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Rights, and International Organizations

Testimony of Juan Garaicoa
Father of Two Children Abducted to Ecuador

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Chairman Smith, Ranking Member Bass, and Members of Congress attending this Hearing today, on behalf of my two children Mateo and Martin, I would like to thank you for giving me the opportunity to speak, here at the United States Congress, about International Parental Abduction and the Goldman Act to Return Abducted American Children.

It has been well documented that international parental abduction, in most cases, is not an act of love, but rather an extreme form of child abuse.

Children who are victims of parental abduction, usually, have already gone through the pain of their parents' separation or relationship breakdown. Due to the unilateral decision of one of their parents, these children, then, face the trauma of suddenly losing contact with their mom or dad - the left behind parent. Sadly, this is precisely the case of my two children, Mateo and Martin, who have been deprived of any contact whatsoever with their dad for over two years now.

The effect of international parental abduction on children can be catastrophic.

An essay published by the American Bar Association reports that "children that are abducted for over six months display severe psychological trauma and severe social disorders that will likely not be resolved as long as the child stays with his or her abductor. Although reintegration with family after many years can be difficult for the child, this is often the only chance the child will have to overcome the issues caused by the abduction. Most children are found to improve with the stability of being home with the searching parent and attending therapy.

Children of long-term abductions report a feeling of resentment toward *both* parents, the abducting parent for stealing them, and the left-behind parent for not rescuing them sooner. And the longer a child is on the run, the more emotional damage is done. Abducted children have a high rate of seeking out their left-behind parent as teenagers and adults, always seeking reunification, even after many years apart. This suggests that returning a child to a left behind parent, even after many years, is often what is best for the child and is what the child desires." ¹

Shortly after my children's abduction in August 2016, I found much needed encouragement and hope from a press release (dated November 18th, 2017) from former Secretary of State John Kerry.

I would like to highlight three paragraphs from Secretary Kerry's statement:

1. *"One of the Department of State's highest priorities is the welfare of children involved in international parental child abduction cases, and one of our most effective tools for resolving these cases is the Hague Abduction Convention."*
2. *"In 2014, Congress passed the Sean and David Goldman International Child Abduction Prevention and Return Act, which gives the Department of State additional tools to advocate for the return of abducted children."*

¹ American Bar Association, One Year Isn't Enough

3. "There can be no safe haven for abductors."

After fighting -for over two years- to secure the return of my children from Ecuador, I would like to testify today that my experience makes me believe that:

1. The Hague Convention has NOT been an effective tool in bringing back my children from Ecuador.
2. The State Department has NOT enforced the tools provided by the Goldman Act.
3. The abductor seems to have been successful in finding a safe haven in Ecuador, a Hague-partner country that has been listed as non-compliant by the State Department for several consecutive years.

HAGUE CONVENTION

In principle, the legal remedy, available through the Hague Convention -of seeking to have the abducted children returned to their habitual place of residence- aims to achieve a fair process.

However, in non-compliant countries, reality is rather different.

As soon as the taking parent abducted my children to Ecuador, she filed lawsuits for divorce, parental rights, and child support (i.e. classic case of forum shopping). Henceforth, she has retained 13 attorneys from 9 different law firms in Ecuador, and none in the U.S. The vast majority of the Ecuadorian attorneys are renowned for their level of influence, connections, and even and questionable practices.

We have been able to document a fairly large number of irregularities since day one. Let me share some of those with you, as they pertain to the Hague Hearings in Ecuador:

Lower Court - April 2018

- Lower Court Judge did not allow independent professionals from the U.S. to testify via videoconference. These professionals, including family therapists and Guardian Ad Litem (who had been appointed by a Florida Judge during divorce proceedings in Miami), had first-hand knowledge of our family dynamics, as they personally treated both, parents and children for nearly three years.
- Lower Court Judge did not allow U.S. custody evaluator, who travelled to Ecuador for this Hearing, to testify in a free manner.

