

# INTERNATIONAL PARENTAL CHILD ABDUCTION

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## HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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## **INTERNATIONAL PARENTAL CHILD ABDUCTION**

**THURSDAY, FEBRUARY 27, 2014**

U.S. SENATE,  
COMMITTEE ON FOREIGN RELATIONS,  
*Washington, DC.*

The committee met, pursuant to notice, at 11:15 a.m., in room SD-419, Dirksen Senate Office Building, Hon. Robert Menendez (chairman of the committee) presiding.

Present: Senators Menendez, Boxer, Corker, and Johnson.

### **OPENING STATEMENT OF HON. ROBERT MENENDEZ, U.S. SENATOR FROM NEW JERSEY**

The CHAIRMAN. Good morning. This hearing will come to order. Let me welcome our panelists. Thank you for being here to help the committee better understand the scope and nature of the tragic problem of parental child abductions around the world and what we can do to change the dynamic. We look forward to your perspective on the international implementation of the 1980 Hague Convention on Civil Aspects of International Child Abduction and on the effectiveness of our government's efforts to bring these children home. I am particularly interested in what we can do to help the parents of these children and what new tools may be available to prevent more abductions in the future.

Each year over a thousand children are abducted from American homes and taken to a foreign country. Too often, they are permanently out of reach of U.S. law and are never returned. It was David Goldman's extraordinary 5-year battle to bring his son, Sean, home from Brazil that helped highlight the horrendous problem of international parental child abduction. David Goldman, who will be on our second panel, is from New Jersey, which brings this close to home for me. But far too many parents have waited far too long for the return of an abducted child and David has helped focus the world's attention on the heartbreak of child abduction.

As a parent, I can only imagine the emotional toll of having a child abducted and taken abroad, and being helpless to try to bring the child back. That is why we are here today: to learn what more we can do to bring these children home.

Also today with us from New Jersey is Bindu Philips, who lost her twin sons, Albert Philip Jacob and Alfred William Jacob. Their father, Sanil Jacob, took the family to India on an impromptu vacation and kept them there against their mother's wishes. For 5 years Bindu Philips has fought legal battles, and the case has been pending for 4 years before the Supreme Court of India. The New

Jersey Supreme Court has given Bindu Philips legal and residential custody, but the court's requests have been ignored. The fact is India is not a signatory of the Hague Convention. As of now, the case has not been resolved.

The U.S. Senate ratified the Hague Abduction Convention to create a civil framework for the quick return of abducted children. But, though the Convention has helped to return many children, it is by no means foolproof. In countries that are a part of the Hague Convention, 73 percent of abducted children are returned.

But if a child is abducted to a country that does not participate in the Convention, the rate of return of children is 27 percent. And at the end of the day, the rate of return of abducted children should be 100 percent.

Today we hope to gain insight into how we can move toward that mark, how we can do more to prevent there from being safe havens anywhere in the world for those who abduct children, and how we can better assist parents in bringing abducted children home, where they legally and rightfully belong.

As part of that effort, this committee is looking at legislative options and is now reviewing language. My hope is that we can make the House-passed Goldman bill even better by bolstering prevention options so that children are less likely to be abducted in the first place.

With that, let me turn to Senator Corker, the distinguished ranking Republican on the committee, for his remarks.

**OPENING STATEMENT OF HON. BOB CORKER,  
U.S. SENATOR FROM TENNESSEE**

Senator CORKER. Thank you, Mr. Chairman. In particular, I like the way you ended your comments there. I think there are some preventative things that can be done and I appreciate the way all of us are thinking that way, and especially your comments and for having this hearing; and to our witnesses, who I know have very compelling stories today.

Child abduction is a difficult emotional issue by itself, but the challenges of international child abduction, where a parent is responsible for the abduction, make it both heartbreaking and very complicated to address through diplomatic and legal channels. The United States has ratified, as the chairman mentioned, the Hague Convention on the Civil Aspects of International Child Abduction. And while I believe the State Department is willing to recognize that it is effective to some degree, my understanding is the Department also sees some real limits to the Convention.

Both the State Department and the Justice Department have their respective ways for addressing these abductions. The State Department has diplomatic tools to engage foreign governments, and the Justice Department has law enforcement tools to bring law-breaking parents back to the United States. These methods have their limits and we have some experts and parents here today who can talk us through some of the limits and how we in Congress might address them.

I hope this committee will take a sober, 360-degree view of the broader problem of international abduction and see how we can

better use the tools we have and consider adding tools that we might also need to bring more kids home.

Thank you very much. I know a number of the witnesses today have been pushing this weekly and I thank them for their diligence and understand their great concern. Thank you.

The CHAIRMAN. Thank you.

Our first panel of the day is Ambassador Susan Jacobs. She is a leading voice on this issue and is the Special Advisor for Children's Issues at the State Department. So, Ambassador, welcome. We look forward to your insights. Your full statement will be included in the record without objection and we would ask you to summarize it in 5 minutes or so, so that we can proceed to a dialogue with you. With that, Ambassador, you are recognized.

