long-standing cases were resolved; the Brazilian judiciary facilitated the return of four children to the United States, and ordered access agreements for three other children. We are pleased by this progress and will discuss it further in our upcoming report.

In our 2014 testimony to the Senate Foreign Relations Committee we stated that while “Japan has been one of the most intransigent countries regarding IPCA cases for many years, Japan’s decision to ratify the Convention opens a new chapter in its approach to IPCA.” As we have reached the fourth anniversary of Japan’s becoming party to the Convention, I would like to share with the Committee my candid view of the strengths and weaknesses we have seen in Japan both as a Convention partner and in regards to abductions that occurred before the Convention came into effect. Prior to joining the Convention, Japan was historically resistant to the idea that access to both parents is usually in a child’s best interest. As a result, Japan had a wide cultural and legal gulf to cross when it ratified the Convention.

Over the past four years, we established a close working relationship with Japan’s Central Authority and have regular discussions with our Japanese counterparts about steps we can take to improve the resolution of IPCA cases. We have seen many positive developments in Japan. There was a 46 percent decline in the number of new reported abductions to Japan in the three years after the Convention came into force compared with the previous three years. Japan made significant efforts to educate its citizens and government officials to prevent abductions. We have also seen a significant improvement in the resolution of abduction cases. Since the Convention came into force, we submitted 18 applications for return to the Japanese central authority. Of these, nine were resolved by voluntary arrangements between the parents and five were resolved by judicial decisions. We are also aware of four additional cases where the parents reached a voluntary agreement prior to an application being submitted to the JCA.

In spite of all of these positive developments, there is a serious flaw in Japan's implementation of the Convention. When a taking parent refuses to comply with a return ordered pursuant to the Convention, Japanese authorities have very limited means to enforce the order. In 2017, we had two cases in Japan that were unresolved for over twelve months as a result of the failure of Japanese authorities to enforce return orders. This is unacceptable and I am deeply concerned that, as a result, there is a pattern of Japan not complying with its obligations under the Convention. I am personally engaged on this issue with the Japanese government. I urged them to create a mechanism ensuring that judicial orders will be enforced in a timely manner. While this issue remains unresolved, I am pleased to report that there is progress.

The Government of Japan is reviewing its enforcement procedures, and recently, the Japanese Supreme Court ruled that a taking parent's failure to comply with a Convention court return order violated Japanese law, constituting the illegal detention of the child. As a result, it appears that Japan's civil courts can apply habeas corpus measures to compel the return of a child to the United States. While these are hopeful signs, we will not rest until Japan's enforcement system is fully compliant with Convention obligations.

Regarding the abduction cases that occurred prior to Japan's ratification of the Convention, we have met regularly with the Japanese Foreign Ministry to review these cases and see where there are opportunities to resolve these cases. Here again, there has been progress, but also disappointment. Since Japan ratified the Convention in 2014, more than half of the left-behind parents in pre-Convention abductions cases achieved some form of access to their children. The remaining cases are some of the most difficult and heartbreaking cases that we have. In the international arena, custody orders entered by State courts in the United States are generally not enforceable outside the United States, and the reach of the United States may be limited by decisions of separate sovereign states and their independent judiciaries.

In all of the pre-Convention cases, we continue to support the left-behind parents and their children to the best of our abilities. Each case is different, and each person must decide what steps make the most sense in his or her case. Their options may include criminal measures, mediated solutions, and legal action in civil court. We work tirelessly to bring mediation and legal resources to left-behind parents, and with our colleagues in law enforcement to resolve cases where criminal charges exist. With remaining pre-Convention cases in Japan, we stand ready to support parents when they decide what steps are right for their families.

Prevention

Fighting for individual returns is not enough. Getting a child back can be infinitely harder than preventing the abduction in the first place, so we have made prevention a cornerstone of our efforts. From a child's first U.S. passport application, we work to prevent children from becoming victims of international parental child abduction.

In 2017, we enrolled over 4,000 children in Child Passport Issuance Alert Program (CPIAP) and helped enroll over 200 children in the Department of Homeland Security's program aimed at preventing IPCA. In both cases this represents an increase and for CPIAP, a 13 percent increase,

over the prevention services we provided in 2016. We work with U.S. and foreign law enforcement agencies, airlines, and others to prevent children from being unlawfully removed from the United States. Our prevention officers are available around the clock and through our broad public affairs campaign, we encourage parents to reach out to us for information that can help thwart abductions before they happen.

The Department of State works closely with U.S. Customs and Border Protection (CBP) to help ensure that parents who have court orders prohibiting the international travel of a child can request assistance from CBP and U.S. law enforcement to prevent outgoing abductions.

Conclusion

Mr. Chairman, Ranking Member Bass, distinguished Members of the Subcommittee, the Act has significantly reinforced our work to address the complex problem of IPCA.

In our efforts to return abducted children to their places of habitual residence, we are using all effective means available to us under the law. This is our mission. The Department of State weaves our concerns about IPCA into our diplomatic discourse with nations around the globe. We remain convinced that the Convention's framework is a worldwide standard and we continue to encourage new countries to accede to the Convention. Where that may not be an option, we continue to use all available tools to encourage the resolution of abductions through persistent diplomatic engagement, an approach that has produced results with many countries around the world.

We appreciate the tools provided to us, including the option of actions provided in the Act. We take actions based on the conclusions of the Annual Report and on the Act, and take action any time we consider it to be timely and effective. We frequently deliver demarches and discuss cases with senior government officials in countries that have demonstrated a pattern of noncompliance. These are very frank conversations, and we are adamant that each country be aware of the importance of this issue and, when appropriate, point out the possible consequences provided in the Act. For example, Tunisia was cited every year since the passage of the Act. We consistently held frank discussions with all levels of government, including the President, on the importance of resolving cases and joining the Convention and used the tools within the Act to demonstrate the seriousness we place on these actions. In 2017, as a result of sustained diplomacy, all open abductions were resolved with the return of the children to the United States. Additionally, Tunisia acceded to the Convention. We will report on our continuing engagement with foreign countries in the follow up Action Report.

We constantly strive to increase our effectiveness and always look for ways to collaborate with our partners, including you, Members of Congress, who have committed so much time and energy to addressing this very important and urgent issue.

Thank you.

Mr. SMITH. I thank you so very much.

If I could, Ms. Lawrence, if you could tell us—you said you raised with India and Japan, other countries. What was India's response when you raised it? When you spoke in Japan not only about Hague cases since they have become—acceded to it but all the pre-Hague cases, the legacy cases, what was their response? What did they say they were going to do and did you do it by name? Did you raise specific cases?

Ms. LAWRENCE. Thank you for that question, Mr. Chairman. I'll start with India. So I was in India in February, and I met with a number of staffers before I went to India to discuss some of the issues that we have had.

When I was there, I was joined, of course, by the team at our mission there, and I know that that has been a concern previously to have our chiefs of mission, our Ambassadors engaged, and I can assure you that Ambassador Juster has taken this onboard from the time he arrived to take up his responsibilities there through today, and he will continue to advocate on behalf of the families that are, tragically, affected by this issue.

He had meetings with Minister Gandhi, who is the head of India's Ministry for Women and Child Development, and when I traveled to India it was, hopefully, to build on some of the momentum that we felt the Indian Government was showing with regards to accession to the convention and also with the willingness to work with us on those pre-convention or the current cases.

I met with a range of individuals. I was in Chennai. I was in Delhi. I spoke with the attorney general for India. I spoke with members of the judiciary. I spoke with Minister Gandhi at the Ambassador's residence.

I spoke with opponents to the convention, proponents of the convention. It is an issue that we will not stop advocating for.

We have engaged with—as you know, the Chandigarh Committee was the committee that the Indian Government put together to investigate a recommendation that they would make to the Indian Government about accession to the convention.

We have spent several hours answering questions with the Chandigarh Committee. I spent another hour-plus with the Chandigarh Committee via digital video conference, again addressing some of the myths that persist about the types of cases we are talking about and also about what the convention actually means.

So we did have a range of meetings. We had them at the highest levels of the government. Ambassador Juster has raised this at the highest levels of the government, and we are told that they are still considering accession to the convention.

With respect to the cases that we have now, we have offered to the Indian Government to sit down and meet on all of those cases individually and, again, in my conversations I have emphasized that if we sat down and looked through all of those cases, that in and of itself would inform them of the scope of the problem and perhaps open up some areas where they could work productively to resolve some of these cases.

Without the convention or any other protocols in place for these cases, the parents are left to pursue their custody of abducted chil-

dren in the Indian courts and typically the resolution of custody cases in India has been slow.

Indian courts generally do not order the return of abducted children to the United States, and in general, custody is given to the taking parent and the parents are left really to pursue their matter in the court system which has not been a very effective method.

So that is the short answer of my time spent there. I believe you also asked about Japan. In my travels there, again, I will say that Ambassador Hagerty has also been very engaged in this issue.

He has raised this issue at the highest levels appropriate to him in the Japanese Government. I have myself met—I've been in this position for a little over 7 months. I've had four occasions to meet with the head of the Central Authority in Japan.

And while, as I did in my opening statement, I have acknowledged that the number of cases has gone down since Japan acceded to the convention and that we have a very productive working relationship with the Central Authority, there are still problems with enforcement of judicial orders.

When you cannot enforce those orders, it undermines confidence in the system and it does not bode well for the future of the convention with respect to Japan.

So I met with, again, the Central Authority there.

I met with the Ministry of Foreign Affairs to talk about the pre-convention cases. They are well aware of which cases those are.

We meet regularly with them to review that they have the correct cases that we consider to be open pre-convention cases and, again, we are in some—to some degree stymied by the fact—and I know the parents who are affected by these pre-convention cases are reluctant, under the convention, to even file an access case because they also feel that in the instance where there might a judicial ruling that would give them some sort of access that the enforcement of that ruling also would be ineffective or not take place.

So I have made those concerns known. The Ambassador has made those concerns known. We also met with the officials from the Indian Embassy and the Japanese Embassy here in Washington to deliver those same messages.

Mr. SMITH. What's your take on the Foreign Minister saying how did the department respond to his comments that they are not going to be put on the list of noncompliant countries, there has been no enforcement, no sanctions meted out as they should be?

You know, when a country shows such a pattern of noncompliance, the decision to enforce it ought to be almost automatic.

There can be mitigating circumstances. We all know that. But in Japan's case, they are gaming the system. And so your answer to that, and also Mr. Cook's comment about the required voluntary compliance from the abductor for enforcement to occur, when the abductor says no he will write and say enforcement ends.

That seems to be—I have to say when the previous administration kept arguing that if they just signed the Hague our problems will go away and the legacy cases would take care of themselves.

There would be a good will that would be generated and would lead to resolution and not resolution by way of aging out so it's no longer a case that we look at.

I traveled with Mike Elias' mother and father to Japan, raised all of these issues and said, look, to me it seems like the nose on my face it's so stark, looking in the mirror.

You can't get away from it that, one, the past cases will be treated with even more prejudice than before if they sign the Hague and that when they get to enforcement they are going to do it in a way that it's like Swiss cheese and it won't happen.

All of that has happened. I am not a prophet, but it seemed very clear from the conversations and from their past very quickly becoming a prologue.

So this idea of required voluntary compliance from the abductor for enforcement, to me, that's outrageous that a country, a great country like Japan, would use that kind of impediment.

That makes all the Hague cases, you know, moot. It's going to be, you know, a voluntary—you know, yes, you can have the children back. So why do you even need the Hague except for a nice backdrop to say, look, we have got a treaty and a convention.

So if you could speak to those two, and again, when you talk about Michael Elias, one of the concerns that many of us have had, and we have this with several of our left-behind parents, as you know, these are military men and women who are deployed to Japan for the defense of Japan in Okinawa, in Yokohama, and other places.

And then their child was abducted and then they ran into this buzz saw of opposition from a government that if Japan isn't put on the noncompliant list this year, I can't tell you how egregious that will be not to see that happen, and then followed very quickly thereafter with serious sanctions.

You know, if President Trump—because Obama wouldn't do it so let's lay that aside—and I found that to be outrageous—but if President Trump can levy sanctions on China and talks sanctions, NAFTA—renegotiating NAFTA on economic issues and if our aluminum industry and steel and other things are so important, which they are, how about for people, for American children who've been abducted.

That, to me, is in a class of its own, a league of its own, and there needs to be—if ever there was an America first, this looks like this is one of them—it's the children. It's their parents.

So I would appeal to you because it starts with what your findings will be and then, obviously, it goes up the chain of command as to what they finally do.

But it seems to me it's a no-brainer. It's been a no-brainer. This year it's got to be.

Ms. LAWRENCE. Thank you, Mr. Chairman.

We share your concerns, as I said, about Japan's failure to enforce convention court orders and in many of my meetings I don't only talk about the convention writ large or the issue of parental-child abduction.

But I do take it to that personal level. As you have referred to, these are people, these are their lives, and people need to be reminded that for someone who has not seen their child in a day, a week, a month, years, this is a life or death matter.

This is a very important life-altering event, and we owe it to all of these children, all of these families, to continue to press where we need to press.

When a Japanese parent—taking parent refuses to comply with the return order, we have found that Japanese authorities have very limited means to enforce the order and we have worked to broaden the discussion to different parts of the Japanese Government.

But it will require some changes in their domestic legislation to give law enforcement the kind of power you're talking about in terms of enforcement.

And we have—we have raised our concerns about enforcement failures at the highest level. This year, the relevant entities across the Japanese Government have heard our call to take a whole-of-government approach, and they have brought others to the table, and we have had a chance to talk to those agencies about the needed legislation to improve their enforcement of court orders.

With respect to citations, we can't, of course, discuss the individual country citation before we give the report to Congress and it's published.

But I can assure you that we have had a number of conversations about how those decisions are made and enforcement of convention court orders is a component of the Hague Convention.

Your compliance with the convention also depends on your enforcement of court orders, and the department will most certainly take into account Japan's enforcement failures in this year's ICAPRA report.

Mr. SMITH. Patricia Apy, who is the brilliant lawyer who was the lawyer for David Goldman—the American lawyer who just did a wonderful job in helping to make his reunification with this son, Sean, possible, she's testifying today and in her comments notes, and I'd appreciate your reaction to this, prior to the enactment of the treaty—this is regarding Japan—parents who had pending abduction matters were sent from time to time urgent time-sensitive updates, repeatedly promised that the Hague ratification would enable them to at least secure access to their children. The promises were entirely illusionary.

Now, those memos came from OCI, and I am wondering, how do you respond to that? I mean, here's what the parents tell me, and I meet with so many of them.

They get frustrated. They know that there are good people working—you and the others are wonderful people. But you do have the tools with the Goldman Act and it seems like those tools stay in the toolbox.

We were just talking about access here, not even reunification and bringing those children back home.

Your thoughts on that?

Ms. LAWRENCE. Thank you, Mr. Chairman.

We have already discussed a little bit about the pre-convention cases. But, again, we do continue to work with the parents who are—there are approximately 20 pre-convention cases that remain active and we work with the left-behind parents to see which methods or avenues they might have available to them.

As I said too in my written statement approximately half of those left-behind parents have achieved some access. It's limited. Sometimes it's a Skype call. Sometimes it's an exchange of letters and gifts.

We know of one parent who has had an in-person visit. Going back to what we just spoke about, if you're a parent, that's your child, is that adequate?

That is not adequate. However, we continue to press, again, on this enforcement issue because I think a lot of parents are put off by the idea that even if they pursued an access case under the convention, their sense is there may be no effective mechanism to enforce the court order for access.

And so, again, what I am saying to you here about access, about these parents, about their disappointment, is what I have said to Japanese officials and we will continue to say that, and I appreciate your support in carrying that method forward.

Mr. SMITH. Well, again, putting Japan on the list and then enforcing it with sanctions will send the message that none of our words can possibly achieve.

So that the Foreign Minister, so that the Prime Minister cannot, in their meetings, or even as he did before the Diet, claim accurately that there has been non-enforcement and they are not on any list.

I can't stress that enough. It would be negligence of the highest degree to leave them off the list, given their track record, which is abominable.

I mean, if this were reversed and the U.S. was doing this, I could tell you I'd be holding hearings on that and pressing our own Government to, in the sense of reciprocity and good governance, to hold ourselves to account.

And what we do in not putting them on the list has bearing with what the judges will do when they get a case before them. They will say, well, I guess Japan's not so bad.

And what's your sense on that? So it's not only is the risk factor to a potential abduction very high if the judges get the wrong information about a specific country, including Japan.

Ms. LAWRENCE. Thank you, Mr. Chairman.

I've had a lot of opportunity to consider the efficacy of the report in and of itself as I travel around, as I meet with other countries, and it's a really powerful tool. The convention is a powerful tool. The report is a powerful tool.

As far as I am aware, we are the only country that produces a report like that, and I know what you mean by sanctions, but I can say that in my meetings very often the foreign counterparts will bring the report up.

And I agree with you that the citations in the report can have very positive effects in terms of the actions that a country will take.

Sometimes it takes a while. But I do think that the report is an extraordinarily valuable tool and for some countries they believe they are being sanctioned by having their—the citation in the report.

And, of course, beyond the citations there are narratives in there that really talk about performance and countries are very keen to see how that will be characterized in the report.

So I do believe that we have some tools at our disposal that are very meaningful to these countries.

Mr. SMITH. Ms. Jayapal.

Ms. JAYAPAL. Thank you, Mr. Chairman. Thank you for having me here. Thank you for having this hearing and I want to thank you for your years of work on this important issue.

I think we all understand that there are many of us that are deeply concerned and we are grateful to the State Department for your efforts over the years and I want to especially just recognize the families in the room that some of you have traveled.

I know, as a mother, I cannot imagine the pain of what you have gone through and I want to thank you for continuing to be here and continuing to push for us to resolve these situations to bring children home to their—safely into their loving families.

I was introduced to this issue—I am new to the issue but I was introduced to it by my constituent, Jeffrey Morehouse, who has been fighting for the return of his kidnapped son, Mochi, since Father's Day of 2010, and that was the last time that Mr. Morehouse saw or heard from his son.

And despite having custody of his son under Washington State law since 2007, a mutual agreement with his ex-wife that she would not travel outside of the state or get a passport—an agreement that the United States is actually Mochi's home country—that was all outlined in this agreement—and the jurisdiction for any custodial dispute, Mochi was still abducted.

And Mr. Morehouse even took the preemptive step of notifying all of the Japanese consulates and their Embassy in the U.S. in writing that he was the custodial parent and requested that they deny any requests for a passport for Mochi.

However, in June 2010, as you may know, his ex-wife was provided a passport for their son by the Portland consulate so he went over our state's border into Oregon. He was provided a passport after being denied one by the Seattle consulate and in 2014 and 2017 Mr. Morehouse then went and actually defended successfully his custodial rights in Japan where the courts ruled that his U.S. sole custody order is legal in Japan.

His ex-wife has twice been denied custody rights under Japanese law and during proceedings she admitted to committing passport fraud and forgery in order to abduct Mochi to Japan.

Mr. Morehouse is the executive director of Bring Abducted Children Home. He's come to Washington, DC, over a dozen times on his own case and the more than 300 U.S. children that have been kidnapped to Japan since 1994 when the Office of Children's Issues was formed.

And yet for nearly 8 years he's been shuttling back and forth between Seattle and Japan all in vain, and there have been some small victories but really nothing that has resulted in his actually reuniting with his son.

And so I just wanted to follow up on the chairman's questions and I apologize if you said some of this before I walked in the room.

But my understanding is that we have provided in the Goldman Act a number of steps that can be taken and, obviously, the first of that is, you know, using the diplomatic channels.

But there are others, and they go all the way up to formal requests to the foreign country to extradite somebody. But there is other things around an official public statement that details the unresolved cases. I guess that's our report.

I don't believe we have done a public condemnation in any of these situations but perhaps you can educate me if we have, and I guess I am just—it seems clear to me from reading these, and I am, as I said, new to the issue but it seems clear to me that voluntary is not—is not going to produce the results we are looking for and that we can continue using diplomatic channels and we should. But we have provided other tools here for the State Department to utilize.

And so I am just wondering what brings this issue to the threshold where—because we have already crossed the thresholds that are outlined in the Goldman Act, as I read it, and so how—what can you do differently to ensure, for example, that Japan is going to reunite Mr. Morehouse's son because I—my deep concern is that the more these different countries see that the United States is not using the tools, the easier it gets for these countries to continue to just say, well, we will just work through diplomatic channels, which really means nothing would move forward.

And so if you can just help educate me about how you see that. What is the threshold to move from one step to another within the tools that we have given to you and what can we possibly tell our families about what we are going to do differently than what we have been doing because, clearly, that has not produced the results we are looking for.

Ms. LAWRENCE. Thank you, Congresswoman.

Again, with respect to Japan, as the chairman has pointed out, we pursued their accession to the convention—Mr. Morehouse's case is, clearly, pre-convention—and we have seen a result since they acceded to the convention in terms of a reduction in the number of reported cases and a resolution to the 2014 and beyond cases.

We have actually, as a Central Authority to Central Authority, filed 18 cases with the Japanese Central Authority, and we have had resolution in 14 of those 18 cases. These are convention cases.