According to the Doctor from Miami, who had previously testified in other Hague proceedings in different countries, he found an extremely hostile environment in the Ecuadorian Court. Most notably, the Custody Evaluator claimed:

- a) That the Judge demonstrated to be utterly biased.
 - b) That his passport was confiscated by the Court until late in the afternoon, long after his testimony had concluded.
 - c) That he was threatened with prison in Ecuador for perjury.
- Lower Court Judge did not recuse herself from hearing this case despite the fact that she maintains an intimate friendship with opposing counsel. Oddly enough, the Judge and the abductors' attorneys were displaying public messages on Facebook of their mutual admiration and love – at a time when the Judge was supposed to announce a hearing date for our Hague case.
 - Lower Court Judge had a short, private meeting with my children without any other person attending. She denied restitution based on what she claimed was the desire of my children.

Court of Appeals (July 2018)

- Panel of Judges did not allow officer from the U.S. Embassy in Ecuador, who went that day to Court, to be present during the Hearing. (An officer from Ecuador's Central Authority was allowed to attend the Lower Court hearing).
- Panel of Judges met privately with my children, but on this occasion, with the presence of an independent child psychologist.
- Panel of Judges announced at the conclusion of Hague hearing that a final ruling would be issued in writing in the following days. However, they did announce their decision to order “protective measures” in favor of my children -in the form of therapies- which were necessary to re-establish the bond between the children with their father in view of the mother's strong opposition.
- Panel of Judges, several days later, issued their ruling in writing with protective measures, but denied restitution because they considered that my children were “well settled” in Ecuador.

Notwithstanding having dismissed the reason that the Lower Court Judge had used to deny the restitution, the Court of Appeals proceeded to deny the restitution based on the “well settle” exception.

It is abundantly clear that this ruling was made in violation of Ecuador's Constitutional Court and the Hague Convention.

In 2017, Ecuador's Constitutional Court ruled that the "one-year clock" of the so-called "well-settled" exception stops when a Petition is received by Ecuador's Central Authority.

Interestingly enough, the Lower Court Judge did mention in her ruling that our Petition had been filed within one year of the abduction. However, this material fact is notoriously missing from the Court of Appeals ruling.

Needless to say, we intend to appeal with the Constitutional Court of Ecuador.

GOLDMAN ACT

In April 2018, when the State Department published its latest Goldman Annual Report, Ecuador was listed -yet again- as a country that demonstrated a pattern of non-compliance.

Subsequently, in July 2018, the State Department published its Report on the "Specific Actions taken against countries determined to have been engaged in a pattern of noncompliance in their 2018 Annual Report on International Child Abduction".

The following is the actual transcript of the full "Report of actions" taken by the State Department with respect to Ecuador

Report of Actions Taken:

The Department has reinforced efforts urging Ecuador to improve its Convention implementation. In January 2018, the USCA increased the frequency of digital video conferences with the Ecuadorian Central Authority, Ecuadorian law enforcement officials, and the Public Defender's Office to monthly meetings. During these conferences, participants discussed case updates and strategies on improving implementation of the Convention in Ecuador. Such conferences also increased understanding among the different offices involved in abduction cases in Ecuador and therefore improved communication, coordination, and cooperation.

The Department also plans to invite Ecuadorian officials to participate in a new International Visitor Leadership Program (IVLP) tentatively scheduled for summer 2018. The IVLP will specifically address the judicial components of processing and resolving Convention abduction cases.

In June 2018, U.S. Embassy Quito delivered a demarche to the Ecuadorian Ministry of Foreign Relations, giving official notice that the Department cited Ecuador for demonstrating a pattern of noncompliance.

With all due respect, these actions –from the point of view of a left behind parent- do NOT seem that impressive.

Despite the fact that the Goldman Act provides powerful tools to the Department of State, it is evident that these tools are not being used. The State Department’s Action Report contains no sanctions whatsoever against Ecuador.

In its Action Report, the State Department claims that “Diplomatic engagement remains our most effective tool with all countries to assist in resolving IPCA cases”.

I have no doubt that intentions are good and the desire is there, but enforcement is lacking. Soft diplomacy –alone- is not getting the job done.