**STATEMENT OF HON. SUSAN JACOBS, SPECIAL ADVISOR FOR CHILDREN'S ISSUES, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE, WASHINGTON, DC**

Ambassador JACOBS. Thank you very much, Chairman Menendez, Ranking Member Corker, Senator Johnson. Thank you very much for this opportunity to explain the Department of State's work on behalf of children and families affected by international parental child abduction. As you well know, there are not many issues in which there is consensus in Washington. However, on this issue the Department of State and the Congress share the goals of preventing international parental child abduction, expeditiously returning children to their homes, and strengthening and expanding the Hague Abduction Convention.

Every abduction case is difficult and extremely painful for all of those involved and I am lucky to have a terrific team solely dedicated to this issue. However, we know that the status quo is not enough. We are constantly identifying new ways to strengthen our bilateral relationships in an effort to resolve individual cases and to generate changes that will positively impact all future cases. We welcome additional tools to help us resolve abduction cases and we look forward to continue working with you on legislation to this end.

I was appointed special advisor for Children's Issues in 2010 and I have to say that one of the most heartbreaking issues that I work on involves children who are abducted and wrongfully separated from a parent. I know that many Senators have tried to help parents in their States reunite with an abducted child and we have all seen the frustration and the pain firsthand and we all want to help.

There is no one way to resolve an international parental child abduction. We are working to address a problem that is viewed and handled differently based on the country involved and its laws pertaining to child custody.

The hardest part of my job is when parents have tried everything to effect the return of their child with no success. My experience in working with these cases is that the Hague Abduction Convention is the best way to resolve them. The Convention is a critical tool that deters abductions from taking place, provides a civil remedy for resolution, mandates prompt action, and encourages voluntary solutions.

Since the treaty entered into force for the United States in 1988, the Department has aggressively promoted ratification of, and accession to, the Convention throughout the world. In the last 2 years the Department has reviewed and the government has accepted four new Convention partners: Singapore, Morocco, Trinidad and Tobago, and the Republic of Korea.

In addition, we are very pleased that on January 24 of this year Japan took the final steps to ratify the Convention and will become a treaty partner on April 1. This is a critical step in the effort to ensure that future abductions to Japan have the possibility of resolution through the Convention. Our discussions with the Japanese about the Convention have led to some positive changes in their government's engagement in abduction matters across the board and we will continue to engage them on resolving the existing cases in the spirit of the Convention. We have made it clear to the Japanese that these cases will continue to be a priority for the United States Government.

While we continue our work to expand the Convention, we are also closely monitoring our current treaty partners to ensure that they are meeting their responsibilities under the Convention. We utilize several diplomatic tools to address compliance concerns. We have the highest number of cases with Mexico and Mexico has transformed in the last few years from a very problematic country to a productive Hague partner. This is the direct result of Departmentwide efforts to cultivate relationships with key Mexican Government officials, and due to these efforts in each of the past 4 years more than 150 abducted children have returned from Mexico. This is significantly higher than in any previous year.

For non-Hague countries, where there are generally no laws that would compel the return of an abducted child, we pursue high-level, intense, sustained diplomatic engagement to communicate the U.S. position on abductions and to press for the return of abducted children. We also ultimately want these countries to join the Convention so in the future there can be a direct path to resolving these difficult cases.

Because non-Hague countries lack the legal framework that judges need in order to return a child, parents do not have as many good options. Without the Convention providing this legal framework, there is very little that foreign governments can or will do to return children absent a court order from that country. We have found that diplomacy is the most effective strategy for shifting cultural and political ideologies that are necessary to engender changes in the law. In countries that are not yet treaty partners under the Convention, diplomacy remains the most effective means of generating greater bilateral cooperation.

Mr. Chairman, Ranking Member Corker, distinguished members of the committee, the Department supports efforts to strengthen prevention programs, enhance diplomatic efforts, and speed up the resolution of these cases. We look forward to working with you on achieving our shared goals and giving these children and their families the support they deserve. I will be very happy to answer any of your questions.

[The prepared statement of Ambassador Jacobs follows:]



## PREPARED STATEMENT OF AMBASSADOR SUSAN S. JACOBS

Chairman Menendez, Ranking Member Corker, and distinguished members of the committee, thank you for the opportunity to address you today regarding international parental child abduction (IPCA), a matter of critical concern affecting the well-being of many children and families.

The Department of State (the Department) appreciates the ongoing interest and support on this issue from Members of Congress, and we look forward to working with the committee to identify new ways to strengthen relationships with other countries to expeditiously resolve these difficult cases. We appreciate the efforts and interest of Chairman Menendez, Ranking Member Corker, and the many Members who advocate in support of their constituents.

The shared goals of the Congress and the Department are to prevent IPCA, return children expeditiously to their countries of habitual residence, and strengthen and expand membership in the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the Convention) worldwide. We appreciate the committee's willingness to collaborate with the Department to achieve these objectives. However, we know the status quo is not enough. We would welcome additional tools to help us resolve abduction cases, and look forward to continue to working with you on legislation.