Most of those have come through this voluntary mediation process. Again, we understand that enforcement of judicial orders is a failure, and it is something that we continue to work on.

The Central Authority doesn't have, it seems, the power or authority to make changes that would make enforcements work, which means we have had to broaden—ask them to bring other people to the table.

We do consider all the tools we have at our disposal, and we do that with our interagency partners and try to use the best tool at the best moment on a case-by-case basis.

I hear your concerns about the use of the other tools, and we continue to speak with our interagency partners and the rest of the department who clearly have interests in our bilateral relationships with many of these countries, Japan included, and we know

that we have those tools at our disposal and consider them when we think they will be effective.

Ms. JAYAPAL. So what would—what would move—what would move the threshold in order to use those tools? I am still not clear on that, because I understand you're discussing with other agencies and maybe you could describe that a little bit more which are the agencies and departments that you routinely work with and are there some that have not engaged that need to be engaged?

But I am just trying to understand what would be done differently now that has not been done before, because it's very difficult for us to go back to our constituents who actually have gone through everything that they could possibly go through, both here in the United States and, in some cases, in the country where their child has been abducted to.

What more do we need to do to ensure that you utilize those tools and crossed that threshold from just pure diplomatic advocacy?

And I do—I just want to, you know, echo and recognize the work that you all have done. I think you have made tremendous progress in a number of places and particularly on those post-convention cases.

But I feel like some of these—some countries are hiding behind that specific date and we are not getting resolution.

Ms. LAWRENCE. And again, I think, Congresswoman, that from many countries' point of view, citation in the report would be considered a serious step, and it has resulted in some profound changes in many places.

As I said, we wouldn't be able to talk right now about what citations will appear in this upcoming report, but we have had a number of conversations with our Japanese counterparts explaining our frustration with the lack of momentum on enforcement of orders.

And in the case of Mr. Morehouse, because I've had the opportunity to meet with him a number of times, we have—the characterization of the history of his case is something that we have directly spoken with them about.

So, again, we do our best to use the tools at our disposal. I don't have a specific answer for you on what the threshold is. We are one voice, one part of the conversation, and I will take back certainly the frustration from Members of Congress on not utilizing the full range of tools.

And we do feel that we are getting results from a lot of our engagement, certainly from the annual reports and certainly from the engagement by our chiefs of mission including Ambassador Hagerty.

They are the President's personal representative in that country and the chief of our bilateral relationship with that country, and I think their voice on these issues carries an enormous amount of weight.

So we are working in the avenues that we think will produce the best results, and I take on board your point that you believe that there may be results from the use of other tools.

At this point, the tools that we have employed and continue to employ have shown some results.

Ms. JAYAPAL. You mentioned earlier that Japanese authorities—I think I wrote this down—Japanese authorities have very limited means to enforce the orders.

That seems to me to be—you know, if they are saying that I think it feels a little perhaps not fully forthright—that there are many more things that could be done and it seems to me that if they need to hear that this is critically important to us that that's where that list of tools—and I don't want to continue to harp on this point but I just think that at some point we need to move down that list.

Otherwise, the act is not really being implemented the way I think the chairman and others had envisioned when we put it into place because it is working on some but I think we need to really look at that whole piece and I hope you hear our frustration in not seeing, particularly on certain cases that have been in process for a long time, not seeing any results there and not having anything to advocate for our children.

Ms. LAWRENCE. Thank you, again, for that question and also for expressing that level of dissatisfaction with the progress to date because it is useful when we sit down and talk about the lack of enforcement.

Again, I think when the United States Government was pursuing Japan's accession to the convention we understood that there was quite a gulf in terms of the cultural norms and the way in which Japanese society viewed custody, and we knew that there would be a period of adjustment.

When I say law, the Japanese Central Authority or the Ministry of Foreign Affairs is limited and also law enforcement is limited.

It's the perspective of how they carry out these kinds of judicial decisions, and we have spoken about that, and I think the chairman referred to a letter earlier that a number of the EU countries sent.

Again, there is nothing in existence even in their domestic law about these kinds of enforcements of judicial decisions with respect to custody that are useful at this moment and that's why, you know, we continue to implore them to look at ways to put into place domestic legislation that would also have an effect on these international cases and it's something that we continue to talk about and raise at every opportunity.

So thank you again for sharing your perspective with me and your frustration on that level. It is helpful when we are talking to our counterparts to explain that this is felt throughout the U.S. Government and it is on behalf of our citizens and our—and your constituents that we bring these matters to their attention and ask that they do something to resolve the problem.

Ms. JAYAPAL. Thank you, Mr. Chairman. I yield back.

Mr. SMITH. Thank you, Ms. Jayapal.

Let me just note for the record, and I know you know this, Jeffrey Morehouse has done it by the book. He is so disciplined, like so many of the left-behind parents, dotting every I, crossing every T.

He testified in May 2015 before our subcommittee—very, very comprehensive testimony he made. So thank you for raising his case.

I'll go to Dr. Harris in 2 seconds—as you may know I am the author of the Trafficking Victims Protection Act. That has sanctions on it.

When Israel and South Korea, two of our closest allies, had—were deemed to be Tier 3 egregious violators on human trafficking—they were worried about security assistance and other assistance, but particularly security assistance, being limited in some way.

They change their laws. They enforced, in the case of Israel, existing law and they shut down the brothels and came into compliance within 1 year.

Sanctions work, and if Japan doesn't get it through your persuasion—and I thank you for trying so hard—it is time to lower the boom, please, with respect, and say, you have failed utterly.

These longer-term cases are egregious. These families are broken, and security assistance, as you know, in the Goldman Act is one of those sanctions that can be levied upon a country.

Dr. Harris.

Mr. HARRIS. Thank you very much, Mr. Chairman, and thank you for giving me the opportunity to be at today's hearing.

And Ms. Lawrence, thank you for the work you do because, you know, there is some things where Americans have to look to the Federal Government as their one and only hope.

There is just some issues that they—the Federal Government is the only thing that's going to solve their problems and this is one of those issues.

So and we probably, you know, move a little broader than just Japan but, obviously, the Goldman Act lists a series of escalating actions that the State Department can take when an international child case—abduction case remain unresolved.

But I am curious—just to run down some of these things to see if, you know, what tools in the toolbox have been used, has the State Department cancelled or delayed any state visits, bilateral working groups, or other official visits in response to any unresolved abduction cases in any country?

Because that's one of the tools in the toolbox and that—you know, that seems like a pretty simple tool because some of these nations I think need a bilateral working relation.

So has the State Department done that in any case?

Ms. LAWRENCE. I've looked through the list of tools—thank you, Representative Harris, for raising that. I am sure that there have been some meetings or other events that may have been canceled, but I cannot speak to the fact if they were canceled directly related to the issue of international abduction.

So I would have to go back and really—

Mr. HARRIS. If you can get back to me, that's fine. And, you know, I sit on the Appropriations Committee so, you know, we want to make sure that American taxpayer dollars are spent appropriately and according to the law, including the Goldman Act.

So has the State Department limited or suspended U.S. development assistance in response to any unresolved abduction cases since the act was passed 4 years ago?

Ms. LAWRENCE. I am not—I am not aware of us having used that particular aspect of the act.

Mr. HARRIS. Okay. How about foreign assistance?

Ms. LAWRENCE. Again, I am not aware of any instance where we have suspended foreign assistance in relation to the act.

Mr. HARRIS. Okay. Even though you, clearly, have the ability? And the Appropriations Committee has never, you know, said you have to do it. But you've had the ability over the years, right?

Ms. LAWRENCE. Correct.

Mr. HARRIS. What about security assistance, which I think the chairman has spoken about in terms of Japan? But there are other countries where that is important.

Ms. LAWRENCE. Again, I am not aware of where we have used that.

Mr. HARRIS. Okay. The reason I am asking that is because one of my constituents, Stanley Hunkovic, has been fighting for the repatriation of his children since 2011. It's a case, by the way, that's mentioned in your annual report.

His children, Gabriel and Anastasia, are American citizens who were abducted by their mother, Leah, and they are currently wards of the state in Trinidad and Tobago. So the issue of noncompliance with orders is kind of rendered moot because they are actually wards of the state.

Now, he's not been able to see or speak to them in years and until very recently the State Department could not even confirm the children's whereabouts, much less their wellbeing.

And that's despite the fact that, again, the Goldman Act has been in place going on 4 years now. Can you commit to me today that the State Department will use any and all means at their disposal to pursue the return of any and all abducted American children, including Gabriel and Anastasia Hunkovic, from any country to which they've been abducted including Trinidad and Tobago?

Ms. LAWRENCE. Thank you, Mr. Harris, for that question and thank you for your interest in his case. I know that one of—several of my colleagues will be meeting with you later this afternoon to discuss with you the latest developments in that case.

Of course, this is a pre-convention case. Trinidad did join the convention, and we have had a productive relationship with them which, of course, does not take away from the pain that your constituent has expressed to you as he has worked through this very difficult situation.

I absolutely will pledge to you that we do look at all the tools available. We will continue to consult with you. We will continue to consult with our interagency partners, with all of the stakeholders in the Department of State and use the tools that are most appropriate to get the best result.

Mr. HARRIS. Well, let me—and thank you. No, thank you for that and, yes, I have met with people months ago and there is still no resolution.

Of course, pre-convention is irrelevant because the Goldman sanctions apply to that case regardless of whether it's pre-convention or post. Am I correct in that assessment?

So that is—that makes no difference whatsoever, and the—these children—it's now 7 years since they were abducted. They are wards of the state.

The state actually has the legal authority over them. So I just don't understand and, again, I can see where, you know, compliance with orders and things like that are different in other cases.

In this case, Trinidad and Tobago has the ability to decide what's best for these children consistent with international law and have not.

So is it going to take literally an act of Congress in an appropriations bill to get you ramped up through the escalating sanctions that can occur in some of these countries that the State Department has been unwilling to pursue despite—again, this a 7-year-old case.

You can only bang your head against the wall so many times til you realize you got to try something else. Is that what it's going to take?

I mean, I'd like to think the State Department is going to use the tools in the toolbox. But, honestly, we have gone down the list.

You know, cancelling state visits—you know, that's not—I mean, I know it's something that would get someone's attention but said you don't—you're not sure if that's ever even been done.

These are serious cases and I am sure the State Department takes them seriously. But I am not sure you use all the tools, and, I mean, we have the same tools, to be honest with you.

I mean, we can limit anything we want to do because these are American taxpayers. Is that what it's going to take?

Are you really honestly going to say look, we are going to look at cases like this—7-year-olds, wards of the state. We have tried everything with Trinidad and Tobago. Seven years gone by.

You know, that developmental assistance that you have been getting from us, which I am sure goes a long way in your country or that foreign assistance or that security assistance, I guess you just don't need it.

Ms. LAWRENCE. Thank you, Mr. Harris, again for bringing attention to this case in this venue.

I know that my colleagues look forward to speaking with you a little bit more deeply later this afternoon to go through whatever options might be available to Mr. Hunkovic.

It is a long time. As we have said before, these are not just issues. They are people and they are their children and it's their lives and we take—we take that with us every time we go into these meetings.

I know that you have had conversations with our Embassy there. I know you've had conversations with our office in the Western Hemisphere Bureau. I know you've had conversations with my colleagues in the Office of Children's Issues.

We are all working together to try and find a way forward and I hope that we will find a way to help resolve this case. It has gone on too long.

Mr. HARRIS. I couldn't agree more. I thank you. All that—my point is, I guess, it may be time for conversations to end and, again, if we need to apply the tools that the State Department is unwilling to apply, I am more than happy to do it for Gabriel and Anastasia and with that, I yield back.

Mr. SMITH. Thank you very much.

Just a few follow-on questions and then Ms. Jayapal has some additional questions as well. As you know, India is the country with the most long-standing abduction cases in the world.

It has for many years been unwilling to join the Hague Convention. Close to 100 American children there are denied access to their American parent and suffer years in India's family court system.

We have numerous left-behind mothers in the United States who suffered both domestic violence from their husbands as well as abduction of their children to India.

Ruchika Abbi and Dr. Samina Rahman are among them. They continue to suffer for lack of a resolution mechanism in India.

Earlier this year, H.R. 3512, as I mentioned in my opening comments, was introduced. It would remove countries like India from GSP benefits until India begins to work cooperatively to resolve the abductions.

Do you think an additional bill might limit India's H-1B visas until abducted U.S. children are returned would also be helpful?

Ms. LAWRENCE. Thank you, Mr. Chairman. Thank you for mentioning the mothers who are left-behind parents.

When I was in India, again, part of that narrative and part of the effort to unravel some of the myths surrounding international parental child abduction is that the taking parent is always the mother, and as we know, there are a number of mothers who are the left-behind parents.

So that was, in part, as I suggested would be a useful lesson in going through all of the cases one by one to start looking at what patterns are really there. I think what you will find is that the pattern is that people know that they have a safe haven and we have made that known.

And I think the only way out of this, as we have said, is to at least accede to the convention. I know we have discussed this with respect to Japan.

It won't cover the pre-convention cases in terms of returns, although there would be an access issue, but in the meantime to find a mechanism, whether that's a memorandum of understanding, whether that's a working group.

We put all of these things on the table. We advocated for them. I think there is a lot to be gained by sitting down and looking individually at these cases and seeing what more can be done than to force the left-behind parent, whether it's a mother or a father, into the Indian court system where they are not going to see a resolution.

So, you know, again, I hear the range of tools that you are talking about. We are—we are willing to sit down and talk with you about what your ideas might be.

I don't know if our colleague from the Indian Embassy is still here. He was before. I can't see out the back of my head. But I hope that he has also heard a lot of these comments and will take that back to the Embassy today.

Mr. SMITH. And Bindu Philips from just outside of my district has a very similar case. Her husband not only—and the local police have reported this accurately—not only did he steal, she tried to visit her children.

It was not a good experience. We are very concerned about this and if India is, again, not on the list, which I believe it will be, there needs to be a sanctions regime.

I can't stress it enough. We do it to our best friends in trafficking. We can do it with our best friends when American children are abducted.

Let me ask one final question. Nico Brann was abducted to Brazil 5 years ago by his mother, Marcelle Guimaraes, with the help of her parents, Carlos and Jemia.

In February, the parents were arrested in Miami, as you know, and then indicted by a Federal grand jury for international parental-child abduction and conspiracy.

They now face 8 years in prison if convicted. But Marcelle, a dual U.S.-Brazilian national, remains a fugitive at large in Brazil with Nico.

Under the Goldman Act, the Secretary of State has the authority, as you know, to ask for her extradition. While Brazil's constitution forbids the extradition of Brazilian nationals, Brazil could denaturalize and extradite her just like they did in another case this year involving a dual national who was indicted for allegedly murdering her husband in Ohio.

Given this precedent, will the U.S. now request that Brazil denaturalize and extradite Marcelle Guimaraes to the United States to face similar criminal charges?

Ms. LAWRENCE. Thank you, Mr. Chairman.

I haven't had the opportunity to let you know that I'll be traveling to Brazil in a couple of weeks and many of the issues that you raised about Brazil will be on our agenda.

Of course, as you know, a request to return a child under the convention is separate from the filing of criminal charges against a parent, and criminal charges are not generally initiated in order to influence the outcome of the civil matter.

Mr. SMITH. But as you know, it's already been done toward the grandparents.

Ms. LAWRENCE. Correct. And we remain in contact with the Department of Justice and I would have to defer to the Office of International Affairs there to speak on extradition because they do have lead on extradition.

Mr. SMITH. Could you make that request or at least an inquiry as to whether or not this process can be followed?

Ms. LAWRENCE. We will certainly—we will certainly follow up with the Department of Justice on this particular case and the issue, more broadly, and get back to you, of course.

Mr. SMITH. Ms. Jayapal.

Ms. JAYAPAL. Thank you, Mr. Chairman.

I just wanted to—I forgot that I wanted to raise, and perhaps the chairman did in his opening statements, but the statements of the Japan's—Japan's Minister of Foreign Affairs, Fumio Kishida, who observed recently that—and this is his quote—until now, there is not a single example in which the United States applied these actions, and he's talking about the Goldman Act sanctions, toward foreign countries.

And then he went on specifically to note that we had not labeled Japan as noncompliant, and 3 days later the Osaka High Court overturned a final return order for Mr. Cook's four children.

And so I just wanted to reiterate that and ask you whether—how you read that comment, because to me that comment goes back to what I said in my opening statement, which is that we are not being taken seriously.

Nobody thinks that we are actually going to do anything with the tools that have been provided, and I think that's extremely harmful because I do think that it also affects what happens in these courts in—around these cases in these various countries.

And so I'd be interested in how you read that comment and what do you see as the—as the remedy to the idea that the United States is not actually going to do anything about these cases.

Ms. LAWRENCE. Thank you again, Congresswoman, and thank you for raising Mr. Cook's case. I know he's on the next panel and, again, in his case he did everything right.

So, again, we have made that point to our Japanese counterparts. I don't know the context with which the Foreign Minister spoke.

I don't know why he chose to say what he did. I am not going to answer on behalf of the Japanese Government. I will leave that to them.

What I can say is that when we have discussed their failure on enforcement and the shortcomings in terms of compliance with all aspects of the convention, we have discussed citations.

We have discussed the full range of tools available, and I think there are many people that I have met with, certainly that Ambassador Hagerty has met with, that we have met with here in Washington who do understand the severity of what we are talking about.

So, again, I can't answer for that comment specifically. I don't know why that comment was made or in what context. But I can say that the people that I have met with have heard our message and, again, I thank you for this time to speak about all of this openly and publicly.

I think, in my almost three decades of serving the United States and working as a diplomat both here in Washington and overseas, we are most effective when we speak with one voice and when people know that we are serious and together on the issue.

And so I appreciate the opportunity to have this dialogue and hope that this will reach some of our colleagues so they understand the seriousness with which Members of Congress view this issue.

Thank you.

Ms. JAYAPAL. Thank you.

But I think I know why he said that, because it is true that Japan has not been designated as noncompliant. Do you think that there is a high likelihood that Japan might be designated as noncompliant?

Ms. LAWRENCE. Thank you.

Again, as I stated earlier and I think I've said a couple of times, I have been very clear with the head of the Japanese Central Authority and with all of the people that I have met with who have told us all of the things that they have done as a Central Authority

and as a country to be a good partner under the Hague Convention and also to address pre-convention cases.

My response has been we appreciate the development of the Central Authority. We appreciate whatever they have done to be a good partner.

However, when we are looking at the full measure of their performance we must take note of the fact that they cannot enforce the court orders, and what we have said previously—and that gets to this comment—is that it undermines the confidence that people have in their seriousness with which they approach the convention.

And so, again, there is no mistaking what we think about that aspect of their performance and, hopefully, they understand where we are.

Ms. JAYAPAL. Thank you, Ms. Lawrence. I am going to yield back.

But I do think it also undermines our credibility on—and our seriousness. It's not just the Japanese Government's seriousness. It's the United States' seriousness about how we approach these cases.

And so I recognize that yours is a very challenging position and a very difficult job, and but I think what you're hearing is we would like to see our seriousness reinforced around these cases.

We'd like to bring these children home, and we'd like to make sure that the governments that we are interacting with understand that we do mean that.

Ms. LAWRENCE. Thank you, Congresswoman. We have many shared objectives.

Mr. SMITH. One just final question. As you know, we have talked a lot about enforcement or the lack thereof in Japan.

Another threshold for a country being found noncompliant is judicial decisions inconsistent with the Hague Convention. As we will hear from Mr. Cook next, the courts in Japan reversed the final return order in his case because they thought it would be bad for the children to live in an apartment in the United States.

Do you believe this public decision by Japan is consistent with the Hague Convention's exception to return Article 13-B, grave risk of psychological or physical harm or an intolerable situation? How Japan's de novo best interest determination here affects future cases? I mean, it's an awful precedent but I'd appreciate your thoughts and response.

Ms. LAWRENCE. Thank you, Mr. Chairman.

I think that one of the areas that we work on very carefully is education through seminars, through workshops, through exchanges of information, through our Hague network of judges.

We have had many discussions with many partners about the exceptions in the convention and the use of those exceptions. Again, I think Mr. Cook did everything he could in the correct way, and so, we do look to improve always the consistency of the decisions over time and the application of the convention.

That's the purpose of the convention. And, I also would mention, because this case has gone on for some time, that the purpose of the convention is to bring a quick resolution.

It's to return the child to the country of habitual residence unless the case falls within those very specific exceptions. That's the purpose of the convention.

As you mentioned at the outset, time is not a good thing in these cases. This is not to our advantage for the child, for the family, for anybody.

And so again, we are looking for application of the convention, correct implementation. We are looking for speedy results. That is in the best interests of all the people involved in these tragic circumstances.

And so, I have heard your concerns, and we share your concern for—

Mr. SMITH. But publicly on the issue of living in an apartment, and the only reason he lives in an apartment is all the money he has spent in adjudicating this case—paying the lawyers' fees and everything else.

So he's been drained by the process and now that's used against him by a court in Japan. Do you find that outrageous?

Ms. LAWRENCE. As I said, Mr. Chairman, Mr. Cook did everything he could and—

Mr. SMITH. But it's not a viable—

Ms. LAWRENCE. We have pointed that out to—

Mr. SMITH [continuing]. Point for Japan to take, is it?