ACTIONS WHICH MIGHT BE HELPFUL IN RESOLVING THE LONG-STANDING ABDUCTION OF MY CHILDREN IN ECUADOR

Critics of the Hague Convention are of the opinion that the United States Government is powerless in its attempts to coerce foreign countries to obey or comply with the Hague Convention.

To maximize impact and bring back American children abducted abroad, I personally believe that the U.S. Government shall start announcing and implementing sanctions at the macro and micro level. This will send an unequivocal message to the world that the United States of America means business when it comes to bringing back its abducted children.

1. THE EXECUTIVE BRANCH – shall consider taking the view that American children are being illegally retained in foreign countries as a result of an act of kidnapping.

With the implementation of economic sanctions, non-compliant countries will soon start complying with the Hague Convention and American children will finally be rescued and protected from the harmful effects of international parental abduction.

Economic sanctions can have a huge impact almost overnight. The United States is Ecuador’s principal trading partner, and currently, Ecuador benefits from tariff-free entry into the United States for many of its products under the Generalized System of Preferences (GSP). In Ecuador, the annual renewal of the GSP with the U.S. is celebrated as a major victory. Under President Moreno, Ecuador is now expressing interest not only in negotiating a new Bilateral Investment Treaty with the U.S., but also in exploring a commercial trade agreement between both countries.

From a “macro” point of view, Ecuador is currently facing a fiscal deficit that is unsustainable. The country lacks any significant monetary policy maneuvering because its official currency is the U.S. dollar.

2. THE DEPARTMENT OF JUSTICE – shall consider taking swift and immediate actions against abductors and accomplices.

Back in August 2016, when my children were kidnapped by their mother, I went personally to the FBI Miami Field Office – as I had read that the FBI had jurisdiction under the International Parental Kidnapping Act (IPKA). A Special Agent told me, on that occasion, that the protocol is for the FBI not to get involved until the Hague proceedings in the foreign country were finalized.

More recently, another FBI Agent from Miami emphatically told me: “Juan...I’m telling you right now.... the taking mother won’t be indicted unless you win the Hague case in Ecuador”.

To my surprise, the FBI Agent also told me that the defenses under IPKA and Hague Convention were the same. My understanding is that IPKA has three defenses, none of which is the “well settled” exception.

I would hope that U.S. Law Enforcement considers international parental kidnapping as a violent crime against innocent children and that the FBI becomes immediately involved - without having to wait for a Hague Case to be resolved overseas.

Parental abductors usually count with a support network of family and friends who aid in the kidnapping or its continuation. These individuals shall be investigated and eventually be criminally liable for aiding and abetting.

These accomplices, whether they are family, friends, or even family attorneys, shall be criminally charged with kidnapping and conspiracy to kidnap.

Prosecuting these individuals makes sense not only because they will be held accountable for their crime, but also because law enforcement may obtain valuable testimony against the abductor and/or other accomplices. Taking action against accomplices could also persuade the abductor to voluntarily return children retained abroad.

3. THE DEPARTMENT OF STATE– shall consider implementing immigration sanctions against accomplices, irrespective of whether the abducted children were taken to a Hague partner country or non-Hague partner country.

The State Department can build a database with the names of all individuals involved in the illegal retention overseas –including family, friends, attorneys, and judges.

Under this scenario, these individuals could encounter a big surprise next time they go to an American Consulate for their visa renewal. Denying U.S.

visas can become an extremely powerful tool on resolving international parental abduction. Please consider implementing immigration sanctions as soon as possible against abductors and their accomplices -irrespective of the country of destination where the abductor has taken our children.

I would like to finish my testimony by emphasizing that every day counts. Time does not erase our memories or heal our pain. Time triggers an awful lot of daily reminders. Time is of the essence and now is the time to bring our children home.

The childhood of our children is in your hands. The fate of our children is in your hands.

My special thanks to Michael G. for his extraordinary work at the Office of Children's Issues, and to Allison H. for her unconditional support throughout this difficult journey.

Last but not least, I would like to send a brief message to my children: I love you guys! I'm here for you. Always!

Thank you.