The Department continues to make great strides in engaging foreign governments both bilaterally and multilaterally to foster diplomatic relationships. These efforts and these relationships have proven critical to achieving the successful return of internationally abducted children. In the past 2 years, the Department has reviewed and the U.S. Government has accepted four new Convention treaty partners: Singapore, Morocco, the Republic of Korea, and Trinidad and Tobago. In addition, on January 24, 2014, Japan deposited its instrument of ratification of the Convention; the treaty will automatically enter into force between the United States and Japan on April 1, 2014. The Department welcomes Japan as a treaty partner, and we look forward to continued progress with the Japanese Government on resolving existing cases in the spirit of the Convention.

We have found that the Convention is the best tool for resolving IPCA cases. It is a multilateral treaty that provides protection for children from the harmful effects of abduction and wrongful retention across international borders. However, I want to be clear—the Convention is not a tool for custody determinations. It provides a legal framework for securing the prompt return of wrongfully removed or retained children to the countries of their habitual residence where a competent court can make decisions on issues of custody.

With more countries joining the Convention, the Department is committed to ensuring all current and future treaty partners meet their responsibilities under the Convention. We look forward to working with Congress to identify the means to do so.

## EFFICACY OF THE 1980 HAGUE ABDUCTION CONVENTION

The United States played an active role in drafting the Convention with the objective of facilitating the return of internationally abducted children. The Convention entered into force for the United States in 1988. Since then, the Department has aggressively promoted ratification of, and accession to, the treaty and the effective implementation of the Convention. We now have 72 partner countries.

In 2013, more than 1,000 children were reported abducted from or retained outside the United States. In the Department's experience, the ability of a parent or legal guardian to secure a court-ordered return is much greater in a country that is a Convention partner. For example, in 2013, 113 children returned from Convention partner countries as a result of a court order in a Hague proceeding. From non-Hague countries during the same period, the Department is aware of only two children, in the same family, who were ordered returned to the United States as a result of court proceedings under the domestic law of that country. An additional 402 children returned from both Convention and non-Convention countries as the result of a voluntary agreement between the parents.

In a recent case, a mother abducted her child to the United Kingdom in October 2013, and the Department's Bureau of Consular Affairs' Office of Children's Issues worked with the left-behind father to forward his Convention application to the U.K. Central Authority (UKCA). The UKCA assigned a solicitor to the case within 48 hours of receiving the application, and a Hague hearing was held in November 2013. After the hearing, the court ordered the return of the child to the United States, and the Office of Children's Issues coordinated the logistics of the child's return with the UKCA. This child returned to the United States within weeks of filing the Hague application with the UKCA.

The Convention entered into force between Singapore and the United States in May 2012. In a case last fall, a concerned father contacted the Office of Children's Issues in September 2013 to report that the taking parent no longer planned to return to the United States with their child as originally agreed. The father's attorney in Singapore filed a Hague petition in the Singapore Family Court, requesting the prompt return of the child to the United States. The Office of Children's Issues was in close contact with the father and provided him with timely information and resources during this difficult time. Simultaneously, we worked closely with the Singapore Central Authority during each step of the process. The U.S. Embassy in Singapore also remained engaged. Utilizing the Convention framework, the court ordered the child's immediate return to the United States within weeks, and the father and child were reunited in November 2013. Prior to the establishment of a treaty relationship, cases with Singapore took years to resolve, if they were resolved at all. This is the result we hope we can bring to more and more cases as we continue to grow our relationships with other countries.

#### MEXICO: AN EXAMPLE OF EVOLVING COMPLIANCE

Decades of experience demonstrate that the Convention is the most reliable and expeditious tool to return abducted children because it provides a uniform, civil legal framework for parents to seek the return of their children. While some countries initially struggle to implement the Convention effectively, we find that persistent diplomatic engagement, combined with technical assistance, improves implementation. The country where we have the highest number of cases is Mexico, which has transformed over the past few years from a problematic to a productive Hague partner and a model for other countries in the Western Hemisphere. The Department did not cite Mexico as "not compliant" in the April 2012 or 2013 Convention Compliance Reports to Congress for the first time in 13 years. The problems in Mexico during this period included lengthy delays in court proceedings, a lack of ability or commitment by law enforcement to locate missing children, and significant delays in processing Hague applications by the Mexican Central Authority. In order to spur improvement in Mexico's compliance, the Bureau of Consular Affairs led a Department-wide effort to cultivate relationships with key Mexican government officials and encourage them to put in place measures to ensure better compliance. The U.S. Embassy, including the Ambassador, was actively engaged in these diplomatic efforts. Mexican authorities committed additional resources to their chronically understaffed Central Authority, giving them the capacity to improve case management. At the working level, we have transformed our relationship from one involving irregular formal correspondence to a cooperative relationship with country officers communicating daily with their Mexican counterparts to move cases forward.