Ms. LAWRENCE. Correct. We went and talked specifically about this case as well. Again, we are looking for consistent implementation of the convention, which will give people confidence in the convention and that's to everyone's advantage.

And, again, these should be speedy resolutions. The children should be returned to the case of—to the country of habitual residence, and the courts are the place to properly decide custody of children. It is not a unilateral action by one parent. That is not the way to do this.

So thank you again for those comments and that will be helpful to us.

Mr. SMITH. Just for the record, could you tell us how many cases were resolved last year in Japan?

Ms. LAWRENCE. I don't have the exact number. As I said, I only have a number from when they acceded to the convention.

We, as I said, had filed 18 cases officially.

Mr. SMITH. How many children does that—

Ms. LAWRENCE. And I don't know the total number of children affected but 14 of those cases were resolved. Again, they were resolved through voluntary means, perhaps mediation. None were resolved through enforced court orders.

Mr. SMITH. None were resolved. So, again, all the more reason why, in neon lights, Japan isn't on the list.

I remember in the journalism class, the first one I took—and I wish it was followed by many of our journalists today—was the three A's of journalism—it's accuracy, accuracy, accuracy. Get the book right.

I mean, what we do in terms of what you do, because you do have discretion in terms of following the prescribed potential sanctions. Reasonable men and women have to decide what is the best way to get from here to there.

By just stating the clear truth with the backdrop of the Goldman Act as the criteria, I don't see how Japan can be anywhere but is my complaint.

Thank you. I appreciate your testimony and your service.

Ms. LAWRENCE. Thank you very much.

Mr. SMITH. I'd like to now welcome our second panel, beginning first with Patricia Apy, internationally well known expert, an attorney practicing international and interstate family law.

Among many countries in which she has litigated, been an expert witness or served as a consultant on international family disputes are the United Kingdom, Brazil, the United Arab Emirates, Italy, Pakistan, Australia, India, Japan, South Africa, Israel, Lebanon, and Canada.

She is frequently sought out by both family law attorneys and litigants nationwide to serve as an expert co-counsel in their own state courts on international matters. Notably, Ms. Apy is an attorney—was the attorney for David and Sean Goldman, successfully resolving the 5-year abduction case with Brazil with Sean's return to the United States in 2009.

Ms. Apy consulted very broadly with us, provided expert counsel while we were writing the Goldman Act and I am forever grateful to her for that, which passed into law and is now the subject of part of this implementation hearing.

I'd also like to introduce Mr. James Cook. As the father of four children, two sets of twins, who were abducted and are in Japan. At this time, he has only been allowed one visit with his children and has not been allowed any access to them since August 2015.

Mr. Cook works for Boston Scientific Corporation, a manufacturer of medical devices in Minnesota. Mr. Cook testified before this committee before twice during his ordeal, beginning with the—begging, asking, appealing to the State Department to take action.

Ms. Apy, the floor is yours.

STATEMENT OF MS. PATRICIA APY, INTERNATIONAL AND INTERSTATE FAMILY LAW ATTORNEY, PARAS, APY, AND REISS

Ms. APY. Thank you, Chairman Smith and distinguished members of the committee. It's a privilege to return.

My first testimony before the subcommittee in support of the Goldman Act was actually in 2009. So I've been living with this act and its implementation, particularly in the context of private practice since that time.

I would respectfully request that my written statement be included in the formal record.

Mr. SMITH. Without objection, so ordered.

Ms. APY. Thank you.

I had the opportunity to listen to the prior testimony and I think it would be most helpful if I addressed some of the issues and the questions that were raised at that testimony from a practical perspective.

The very first thing that I want to say is that the work of this subcommittee in—which went on for a number of years with extensive hearings with a great deal of work, created an act which has had an immediate impact on the prevention of child abduction.

The report that was—that is a strong part of the act was actually opposed by the United States Department of State along with the body of the act when it was originally preferred.

The opposition was that it would not be effective, that it would—that it would be met with a response diplomatically that would not foster the return of children, that it was not consistent with the abduction convention.

All of those criticisms proved to be untrue. In fact, the number that you've been given for the reduction in the amount of cases of child abduction is a direct result of American judges who have had the opportunity to review the report and to make a determination whether asked by individual parents for preventative measures to make a determination objectively based on that information as to whether or not there exist obstacles to recovery of children systematically in a country. This is without necessarily consideration of the individual characteristics of the parties.

So, for example, if a judge is looking at a report and it indicates that there is a noncompliant state, the judge then knows that there needs to be a broader and more protective aspect of parenting and access protections, which is why language is so important.

One of the things what concerns me about the report and concerns me about the testimony that we have heard today is that language has been used very loosely, and I want to point out some of the places so that this committee can appreciate it and consider it in some of the questions that have been raised in some of the legislative actions which may need to be taken.

First of all, you keep hearing the word resolved—cases are resolved. Let me remind the committee that the—under the convention—we are talking about convention cases—there is one remedy that is provided with respect to an abduction and that is return.

The Hague Convention does not address custody. It doesn't address jurisdiction. It addresses the return of a child wrongfully removed or retained outside of the child's habitual residence.

With respect to the organization of rights of access, there is one remedy. It is that there is an identifiable opportunity for actual access between a parent and their child.

In the reports that went along with the original identification of the organization of rights of access, access was supposed to be the ability of a child, for example, to return and visit the other country of the parent, whether it's a left-behind parent or a parent in a case in which the parties just live in other countries.

That's not what you're hearing in either the testimony or in the reporting. When you hear resolution, a careful follow-up question is how many returns have there been, and the answer is there have been none.

When you're asked how many—what are the—there was a reference to half of the cases that were filed when Japan ratified the convention, providing an opportunity for access.

The careful follow-up question, and I believe I did hear some response to this, is that the access that provided is not an identifiable access order.

It might have been one Skype call. They are including the definition of access the ability to send packages to a child without any contact whatsoever. Nothing in the convention contemplates that as access.

So the first piece that has to be addressed is that the report has to be accurate because an American judge had to know that in fact

there is no ability to obtain an access order if a child is retained in Japan, for example. There is no ability for a U.S. order in any state to be provided an opportunity for enforcement.

The Hague Abduction Convention is a reciprocal treaty which, of course, means that both parties have to be signatories, have to have provided the responsibilities under the treaty and to afford those responsibilities.

It is not a situation in which you can merely assert a treaty is applicable whether or not it is actually—there is actually been any type of treaty relationship.

I need to point out that in the written remarks that you've been provided there is reference, for example, to a number of countries and work on the part of the Department of State with respect to those issues.

I have to caution that that information is inaccurate. In fact, Jamaica, Pakistan, and Tunisia have deposited their accessions with the Hague Conference but their accessions have not been accepted by the United States Department of State.

So there is no treaty relationship right now that exists with respect to those countries. With respect to Fiji, I agree that we—they reference it as having been welcomed as a partner. But you should know that the accession was deposited in 1999 originally, and it's taken until now.

And again, that there could be very good reasons for the failure to accept the accession of a country that has indicated that they are filing it.

In the prior testimony, you heard repeated reference to Japan acceding to the convention. So we are clear, Japan did not file letters of accession.

Japan, once it ratified, became immediately affected. The United States had no oversight or—and there was no ability to accept the accession.

Why that is important is that there—the idea that they would need some time to get up to speed, as you have heard, referenced that there was no way to place any conditions or to impact on the way the treaty was going to be applied in Japan.

As I've testified in prior hearings, I was deeply concerned that Japan would ratify the treaty and what would follow is exactly what we have and that is it is in name only.

One of the most important aspects of the report has to be its accuracy and its transparency. If a country is listed as compliant, then a judge sitting in Washington State is going to look at the report and believe that a parent requesting the opportunity to visit that country will be doing so under an effective and existing mechanism for the return of the child.

Without accurate information and accurate language, it creates the impression that there is a reciprocal active relationship. Same with if we are talking about context of countries in which there are difficulties going on with their treaty partnership.

There has to be transparency about where the difficulties are even if it's a circumstance in which the State Department is reticent to list them as noncompliant. You still have to identify oh by the way, they are not going to enforce an order. They are not going

to provide rights of access. You're not going to be able to have a child returned.

That, to me, the unapologetic identification of actual issues in the report has got to be—has got to be the number-one issue that the United States Department of State does as it addresses and provides the information in this report.

The second issue that was addressed and questions were asked that I think is extremely important is accurately describing what steps are being taken when you have identified that a country is noncompliant, there are a number of standard phrases that are found in the report that are not descriptive and not helpful.

For example, talking about we are working with, we are talking with, we are trying to find practical solutions, we are working on educational opportunities are not responsive, very frankly, to the issues of the particular difficulties that you would find in the country.

For example, if we were talking about a country where the problem is the enforcement of orders where the mutual recognition of orders depended upon the nature of the problem, you might want to seek the entry of a mirror order in that country so there are orders in both places before a child is permitted to visit.

You might have additional passport and border restrictions that you would not otherwise have. There was reference in testimony to India. I think it's very important that this committee understand that India has taken a formal position against the execution of the treaty.

There is—a study was commissioned in 2009. During the time period of that study, which took a number of years, most lawyers and judges supported the India joining the convention.

However, the Indian Government, when that issue was pressed and it was provided to public comment, strongly took the position that they believed, rightly or wrongly, that the treaty would not be a benefit to their citizens.

In particular, it focused on the ability to permit, as they said, women to return to India without the necessity of having to respond or return children to their habitual residences.

That's a formal position. It's not an educational problem at this point, especially given the length of time which, of course, gets us to the systemic problem of diplomacy.

There is a reference in the—in the written remarks of the Special Advisor that is a little bit concerning and that is a reference to diplomatic efforts.

She indicates much of the day-to-day diplomatic engagement on abduction matters is handled by country officers in the Office of Children's Issues.

There is no question that country officers work individual cases. But the Goldman Act was designed to go beyond the particular issue of any individual case and to broaden the concept of fighting child abduction by looking at diplomatic tools in an objective matter.

The point is, as I've testified before, no individual parent should have to become, if you will, an officer of the United States Department of State and engaged on a state level basis in determining what the problems are with compliance or reciprocity.

I could not hear in the testimony and I am unaware of any objective process that has been instituted by the United States Department of State with respect to any of the tools as we have called them addressing noncompliant countries.

The last time I am aware of there having been any of actions like the tools that have been described were before this act was in place and that was in the case of David Goldman when, based on individual effort and effort of the chairman and effort of members of the Senate in addressing this issue.

Those elements were done from the congressional side. They were not recommended by the United States Department of State and they were not supported by the United States Department of State.

Nevertheless, they were incredibly effective in the return. When you have countries like we have had in the report since its inception that have remained on the noncompliant list, there has to be an objective process and you have to have, as Members of Congress, an objective report as to was a recommendation made that certain of these tools be employed.

And I didn't hear that there is even a process in place for OCI—Office of Children's Issues—to identify what steps they have taken and what the responses are so that you can not only address the problems with respect to your constituents but so that you can address in the committees in which you sit and the legislative determinations that you make, whether or not that is a consideration you have to have available.

In my discussions with attorneys and judges throughout the world who address these issues, particularly in countries that have been identified as noncompliant, they are almost unanimously in support of the concept that understanding that pressure will be placed upon the country on a systemic basis will make a difference in treaty compliance and will make a difference in looking at these issues seriously.

With respect to, for example, the use of memorandums of understanding, their ideal for the circumstances in which there is an educational issue, you can identify where are the problems.

You can identify what actions have to be taken and what time frame, and until they are, you can then notify judges and lawyers in the United States that there does not currently exist a reciprocal treaty relationship.

Again, when this was originally—when this act was originally addressed, the concern was that it would somehow tie the diplomatic hands of the United States Department of State.

Well, to my knowledge, since this act was—has been enacted, other than a demarche, there has been no diplomatic action taken, no requests or any objective process employed or recommendations that I am aware of for the imposition of any of the tools that you've identified.

My final point that I would like to address is the issue of border control, and I do note that in the—in the report that was provided by Ms. Lawrence, there is a reference to the Department of State working closely with U.S. Customs and Border Protection and referencing numbers.

May I tell you that the number 200 children being enrolled in the program, Homeland Security's program, which is authorized by ICAPRA, is woefully low.

We have had thousands of orders for protective measures. There are significant difficulties in getting families onto this list. The review process that's been employed with an extra step by the Department of State has been difficult. There has been a lack of communication back to judges as to whether or not children are on or off the list, creating abduction risk.

So that number is not a positive. Two hundred is woefully low. It evidences that there is a lack of implementation that needs to be looked at, seriously.

I'd be happy to take any of your questions or address any of the countries that are referenced with which I have experience that might be helpful.

[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

No Abducted Child Left Behind: An Update on the Goldman Act

Chairman Hon. Christopher H. Smith (NJ) ; Ranking Member Hon. Karen Bass (CA) and distinguished Members of the Committee, a number of which before whom I have previously had the privilege of offering testimony as you continue to confront the enormous task of preventing International Parental Abduction:

My name is Patricia Apy. As reflected in the information outlining my professional experience, much of the last three 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 who have been removed or retained to countries which either are not compliant with the Treaty obligations found in the Hague Convention on International Child Abduction, or have not ratified the Treaty. I had the privilege of working closely with those drafting the Sean and David Goldman International Parental Kidnapping Prevention and Return Act of 2014. I have, since August of 2014 worked closely with the application of the law, and have written and spoken extensively regarding the practical preventative measures initiated by the Act. I append to my remarks, "The Case for Reciprocity, Significance of the International Child Abduction Prevention and Recovery Act, in the Private Practice of International Family Law" New Jersey Lawyer October 2015, in which I provided a detailed evaluation of the legal and diplomatic components of the Act, and its impact upon the international practice of family law.

In addition to my continuing work in litigating the retrieval of children who have been wrongfully removed or retained world-wide, I have served as an expert witness throughout this country, assisting Judges and lawyers in evaluating and implementing requests for preventative measures in family law cases. It is that perspective that I hope to share in my brief remarks.

Today I wish to focus on:

- A review of how the ICAPRA, and its reporting requirements are being used throughout the United States.
- The importance of the reporting requirements of ICAPRA to the prevention of parental abduction; why accuracy and transparency are crucial ;
- Why it is essential to accurately and unapologetically identify all non-conforming states , identifying the obstacles to recovery of children wrongfully removed or retained there;
- Point out the importance of identifying precisely what steps are being taken to address any systemic difficulties that the Office of Children's Issues is encountering with any particular country;
- Advocate that the Department of State be required (as provided for in the express language of the Act) to identify the steps that have been taken to ameliorate identified obstacles to recovery and to move beyond mere *demarche* and use affirmative tools of MOUs coupled with specific diplomatic actions to influence the actions of other countries, particularly those identified as non-conforming.

To illustrate the issues I am prepared to discuss Japan, which has not demonstrated treaty compliance, yet has not been identified as a non-conforming state. To remind the committee, I have, for years, been representing Michael Elias, a prior witness to this Sub-committee, 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. 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. Mr. Elias, has not filed an application for assistance for the organization of rights of access, because there is no identified process, nor meaningful remedy in doing so.

The current status of the resolution of existing abduction cases, despite Japan's formal execution of the Hague Abduction Convention, remains particularly difficult and has a sinister impact upon the prevention of future abductions.

American Judges, if reading the ICAPRA report, may be led to believe that there is a legitimate process in place to provide the swift remedy of return of abducted children, or a identifiable process to organize rights of access for left behind parents. This is particularly important in that so many of the children, who were victims of abduction prior to Japan becoming a signator, were left only with the remedy of access petitions.

Actions of OCI/ State Department Japan Desk:

Prior to the enactment of the Treaty, parents who had pending abduction matters were sent, from time to time, "urgent" time-sensitive updates, repeatedly promising that the Hague ratification would enable them to at least secure access rights to their children. The promises were entirely illusory.

Additionally, left behind parents were encouraged that despite the ratification of the Treaty, the Office of Children's issues would "continue to raise the question of how Japan intends to resolve existing cases". While correspondence referred to "bi-lateral discussions", such discussions are hampered by the historic position of the Department of State against the use of Memoranda of Understanding or other bi-lateral agreements. No concrete steps have been

taken to address Japan's deficiency in its reciprocal obligations as provided for in ICAPRA. The lack of inclusion of Japan as a "non-conforming" state despite the failure to secure the return of children under the Treaty, sends a message that the fate of these abducted children are not of particular concern. Notably of the approximately 40 applications by left behind parents of abducted children, filed for organization of rights of access under Article 21, on the first day that applications were received by the Department of State, I am aware of no process in place to address such claims under Article 21 nor am I aware of any access in those cases being provided through a Hague process.

Conclusion:

MOUs, bilateral agreements and diplomatic sanctions must be seen as part of an arsenal available to the Department of State to address the unique legal and cultural framework of international family law. American families need to have accurate and transparent information regarding the objective obstacles to recovery of children, for both non-conforming and conforming states. This body, needs to know whether certain countries remain recalcitrant in their reciprocal treaty obligations and address accountability in order to protect American Children.

Thank you.

Patricia E Apy
Fellow International Academy of Matrimonial Lawyers
Paras Apy Reiss, PC

**STATEMENT OF MR. JAMES COOK, FATHER OF FOUR
CHILDREN ABDUCTED IN JAPAN**

Mr. COOK. Thank you.

Thank you, Chairman Smith and the committee members for this opportunity to speak about Japan, Hague compliance, and my experience in the process, and I request that my written statements be entered into the record.

When I last testified it was last April before this committee, 2 months after Osaka High Court had revoked the return order of January 2016.

In May 2017, I appealed this ruling and in December 2017 Japan's Supreme Court ruled that the Osaka High Court was correct and affirmed the order and closed my case.

A few weeks ago, the Osaka High Court cancelled the previous enforcement orders and all penalties due to me, which grew to \$132,000—\$84,000 of which at the time when the Osaka High Court originally ruled and said that I had no financial means, they had already ordered \$84,000 paid to me.

This is how Japan executes the perfect Hague abduction. After over 2½ years in this process, I have nothing. This process has cost me everything.

Japan relitigated our Hague case as a successful ploy to avoid compliance with the Hague. The Hague is specific in its intended objective—a ruling to determine habitual residence and legal jurisdiction. That jurisdiction is the venue to evaluate a child's best interest and custody. Japan intentionally conflates Hague jurisdictional decisions as custody decisions.

When Article 16 of the Hague explicitly prohibits custody determinations, the Osaka High Court's February ruling basically was a best interest custody hearing. For further details on this and other statements, please refer to my written testimony.

Japan's court system is corrupt and must not be respected by the USA. There are groups and organizations that control much of the family law in Japan. Federation of Lawyers of Japan, whose members include Yoko Yoshida, Yoriko Nishimura, and Takayo Amata is one such group.

Yoko Yoshida, vice chairman of the Committee on Gender Equality, an organ of the Federation of Lawyers of Japan, opposes Japan's ratification of the Hague Convention.

Most of the attorneys who advise and help child abduction are communists—members of Japan's Communist Party. See the written testimony for further details and evidence that communist attorneys control family courts and advocacy of abduction.

A large piece of Japan's corrupt family court system is a network of governmentally funded domestic violence shelters, referred to as Shelter Net in Japan.

An attorney, like Yoko Yoshida, will tell a woman seeking divorce and sole custody of her child, to report to a DV shelter. The shelter will receive money for this woman and child.

It is obvious this situation is ripe for collusion between federation attorneys and Shelter Net member shelters.

At the divorce hearing, applying the continuity principle, the judge rules the child is to remain with the abducting parent.

An important point about the continuity principle—it's illegal. Civil Code 766 took effect in 2012 specifically instructs judges to use abduction against a parent in determining custody.

There is no—there are no consequences for judges disregarding the law. Judges are rogue and create legislation from the bench.

The jurisprudence of judges even at the Japan Supreme Court in the Hague cases and even in Hague cases as so-called continuity principle whereby abductors keep children.

We know this principle is operative based on empirical evidence of many rulings including my Supreme Court ruling of December 2017. Taking a child permanently from one parent is crazy and inhuman.

More information on this issue is within my written testimony. As a result, Japan's Supreme Court's noncompliant ruling of December 21st, 2017, on April 6th I submitted through legal counsel in Japan a petition for impeachment to Japan's Diet of the following Supreme Court justices: Atsushi Yamaguchi, Masayuki Ikegami, Naoto Otani, who is now the chief justice of Japan's Supreme Court and his elevation is a curious, almost quid pro quo nature with relation to when my order or decision came out; Judge Hiroshi Koike, whose opinion at the end of my ruling illustrates at least one justice has a complete disconnect with the elements and the intention of the Hague; and finally, Katsuyuki Kizawa.

The 52-page impeachment petition plus supporting evidence details illegal practices by the judiciary, collusion by attorneys, and ties to politicians in Japan's Diet and details the several ways that Japan's Supreme Court's decision 2017 ruling is in direct violation of the Hague. Such wilful malpractice must only be resolved through impeachment.

This petition is available to the 26 EU member countries, Canada, and U.S. Department of State to aid in their unified efforts against Japan regarding international parental-child abduction. The original Japanese language petition is available from Kisna Child Parent Reunion, an NGO in Japan.