Mexican authorities now locate more children and courts have shown marked improvement, processing Convention cases more quickly. More children are being returned to the United States by court order or voluntary arrangements than ever before. In each of the past 4 years, more than 150 abducted children have returned from Mexico (including 250 in 2010). This is significantly more than any previous year. More than 200 of these children returned by court orders in Hague Convention cases. By contrast, during the previous 4 years, only 85 children returned from Mexico pursuant to a Hague Convention court order.

We are working with our Mexican counterparts to make progress on resolving longstanding cases. While in years past Mexican law enforcement agencies were uncommitted to locating missing children, Interpol Mexico has now begun focusing on these cases, with positive results. In each of the last 3 years, there has been a reduction in longstanding unresolved return applications cited in the Compliance Report to Congress. We anticipate that this will be true for the 2014 report as well.

The focus on resolving older cases has resulted in at least 30 cases of court-ordered returns in the last 3 years in cases where the children had been retained in Mexico for more than 3 years. Mexico has also made progress in handling new cases more efficiently. The Mexican Central Authority now processes cases internally in days or weeks instead of taking several months to move cases on to the courts. Courts are also improving; during the past 3 years, we have seen 12 cases where the time from sending the Hague application to Mexico and the return of the children by court order was less than 10 weeks.

Overall, in the Office of Children's Issues, the number of open international child abduction cases to Mexico has dropped by more than 50 percent in the last 4 years. In June 2010, we had 566 open cases in Mexico. Today, we have less than 260. The number of abductions to Mexico reported to the Office of Children's Issues is down by about 35 percent since 2008. This is due not only to enhanced prevention efforts

but also to our improved bilateral relationship with Mexico that has made addressing compliance concerns a top priority.

Despite these improvements, we have not lost focus on the fact that children continue to be abducted to Mexico every week and many parents still must wait far too long to be reunited with their children. We will continue committing significant resources to Mexico, and will keep working to build on the gains of the past 4 years.

#### THE CHALLENGE OF NON-CONVENTION REMEDIES

In cases where the return remedy of the Convention is unavailable, the Department believes that diplomacy is the best strategy for pursuing the return of the child and for encouraging ratification of or accession to the treaty.

Many foreign courts do not recognize and enforce U.S. court custody orders. We are prohibited by federal law from providing legal advice in individual abduction cases and therefore we always encourage parents to consult with an attorney before taking any action. However, our country officers work closely with parents to provide them information about options they have to pursue custody in a foreign court or to otherwise encourage a parent to return a child, including use of visa ineligibility and law enforcement channels. Although the Department routinely requests assistance from foreign governments to facilitate the return of abducted children or to assist consular officers in verifying the well-being of children, most governments, including the U.S. Government, are limited legally in what they are permitted or obligated to do. The Convention helps define those permissions and obligations. We find that developing strong diplomatic relationships with governments is the best way to obtain assistance to our requests to the furthest extent allowed by the country's laws.

#### THE ROLE OF DIPLOMACY

We saw the diplomatic process work with Germany in the late 1990s in response to the Department's determination that Germany was noncompliant with the Convention. The Bureau of Consular Affairs headed a major effort to engage bilaterally with Germany, with Presidents Clinton and Bush raising the issue with the German Chancellor. As a result, Germany revised its domestic laws, ensuring its courts could better comply with the Convention and law enforcement could better enforce Hague return orders. Today, Germany is one of our strongest bilateral partners and a model for other countries.

We meet regularly with our Convention partners to exchange information and to advocate for effective treaty implementation. Across the board, we have achieved positive results that impacted existing and future cases, mutual understanding, and strong partnerships for seeking resolution to the international problem of child abduction.

Diplomacy is the most effective strategy for generating the cultural and legal reform needed to institute changes in countries' domestic laws that will successfully address IPCA. In countries that are not yet treaty partners under the Convention, diplomacy remains the most effective means of generating greater bilateral cooperation that can lead to a country's accession to or ratification of the Convention or to resolution of an abduction case. The contacts that the Bureau of Consular Affairs develops through consistent diplomatic interactions and greater awareness about the Convention have also resulted in increased attention, including from the Congress, to the existing cases that fall outside the Convention framework.

Without the Convention providing a legal framework for parents to seek the return of a child, there is very little foreign governments can do to return a child abducted across an international border absent an order from a court in that country. In nations with independent judiciaries, including our own, the executive branch generally has no power to compel the courts to take specific action in individual cases. We look forward to working with the committee on better tools to help resolve more cases and generate better compliance.

Thanks to Congress and the good work by this committee we have increased our staffing—the Office of Children's Issues is now able to focus on bilateral, multilateral, and policy work aimed at encouraging cultural, political, and legal changes in nonpartner and partner countries to facilitate progress toward joining and improving compliance with the Convention. These include the very bilateral relationships that proved so crucial to our success in addressing compliance concerns with Mexico and Germany.

When the Convention is unavailable, the Department exhausts all appropriate steps to seek the return of these children. In these instances, the Office of Children's Issues works closely with left-behind parents to provide information about domestic and foreign resources that may help parents to resolve their children's cases. We

raise individual cases with foreign governments, requesting through diplomatic channels that they help to facilitate the return of abducted children to the United States and assist parents to obtain access, confirm their children's welfare, and understand their options. We monitor legal proceedings as a case unfolds in court, attend hearings when appropriate, engage child welfare authorities, advocate for consular and parental access, coordinate with law enforcement authorities when competent officials choose to pursue criminal remedies, and work day-to-day to explore all available and appropriate options for seeking abducted children's return to their countries of habitual residence. We know this is extremely difficult for the families so we do everything we can to keep them informed of our efforts and the different tools we use to return their child.

#### IPCA COUNTRY STRATEGIES: OUR VISION FOR THE FUTURE OF IPCA

The Office of Children's Issues realizes that concentrating only on individual cases will not generate the necessary systemic changes in foreign legal systems that promote the return of abducted children. To ensure that actions and outcomes in individual cases inform how we interact bilaterally with the foreign government on future cases and on policy matters, we have initiated a country-by-country review of political, social, and legal structures to identify the barriers that currently obstruct our efforts to return abducted children—or, in some cases, to identify those policies that are working and worth emulating in other countries. Crafting long-term strategies to influence the behavior of foreign government officials allows us to address common trends of noncompliance and noncooperation that often run throughout multiple cases in a particular country. By strategically planning how we will pursue the removal of these obstacles, we have also rendered our individual case management efforts more productive and moved forward with our policy objectives.

Our country-specific strategies will be our roadmap for addressing future abductions. For example, 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. Historically resistant to the idea that access to both parents is usually in a child's best interest, Japan had a wide cultural and legal gulf to cross as it ratified the Convention. While Japan has demonstrated its intent to implement the treaty effectively, like most new Convention countries it will likely encounter cultural and legal challenges during the early stages of implementation. By fostering a close working relationship with Japan's Central Authority and encouraging Japanese judges to seek training and technical assistance for applying the Convention, the Department looks to ensure that Japan will effectively implement the Convention.

India is second only to Mexico in the number of outgoing IPCA cases open with the Office of Children's Issues, and we believe it will continue to be a significant IPCA destination. Although India's accession to the Convention remains a long-term goal, the Office of Children's Issues is not idle in our relations with India. We have developed a long-term strategy of raising accession to the Convention with senior Indian Government officials to ensure that they continue to explore the Convention and make progress toward accession and implementation. Enlisting support from the Hague Permanent Bureau and working multilaterally with other Hague partners, the Department seeks to convince India of the benefits of Hague accession and implementation, as we were able to do in Japan.

#### PREVENTION TOOLS AND THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

The most effective means of stemming the growth of IPCA is to stop it before it occurs. We are dedicated to helping prevent abduction and look forward to working with the committee to explore additional steps that could be taken to help prevent these tragic events. Since 2011, the Office of Children's Issues has broadened the efforts of its Prevention Branch, which is staffed by a team of experts who both manage the Children's Passport Issuance Alert Program (CPIAP), and conduct outreach and training for passport agencies and other domestic stakeholders to prevent IPCA. Furthermore, the Prevention Branch actively engages with domestic law enforcement agencies to stop abductions in progress.

Our Prevention Branch exclusively administers CPIAP, which allows parents and legal guardians to enroll their children in a Department database to help protect against U.S. passport issuance without parental consent or notification. If a passport application is submitted for a child who is registered in CPIAP, the Department contacts and alerts the parent. The Prevention Branch is responsible for reviewing and resolving, in conjunction with Overseas Citizens Services' Office of Legal Affairs, all child custody passport alert entries that produce "hits" during the pass-

port application process. On average, the Prevention Branch reviews more than 300 hits per month. In 2013, the Prevention Branch entered more than 5,500 children into our CPIAP database and has managed more than 10,000 CPIAP cases since November 2011.

Congressional interest remains crucial to our success. Accordingly, the Department can identify concrete ways in which Congress can provide additional tools that will assist the Bureau of Consular Affairs in returning internationally abducted children. One of the Department's highest priorities is to persuade other countries that have not ratified or acceded to the Convention to become party to the treaty. Once they have decided to ratify or accede to the treaty, the Department continues to work with that foreign country to help it pass laws to implement the Convention effectively under that country's domestic law and create an effective Central Authority that promotes compliance with the Convention. The Hague Conference on Private International Law, often viewed by foreign governments as a neutral party, is an invaluable partner in this effort and is very effective at providing technical assistance.

#### CONCLUSION

Mr. Chairman, Ranking Member Corker, distinguished members of the committee, your support remains a key element to our success in pressing for a tangible resolution to these cases and to furthering our bilateral relationships in support of preventing and resolving international abduction. We remain committed to achieving our shared goals to increase the number of children returned to their parents, to advocate for membership in this important international treaty, and to create safeguards that will minimize the risk of IPCA. We look forward to working with you on identifying other tools to achieve these shared goals.

Thank you. I am pleased to take your questions.

The CHAIRMAN. Well, thank you.