Japan must be held accountable. Diplomacy on this issue with Japan has not been successful for decades. More than 400 children, supported by DOS statistics, have been lost to U.S. parents in this time.

Children are not bargaining chips or pawns because their rights are non-negotiable. For reasons outlined above, including the non-compliant Japan's Supreme Court Hague ruling, Japan's corrupt judiciary, and Japan's unrepentant abduction practices, I recommend the following actions be taken.

One, placement of indefinite tariffs upon strategic Japanese imports until the following occur: A, revocation and invalidation of the Osaka High Court's February 2017 ruling and Japan's Supreme Court's December 2017 ruling, and the immediate return of my four children without delay or condition; B, criminalization of parent-child abduction to Japan; C, criminalization of denial of access to pre-Hague abducted children; D, creation of a quick legal path to criminalization and prosecution and contempt of Hague return orders that include forcible arrest of abductor, prosecution of harboring individuals, and physical remove of children by law enforcement or the left-behind parent; E, recognition and enforcement of

all previous and future U.S. court custody and return orders; and F, extradition of U.S. or court ordered persons by any means including arrest, physical force, and arraignment of harboring individuals.

Suggestion number two: The Department of State to issue indefinite travel alert in caution to parents travelling to Japan with minor children of Japanese descent due to extreme abduction risk and Japan's history of noncompliance.

This alert can be rescinded at some point when Japan shows 2 years with perfect Hague compliance. More recommendations are found in my written testimony.

Finally, Japan has ignored demarches and similar toothless diplomatic efforts for years. Japan, at its core, is an economic nation that relies on asymmetric trade. That is, they sell far more than they buy.

Effective strategies will use tactics that affect trade, not diplomatic talk. Tariffs, not talk. Deadlines, not debate. Progress, not promises.

I ask this committee and fellow lawmakers to make laws as I've outlined above. I ask judges across the United States to heed my testimony when contemplating joint custody arrangements between U.S. and Japanese parents and, certainly, any consideration of allowed travel out of the U.S. There is no such thing as a harmless vacation to Japan.

I ask President Trump to make the call, write the executive order, or take the action that returns my children immediately.

When you are with P.M. Abe next week, tell him he must do it and he will. Please refer to my written testimony for recognition of groups and individuals who have helped. I am not short on gratitude but I am limited on time before this committee.

Thank you again, Chairman Smith, and I am forever grateful for your years of work, the opportunity to speak, and most of all, I thank you for caring, which you have.

[The prepared statement of Mr. Cook follows:]

James Cook II

No Abducted Child Left Behind: An Update on the Goldman Act

04.11.2018 2:00pm 2200 Rayburn

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

Thank you Chairman Smith and committee members for this opportunity to speak about Japan, Hague compliance, and my experience in the process.

This is my third time in three years before this committee speaking about these topics. Following is a brief summary of my Hague case and status as of today. My case is an excellent example of how Japan completely fails to be Hague compliant, is systemically incapable to comply, and likely never to comply absent outside force after 4 years of Hague participation.

I am James Cook, and since August 2014, I have been working to gain return of my four minor children abducted to Japan. In July 2014, my wife, Hitomi Arimitsu, took our four children to Japan to visit her family and refuses to return. Her father is Mr. Yukinori Arimitsu of Arimitsu Industry Co. Ltd of Osaka, Japan. Mr. Arimitsu has been harboring our children in contempt of Japan and U.S. court orders.

Several civil attempts were made in fall of 2014 to spring 2015 to gain return of our children. In August 2015, with the assistance of Department of State (DoS), I submitted an Application for Return under Hague. Both USA and Japan are signatories to Hague, and Japan began implementation of Hague on April 1, 2014. DoS and Japan Central Authority (JCA) accepted my application in early August 2015. The struggle to gain our children's return from Japan under Hague began.

In October 2015, Osaka Family Court (OFC) found the proper location for jurisdiction to determine custody was Hennepin County, Minnesota, habitual residence prior to abduction, and ordered return of our youngest twins, 7 years old at the time. OFC considered the opinion of our oldest twins, 12 years old, and used the court's discretion and denied their return. This is an example that children are viewed as property, not people, with this Solomon-like division.

Both Hitomi and I appealed the OFC ruling in November 2015. Osaka High Court (OHC) affirmed OFC's jurisdictional determination (USA, not Japan) and ordered immediate return of all **four** children to USA (habitual residence) in a January 2016 order. Hitomi appealed this order to Supreme Court in Japan in February 2016 and was denied standing almost immediately. The order was final and enforceable at that moment. *Japan's legal authority shifted to enforcement of order and compliance with Hague from that point.*

Hennepin County Family Court took up this matter as part of an active dissolution case and accepted jurisdiction in comity with OHC. Hennepin County court legally substantiated jurisdiction independent of OHC ruling of January 2016. Both USA and Japan are signatories of Hague Convention on Child Abduction. As signatories of Hague, we agree to respect and

uphold court decisions made in other signatory states. There is specific language in Hague addressing comity of signatory court's rulings.

Numerous enforcement attempts have been made in Japan, using all legal means of enforcement, starting in February 2016 through September 2016. All attempts were unsuccessful. At the heart of Japan's enforcement articles for Hague is required voluntary compliance from abductor for enforcement. When an abductor says "no", enforcement ends. In contrast, if I were to go see our children in Japan without her permission, I risk arrest and being held for 23 days in jail BEFORE any charges need to be filed. After which, I could be denied entry into Japan in the future. This is just one example of systemic deterrence against left-behind parents attempting to have a relationship with their abducted children or effectuate foreign court-ordered returns.

Hennepin County Court exercised their jurisdictional authority and ordered Hitomi Arimitsu in separate orders of December 2nd and December 13th, 2016 to surrender our children to me on December 17, 2016 at U.S. Consulate in Osaka, Japan. I was present at Consulate on December 17th in compliance with the order. Hitomi did not show or communicate her intended contempt. I left Japan for the fourth time in a year without any contact with our children. I have not seen our children in person since October 2014 when I travelled to Japan to meet them at Tokyo Disneyland. All communication ceased in late August 2015, one week prior to our first Hague hearing in Osaka, Japan.

Hitomi petitioned OHC in January 2017 to modify the return order citing my dissipated financial assets during the preceding year and claimed I could not support children if returned. These types of considerations are specifically addressed in Hague as examples **NOT** to be considered and not sufficient to deny return. Nonetheless, in February 2017 OHC revoked their previous return order of January 2016. We received permission to appeal to Japanese Supreme Court (JSC) and JSC received our arguments on May 10, 2017.

Hitomi was again ordered by Hennepin County, the only court on the planet with jurisdiction over our children, on March 24, 2017 to surrender our children's passports by April 7th and release children to me at U.S. Consulate on April 23rd. She refused to surrender passports that are property of U.S. DoS. I was present in U.S. Consulate in Osaka on April 23rd and Hitomi did not comply with any part of March 24th order. I left Japan, once again, unable to see or communicate with our children.

On December 21, 2017, Japan's Supreme Court ruled that OHC's revocation was legal and affirmed. Our children are no longer ordered to be returned to USA. With this decision all my legal avenues in Japan have ended and my Hague case is concluded.

Two weeks ago, OHC cancelled all enforcement orders and financial penalties due me. Hitomi has achieved the perfect consequence-free abduction with the aid of Japan's systemic non-compliance and DoS's inaction.

After over 2.5 years in this process I have nothing. This process has cost me everything.

DoS Office of Children's Issues (OCI) has recommended I file a petition for access under Hague. If my two previous return orders were not enforceable, any order for access will be

equally unenforceable. DoS OCI has little value to any LBP of children in Japan until or unless the JSC ruling of December 21, 2017 is revoked or vacated.

Japan re-litigated our Hague case as a successful ploy to avoid compliance and DoS is complicit in the failure.

Japan signed The Hague under great pressure and domestic opposition. To assuage opponents in Japan, implementing legislation was written allowing broad interpretations of Hague language, counter to Hague's specific intent of narrow interpretations, and only civil enforcement powers, not criminal. No one will be arrested, detained, or criminally prosecuted for contempt of court-ordered return. Parental child abduction is NOT a crime in Japan. In fact, it's a court-condoned practice.

Hitomi was allowed to file an appeal for modification of return order a year after the 2nd return order due to a 'change in circumstance'. Her petition for modification was based upon factors outside of, and specifically excluded from consideration, according to language in The Hague. These considerations were financial, living arrangements, whether Hitomi could come live in USA, whether I would receive support from my estranged father, education opportunities, and in general, "best interest". It is clearly stated in The Hague that "best interest" considerations are ONLY to be decided by court of habitual residence, after return. At no time, has habitual residence, Minnesota, USA, been in dispute or reversed. Hitomi's appeal was on erroneous grounds using erroneous evidence. It was a junk lawsuit that should have been dismissed as such.

Article 19 (Hague)

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

OHC's acceptance of her appeal was a clear sign that Japan's judiciary is incapable to handle Hague cases. The three judges of Osaka High Court, 9th Civil Division; Presiding Judge Toru Matsuda, Judge Yoshinori Tanaka, Judge Takahiro Hiwada were ignorant of The Hague's most basic elements.

OHC's February 17, 2017 revocation reasoning, and JSC reasoning, violates the language and intent of Hague, and therefore non-compliant, in the following ways:

1) "**Grave risk' was never supposed to include lifestyle.** OHC used my depleted financial circumstances as an 'intolerable situation' (grave risk) to not return our children. Extensive Hague case law contradicts OHC's reasoning, including language in The Hague itself. The courts ignored over \$84,000.00 Hitomi owed me, at that time, in contempt fines ordered by OHC. Ultimately, the amount reached over \$ 132,000.00. The grave risk or intolerable situation was to Hitomi's family's fortune, not to our children!

2) **Objection of 12-year olds as valid.** Our children were alienated from me for a year prior to this interview and unable to make an accurate opinion. 12-year-old children lack the brain development to make reasoned decisions and still are mostly emotion driven. They are not old enough to understand how the ramifications of their opinions expressed in their Hague case

will cause life-long effects on themselves and younger siblings. Extensive Hague case law contradicts OHC's reasoning. In essence, OHC ignored voluminous precedent to make up this reason.

3) **Not expeditious proceedings.** The long drawn out legal and enforcement process is in direct violation of timeliness within the Convention. This one violation is grounds to dismiss OHC revocation and JSC rulings. Japan's implementation laws allow for appeals for modification until children are returned. In essence, the Japanese abductor can hold the child indefinitely to a point where temporary circumstances of LBP change to allow modification.

4) **No access to children during process.** Ability to maintain relationship with my children was destroyed. Japan's enforcement laws require the abductor's permission to access child(ren). Under Hague, I am guaranteed access and Japan was non-compliant. Japan is not capable to participate in The Hague.

5) **No enforcement powers.** This added to the delay and ultimately the circumstances for modification and revocation. At every enforcement opportunity, abductor's permission is required to proceed. The thief's permission is required for access to stolen lucre. Law enforcement's powers extend to asking the child to come with them voluntarily. Child cannot be physically touched or moved by law enforcement or left-behind parent (LBP). Japan lacks enforcement powers to participate in The Hague.

6) **Violates 'furtherance of Convention' standard.** It rewards and encourages further abductions, not discourages. The broad reading, implementation, and ineffective enforcement of The Hague language violates The Hague and is prima facie evidence of non-compliance. Even the most foundational element of The Hague is not followed by Japan.

DoS was provided frequent updates regarding my case progress and my legal concerns the non-compliant way Japan was allowing my case to progress. DoS did nothing to intervene or protest the non-compliant path Japan was pursuing. When JSC ruled and ended my case, DoS said they had sympathy for me and my children while saying there was nothing they could do. There was plenty they could have done under Goldman Act, yet they did nothing. There is plenty they can still do to force my children's return, as ordered twice under Hague proceedings in Japan. DoS is complicit with my children's continued abduction. I am left to wonder if there are grounds for an investigation into conspiracy with JCA to fail.

Japan is not compliant with Hague by any objective measure.

In the last three Goldman Act reports, Japan has avoided being designated 'non-compliant' as a result of significant manipulations from Japan and within DoS. It is my hope that this year's report will be accurate and show Japan to be 'non-compliant'.

Please do not be fooled by informational misdirection and shading of Japan's record from DoS. To this day, there has yet to be one U.S. child returned to a U.S. parent as a result of Japan's enforcement of Hague. Children that have been returned (3) to U.S. parents are the result of negotiated settlements, parental death, and factors outside of Japan's Hague laws. Over 50% of all children returned (4) have been to one Japanese parent living in Oregon. U.S. parents do not get their children back if the Japanese parent refuses to return. The irony of my case, with

4 U.S. children, is that it would make Japan compliant, no question. A recent ruling in JSC regarding the 'extreme illegality' of habeas corpus contempt - "extreme illegality" is the legal standard in Japan, not just illegal - has given a Japanese parent residing in USA a chance at another Hague return. This would be 5 of 8 children returned to USA under Hague to Japanese parents. To rephrase in metrics used by DoS, nearly 2/3^{ds} of returned children have been from Japanese parents in Japan to Japanese parents living in USA. The Hague appears to be an international extension of Japanese family law. I guess The Hague is working well enough for Japan, but not for American children.

DoS has allowed the errant Japan Supreme Court ruling of December 21, 2017 to stand, unchallenged, and as such, has provided a legal basis for all future return failures of U.S. children to U.S. parents. OCI has little value with respect to Japan abductions until or unless DoS will object to JSC ruling and demand our children's return. No U.S. child can ever be made to return from Japan with December 21, 2017 order being allowed to stand. Unless, of course, the parent in USA is Japanese.

This article describes the legal errors of the JSC ruling with links to several references: <http://conflictolaws.net/2018/japanese-supreme-court-renders-decision-on-hague-abduction-convention/>

Colin P.A. Jones has written several times about my case: <https://www.japantimes.co.jp/community/2017/12/31/issues/japans-supreme-court-hands-road-map-parental-child-abductions/#.Wki8tTT8lBM>

A well-written article by Brian Prager on his blog dedicated to his son who was abducted to Japan in 2010. <https://forruiboy.com/read-for-rui-boy/>

Japan's court system is corrupt and must not be respected by U.S.A.

A common assumption many make about most advanced countries is that our legal systems operate the same and adhere to similar legal standards. It is recognized that certain legal specialties must be compensated differently than others. For example, family law attorneys in USA are forbidden to receive compensation linked to success of a case, whereas, personal injury (tort) attorneys receive compensation linked to success. In Japan, family law attorneys are paid 'success fees' AND can receive a percentage of settlements and monthly maintenance payments. The incentive to manipulate and complicate the process is obvious.

A large piece of the family court (divorce) system is the \$1 billion budget for domestic violence shelters in Japan. A billion dollar enterprise cannot exist without robust systems and supports. Family law system in Japan has all of those elements. Following is an example of a domestic divorce process with background.

Tomoko wants to divorce her husband Niro and take the child with her, and away from him. Tomokoi, like most Japanese mothers, believe children are her unique property since they are her primary responsibility. Wondering what to do, she searches internet and finds numerous blogs that provide her step-by-step instructions how to proceed successfully. These blogs appear to be written by sympathetic individuals, but are actually an extension of organizations that exist to bring in new supply for this billion-dollar enterprise.

Tomoko's first step is to find a proper lawyer (bengoshi) that specializes in this type of case. One of the blogs directs Tomoko to a group like Federation of Lawyers of Japan whose members include: Yoko Yoshida, Yoriko Nishimura, and Takayo Kamata.

Yoko Yoshida is the Vice Chairperson of the "Committee on Gender Equality," an organ of the Federation of Lawyers of Japan. As described in "News from the Federation of Lawyers of Japan/ News from Gender Equality" she opposes Japan's ratification of the Hague Convention. The websites below explain that most of the attorneys who advise and help child abduction are communists (members of Japan Communist Party).

It is true to say that because their activities are only taken up by the party's homepage or Red Flag (赤旗), which is the official newspaper of the Japan Communist Party.
https://blogs.yahoo.co.jp/nb_1chii/36450440.html

(These articles are in Japanese and can be translated well enough via Google Translate)

About Sankei article: <http://oynaiko-law.org/suifu/d/20171013sankei.pdf>

About Takayo Kamata and her communist activities:
<http://jcp-matsukama.main.jp/index.php?FrontPage20160207>
<http://jcp-chiba.webj.jp/nissin207/dekiqoto1406/dekiqoto140812.html>

About Yoko Yoshida and her communist activities
http://www.jcp.or.jp/akahata/aik13/2013-06-13/2013061304_02_1.html

About Nikkei article
https://www.nikkei.com/news/print-article/?R_FLG=0&bf=0&mg=DGKZZO13453130Y7A220CrCC1000

About Yoriko Nishimura and her communist activities
[http://jcp-ishikawa.jp/genpaisu/2015-08/354\\$.html](http://jcp-ishikawa.jp/genpaisu/2015-08/354$.html)

Tomoko's second step, according to these types of organizations, involves reporting a DV claim to police and checking herself and child into a governmentally funded DV shelter in her area. This network of DV shelters (ShelterNet) receive payments from the government based upon number of individuals served, so Miki represents a revenue source to the shelter operator. Tomoko has officially entered the billion-dollar enterprise as an input, and she's already making the enterprise money. At the shelter, her case will be examined to determine the amount of money that can be made off of her. In the meantime, Tomoko will be provided a place to stay and a minimal amount of monthly money, approximately \$ 1,000.00. Niro comes home to an empty house and must learn to live alone, in silence.

If her attorney determines Tomoko has money and decides to take her case, Tomoko (and 'her' child) will enter into a process that takes months before it will come to a hearing. Shige continues to live in silence this whole time and at some point will receive notice of Tomoko's intention to divorce and take child. Niro will seek out an attorney that may or may not be complicit with the enterprise and his eventual loss. Niro only represents the revenue source for the enterprise and has no value beyond that.

Once there is a hearing, the judge will be looking for evidence supporting his predetermined decision (Tomoko gets sole custody of child and Niro must pay to see the child 1-2 hours per month). Japan does not have legal joint custody, only sole custody. In essence, legally sanctioned abduction. The key piece of evidence the judge seeks is where and with whom the child is currently living. Using the long-held legal tradition of "continuity principle", judge decides to order the child to remain with whomever abducted and currently possesses the child.

"Continuity Principle" describes the rationale 'to avoid further trauma to the child it's best to leave the child' with the parent that took the child many months ago. Although common, this practice is specifically FORBIDDEN in Japanese legal Code 766, passed in 2012. Judges still use this rationale couched in other language to continue the same old ways, 100% opposed to codified law. It's expected that criminals break the law, but it's hard to believe judges take the lead in unlawfulness!

Videos of Japanese Diet sessions (English subtitles) Diet member Matsunami questioning Minister of Justice Kaneda and discussing 766, continuity principle, and my case:

February 2017

Japanese Diet member Matsunami asking former Minister of Justice Kaneda about interpretation of article 766. There were several long, evasive responses by Minister Kaneda. This is extremely revealing. Finally, when pressed to respond "yes or no" in English, he admitted reluctantly that yes, he agreed with the interpretation and intent of the revision of 766, which is against the abduction of children. (13:17 – 17:26 min English subtitles)

https://www.youtube.com/watch?v=l_X0uK-laBk

March 2017

Diet member Matsunami asking Minister of Justice Kaneda and others questions about the international problem of the Hague implementation in Japan. (English subtitles.)

https://www.youtube.com/watch?v=l_XouK-laBk

April 2017

This commentary in the Diet April 2017 by former Diet member Matsunami about asking former Minister of Justice Kaneda about the interpretation of 766 and mentioning my name in the process is quite revealing. He insists that it is important to agree on the interpretation and purpose of the revision of 766 in order to build mutual trust with other countries. He also asks about the continuity principle. (starting at 9:34 – 15:45 min English subtitles)

<https://www.youtube.com/watch?v=ZAputy?wpq4>

Tomoko, unsurprisingly, 'wins' the right to keep their child away from its' father indefinitely. Although the court may have ordered Niro access, usually supervised in a court space or meeting room for 1-2 hours per month that he must pay the court for use of their room, Japanese law has no consequences for Tomoko to be in contempt of this meager requirement.

With that, Niro's child loses a parent, indefinitely. If Niro continues to pay his monthly support, from which Tomoko's attorney gets a percentage, Niro may be allowed to see his child. Typically, the child is alienated enough in the intervening time that the child learns to hate and 'erase' the other parent.

It's a myth that alienated children will seek out their other parent later on. This myth is perpetuated by other people to quell the sickening feeling that arises upon hearing and briefly imagining themselves in the same situation. For many of these children, the loss of the other parent is absolute.

How can all of this happen?

1. Communist Party affiliated lawyers and judges control the legal system. There is evidence of collusion between these communist lawyers and judges.
2. ShelterNet has a financial incentive to recruit customers. Fertile grounds for corruption with an incentive to collude with lawyers and judges.
3. Judiciary practicing outdated law without consequence. No oversight.
4. Parental child abduction is not a crime in Japan, and therefore, enforcement is ineffectual.
5. Current system perpetuated by 1) - 3).

Japan must be held accountable.