Let me ask you, Ambassador. The Hague Convention has been criticized as lacking effective mechanisms to compel compliance among participating countries. In your view, are the existing diplomatic tools to encourage cooperation sufficient for addressing patterns of noncompliance among Hague countries?

Ambassador JACOBS. Thank you very much for that question. One of the best diplomatic tools we have is the engagement of our Congress on these issues, so that when we are talking to our partners in The Hague we can say: You know, our Congress is looking very carefully at these issues and we really need you to do a better job of compliance. We do get a lot of support from the Permanent Bureau of The Hague Committee in urging countries, in training judges, in training prosecutors in how to proceed.

So I think that the more tools we have the better off we are. But we have had a lot of success. Last year there were 522 returns of children abducted from the United States. Hague orders resulted in 113 of them, and of the voluntary returns most of those were from Hague countries, 73 percent of them. So I think that Hague does work. It can always be strengthened and we can certainly always strengthen our bilateral and multilateral efforts to get countries to do a better job of implementation.

The CHAIRMAN. You just mentioned that the more tools we have the better we can succeed at our goal. So in this respect, what are the merits of applying sanctions, aid conditionality, or other forms of diplomatic consequence to what might be defined as noncompliant states—states that habitually have a large number of children that have been abducted, and are not responsive to the otherwise diplomatic overtures that you have just described?

Ambassador JACOBS. Thank you for that question. Fortunately, most of our Hague partners are susceptible to diplomatic pressure. It is in the non-Hague countries that we have much less compli-

ance, and with those countries we have established bilateral working groups. That is one of the ways that we and a number of other countries persuaded Japan to join the Convention. Intense diplomatic efforts with Mexico have made them a much more Hague-compliant country.

We also have a compliance report that we use with Hague countries and the shaming value of that report has produced some results.

The CHAIRMAN. It sounds like in general Hague countries perform much better, which I myself acknowledged in my opening remarks. So for non-Hague countries, do we think that, again, that the merits of applying sanctions or aid conditionality would be something to get them to move in the right direction? And you publish a report of those Hague countries that may not be performing well. Do you publish a report of non-Hague countries in terms of those where we find large numbers of children?

Ambassador JACOBS. We do not publish a report on non-Hague countries that are noncompliant, because they are not in the Convention. What we do with those countries really is intense diplomatic efforts from the working level to the Ambassador to the Secretary of State and the President. The President raised—before Japan agreed to join the Convention, the President raised Hague accession with them any number of times. The two, Secretary Clinton and now Secretary Kerry, having served in the Senate, have an intense interest in this issue because they know about constituent services and how important this issue is to the people of the United States and to the Congress.

So we demarche countries that are not cooperating. I visit them. We have intense talks. And we have had a lot of success. In addition to the four countries that we have just accepted as partners, there are five more countries under review and we are expecting good results from another couple of countries in Asia. This is due to diplomacy, bilateral, multilateral, congressional interest.

The CHAIRMAN. I would take it a step beyond. I would say that I understand constituent service very well, but the safety and security of a nation's citizens is probably job number 1 of any government. We normally think of threats as both internal and external, but I would add that when one abducts a child and they are no longer in their home, that the safety and security of that child has been affected. So it should be seen beyond constituent relations. It should be seen as a part of the security of those who are most vulnerable, at the end of the day, and I hope we look at it in that context.

Ambassador JACOBS. And we do. We have no greater goal than returning every abducted child to his home.

The CHAIRMAN. Two final questions. In the preventive role, can you tell me about the effectiveness of the child passport issuance alert program?

Ambassador JACOBS. I am pleased to do that, sir. Last year we prevented 80 abductions through that program and also through the dual consent program we have, where both parents have to consent to the issuance of a passport for children under the age of 16.

The CHAIRMAN. Is there anything more that we can do in that context? Is this a widely known program? Is it something we can do a better job of letting parents know about? Are there any other tools that you do not possess that you would like to see the Congress give you in this regard?

Ambassador JACOBS. I am sure there are a number of things that we would like to discuss with you in a different venue.

The CHAIRMAN. Well, we look forward to that.

Ambassador JACOBS. Thank you.

The CHAIRMAN. I am not quite sure why it would not be in this venue, but I will trust that—

Ambassador JACOBS. I think part of it is that there are other things that we are doing, but if we mention them in public it will help abductors to succeed.

The CHAIRMAN. We do not want to do that, so we will look forward to a classified session where we can have a thorough discussion, because our goal here is to achieve success.

Finally, again on the program, on the passport issuance alert program, is that widely known? I did not know about it until I started preparing for this hearing.

Ambassador JACOBS. It is on our Web site and we do talk about it. But I think there is probably more that we can do. It is advertised on our Web site, and we can talk to the passport people and see how we can do a better job of making it more widely known.

The CHAIRMAN. It might be great to have public schools, all schools in the country, particularly at a secondary level, when these children enter of age for the possibility of a passport, to have parents know about the program as a more widely known—

Ambassador JACOBS. I like that idea.

The CHAIRMAN. We look forward to working with you.

Senator Corker.

Senator CORKER. Thank you, Mr. Chairman.

Thank you for being here. I was just looking at the largest number of open cases, if you will, and sort of the countries that are involved. I notice that Mexico has the largest number of abduction cases that are still open. I assume that that is because of proximity and ease of ingress and egress. Are there any other factors that might make us more informed as to why that is the case?

Ambassador JACOBS. I think you have hit the nail on the head, sir. But remember, the numbers that we are supplying are the numbers that are reported to us. So there might be more cases, there might be fewer cases, there might be more returns than we know about, because it is all self-reporting. So we can only put out the numbers of which we are aware.

Senator CORKER. Let me ask you this. Again, I bump into people in the hallways that have had this happen to them and their families and it really is heart-wrenching. If you were to just be able to say, Congress, give me these tools to keep this from happening, what would those tools be? What would those additional tools be?

Ambassador JACOBS. Well, I think part of the problem is that we could use better exit controls for children. We do not have exit controls in the United States and many other countries do have that. Perhaps if parents are traveling alone with a child they should have a court order or permission from the other parent. There are

things that we could do differently. The tools that we have work to a certain degree. We did prevent 80 abductions last year. I wish we had prevented every abduction from happening. But I think that we and DHS could come and talk to you and review some other ideas that we and they might have about how to do a better job on this.

Senator CORKER. Well, it seems to me there is some momentum around this issue with the House having passed a bill, and it seems to me if we are going to address it we ought to address it in a real way and not a superficial way. So I would recommend that you come in and talk with both the majority staff and ours to figure out what tools you really need that could be effective and would stop this from happening.

Let me ask you a question. We are going to ask witnesses in just a minute about their experiences. What would they say, do you think, when we ask them about what it is that the State—what is the most effective thing the State Department does with the existing tools to help us return our abducted children?

Ambassador JACOBS. Well, thank you for that question. I hope that they would say that we work closely with them, that we provide information to them, a sympathetic ear, and our unflinching efforts to try to get their children back home.

Senator CORKER. Would they say, do you think, that the State Department is the more effective effort or the Justice Department is the more effective effort?

Ambassador JACOBS. From my point of view it is two different jobs that we each do. We are working on civil remedies and the Justice Department is working on criminal remedies. We work together. We work with DHS, we work with Justice, we work with our NGO partners, and we all work together to try to find the best resolution to each case.

Senator CORKER. I heard you talking about demarches earlier. I guess I have sat with our Foreign Service officers as we issued demarches when we have concerns, for instance, about Pakistan maybe double-dealing with us relative to things that are happening in the FATA areas. Those are pretty serious issues that affect Americans and yet I do not really see a lot of impact that comes from those demarches.

So is our diplomatic effort, the way you have described them, and basically calling out governments when they are not acting in appropriate ways, is that particularly effective?

Ambassador JACOBS. Thank you for that question. I think it is effective. On my many trips, I talk to countries about their performance, whether they are Hague or non-Hague, and often we get the result that we want and we have more children returned. Mexico is the perfect example. For 3½ years we have focused a lot of efforts on compliance with Mexico. We meet with Mexico constantly. We pick up the phone, we talk to their central authority. And we are getting many more returns than we have in the past. So I think that this is a very good thing.

Senator CORKER. Listen, I appreciate you being here today. I know that it must be a very frustrating job that you have, to know the seriousness of the problems that families are having in this regard and the lack of tangible tools that sometimes are at your dis-



posal. I do hope you will come in and see us and talk with us in a setting that you feel comfortable talking in to help us figure out a way to help you and the families that are impacted in this way.

Ambassador JACOBS. Thank you. We will do that.

The CHAIRMAN. Senator Boxer.

Senator BOXER. First let me say, thank you, both of you, because I am so happy to see this bipartisan spirit on an issue that is so tragic and so important. I want to apologize for this quick entrance and exit. I have responsibilities as chairman of a different committee and I trust my two friends here to press on this. I want to just say publicly that I want to work with you.

I want to say, Ambassador Jacobs, thank you to you, because you have been terrific when I have called you on adoption cases and other things, and thank you so much. A lot of your work just goes unnoticed, but there are families all over America who are grateful.

What a painful loss for a parent, for the left-behind parent, and what a painful loss for a child, deprived of two loving parents. Certainly these abductions put the child at risk for serious long-term trauma. I know today you will hear from three left-behind parents who will share their experience and one of them is my constituent, Patrick Braden. After his daughter Melissa was abducted by her mother to Japan in 2006, Patrick became a passionate and unrelenting advocate on the issue. Nearly 8 years later, Melissa still has not been returned home to her dad.

But unfortunately, this situation is not unique. According to the State Department, Japanese courts have never ordered the return of an abducted child. That just does not add up. In fact, there was no legal framework in place to secure the return of children abducted to Japan because Japan was not a party to the Hague Abduction Convention. But due to the tireless efforts of left-behind parents like Patrick to keep a spotlight on this issue and sustained United States pressure, last month, as we know, Japan announced it will finally join the Convention.