Diplomacy on this issue with Japan has not been successful for decades. Hundreds of children have been lost to U.S. parents in this time. Children are not bargaining chips or pawns because their rights are non-negotiable. Japan's movement on this issue has only come as the result of coordinated, extreme pressure. Parental child abduction to Japan affects nearly every country, so coordinated, international efforts must be pursued. U.S. DoS holds a powerful position in the world and must lead these coalitions and efforts. For reasons outlined above, including the illegal JSC Hague ruling, Japan's corrupt judiciary, and Japan's unrepentant abduction practices, I recommend the following actions be taken:

1. Placement of indefinite tariffs upon strategic Japanese imports until the following occur:
 - a. Revocation and invalidation of OHC's February 2017 and JSC's December 2017 rulings as non-compliant.
 - i. Immediate return of my four children without delay or condition. No further court actions; it's been nearly 3 years already.
 - ii. Reinstatement of all enforcement fines and penalties due me. (approx. \$ 132,000.00)
 - b. Criminalization of parental child abduction to Japan.
 - c. Criminalization of denial of access to pre-Hague abducted children.
 - d. Creation of a quick legal path to criminalization and prosecution of contempt of Hague return orders that include forcible arrest of abductor, harboring individuals, and physical removal of children by law enforcement or LBP.
 - e. Recognition & enforcement of all previous and future U.S. court custody and return orders.
 - f. Extradition of U.S. court-ordered persons by any means including arrest, physical force, and arraignment of harboring individuals.
 - g. Payment of all U.S. court-ordered contempt penalties by Japanese government directly to LBP within 30 days of order.
2. U.S. legislation or addendum of Goldman Act that:
 - a. makes U.S. DoS responsible for payment of all costs, fines, and penalties awarded to U.S. citizens during the course of Hague proceedings. DoS can arrange to collect the penalties from signatory countries after U.S. citizen has been paid. The costs of prosecuting Hague cases is onerous for citizens, and DoS needs to have 'skin in the game'.
 - b. allows U.S. LBP to sue DoS for failure to act or utilize Goldman Act tools in

- pursuit of an abducted child's return.
- c. Allows DoS review and challenge of all non-return Hague decisions with use of full Goldman Act tools in the event agreement is not reached within 90 days from challenge.
3. DoS to issue indefinite travel alert and caution to parents traveling to Japan with minor children of Japanese descent due to extreme abduction risk and Japan's history of non-compliance. This alert can be rescinded at some point when Japan shows two years of perfect Hague compliance.
 4. DoS must endorse the U.S. parent's consent for a Japanese passport issuance to a minor child. This endorsement remains the property of DoS and can be rescinded at any point to invalidate dual citizenship of a minor child, at which point, minor child then becomes only a U.S. citizen for purposes of treaties, jurisdiction, and abduction.
 5. For countries outside of USA that have been affected, such as Canada and EU, I recommend adoption of similar legislation and economic policies. The more unified our efforts, the greater our impact for quick, permanent change for all.

Japan has ignored demarches and similar toothless efforts for years. Japan, at its core, is an economic nation that relies on asymmetric trade. Effective strategies will use tactics that affect trade, not diplomatic talk. Additionally, Japan enjoys a mythical regard by many in the world. Dedicated efforts to disabuse the world of this mythology and inform regarding the reality of Japan will move this issue further along.

How many advanced societies are aware of Japan's archaic family laws? We must educate the world how the rights of parents and children are disregarded in Japan.

How many of these societies are aware of rampant racism within Japan and nearly pathological nationalism? Our bi-racial children are outcasts in Japan and considered 'less than' by society. In all matters, Japan is primary and facts, rights, and reality are secondary. Japan's exceptionalism must not be condoned.

How many are aware of the significant humanitarian effort imbalance between Japan and the rest of the world? Japan is a significant net 'taker' from other countries of the world while pushing a facade of contribution. The rareness of these contributions makes them stand out.

In closing, the last four years, nearly equal to Japan's Hague participation, have been a form of misery only a few can understand. I have spent everything I have, lost my children, and been abandoned by my government.

- I ask this committee and fellow lawmakers in the Legislative branch to make laws as I have outlined above.
- I ask the Judicial branch to heed my testimony when contemplating joint custody arrangements between U.S. and Japanese parents, and certainly any considerations of allowed travel out of USA. There is no such thing as a harmless vacation to Japan.

- I ask the Executive branch, and specifically President Trump, to make the call, write the Executive Order, or take the action that returns my children immediately.
- Mr. President, when you meet with PM Abe next week, demand my children back. There is nothing to study. There is nothing complex – both common put-offs from Japanese. My children were taken, ordered returned twice, and through Japan's unwillingness to honor their Hague commitments, held in Japan until a legal reason could be crafted to justify them staying.

There are several organizations working and supporting left-behind parents to reunite with their children. These organizations include: iStand Parents, BACHome, and Kizuna Child-Parent Reunion in Japan. Various unaffiliated individuals have helped behind the scenes in both USA and Japan. I am grateful for these organizations who work on the issue and on my behalf. I am grateful to the various Mr. and Ms. X's that help from the shadows. The risks to their livelihoods in Japan are great, yet they help. 非常に感謝しています。

As a final comment, I was recently contacted by a father now living in Japan, but not with his wife and children. His wife abandoned their home and life in USA in January of this year and took their children to Japan. When he asked his wife why she did this suddenly, her reply referenced my case and JSC's December 21 2017 ruling, when she said, 'because I knew I could keep them in Japan forever now.'

Thank you again Chairman Smith, and I am forever grateful for your years of work, these opportunities to speak, and most of all, I thank you for caring when few have.

Mr. SMITH. Thank you, Mr. Cook, and I think your point about upcoming meetings with Mr. Abe is an excellent opportunity for the President to raise these issues.

In previous meetings, we have given detailed memos to the White House in the hopes that he would raise it in a way that was significant and detailed.

We'll do it again, so thank you, and your testimony, I can assure you, will be clear and hopefully as well as a summary of it that we will convey to he and others within the administration.

These are great opportunities. As a matter of fact, when in a previous meeting, obviously, there's always been concerns about abductions from Japan to Pyongyang to North Korea and the President has spoken out, as I have and so many others have, for years.

Congressman Honda had a resolution years ago on that and I was the Republican co-sponsor on it, believing that too is an egregious violation.

Well, Japan itself needs to be held to account as well. So we did ask that he raise it with Abe. We will do it again, and I appreciate that.

If I could, Ms. Apy, if you could, when a judge is dealing with a case before him or her, do they read the report to get a sense of what that country's potential risks are? Do they often contact, for example, the State Department or the Office of Children's Issues to get a further delineation of how good or bad?

Because a report is always dated except for the first few weeks when it comes out and even then they might want to get an update if there's been any turn of events. How does that actually work?

Ms. APY. Of course, as you mentioned, the report is retrospective in that it tells us about the numbers for the prior year, which is why the classifications of noncompliance versus compliance are so important because it means you don't have to deconstruct what's happening yesterday.

In most family court cases, of course, a judge doesn't do independent fact finding. The information is presented to the court subject to the rules of evidence, which is why the report is so important.

Because it's been generated by the United States Department of State, it can be taken—judicial notice can be taken of the content of the report and it can be used then by the court in assessing risk, which places the burden on someone who is—who is arguing that the classification of the Department of State should not be accepted. It places the burden on that person to come forward.

So, for example, in a circumstance like Japan that we've been discussing, because Japan has heretofore not been listed as non-compliant, it places the burden on the parent who wishes to provide protections against travel in bringing—in hiring an expert and having that expert come and testify specifically to the very issues that you have heard testimony on today and I've served in that capacity.

So the problem with that is, of course, it's an expensive process. It involves having to find an expert and to present that information to the court and, of course, the court is looking at a report issued by the Department of State saying that, in the case of Japan, as

we've been discussing, they're compliant. So it's extremely problematic.

The court doesn't get—it wouldn't have the opportunity, as I said, to get updates, but the counsel can and in fact if they're on—if on the State Department Web site and on other identifiable State Department sources of information their updated data, that would be something that the attorneys could reference and would look at and when, in fact, we do.

Mr. SMITH. If I could just ask you on the necessity and efficacy of MOUs, which I know you have spoken to many times. We included it in the Goldman Act.

I know prior to Japan's accession to the Hague the view from the State Department, not only for the Goldman Act itself because the official position was against, until it was reversed later by John Kerry.

I didn't get any sense today that the department is any closer to pursuing an MOU with Japan or anyone else. What is this reluctance to find a durable predictable means to resolve cases? Is it the effort that it—

Ms. APY. The Department of State took a position early on that they would not support any memorandums of understanding related to child abduction on the theory that by setting up MOUs that they would somehow dilute the pressure upon countries to become signatories to the Hague abduction convention.

What it misses, unfortunately, is the opportunity to use an MOU to address specific problems and to provide diplomatic solutions.

So, for example, if you're talking about a convention signatory like Brazil, you could use an MOU to identify the areas that there are problems and then set objective goals while at the same time saying, A, you're noncompliant, and B, until the following things happen we are going to announce and make it clear that there is no reciprocal relationship, which means, for example, that American children would not be returned unless the treaty process was back in place.

That's an example. The advantage of doing MOUs in non-Hague countries can be seen by—if we look at Pakistan, who has filed their accession, I am looking forward. Hopefully, the accession will be very soon accepted.

Pakistan is one of the very only Sharif-based systems that's a common law system. We have high court judges prepared to apply the treaty and part of the reason they're prepared is there's been a memorandum of understanding between Pakistan and the United Kingdom that has been working for a number of years, establishing the legal culture that allows now the treaty to become part of a normalized concept of the law there.

That's an example when an MOU, especially when we have religious-based legal systems, can be used to bridge the culture so that we don't run into a problem where a country—the accession is accepted and there's nothing in place.

You have no underlying law. You have no underlying process. But you have on paper a reciprocal treaty agreement. I can only assume that the reason that MOUs haven't been used, now that you have got the numbers and the report that provides for them,

is that there's just not been the diplomatic will to do the hard work to do that.

And I—and, frankly, it's a, from my perspective at least, I know that member of the bench and bar in the United States, members of organizations like the International Academy of Family Lawyers and the American Bar Association have been willing to work with the State Department as private practitioners providing technical assistance in drafting MOUs, in providing model orders, in doing things that would, if you will, advance the ball.

Again, it's nowhere on the radar screen because there is no process employed for moving beyond a demarche. There's just—I don't see how the—the whole point of considering MOUs was to provide objective information so that we were not talking about speculative subjective reviews of countries.

We had objective information so that if we were talking to our friends we could say, look, I am sorry—you know, we have a valued relationship with you but the following numbers need to be addressed and here's how.

I just don't see that there's been the diplomatic will or the political will to do that on the executive side and I—since I've been doing this for a very long time I am hopeful.

Again, the work of this committee cannot be overstated in that when you look at those—the reduction and the preventative numbers it's only because of the work of this committee and it's made a huge impact on American families.

Mr. SMITH. Suzanne Lawrence did talk about redoubling our efforts. We worked tirelessly both in the U.S. and in our Embassies.

It seems to me that working tirelessly and redoubling our efforts—since we are at the threshold now where MOUs are—should be a given as a remedy to—as a means to a remedy of these cases.

So we'll redouble our efforts to try to get them to do it because I think it's just missing by a mile. You know, nice conversations, diplomatic meetings are all fine. But they should not be a substitute for a durable mechanism that could be employed with predictability and, hopefully, with success.

Just a couple final questions and I deeply appreciate both—the subcommittee deeply appreciates both of your testimonies. It helps us to know what to do next and how to go forward, and I thank you for that.

Ms. Apy, if you could maybe speak to countries that you have found to be more Hague compliant. Do you find that it's a problem worldwide that everyone seems to have serious problems or are there countries that you have found that really seem to be on the ball and really want to do the right thing?

And, again, if you could, Mr. Cook, I said it to Ms. Lawrence. You, obviously, said it in your testimony. But the whole idea that seems to be missing—people say what about Japan—oh, we've brought some people back.

Well, as you have pointed out, when the abductor says no, enforcement ends. That is absolutely absurd to think that the veto power is vested in the abductor—the person who has committed this egregious action.

So perhaps you might want to speak to that again because I think the Japanese Government needs to know that we find this

outrageous. You know, you cannot convey that kind of veto power to someone who has committed such a terrible act.

Ms. APY. I would just reference, on countries that are particularly successful, keep in mind, of course, that the Hague abduction convention was executed in 1980. The United States ratified it in 1988.

So for 8 years, a number of countries had already begun the process and begun the—the body of case law began to be established. And so you have, frankly, leadership in that regard. The United Kingdom, the Netherlands, Sweden, Canada would be places that have continued to apply the convention.

I would note one common element to their success, however, and that is that in virtually all of those countries where the success rates are extremely high, left-behind parents are provided support in having legal representatives to assist them in having their children returned.

In—for example, in the United—in cases for Sweden, if a child is removed from Sweden to somewhere else in the world, the Swedish Government assists in underwriting the costs of the return and repatriation of those children.

The result is that their numbers are far higher in the return of children. The same in the United Kingdom. There are—there are particular judges that have been denominated as Hague judges. Legal aid is provided for left-behind parents who are specialists in the issue of the Hague abduction convention.

Of course, the United States took a reservation to that portion of the treaty that provided for assistance in legal services for the return of abducted children.

So members of the family bar throughout the United States, those of us who do this work volunteer our time as pro bono lawyers, like the Elias case, keeping in mind that the average length of time for these cases—for treaty cases run between 18 months and 2 years from beginning to end if they're successful.

For nontreaty cases and treaties in countries that are noncompliant and nonreciprocal the average is closer to 5 years. That's a long time to have to pay a lawyer. It's a long time to have to do travel and repatriation and expenses, and the crippling impact of those resources cannot be overstated.

In the Goldman case, there were over \$¼ million of expenses in—direct expenses that Mr. Goldman had to find and borrow and do whatever he could in order to accomplish the repatriation of this child and it would not have been enough but for the assistance of the Congress of the United States in taking direct diplomatic action.

Mr. SMITH. Okay.

Mr. COOK. I resemble that comment. [Laughter.]

I recognize that situation of having—of spending everything you have and it's still not enough. In fact, one of the recommendations I had is that the respective governments who sign the treaties are the ones that foot the bills for the two—their respective citizens for this so that way—like I wrote—it'd be important for the—for the State Department to have skin in the game.

If they had to pay off—if they had to pay left-behind parents, which was myself, all of the awarded penalties as a result of this, they might have a little bit different view on doing this.

But with respect to the—your question or talking about permission to enforce in Japan, the—it is accurate to say that you need the consent, which is a little different than permission—consent of the abductor to have access to the left-behind—to have the—to the stolen children.

It's also you need to have the consent of the abductor or those that are found guilty of abducting to comply with the order because in Japan there is no contempt, or there is contempt—there are no consequences for contempt.

So even though my children were ordered twice returned, my wife, he told me, was able to be in contempt for no consequence. Meanwhile, she accrued, as I said in one instance, \$132,000 of per diem fines and enforcement fines that after the court had done its magic and flipped this order and revoked it they then also just—like I said, 2 weeks ago took away any of the—the contempt fines.

So I am absolutely left with nothing, and this isn't just about me. This is—this is how Japan operates absent some external effort.

And a little thing I wrote in here is when—you know, we asked numbers of—Ms. Lawrence about the returns of children. We keep pretty close tabs on each other, everybody in this community, okay, and the numbers that I am told is that there have been now seven total children returned to the United States.

Of those seven, three of them were U.S. children returned to U.S. parents, none of which were done the result of Japanese enforcement powers because they don't have any. One was the death of the taking parent—the father in Japan—and so the child was reunited with the mother at the funeral.

The—another one was—well, I can't use the words here—it was a mess of how that she reneged at the last second and chased the man out of the country. There's a third, and then we have the case of four children—four children returned—Japanese children returned to a Japanese mother living in Oregon.

Now we have another case that was just decided with four of the five Supreme Court justices that were in my case—just miraculously understood that alienated children's opinions many not—should not be taken seriously and being in contempt of a court order is a crime.

So they're going to allow the possibility of this child to be returned to the left-behind parent in the United States, who is also a Japanese citizen.

So by using the State Department's own metrics, five of the eight children returned under the Hague will be from one Japanese parent in Japan to a Japanese parent living in the United States.

The Hague is not working for U.S. children. It's just an extension of the Japanese family law system, and our State Department does nothing about it.

And I have dealt with Japan for over 30 years and there is—we, as people in the cause, trying to get our children back, have to battle through our State Department over into another land, and I believe there are forces within the State Department that are going to prevent or, I should say, are going to give a pass to Japan al-

most permanently with the exception of someone like President Trump or maybe the future Secretary of State stepping in and saying, “We are done.”

Anybody that—anybody that—you know, we cannot allow Japan to continue to be noncompliant. These are children. I don’t care what deals were done, what agreements were made, whatever—whoever. They were sold out for whatever donations to whatever foundations.

We need to get these kids back and it has to change, and whoever is left from that mind set needs to be blown out of the State Department so we have people that actually follow the rule of law and follow, particularly, the Goldman Act because these are—this is the only way we are going to get kids back is to exert some sort of force upon Japan, some economic pain, because at the end of the day they’re an economic country.

They’re excellent at the diplomatic rope-a-dope. They’ll listen to you and they’ll make promises all day long and, oh, they seem sincere. They’re not. But they have to experience some pain.

Mr. SMITH. Just one final question before I go to Ms. Jayapal. India has been noncompliant, pursuant to the Goldman Act and on the reports since 2014. No penalty whatsoever.

It seems to me this needs to be the year of getting the report accurate with regards to countries like Japan and also a year of significant sanctions. What are your thoughts on that?

Again, a regimen that goes without—you know, it’s all on paper and nobody does anything with it. It has a perverse outcome of countries saying it’s a paper tiger and this law was meant to be a game changer.

Ms. APY. Well, and this is a good example of needing to look at the country that we are talking about and identifying what the problem is to find a diplomatic remedy that matches it.

In India, as I’ve mentioned, the significant portion of the judiciary and the lawyers, particularly in this area, support joining the Hague, support taking those steps and there have been constant bar reports in support.

The government has pushed back for political reasons and has indicated they will not do so. So—

Mr. SMITH. Does that have anything—if you don’t mind me interrupting—to the fact that so many of those who are left behind are mothers—are women? Because we’ve had testifying here a number of women who have had their children abducted to India.

Ms. APY. The push back came—was led by the Ministry of Women and Children that indicated that they did not think that the treaty provided adequate protections and—for women and that they did not want the return to—which was, again, considering the limitations of protection of women in India under Indian law was sort of interesting to me.

But the real—but looking—focussing on the issue of India, we have a tremendous diaspora of Indian—Americans—those of Indian descent in this country. There’s regularly going back and forth and in a—actually covers the entire subcontinent.

That’s something where, for example, as you mentioned earlier, consideration of those issues in sanctions, whether it’s dealing with visa issues, dealing with the circumstances under which someone

can easily go back and forth in circumstances in which we have a country that's going to—that's creating an environment where there is no ability to enforce U.S. orders—where there is an ongoing problem—where we do want to find a way to encourage them that—to look at what their own judiciary and judges are saying needs to happen in their country. That might be one of the ways to creatively look at it.

I would also say that this would lend itself to an MOU, identifying that we are going—we need to see these changes in this period of time. If you don't do that, then we are going to look at the circumstances under which we place our citizens at risk in going back and forth and under what circumstances.

Ms. JAYAPAL. Thank you, Mr. Chairman. I am actually one of those Indians—people of Indian descent and actually proud to be the first Indian-American woman here in the U.S. House of Representatives, and so I am looking forward to just understanding more about the situation with India. I think I know quite a bit about the treaty piece of it but in terms of this specific issue.

I just wanted to go back to what you said about other countries being more successful in negotiating for the return of some of these abducted children.

Have you found that countries have had success with the very countries that we are having the most challenges with? For example, have other countries been successful at negotiating real resolutions with Japan?

Ms. APY. My experience with Japan is that the rest of the countries that deal directly with Japan have the same problems we do.

I've had a number of meetings with a consul general from other—representing other countries having these kind of conversations, all of which, I think, would be led by and encouraged by joint activity in diplomatic activity whether it's a joint MOU and signing on to a joint MOU, looking at identifying the problems and treaty reciprocity together, which is why it's so disheartening when you don't see the United States Department of State signing on with or joining in joint activity.

So I would say my experiences even with countries in the Pacific Rim—and there are challenges there throughout the Asia—but we have those—we have those issues. But we've got the real leverage—

Ms. JAYAPAL. Yes.

Ms. APY [continuing]. Is the issue. We have status of forces agreements that we regularly negotiate. We are talking about a disproportionate number of our military members involved.

We have the ability to take leadership in that area where we haven't. So in that context I would say everyone's sort of in the same boat but we have the best leverage to be able to address it.

With respect to some of the other parts of the world and particularly India and Pakistan, I will tell you that the U.K. has had a significantly better opportunity of negotiating and working through some of these cases than we have and they've been willing to, in some of these countries, enter into bilateral agreements that they work very hard in making sure work.

And of course, as I mentioned, they—the government in that case provides a lot of skilled leadership in assisting those cases both on an individual negotiated basis as well as in assisting in litigation.

Ms. JAYAPAL. So you mentioned in your earlier testimony just sort of ways that we should clarify the language, in particular, the categories within the report.

What other—and Mr. Cook, thank you for your—for your testimony. I just—I just listen to you and it—I can't—I don't have any words to express how this must feel for you and for other families.

I've sat with Mr. Morehouse and it's heart-breaking. So thank you for being here in spite of that.

Just in terms of the specific recommendations of what we might push for, we can—you know, we can make amendments to the legislation.

We could work on those pieces. But just in terms of immediate actions that if you had the magic wand and you were in control of the State Department tomorrow, Ms. Apy, what would—

Ms. APY. I will take a pass on that. [Laughter.]

Ms. JAYAPAL. What would—maybe just this portion of it.

Ms. APY. Right.

Ms. JAYAPAL. What would you—what would you recommend that Congress do to push for those actions that you think would be most effective?

Ms. APY. Well, first of all, I believe that there are adequate tools in this—in this act as it's written. I do not believe that it needs to be amended.

I think that the problem is that there has not—

Ms. JAYAPAL. You don't—you don't think that the report language should be clarified or—

Ms. APY. I think that the—I think that the act absolutely provides what should go in the report. I believe that the United States Department of State has to be—has to actually comply with the law as it's written and I don't believe that they have enthusiastically been doing that in the sense that they need to be, as I said, unapologetic and they need to be objective.

The language is already there. I would add, however, that I think that there needs to be an identified process for the circumstances under which they must move the diplomatic remedies that are provided in the act from a—the lowest levels.

When you have a country—I don't know whether it's the objective test of a country has been on in a noncompliance role for a year or 2 years that at that point certain things have to be done.

But I have to reiterate by saying a careful reading of the existing law provides the test for a noncompliant country. They're just not applying it.

Ms. JAYAPAL. Right.

Ms. APY. And the existing law provides the circumstances under which you have to move to diplomatic sanctions and they're not being done.

So at some point, the mechanism is to come back and say, as was alluded to, do we have to then look at whether or not the State Department is accurately applying it and if they're not, put additional steps in that force them to do that, which seems—we have enough—the issues here are urgent.

Time is not a neutral for these families, and the idea that there would be push back when you have given the State Department objective ladder that they can climb is extraordinarily frustrating. Pushing back at the 90-day report, for example—they have a 90-day report process.

When the report first comes in and comments are made, they should come back with direct response as they're required to do under the act as to what steps they've taken in individual country cases. They're just not doing it.

Ms. JAYAPAL. Thank you. I have nothing else.

Mr. SMITH. Will the gentlelady yield?

Ms. JAYAPAL. Yes, I would.

Mr. SMITH. And on that point, that's why we have had so many hearings, not only to hear from left-behind parents and experts like Patricia Apy but also to try to hold them to account, to say listen to both spirit and letter of the law and just follow it, which is why, again, this year we are having this hearing before the report is issued.

We will have another afterwards and then probably another one after that in this calendar year just to keep the pressure on our own people just to do the right thing.

And but thank you. It was a great question.

Ms. APY. Thank you.

Mr. SMITH. And I thank you both for your testimony and for your leadership and, Mr. Cook, know that our prayers and hopes are with you and other left-behind parents.

The hearing is adjourned.

[Whereupon, at 4:30 p.m., the subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE 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

April 4, 2018

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 Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations in Room 2200 of the Rayburn House Office Building (and available live on the Committee website at <http://www.ForeignAffairs.house.gov>):

DATE: Wednesday, April 11, 2018
TIME: 2:00 p.m.
SUBJECT: No Abducted Child Left Behind: An Update on the Goldman Act

WITNESSES: **Panel I**
Ms. Suzanne Lawrence
Special Advisor for Children's Issues
Office of Children's Issues
Bureau of Consular Affairs
U.S. Department of State

Panel II
Ms. Patricia Apy
International and Interstate Family Law Attorney
Paras, Apy, and Reiss

Mr. James Cook
Father of Four Children Abducted in Japan

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 Wednesday Date 4/11/18 Room 2200

Starting Time 2:17pm Ending Time 4:29pm

Recesses (to) (to) (to) (to) (to) (to)

Presiding Member(s)
Chairman Smith

Check all of the following that apply:

Open Session Electronically Recorded (taped)
Executive (closed) Session Stenographic Record
Televised

TITLE OF HEARING:
No Abducted Child Left Behind: An Update on the Goldman Act

SUBCOMMITTEE MEMBERS PRESENT:
Rep. Garrett

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

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.)
-Smith: The Case for Reciprocity, by Patricia Apy
-Smith: Dr. Samina Rahman Submission for the Record

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED _____


Subcommittee Staff Associate

MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY, AND CHAIRMAN, SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS

The Case for Reciprocity

Significance of the International Child Abduction Prevention and Recovery Act in the Private Practice of International Family Law

by Patricia E Apy

In 1989, a mere three years after the United States Congress enacted the International Child Abduction Remedies Act (ICARA), then 42 U.S.C. §11601 *et seq.*,¹ a case was filed in United States Federal District Court in Wyoming, seeking the return of Sarah Isa Mohsen from the United States to her habitual residence, conceded to have been the Kingdom of Bahrain. The application also conceded that Bahrain was not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction.² However, the petition for return of the child was predicated upon the argument that, with the ratification of the treaty by the United States, the courts of the United States were now obligated to apply the substantive analysis of the treaty in deliberating on the question of wrongfulness of the removal and retention, as well as considering the unique treaty remedy of a speedy return of the child. The argument advanced concepts of treaty compliance, as well as the adoption of the protections as a component of "customary international law." However, the federal judge in Wyoming was not moved, and dismissed the application based upon the lack of treaty reciprocity existing between the United States and Bahrain.³

Five years later, Barbara Mezo sought the return of her abducted children from various countries in North Africa, filing a petition in United States Federal District Court in the Eastern District of New York, which charged that then Secretary of State Warren Christopher should "perform his duties" by implementing the provisions of ICARA and securing the return of her two children, taken to Egypt and subsequently from Egypt to Libya. The court observed the disconnect between the diplomatic functions of the Department of State and a private cause of action under the treaty, and then repeated that because the Hague Convention applied to neither Egypt nor Libya, the remedy she requested was unavailable and the action was summarily dismissed.⁴

In 2004, Sean Goldman was taken by his mother in the

company of his two maternal grandparents to Rio de Janeiro, Brazil. The trip was explicitly intended to be a few weeks in length; however, the mother, and later her family, would argue that upon arrival in Brazil she chose never to return to the United States. What followed was protracted litigation waged in two countries, which eventually made its way to the consciousness of the average American and Brazilian and became newsworthy around the globe. Sean's father, David Goldman, enlisted the assistance of various congressional leaders, career diplomats with specific experience in Latin America and the American media to articulate a case that Brazil, in failing to have ever returned an American child consistent with their explicit responsibilities in the treaty, could no longer be considered as compliant. As a result, he argued, a reciprocal relationship as contemplated by the treaty simply failed to exist, and he requested diplomatic and legislative efforts to pressure Brazil into recognizing and complying with their obligations under international law.

Goldman's success at drawing congressional attention to a host of systemic issues in the implementation and enforcement of the obligations found in the Hague Convention on the Civil Aspects of International Child Abduction on a nation-state basis made it patently obvious that replicating this action on behalf of any future individual litigant would require enormous financial and personal resources, and offer little promise of institutional change. Similarly situated "left-behind" parents saw both increased hope and overwhelming frustration in attempting to advance similar tactics in working for the return of their children from a host of countries, both within and without treaty mechanisms.

However, these parents garnered congressional attention in addressing the issue of international parental abduction. They called for a reasoned assessment of the process and effectiveness of the United States Department of State: 1) in managing its role as central authority under the treaty, and 2) in exploring the

long-held formal position of the Department of State in refusing to consider alternate diplomatic and legal mechanisms to press for international compliance with existing treaty obligations or to explore bi-lateral or multi-lateral agreements with countries who were not treaty signatories, and whose legal systems and historic approach to international parental abduction made them unlikely participants in a reciprocal treaty scheme.

Between Dec. 2009 and Aug. 2014, the United States House of Representatives and the United States Senate held no fewer than six different hearings. These were conducted in committees and subcommittees, before the Tom Lantos Human Rights Commission, and requested by the Women's Caucus, addressing the Hague Abduction Convention and ICARA's application both outside and within the United States. Testimony was solicited not only from the United States Department of State Office of Children's Issues, but from international family law practitioners, law professors and academics and subject matter advocates, including representatives from various countries, non-governmental organizations (NGOs) and affected parents. Originally introduced by Congressman Christopher Smith of New Jersey in 2009, six different versions of what would eventually be titled the Sean and David Goldman International Parental Kidnapping Prevention and Return Act of 2014 were authored, marked up and negotiated, and on Aug. 8, 2014, executed by the president of the United States as 22 U.S.C. §9111 *et seq.* The United States Department of State vociferously opposed them all.

The act represents three areas of federal action now focused on the prevention of child abduction. First, it provides documentation and accountability regarding the administration, prosecution and resolution of diplomatically reported abduction cases. Second, it provides objective criteria for the use of

diplomatic tools in addressing cases in which there are proven obstacles to the recovery of children. Third, it begins the process of establishing border controls and protocols to insure that judicial restraints on the removal of children from the United States may be legally and practically implemented.

The act is structured with attention to these three primary areas. Title I addresses actions to be taken by the Department of State, primarily in its role as central authority, by enhancing its ability to comply with the duties already assigned to it by the existing requirements of the Hague Abduction Treaty.⁵ Title II outlines mandatory and discretionary diplomatic steps to be taken where objective evidence demonstrates either that a treaty signator is not meeting its obligations under the treaty, or where an alternate protocol for addressing child abduction must be negotiated apart from participation in the Hague Abduction Convention.⁶ Title III begins the first step toward effective border control for the prevention of international child abductions from the United States, with the goal of insuring that all children traveling from the United States are authorized to do so.⁷

The Importance of the ICAPRA Reporting Requirements to the Judicial Assessment of Risk of Abduction

Testimony elicited at the hearings repeatedly demonstrated that the earliest observations made by the Hague Conference on Private International Law, included in its compilation of recommendations for continued good practice in dealing with the civil aspects of international child abduction, remained salient. "Preventing abduction is a key aim of the 1980 Convention, and it is widely acknowledged that it is better to prevent an abduction than to have to seek the child's return after Abduction."⁸ Among those measures

recommended by The Hague Special Commissions were "documentation of the requirement to obtain or maintain separate travel documentation for the minor child; the established express consent of both parents before issuing travel documentation for minor children; assessing and taking into account the potential risk of wrongful removal or retention of a minor child."⁹

Among the difficulties discussed in years of congressional briefings and hearings, particularly by family law practitioners and parents, was the inherent challenge in successfully securing reasonable preventative restraints on international travel of their children.¹⁰ They shared the complexity and expense of providing accurate and admissible information to the judges who were charged with fashioning parenting and international access arrangements when parents could not agree. Judges considering the imposition of preventative measures and restraints were universally and naturally reluctant to impose restraints where no objectionable behavior had as yet occurred. Further, locating and qualifying experts with specialized knowledge not only in foreign law but in the actions of a foreign government or its governmental entities in its compliance with the Hague Abduction Convention factors, was often challenging or impossible.

In their seminal work on child abduction, summarized in the *Judges Guide to Risk Factors of Child Abduction*, Linda Gardner and Janet Johnston explained that assessing the risk of removal or retention of a child required, in addition to the individual characteristics of the parents and their actions, an objective assessment of the institutional obstacles to recovering that child. Obstacles to recovery refer to the degree to which there are legal, procedural, policy or practical barriers to locating, recovering or returning a child in the event of an abduction. If the obstacles appear to be

extremely difficult to overcome, then the likelihood of the child ever being returned may be remote. If the case appears to involve a few minor obstacles, then the likelihood of the child being recovered promptly would be relatively good. The family court judge should consider that, in cases in which the obstacles to a prompt recovery would be difficult to overcome, the need for preventative measures is more acute, warranting the use of more restrictive methods.³¹

The treaty is silent with regard to enforcement of its provisions or assessment of the current status of compliance among treaty partners. Further, no formal recordkeeping component is contained within the structure of the treaty, nor has one been routinely or voluntarily taken on by the Hague Conference.³² The original requirement of the United States Department of State to provide information to Congress regarding the status of the abduction treaty

was enacted, not as an original part of the original treaty implementing legislation for the Hague Abduction Convention, but as part of the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999, and also as part of the Foreign Affairs Reform and Restructuring Act of 1998 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999.

Under the prior reporting requirements, the Office of Children's Issues, relying upon the Hague Conference *Guide to Good Practice*, subjectively assessed three areas of performance in categorizing a country as non-compliant or demonstrating patterns of non-compliance. Historically, many of the reports had been received with lukewarm enthusiasm by family lawyers, who remained hopeful of the eventual ability to rely upon the information in their international practices. Practitioners perceived there was a tendency on the part of the

Department of State to avoid applying the moniker of non-compliant to offending countries, even in circumstances where it was clear the obstacles to recovery were virtually total. (Note: If the obstacles to recovery of abducted children, as referenced earlier, are virtually total, then by definition the country cannot be treaty compliant.) Unless a country had demonstrated deficiencies in all three of the areas of performance (central authority compliance, judicial performance, and law enforcement performance) the report would indicate that the country displayed merely "patterns of non-compliance." Further, the reports did not highlight qualitative statistical data that would permit independent review or reliably document the current number of cases, how old they were, or their disposition. There was no policy of identifying, for members of Congress, abductions that had taken place into or out of their constituency. There was no

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formal recognition of the link between military service and an over-representation of international child abduction cases. Of course, the report was limited to information regarding countries that were signatories of the Hague Abduction Treaty, and provided little information regarding reported abductions or requested assistance involving non-treaty signators.

In the past, the Hague Conference has studiously guarded its neutrality by avoiding engagement in any public negative critique of signatory countries (particularly where it could be viewed as punitive) in favor of educational and technical support to encourage treaty implementation. While there may be nothing wrong with this perspective when it results in an unintended loss of transparency or is unreservedly echoed in the diplomacy of treaty signators without scrutiny, it can lead to a reluctance to unflinchingly review and publicly warn about the actions of states-party (including the United States of America). Further, it encourages a false sense of comfort on the part of the world's family court judges, who could assume a country that identifies itself as a signator, without more, acts with reciprocity regarding the implementation of the treaty. To apply the Gidner-Johnston risk factor matrix, such misinformation could leave the impression of few existing obstacles to recovery of a child, in the absence of concrete disclosure of the number, circumstances, and treatment of active abduction cases.¹³ Without the necessary objective statistical assessment of the state of reciprocity, attorneys draft international access arrangements unaware of the potential inability to retrieve a child from a jurisdiction, and without considering or including additional security to insure international enforcement in their matrimonial litigation.

In her introductory correspondence accompanying the 2010 Compliance

Report, Janice Jacobs, then assistant secretary of state for consular affairs, wrote: "Compliance is a challenge for many countries. Consequently, continued evaluation of Treaty implementation in partner countries and the United States is vital for its success."¹⁴ The model for the diplomatic and reporting requirements now codified as part of ICAPRA was the United States' Trafficking Victims Protection Act of 2000 (TVPA) and its subsequent amendments.¹⁵ The use of TVPA was not accidental. The goal of the reporting requirements found in TVPA have been articulated as, "seeking to increase global awareness of the human trafficking phenomenon by shedding new light on various facets of the problem and highlighting shared and individual efforts of the international community and to encourage foreign governments to take effective action against all forms of trafficking in persons."¹⁶

While originally the subject of similar skepticism by the Department of State, which raised numerous objections in 1999 to the financial, manpower, and diplomatic burdens inherent in the reporting function, a decade of TVPA has demonstrated that the Trafficking in Persons (TIP) Report has had a remarkable impact upon the recognition and amelioration of trafficking in persons, both domestically and internationally. Widely acknowledged as the world's most comprehensive and influential assessment of global anti-trafficking efforts, the report is a potentially powerful advocacy and campaigning tool for anti-slavery groups working both in-country and internationally. Since 2001, the report has been the principal diplomatic tool of the United States to engage foreign governments on the issue of trafficking and slavery within their own borders. Using a three-tier system, the U.S. State Department ranks how countries are complying with the TVPA. It offers a detailed analysis of credible evidence of people trafficking and slavery

within each country, any counter-trafficking efforts being undertaken and a series of suggestions for how the situation could and should improve. "It is a blunt instrument to force through change and a strong platform in delivering credible information that looks at solid evidence in an objective light with the weight of what is still the most powerful nation on earth behind it. As an advocacy tool you don't get much better than that."¹⁷

The motivation for the changes made to previous reporting requirements once added to ICARA are designed with precisely the same purpose as the TIP Report. ICAPRA is designed to enhance and strengthen the information to be submitted to Congress by requiring production of more than generalized and subjective summaries, and by expanding reporting requirements to provide information about abductions to non-treaty jurisdictions. In addition to reporting on any countries in which there are pending abductions, regardless of their treaty status, the new requirements will provide the tools for judges, in addition to lawmakers, to evaluate components of the practical obstacles facing those attempting to recover their abducted children. For the legislators and diplomats, this information can be used to form and communicate a conclusion regarding whether there has been a 'governmental failure' when the evidence so demonstrates, and to contemplate diplomatic or legislative action if appropriate. For the jurist, attorney, arbitrator, or mediator this information can be used to objectively assess the systemic obstacles to recovery of a child, apart from any contested allegations regarding the individual family dynamics and to be informed by this objective, non-case-specific information in considering the necessity or prudence in recommending the imposition of preventative measures or enhanced enforcement mechanisms.¹⁸

Reading the First ICAPRA Report

On May 13, 2015, the Office of Children's Issues released its first ICAPRA report, admittedly for a truncated reporting period.¹⁹ In testimony solicited before the House Foreign Affairs Subcommittee on Africa, Global Health and Human Rights, on July 16, 2015, Ambassador Susan Jacobs, special advisor for children's issues at the United States Department of State, conceded, in her remarks regarding the first compliance report issued pursuant to ICAPRA, that there are a number of weaknesses.²⁰

The author believes these difficulties at best may simply reflect the State Department's inability to so quickly comply within the statutory timeframe in a way that reasonably articulates the information required by the law in a useable form. At worst, the author believes, it could be read as evidence of an institutional resentment to the con-

gressional imposition of the modified reporting requirements and a determination to render the report of limited value. In either case, the author feels a comparison between the quality, scope and comprehensiveness of the 390-plus-page annual TIP Report and the recently released 41-page ICAPRA report demonstrates a failure to appreciate the need for and potential international impact of the report required by the legislation.

This first ICAPRA report actually warns, "The case numbers provided in Table 2 do not necessarily reflect the total amount of cases per country or area, reported to the USCA. Rather the statistics provided reflect the number of abduction or access cases that met the specific data requirements of the law, as outlined in the header of categories in Table 2 in CY 2014."²¹ A cursory review by the author appears to indicate an almost arbitrary and subjective inclu-

sion and exclusion of cases, based upon the department's reading of the legislation, and not as a result of specific instructions in the law to do so.

Non-Hague Treaty Cases

By way of example, if one looks at a non-treaty country such as the United Arab Emirates (UAE), the report, in Table 2, indicates the number of unresolved cases is zero. A check of the Appendix II, which in Table 6 purports to list all unresolved cases, offers no listing for the UAE.

This would come as a shock to Christopher Dahm, whose daughter Gabrielle was abducted by her mother with the assistance of her maternal grandparents on Aug. 4, 2010. It would also be a surprise to Congresswoman Lois Frankel and Senator Bill Nelson, from South Florida, who have been working with the Department of State and Department of Justice in insisting

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on her return. "Her abduction occurred in violation of express orders prohibiting the mother from removing the child from the United States, and placing restrictions on passport issuance. Neither parent is a citizen of the UAE. As a result, the United States attorney for the Southern District of Florida sought and obtained criminal indictments against both the abducting mother and her accomplice parents for international child abduction pursuant to the International Parental Kidnapping Prevention and Crime Act.²³ Dahm has identified his daughter as having been abducted, and sought the assistance of the Office of Children's Issues in securing her repatriation, as well as frequent requests for diplomatic help in securing information regarding her location and her health. Communication from the department confirms the case has been the subject of discussion with UAE authorities by Jacobs. Dahm's congressional representative, Lois Frankel, and her office have been aggressively involved with the matter, compelling regular diplomatic and law enforcement updates. Dahm's case appears to fall into the category of cases the State Department has removed from their reporting requirements.²⁴

The report leaves the reader to guess at which cases the department considered to be outside of the "data requirements of the law," or did not "necessarily" reflect the total number of cases.

Regarding the identification of countries demonstrating a "pattern of non-compliance," and implicating diplomatic remedies, the author believes the selective choices made in reflecting the nature and number of pending abduction cases has a direct bearing on the assessment of whether a country is acting in "persistent failure."

Hague Treaty Cases

Japan is singled out in the report, but only as a diplomatic success story, with contradictory information regard-

ing its status within different sections of the report. While seemingly acknowledging that Japan has continued its historic patterns of recalcitrance in the return of abducted children or organization of rights of access, Japan was not identified as exhibiting patterns of non-compliance.

Within hours of the Hague Abduction Convention becoming effective between the government of the United States and Japan in April 2014, the parents of children who had been abducted from the United States (some of whom have been prevented from seeing their children for years), filed their applications for the organization of rights of access pursuant to Article 21 of the treaty. Left-behind parents had already been told the treaty would not be retroactively applicable to their abduction claims, and were strongly encouraged by the Japanese Central Authority to relinquish any pre-ratification abduction claims or requests for return of their children to the United States.²⁵ The chart of pending cases in the ICAPRA report confirms the 40 cases were brought, and indicates only 29 were submitted to the Japanese Central Authority, and that the Japanese Central Authority has taken no steps to submit the requests for access to either judicial or administrative bodies.

Nevertheless, the report indicates there are zero unresolved cases, despite the fact that as of May 30, 2015, there appears to have been no access accomplished, pursuant to the convention, for any of the applicants. The report does not produce any evidence of efforts to negotiate a memorandum of understanding, or other alternate protocol to deal with the pre-ratification cases. The documentation does not identify service members or former service members (despite the fact that at least two known cases were among the pre-ratification cases). In identifying its recommendations to improve resolution of cases, the department does not identify Japan as a

country with which they have held bilateral meetings, as expressly contemplated by the legislation to encourage governmental officials to comply with their obligations under the treaty, or to intensify their engagement with the Japanese Central Authority for updates or prompt case processing.²⁶ However, its discussion of Japan references the department's efforts as it "continues to encourage the government of Japan to remove obstacles that parents still face in gaining access to or return of their children." The paragraph closes with the statement that "almost all of these Non-Convention cases remained un-resolved."

It is unclear what the department means by non-convention cases in this context, in that while the pre-ratification abduction cases would be so considered, a new access case would be a convention case. Finally, a review of the reasons for delay in submission to authority found in Table 5 identifies each of the 29 listed access cases as suffering from a delay. Notably, the department indicates that in nine of the cases "the case was not submitted to a judicial or administrative authority while the parents pursue mediation." However, if delay actually refers to the mediation program advanced by the Japanese Central Authority in 2013, it has produced no recognizable success. Inasmuch as there has been no successful access application or abduction application, nor any significant movement on pre-existing cases, the author sees no viable explanation regarding how Japan is kept from being identified objectively as demonstrating patterns of non-compliance.

The potential difficulty for effective use of the report in its current form is that an attorney or judge attempting to prospectively determine whether Japan poses systemic obstacles to recovery, would be misguided in reading or attempting to evaluate the report. In fact, counsel for a parent urging travel to Japan could (and likely will argue) that

Japan should be considered entirely treaty-compliant, and their reciprocal obligations under the treaty positively met based upon this report, as a matter of law.

At the hearing conducted in July, Jacobs indicated that a revised report would be prepared reflecting more accurately the number and status of pending international child abduction cases.²⁶

Working Toward a National Registry for Custody Orders Preventing Travel from the United States

One of what the author views as the most immediately promising portions of ICAPRA, and certainly the one that would directly impact family law attorneys and judges, is found in the amendment to the Homeland Security Act. The new legislation requires the establishment of a federal program through the commissioner of United States Customs and Border Protection, in coordination with the Department of Justice, federal law enforcement, and the State Department, to prevent children from being removed from the United States in violation of a valid court order. Title III begins this process by establishing a working group comprised of the major stakeholders, including consultation with representatives from the Department of Defense and the FBI.

In formulating the program, it is possible a federal uniform order preventing international travel can be drafted that provides an administrative mechanism for the registration of effective orders. In looking at the components of a meaningful and valid order, the working group need not reinvent the wheel. It can refer to the Uniform Child Abduction Prevention Act (UCAPA),²⁷ promulgated by the National Conference of Commissioners on Uniform State Law in 2006. The UCAPA harmonizes the Uniform Child Custody Jurisdiction and Enforcement Act²⁸ with a host of other state and federal laws and a myriad of

substantive custody issues, including domestic violence concerns. In outlining a recommended process for, and the components of, a valid abduction prevention order, the UCAPA enumerates a number of specific measures a court may order. The UCAPA references travel restrictions and the State Department's Child Passport Issuance Alert Program, and includes criteria for expiration, modification or revocation of orders. Currently enacted in 14 states, the author believes using the UCAPA as a beginning template that has been drafted and amplified by subject matter experts can only render a uniform order easier to use, and therefore more likely to become a regular and accepted preventative method. Still, it would be helpful for international legal practitioners both in the United States and abroad to remain engaged through their professional associations²⁹ in rendering the process internationally user-friendly.

The Promise of ICAPRA for Family Lawyers

In addition to the reporting and diplomatic functions mentioned above, and the steps toward border control, ICAPRA offers real-time assistance to left-behind parents and their counsel. Now, no longer experiencing their child's abduction as relegated to a domestic dispute, litigants are assured of at least one senior official in each and every diplomatic and consular mission abroad specially assigned to assist parents who need to coordinate legal efforts abroad or may attempt to see their children. Embassies and consulates are to monitor developments in these cases, and communicate accurate information back to the United States Department of State Office of Children's Issues and the litigants. For each country in which there are five or more active cases of international abduction, there must be a written strategic plan to engage with the appropriate foreign counterpart and provide predictable

mechanisms for working cases.

ICAPRA was not drafted to supplant or weaken ICARA, or the application of the Hague Abduction Treaty on a global basis. Nothing in the text of the legislation limits the Hague Conference in its current role, or its relevance. The Hague Conference will presumably continue with its efforts for international judicial education and sharing of good practice and communicating international legal developments.

ICAPRA articulates congressional intention that an individual left-behind parent and their legal representatives will no longer be forced to litigate 'systemic' maladies in the diplomatic relationships between that country and the United States. Once it is determined, using objective criteria, that there is a breach in the reciprocal relationship with a treaty partner, or there is a systemic governmental failure to address international parental abduction, the burden for action shifts to the State Department to utilize the diplomatic tools available to identify and ameliorate the problems. If and when they cannot, the president of the United States has an escalating arsenal of measured diplomatic resources. This begins with bilateral and multi-lateral discussions and agreements to develop alternate protocol for the resolution of international child abduction, particularly where religious and culturally based legal systems make the future likelihood of participation in the Abduction Convention remote. But the author believes it also means identifying and disclosing the difficulties with treaty partners, so family lawyers are not lulled into the belief that the treaty is properly working in a place it does not. Any serious critique of the working of the Abduction Convention will, undoubtedly, also include a critical analysis of the treatment of treaty cases within the United States.

Patricia E. App has been a fellow of the International Academy of Matrimonial

Lawyers since 1998. In April 2015, she received the American Bar Association's National Grassroots Advocacy Award recognizing her body of legislative work and advocacy, including having served as one of the principal authors of the ICAPRA. This article includes information compiled in support of remarks made at the IAML Hague Symposium, Quebec, Canada, on June 9, 2015.

ENDNOTES

- Now transferred to 22 U.S.C. §9001 *et seq.*
- Hague Conference on Private International Law, Final Act of the 14th Session, Oct. 25, 1980, 51 Fed. Reg. 10498 (1980).
- Mahien v. Moinsen*, 715 F. Supp. 1063 (D.Wyo. 1989).
- Mezo v. Elmargawi*, 855 F. Supp. 59 (E.D.N.Y. 1994).
- 22 U.S.C. §§9111-9114.
- 22 U.S.C. §§9121-9125.
- Section III amends 6 U.S.C. §231 *et seq.* The secretary, through the commissioner of U.S. Customs and Border Protection (referred to in this section as CBP), in coordination with the secretary of state, the attorney general, and the director of the Federal Bureau of Investigation, shall establish a program that: 1) seeks to prevent a child (as defined in 18 U.S.C. §1204(b)(1)) from departing from the territory of the United States if a parent or legal guardian of such child: 1) presents a court order from a court of competent jurisdiction prohibiting the removal of such child from the United States to a CBP officer in sufficient time to prevent such departure for the duration of such court order, and 2) leverages other existing authorities and processes to address the wrongful removal and return of a child.
- Hague Conference "Guide to Good Practice."
- "Summary: Proactive Measures—Creating a Legal Environment which reduces the risk of abduction," Part III, Preventative Measures.
- MacKinnon v. MacKinnon*, 191 N.J. 240 (2007).
- Linda Gilmer, Ph.D., and Janet Johnston Ph.D., "Judges Guide to Risk Factors of Child Abduction," presented on March 20, 1995, at the 22nd National Conference on Juvenile Justice National Council of Juvenile and Family Court Judges and the National District Attorneys Association.
- In May 2014, Secretary General Christophe Bernasconi, in addressing the IAML Hague Symposium New York, indicated the Hague Conference does not have access to uniform or current statistics from signator countries providing a recent or relevant basis for the assessment of international reciprocity. See also Caidin M. Barmon, The Hague Convention on Civil Aspects of International Child Abduction, The Need for Mechanisms to Address Non-Compliance, 31 *BC Third World L.J.* 129, 133 (2011).
- In her memorandum Re Sean and David Goldman International Child Abduction Prevention and Return Act of 2014 (ICAPA), prepared for the International Academy of Matrimonial Lawyers, Ashley Tomlinson, of Laura Dale & Associates, Houston, Texas, reviewed the pros and cons of the new legislation. In doing so she recounts State Department testimony offered by Ambassador Susan Jacobs before the Senate Foreign Affairs Committee summarizing the State Department's opposition to ICAPRA as somehow undermining the work of the Hague Conference and "threatening the efficacy of the Convention." However, in the 35 years since the enactment of the treaty, the author believes the Hague Conference has not seemed willing to exert its leadership in providing neutral assessment and publication of timely and relevant statistics evaluating the status of reciprocity. The United States Department of State's deference to the Hague Conference as a body to which the United States should "continue to delegate its sovereign authority" is not supported in the areas of international family law practitioners having to identify and advocate legal protections based upon obstacles to recovery.
- See *Hey Uncle Sam! Maybe it's time to stop condoning child abductions to Mexico*, Antoinette A Newberry Wood, 42 *Ge. J. Int'l & Comp'l* 217, 240 (2013).
- 22 U.S.C. §7107.
- Introductory remarks, Purpose, The 2009 Trafficking in Persons (TIP) Report; Report and subsequent updates available at www.state.gov/tip.
- Steve Trent Environmental Justice Foundation, How NGOs are using the Trafficking in Person's Report, Annie Kelly, *The Guardian*, 21 June 2013.
- Title I, ICAPRA, Department of State Actions, Reporting Requirements; Actions in Response to Unresolved Cases; Actions in Response to Determination of Pattern of Noncompliance, 22 U.S.C. §§9111-9114.
- The report indicates that the reporting period under the statute was from Aug. 2014 to Dec. 2014, with future reports reflecting a calendar year.
- <http://foreignaffairs.house.gov/hearing/subcommittee-hearing-goldman-act-return-abducted-american-children-ensuring-accurate-numbers>
- Section 3.2, Countries and Areas with Five or More Pending Abduction Cases during CY 2014.
- 18 U.S.C. §1204.
- The department has independently determined that "most non-Convention cases do not meet ICAPRA's definition of an unresolved abduction case." Their purposeful application of the definitions to exclude virtually all existing non-treaty abduction cases from reporting, unless there is a request made to a non-existent central authority, is neither a fair nor accurate reading of the language and intent of the statute. The accompanying statement, "When parents use the legal system of a non-Convention country, they are likely participating in the proceeding for custody of the child, which may not involve the return of the child to the United States, rather than submitting an application for return of the child for determination to the judicial or administrative authority. Therefore, the Department does not consider a custody proceeding to be an unresolved abduction case in a non-Convention country, unless there is also a formal request for return," is particularly unhelpful. If a parent has identified their child as having been abducted, and as a result opened a case with the Office of Children's Issues, then to remove their case from the data, because they are forced to file a custody complaint as the only possible way to perfect the return of their child, is unsupportable.
- Indeed, a so-called "access mediation program" had been offered in Dec. 2013, only to parents of abducted children who were willing to formally abandon their abduction claims.
- Id.*
- Table 3 Recommendations to Improve Resolution of Cases in Countries or Areas with Five or More Pending Abduction Cases during CY 2014 at 20.
- Uniform Child Abduction Prevention Act (Statutory Text, Comments, Un-Official Notations) Linda Blood, J.D., Reporter, 41 *Penn. L.Q.* 23 (2007).
- Uniform Child Custody Jurisdiction and Enforcement Act, approved 1997, enacted in all states except Mass where pending. www.uniformlawcommission.com.
- International Academy of Matrimonial Lawyer Hague Working Group; International Law and Procedure Committee of the Family Law Section of the ABA should provide technical assistance to the working group in addressing best practices to establish validity of orders.

**MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE CHRISTOPHER H. SMITH,
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY, AND CHAIRMAN,
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTER-
NATIONAL ORGANIZATIONS**

To the Honorable Congressional representatives Chairman Chris Smith, Congresswoman Pramila Jayapal and Congressman Andy Harris,

I cannot thank you enough for giving me- an immigrant to this great country the United States, and an abandoned wife and a robbed mother - a chance to let my words be entered into the public record for posterity. This is my chance to let my son and other abducted American kids like him know that their government has not forgotten them.

My name is Samina Rahman and I am a physician in Arizona. I am an immigrant through the H1B visa program, a Bangladeshi citizen by birth, and I was born and raised in Dubai, where I met and eventually married my husband Salman Qaiyum Khan in 2005. He was a fellow medical student and is an Indian citizen who spent most of his life in Saudi Arabia and Dubai.

In April 2013 my only child Abdallah abducted by Salman Khan at the tender age of 6 years old, from New York to Dubai and then onto India. That was 5 years ago this month. At the time Abdallah was both a habitual resident of New York as well as a US citizen by birth.

In 2013, I was in my first year of Internal Medicine residency training at the Montefiore Medical Center in New York, working at least 80 hours a week. My husband and son had supposedly gone on a 4 day vacation to Florida to visit his eldest sister Arshi Khan and her husband Dr. Samad Khan. 4 days later, as I cooked my husband's favorite meal and waited for their return from Florida, I received a text from a Dubai phone number "We are in Dubai". For 2 days I called my husband on this Dubai number and yelled at him and pleaded to him to come back to New York and we would sort everything out. But he insisted I leave my residency training and actually sent my program director a vicious email in the attempt to get me fired and deported from the US. My husband's goal was to get me to settle down in either India or Dubai where he would be able to continue abusing me emotionally, physically and financially, without legal consequences. In both countries I would have no choice except to remain in an abusive marriage so that I could continue to be a mother to my son and live a respectable life in the eyes of a society that is harsh to divorced women.

After spending 3 days in Dubai with his parents, Salman abducted our son to India and ended all contact with me. None of this travel except the initial trip to Florida were with my consent or knowledge.

Meanwhile I started the uncoordinated and complicated process of registering an "international parental child abduction" (IPCA) in the US. First I called a DV hotline to find out if what had just happened to me was indeed illegal as I had never before heard of IPCA, then I filed a police report for a missing child, then I retained a \$500 per hour international divorce lawyer Mr. Jeremy Morley to help me obtain a sole legal and physical custody order from the district family court. I was told the court order was absolutely necessary to open an international parental kidnapping case with the FBI- although the federal law 18 USC 1204 International Parental Kidnapping Act does not actually state it as a requirement.

I separately opened a case with the DoS Office of Children's Issues (OCI).

The OCI does offer a number of "potential" solutions before and after an IPCA has occurred, but none of them bring the child back to the US nor prevent the courts of foreign nations from taking jurisdiction over American children with existing US custody orders.

In July 2013, the US Embassy in Delhi conducted a "welfare visit" at my request and with my husband's permission, and issued a glowing report of how well my son was doing, how many electronic gadgets there are in the house, and included a blatant lie that my 6 year old son has a personal cell phone

which he uses to contact me regularly. If they had only looked at the call log on that phone they would have discovered that was a lie. But it's likely that embassy officials were willing to turn a blind eye because then they would be justified in doing nothing to return my 6 year old traumatized son to his mother.

The next welfare check I requested from the DoS was refused by my husband, and so it never happened, which is the most dangerous reason to NOT conduct a welfare check!

My son was put on the Children's Passport Issuance Alert Program (CPIAP) by the DoS, and I was hopeful that when my 6 year old son would turn 10, the renewal of his expired passport would give me some leverage with his father, but apart from starting to allow fully monitored on and off contact on WhatsApp 6 months before renewal time, it has not yielded any other results.

I found it very odd that in my deep despair when I asked my OCI case officer to connect me with other parents in my situation, they refused saying it was a privacy issue. I responded that I was completely Okay to waive my own privacy. They again refused, which I found deliberately unhelpful. Eventually, through various sources I have now become part of a large coalition of parent advocates under the umbrella of the iStand Parent Network. But it is still a mystery to me how the DoS can put up the names of several indian lawyers on its website with the disclaimer that they cannot really vouch for any of them, yet they don't list the names of the iStand Parent Network and individual parents like me. At least we don't charge money and generally give better advice on IPCA than most lawyers on that list.

My interactions with the FBI have been positive in some ways and frustrating in others. I was lucky to have landed an FBI agent who has successfully brought back some abducted children from countries like Saudi Arabia and Tunisia, but he was unable to convince the federal prosecutor to press criminal charges against my son's paternal aunt Arshi Khan and her husband Dr. Samad Khan, despite obtaining the evidence through grand jury subpoenas that proved that the one-way Delta airline plane tickets from Atlanta to Dubai that were used to fly my son out of the country were purchased by them!

My FBI agent asked the federal prosecutor to press charges against Arshi Khan and Dr. Samad Khan for aiding and abetting in my son's abduction, and the prosecutor is said to have responded "The sister and her husband will only say that they bought the tickets but never knew that her brother was planning an abduction". I insisted that Arshi and Dr.Khan have never answered my hundreds of phone calls after my son's abduction - is that how innocent people behave? And why is the burden of proof on me? Let the family members who purchased my son's ONE-way international plane tickets in the month of April when there were no school holidays ongoing, have to prove that they had only "pure" intentions. If in 2013, Arshi and Dr.Khan has been charged for aiding and abetting in my son's international abduction, I have no doubt in my mind that my son would have been returned to the US within months, and my husband would have been forced to sit down with me to work out some sort of shared parenting plan, instead of my being carved out almost completely from my son's life for the last 5 years.

The day my husband flew with my son to Dubai instead of returning to New York as planned, he called me from the airport for a few seconds and told me to speak to my son who he said was refusing to get on the plane... he handed his phone to my son who was sobbing harder than I had ever heard him, my poor angel Abdallah, and I told him not to cry and to get on the plane and come back to New York where I was waiting for him, and my son tried to say some thing to me though his sobs, but my husband quickly grabbed the phone back from him and told me he had to hang up or they would miss the flight.

My heart still screams in fury and unbearable pain when I remember the details of that call. My son tried to tell me he was being abducted and I had no clue. But the reality is that even if I had known, there is

nothing I could have done to restrict my son's travel without a custody order, which I did not have at the time as I was married to my husband. Unlike at the Canadian or South African airports where a parent must produce a notarized letter of consent from the non-travelling parent to be allowed to exit those countries. Unlike in India, where a foreign national cannot leave India after a 6 month stay without an "exit permit" provided by the Foreigner's Registration Office (FRRO). Unlike in the UK where a concerned parent can ask the police to place a "Port Alert" on children at risk of abduction without a custody order.

Through my own case and those of several other parents across the US, in the last 5 years I have learnt about the utter failure United States government in preventing new abductions and in bringing back the 10s of 1000s of already abducted children since the 1980s. Congress has been holding hearings of IPCA since the 1980s and there were cases of American children abducted to India even then. Yet India and the US still have no bilateral treaty or MOU in place to address this still growing crime.

I learnt that although what happened to my son is federal crime in the United States since the 1990s under 18 USC 1204, there have been only a handful of prosecutions.

Prosecutorial discretion has been abused in other IPCA cases besides mine- most consequentially in the case of Dharmesh Ved, whose wife Sejal Ved was restricted from travel outside the US by the Kansas family court by confiscation of her US passport because she was believed to be flight risk after the police had to be called to the house when Sejal held a knife to their middle daughter's throat and threatened to kill her if she was not allowed to take all 3 kids to India to live with her parents. Dharmesh Ved was given sole custody by the Kansas family court of all 3 of their daughters. She however obtained a fraudulent Indian passport from corrupt Indian consulate officials in Houston, which she used to flee the US with the youngest daughter Kiara to seek refuge in Mumbai where her family has political connections. Dharmesh spent about half a million dollars on litigation & appeals in both the US and India, and 5 years later, just 2 weeks before he was almost certain to win a decision in his favor at the Supreme Court of India, his 6 year old daughter died under highly suspicious circumstances of aprazolam ingestion (a medication for anxiety and panic attacks) according to the Mumbai Lilavati hospital medical reports. But an "autopsy report" issued by the Mumbai police over 6 months after her death states she died of pneumonia! Prior to Kiara's death, the Kansas DA's office had several times refused to extradite the US citizen mother Sejal for passport fraud arguing that it would be a waste of their resources! Dharmesh knowing that his daughter was in imminent danger with her mentally unstable mother even offered to pay all costs for extradition, believing that may be the only way to bring the child back safely to the US to his lawful sole custody. And now little Kiara is dead, her father and 2 older sisters are traumatized, and they still have no answers as to who was responsible for her suspicious death.

I learnt that many US family court judges are still ignorant of IPCA and the Goldman Act which is US law since 2014 and should therefore be common knowledge to all US lawyers and judges who bother to update their knowledge as we physicians have to annually in order to maintain our license to practice. An American mother in Arizona will be held in contempt of court if she prevents her children from travelling this summer to India, which DoS has labelled "non-compliant" with respect to IPCA since 2014.

I learnt that the Indian Judiciary even at the highest level of Chief Justice is corrupt. Our American children are literally being held hostage as "golden geese" by greedy lawyers and judges for 5 to 7 years due to the heavily backlogged courts where 30 million cases are currently pending- of which 90% have been pending for over 1 year and 50% have been pending for over 5 years. IPCA is a booming COTTAGE INDUSTRY industry in India with both the left behind and abducting parents spending

anywhere from \$60,000 to 500,000\$ on litigation in 2 countries for 5-7 years, and with no almost no access the whole time!

A Delhi Supreme Court Judge issued the following order in the case of Roshni, the abducted daughter of Ruchika Abbi who in 2015 had testified before this honorable Committee. Ruchika had to move to India for 1.5 years to get her daughter back, almost losing her job in the US, being reduced to near poverty. Roshni's custody was first awarded to Ruchika by the Supreme Court of India, but when her husband disobeyed that order by abducting Roshni during a Supreme Court ordered visitation on Indian soil, the Supreme Court instead of penalizing the now twice abducting father for contempt of court ordered the poor child to remain in her captor's custody! The judge even acknowledged signs of parental alienation: ***"...We hope, trust and expect from the appellant (Ruchika) and respondent no. 2 (twice abducting father) to cooperate with each other for the sake of their minor child's welfare and taking advantage of temporary custody of the child not to influence her innocent mind by tutoring her and create hatred against others for their personal interest - a fact, which we unfortunately noticed while interacting with the child on two occasions. Indeed, we feel that such attempt on their part and especially, respondent no.2 may do more harm to the child in long run."***

For a Supreme Court Judge to recognize parental alienation of a 7 year old girl by her twice abducting father and still order her to remain with her father is the most cruel type of child abuse. It is no better than if a Judge were forcing a 12 year old rape victim to marry her rapist, thus legitimizing the rape, exonerating the rapist, and sentencing the victim to a lifetime of continued horrific abuse.

Only in India are women and children still treated as second and third class citizens. Indian courts & government officials have shown clear disdain for women like me & Ruchika because we have hard earned careers in the US and have the courage to stand up to the abuse from our husbands and in-laws and to stand up for our rights as wives and mothers.

The Indian Ministry of Women and Child Development (MWCD) has shown only heartlessness towards women like myself whose abusive husbands are trying very hard to erase us from our children's lives. MWCD officials almost never respond to our many emails. They refused repeatedly to grant us left behind parents an audience on February 3rd 2017 at a stakeholder meeting about IPCA, instead deliberately misdirecting us to "tweet" our concerns, while abducting mothers, their lawyers and anti-Hague lobbyists were invited to the meeting chaired by Minister Maneka Gandhi!

The Supreme Court of India and MWCD support IPCA as an abducting mother's rightful defense against alleged domestic violence (DV). The same Supreme Court of India and MWCD have forced us American based left-behind mothers into grave financial difficulties by giving us multiple court dates in India which we are forbidden to attend via video conference, courts dates which keep getting postponed month after month leading to multiple fruitless trips in a year to India, and by issuing outrageous, misogynistic court orders that forbid us, the biological mother and the custodial parent by US law, to have our children with us for overnight stays, by preventing our children from vacationing with us in the US or even within India. Bindu Philips, after 8 years apart from her abducted twin boys, finally got 1 week court ordered visitation, during which her ex-husband supervised her and the boys, even staying in the same hotel and making the kids go back into his room with him instead of staying with Bindu.

In December 2015, over a year after the US DoS had labelled India as "non-compliant" according to the definitions in the Goldman Act, the DoS sent an application to the Government of India requesting the return of over 90 abducted American children, including my son. India has been stalling for the last 2.5 years on their official response, and the DoS's only answer to Congress has been "We are meeting with

the Indian government repeatedly and raising our concerns and educating them about the need for accession to The Hague" which does not answer the question at all, because India's accession to the Hague Convention on International Child Abduction will not lead to returns of the existing 90 + cases!

Seeing that the DoS by its own choice is basically nothing more than the "Department of Status Quo", in 2017 we left behind parents took into our own hands to reach out to the special Punjab and Haryana Committee designated by the MWCD in early 2017 to weigh the pros and cons of India acceding to the Hague Convention. This committee is headed by Punjab and Haryana High Court Justice Rajesh Bindal. (Ms Suzanne Lawrence has referred to it as the Haryana Committee)..

On September 16th 2017, about 17 Left behind parents from the US, UK and Australia managed to get the Haryana Committee officials to agree to a video conference, attended by the following committee members-Justice Rajesh Bindal Committee chairman, Justice Garg Committee Panel member, Justice Anita Chaudry, Committee panel member, Ms. Meenaxee Raj Committee coordinator, Ms. Astha Saxena, Joint Secretary of the Ministry of Women and Child Development and Ms. Uma Shekar, Joint Secretary Ministry of External Affairs.

The Haryana committee heard our heart breaking stories over video conference. At least half of us were mothers who have been victims of DV apart from having our children abducted to India by our husbands. None of us women are paid alimony. Most of us have had money, wedding jewelry, digital cameras, laptops, passports and other travel documents stolen from us by our husbands. Some of us have been given ex parte divorces. All of us stayed in our abusive marriages for the sake of our children and because we felt we had no escape. All of us have been deprived of almost any meaningful contact with our children. Each and every committee member had disinterested, skeptical expressions on their faces as they heard us out and watched some of cry. They said nothing except "Thank you, we don't have the time to listen to everything today, please send us your stories via email." No acknowledgement of our pain. We sent emails to all the members of the Haryana Committee, but we only received acknowledgement from the committee coordinator that our emails were received, but no offer of assistance or even sympathy.

Later we discovered certain facts that made us believe that the Haryana Committee is compromised by a conflict of interest. A handful of wealthy abducting mothers who are US citizens of Indian origin, their lawyers and the anti-Hague lobby, have been meeting for several months at committee chairman Justice Bindal's home. Conflict of interest would explain why India after being labeled "non-compliant" by the US created a draft bill of The Hague in June 2016, formed the Haryana committee to discuss India's accession to The Hague in early 2017, spoke with us left behind parents in September 2017, and still has not budged from its original position, which remains that India's accession to The Hague will be disastrous to the safety of Indian women. This is a lie. 1/3 of all left behind parents are mothers and the Hague if correctly implemented would protect us, and more importantly protect our children.

One of the most vocal opponents of India's accession to The Hague is ex- Additional Solicitor General (ASG) of India, Indra Jaisingh. She has made it her personal mission to lobby the Indian government to prevent abducted American children from being returned. Here too there is conflict of interest as she actually takes on IPCA cases herself. In 2016 she was charged by the Ministry of Home Affairs for soliciting over a 100 million rupees in foreign funds for her NGO "Lawyer's Collective" in the name of creating AIDS awareness in India and advocating for women's rights (which included basically writing bills that if enacted will make it easier for women to sue their husbands for large sums of alimony), when in reality those foreign funds were used to finance the campaigns of various ministers who have helped keep her in powerful government positions over the years. Jaisingh's NGO license was subsequently suspended and then cancelled by the Ministry of Home Affairs in December 2016, however in 2017 she was giving opinions in the major Indian newspapers claiming that India must not

sign the Hague because Indian women will suffer great harm. Minister Maneka Gandhi has been inexplicably partial to her opinion.

Indira Jaisingh, Suranya Aiyer and Malavika Rajkotia are high profile Indian lawyers who advertise themselves as "women rights" advocates, but when we left behind moms approached them for their help, they turned us away rudely and even aggressively, when they realized we are not about extorting money from our husbands, but only wanted our children to have both loving parents in their lives.

There is a left behind mother from San Jose CA named Nidhi Sharma. Her son Daksh was abducted at the tender age of 4 years old by his father not once but twice- first from India to the US, and then after Nidhi followed them to the US, a second abduction, this time from the US to India. Nidhi had already filed criminal charges in India against her husband and in-laws in 2015 for the first outbound child abduction and though their passports were impounded they were never arrested. She has had absolutely no contact with Daksh for almost 3 years since the first abduction. In November 2017, Daksh's father tragically committed suicide in India. Nidhi travelled to India and spent almost 3 months there from December 2017 to February 2018, trying to get her son back using every legal channel available.

She spent several long days commuting 8 hours either way from her small home town to the Punjab and Haryana High Court. (The Haryana Committee is aware of her case). Nidhi was able to see Daksh only once in the 3 months as a result of a writ of habeus corpus petition. Daksh however is totally brainwashed and even scared of her- he was tutored by his paternal grandparents to announce to the judge - "She used to beat my father, and she twisted my thumb when I was small, and nobody taught me to say all these things". Meanwhile her late ex- husband's parents started shouting in the court that Nidhi's 200+ emails to her husband begging for access to her son were ultimately responsible for their son's suicide, whereas they already knew that their son had a history of failed suicidal attempts in the past due to untreated psychological problems.

Despite the obvious parental alienation/brain washing of Daksh, the response of both the Punjab and Haryana High Court and Lower Court judges has been to order him to remain with his brainwashing elderly grandparents, and for Nidhi to attempt to "mediate" with her ex- in laws. Nidhi's lawyer has now informed her that her in laws have petitioned for the legal guardianship of her son. As with the disastrous case of Ruchika Abbi, at the end of years of litigation, the judge will ask the abducted child who they want to live with, and as in most cases where the child is so young and so petrified of or brainwashed by their abductors, Daksh will probably say he wishes to remain with his abducting grandparents.

And that is how the Indian judiciary washes their hands off the responsibility to do what is right by America's abducted children. They very eagerly usurp jurisdiction over American children the second they land on Indian soil, using fancy legal terms like "parens patria" in the wrong context, but they refuse to protect our children's human right to have access to both their parents. Why doesn't India apply "parens patria" to the existing 400,000 street children of India who are forced into the multimillion dollar child trafficking industry? These same judges & lawyers drive by these street children everyday on their way to & from court. Why only American, British, Dutch citizen children? To fail to recognize the financial motivation & conflict of interest behind India's policy to LEGALLY retain abducted American children is to deliberately turn a blind eye to the abuse of our innocent children as "Golden Geese".

The anti-Hague lobby in India paints a false narrative that the taking parent is always an Indian woman fleeing the domestic violence she suffered in the US, an uneducated, only Hindi speaking, beaten up woman who cannot dial 911. Yet when she lands in India she is capable of immediately retaining high profile lawyers and filing multiple simultaneous petitions for dowry harassment, domestic violence,

alimony and child custody. In reality the anti Hague lobby including Indira Jaisng and the Minister of WCD Maneka Gandhi do nothing to help the true DV victim women and children in India. Maneka Gandhi has publicly shown more sympathy for street dogs than to women like me.

From my own experience as a DV victim in India in 2016, I learnt that Indian law enforcement does NOTHING to assist and protect abused women and children. India is a country that turns child abduction and domestic violence cases into civil cases and then looks the other way while we women and children are left to fend for ourselves in the courts. In the US the police come to the victim's rescue within minutes of a phone call to 911 and the abuser gets arrested and jailed. However, when I visited India in November 2016 for my son's 10th birthday, my husband physically assaulted me in front of his extended family and our son. My husband's kind hearted relatives rushed to protect me and my parents. I returned to my hotel some miles away with my parents with a bad concussion that would last 10 days and with my clothes torn and with the fear of more violent attacks against me and also possibly even my son. I called the Women's police station to help me, and they told me they will first need "investigate" before they are able to press any charges against my husband, which would take at least 2 weeks if not longer, and that if he is charged for domestic violence, he would be arrested and jailed for 24 hours and then get out on bail. At NO time would I receive either police protection or a court protection order. I also called the national Child Helpline to tell them my son was in danger of being physically abused by his violent father, and they told me that even if I were to obtain an Indian court custody order, Child Helpline staff are not permitted to remove a child away from a violent parent.

After I was assaulted, I emailed Minister Maneka Gandhi and the Ministry of External Affairs about my assault along with a graphic picture of me in my torn clothes. 14 months later, I got an email response stating that they will not open a case!

Mothers like myself, Ruchika Abbi, Bindu Philips, Swati Binayki and Farheen Khalil have not only had their children abducted and illegally retained in India by our abusive husbands, but Indian judges have "ordered" that they only get few hours visitation a year, a few minutes Skype calls on weekends, absolutely no overnight stays and no travel to the US!

The Mumbai High Court recently issued a shocking decision in April 2018. Shehzad Hemmani is an Indian citizen and Nadia Rashid is a dual Dutch & Pakistani citizen. In September 2016, at only 1 year and 5 months old, Insiya was abducted by her father Hemmani's hired henchmen from the Netherlands to India. 4 of 5 kidnappers were later arrested in the Netherlands, however the father Hemmani remains in India protected by the Mumbai courts where the Interpol diffusion notice against Hemmani was cancelled and an official extradition request from the Netherlands government was denied. In 2017 the Dutch Foreign Minister himself spoke with India's Minister of External Affairs Sushma Swaraj and was flatly told "A father cannot be accused of abducting his own child" & to trust the Indian judicial system to deliver justice to Insiya. The Mumbai Family Court in January 2018 finally ordered Insiya's return to her mother in the Netherlands, however, Hemmani appealed to the Mumbai High Court, which has ordered that Insiya, now 4 years old and with no contact with her mother for the last 2.5 years, remain in India with her abducting father! The judge has given the following twisted reasoning- ***"The child has gained roots in India, the child is not conversant in the Dutch language and would feel completely uprooted if transferred to Netherlands and is made to live in an atmosphere where the child is left only to the mother, whereas in India, the child is in company of the grandparents with lot of love and affection being showered on the child. The issue as to in what manner Insiya was brought to India, is of no significance. As India is not yet signatory of the Hague convention, the Court in that country to which the child has been brought must consider the welfare of the child... Though the Comity of Courts is a principle of International acceptance, it would not partake the guiding principle in the custody matters being the welfare of the child to be of paramount importance...in view of her bonding with the father and his family and with the country for the last 18 months, would cause tremendous mental and***

psychological harm to the child, who is at the age of receiving love and affection and reciprocating the same."

The judge condones the abduction of the child by the father, and states that to return her to her own mother will be cruel!

We frustrated left behind parents recently took it to ourselves to try to speak directly with Ambassador Juster, who was asked by US Congress at the time of his nomination if he would address the issue of India's and IPCA. He answered "Yes" and went on to state that he would like to speak to parents directly to hear our stories, but due to some reason or another, Mr. Juster never accepted our collective request to meet him in Washington DC before he left for India, and now according to embassy officials, Mr. Juster is unable to find the time to speak to us over the phone but is willing to meet with us if some of us parents are willing to fly over to Delhi. We spoke instead to Mr. Hogeman and Ms. Pam Kazi on conference call and all they could talk about is their "educational efforts". There was no mention of Goldman Act implementation by either Mr. Hogeman or Ms. Kazi until it was my turn to speak and I respectfully asked them if they have ever heard of the Goldman Act, and they acknowledged they "know the Goldman Act very well!" and when I asked- "Well so are you going to use any of the tools in the Goldman Act against India since India has been labelled non-compliant since 2014?" And they replied "We have been meeting with the Ministry of External Affairs and of Women & Child Development and we are educating them" and we were then asked to end the conversation since we had run out of the allotted time.

India ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992 and 15 years later in 2007 create the Ministry of Women and Child Development with the sole purpose to be the nodal ministry to implement the UNCRC, and 26 years after ratification of the UNCRC, India has still not implemented the following articles:

Articles 11, 35-The State's responsibility to take measures, including the conclusion of bilateral & multilateral agreements, to combat child abduction and the non-return of children abroad.

Articles 3, 5, 7, 8, 9, 10-The child's right to maintain regular access to both parents, and to be cared for by both parents.

Articles 7, 8- The child's right to preserve his or her own identity.

Why do Mr. Hogeman, Ms. Kazi and the OCI in general fail to see that India will treat the Hague with the same level of disrespect as it has been treating the UNCRC for decades.

The only solution with non-compliant countries like India where the legal system profits from IPCA, is to start using the many tools defined in the Goldman Act.

I am deeply grateful for the continued commitment of the House Foreign Relations Subcommittee and especially of Chairman Chris Smith to deliver justice to abducted American children like my son.

Sincerely,
Samina A. Rahman, MD
Mother of Abdallah S. Khan
Chandler, AZ 85226

Questions for the Record Submitted to
Special Advisor for Children's Issues Suzanne Lawrence by
Representative Chris Smith
House Foreign Affairs Committee
April 11, 2018

Question 1:

How many cases were resolved with Japan in 2017? Were any of those cases resolved by the child attaining the age of 16?

Answer:

In 2017, four Convention abduction cases with Japan were resolved with the child returning to the United States pursuant to a voluntary arrangement between the parents as a result of the Convention process. Six Convention access cases with Japan were resolved in 2017. One of these was resolved pursuant to a voluntary arrangement for return between the parents as a result of the Convention process. Two cases were withdrawn by the requesting parent. In two cases the left-behind parent could not be located. In one case the child or left-behind parent is deceased. In addition, five access cases were closed because the child was no longer under 16 years of age. When a child attains the age of 16, the Office of Children's Issues will close the child's case, but the case is not considered "resolved" per the Goldman Act.

In 2017, seven pre-Convention abduction cases with Japan, where the left-behind parent did not file for access under the Convention, were resolved. One of these was resolved with the child returning to the United States pursuant to a voluntary arrangement between the parents. Another was resolved with a voluntary access arrangement between the parents. In five cases, the left-behind parent could not be located. In addition, one case was closed because the child was no longer under 16 years of age.

Question 2:

Per the Goldman Act Sec. 202, have any bilateral, working or official state visits been delayed or canceled as a direct response to a country's failure to resolve abduction cases?

Answer:

The Department has not delayed or canceled any bilateral working groups or other official visits in response to a failure to resolve abduction cases. We evaluate how pragmatic and productive a particular action will be on a country by country basis. We work closely with stakeholder offices in the Department, our interagency partners, and our missions overseas to carefully consider the use of each tool outlined in the Goldman Act. In our overseas missions, we work specifically with our ambassadors, who are the President's personal representatives in a country. For additional information about actions the Department has taken, please refer to our 2016 and 2017 Action Report on International Parental Child Abduction. The 2018 Action Report will be available later this year.

Question 3:

The Goldman Act does not include a country's Hague Convention status in the definition of an "unresolved case". When a country has open both pre- and post- Hague cases, why does the State Department include only post-Hague cases as "unresolved cases" in its count for purposes of determining whether a country has 30% or more "unresolved cases"?

Answer:

The Goldman Act defines countries as either a "Convention Country" or a "Non-Convention" country for purposes of determining a "pattern of noncompliance" under the Act, based on whether the Convention has entered into force with respect to the United States. For a Convention country, the term "pattern of noncompliance" means the persistent failure of a Convention country to implement and abide by the Convention. Therefore, a threshold inquiry is whether a child who has been abducted or retained is subject to the Convention's provisions. Only if the child falls within the scope of the Convention will the administrative and judicial mechanisms of the Convention apply. Because the return remedy of the Convention does not apply to cases where a child was wrongfully removed or retained prior to the Convention entering into force between the United States and the other Contracting State, pre-Convention cases have no bearing on whether a country is implementing the Convention's provisions regarding applications for return. Nevertheless, the Department reports on efforts to seek resolution of pre-Convention cases, pursuant to the requirements in the Goldman Act, found at 22 USC 9111(b)(9). The Department also assists parents with pre-Convention cases with filing access cases under the Convention.

Question 4:

How many children were involved in the cases of child abduction opened by the Department of State in 2017? How many cases were opened in 2017? How many cases were resolved in 2017? How many children were involved in cases that were resolved in 2017?

Answer:

In 2017, 345 cases of child abduction, involving 496 children, were opened by the Department of State.

Department records show that the average abduction case is open for 13 months. As a result, the most recent year for which we can evaluate the resolution of cases is 2015. By December 31, 2017, 42 percent of children who were reported abducted in 2015 had returned to the United States. Of the abduction cases opened in 2015, 62 percent had resolved either judicially or voluntarily, another 26 percent resolved for other reasons or had been closed administratively, and lastly 12 percent remained open at the end of 2017.

Question 5:

How many children were returned to the United States in 2017?

Answer:

In 2017, 215 abducted or wrongfully retained children returned to the United States. The majority, 160, returned from Convention countries, while 55 children returned from countries adhering to no protocols with respect to child abduction, as defined in the Act.