Well, we all hope it is a turning point for Japan. Ambassador Jacobs, you have stated that Japan has been one of the “most intransigent countries” on this. How can the United States work to ensure that Japan’s decision to join the Hague Abduction Convention results in real progress in securing the return of abducted children? In other words, it is not just checking the box and saying, I will get those people off my back. But how can we make sure they mean what they said when they joined the Convention?

Ambassador JACOBS. Thank you very much for that question. This is something that we continue to work on. So what we are going to do is to continue to engage with Japan to monitor every case, to talk to them about every case, and to make sure that they are complying with the Convention. I am optimistic that they will do it. I think that the effort that we and a number of other countries, the left-behind parents, and the Congress put into persuading Japan to join the Convention has to have positive consequences.

Senator BOXER. Ambassador Jacobs, do you have any sense of how many left-behind parents there are where the child was abducted from the United States and lives in Japan now? Can you give us a sense of it? What are we dealing with?

Ambassador JACOBS. I can.

Senator BOXER. That would be great.

Ambassador JACOBS. There are currently 80 children representing 58 cases who—these are open cases with Japan.

Senator BOXER. Eighty children?

Ambassador JACOBS. Eighty children, fifty-eight cases.

Senator BOXER. Okay, so some siblings in there.

Ambassador JACOBS. Yes.

Senator BOXER. So we say 58 cases.

Ambassador, I am wondering whether it might be useful—the only reason I am focused on Japan—believe me, it is not to the exclusion of anyone, but just because of Patrick. I know what he has gone through because I have seen him over the years in this tormented situation. Fifty-eight cases. Now, we know Japan joined the Hague Abduction Convention, which is not retroactive; it is forward. But do you think there is a way that we could work with you, all my colleagues, to put pressure on Japan to show that they are serious by looking back and helping us resolve some of these existing cases? Do you think there is a way we could work together on that?

Ambassador JACOBS. I certainly think we can work together, and we have stressed to the Japanese how important their performance is going forward, but also that we have not forgotten the cases that still exist, and we will not be satisfied until all of those children are home where they belong, and we look forward to working with you on finding ways to ensure that that happens.

Senator BOXER. Good.

Well, Mr. Chairman, what I would like to do is, just because I have been working for this for so long on this particular case, maybe there is a way we can hone in on this and just say to the Japanese, and do it in our way—with the Ambassador, we can just have a multipronged effort, where you talk to your people, we talk to our people, and the parents continue to do their work—and we can say: You have signed this Convention, wonderful; but now you need to bring justice to these cases. So you will work with us on that?

Ambassador JACOBS. I think that that sounds like a terrific plan.

Senator BOXER. Great.

Ambassador JACOBS. And we look forward to working with you. I cannot tell you how important the interest of the Congress is in the work that we do.

Senator BOXER. Good.

Ambassador JACOBS. It really makes a difference overseas when I can walk into a meeting and say the Congress of the United States cares about this issue.

Senator BOXER. Well, Ambassador, you know you can.

Mr. Chairman, I am so grateful to you for this. I think maybe we can get some results. Senator Corker, I was just suggesting that we work on a multipronged plan. There are 58 existing cases—the reason I am saying Japan is because they just signed the Hague Abduction Convention, but it is not retroactive. So if we can say to the Japanese, we are very happy you did this, but can you please reopen these 58 cases, and we work in our way and the Ambassador works in her way, parents work in their way. I look forward to working with both of you on that.

Senator CORKER. Thank you.

Senator BOXER. And thanks again.

The CHAIRMAN. Thank you, Senator Boxer. We look forward to having your—when I am in a fight, I like Barbara Boxer with me. It always works wonderfully.

Senator BOXER. We will do it.

The CHAIRMAN. Let me just add to that and then one final question. If you could provide our staff with the leading countries that have the greatest number of children abducted, and for which we have not had a great deal of success. It might very well be that the chair, maybe working with the ranking member, will consider convening a group of members—excuse me—a group of ambassadors from those countries and having a discussion directly on this issue, so that they know the interest and intent of the Senate in that regard. That might be a very positive force to get their attention.

Ambassador JACOBS. Thank you. We will be very happy to provide that to you.

[The written answer from Ambassador Jacobs to the requested information follows:]

The countries with which we have established a treaty relationship under the Hague Abduction Convention yet about which we remain concerned with respect to compliance issues include Costa Rica, Honduras, Guatemala, Brazil, and the Bahamas. Non-Convention countries with which we have a high number of abduction cases and limited success in effecting the return of abducted children include India, Egypt, Russia, China, Saudi Arabia, Pakistan, Jordan, Lebanon, Indonesia, the Philippines, and Japan. In Japan, the treaty will enter into force on April 1, 2014. Parents of children abducted to or wrongfully retained in Japan before April 1, 2014, will not be able to apply for return under the Hague Abduction Convention. However, we will continue to press for resolutions to these cases.

We welcome the opportunity to collaborate with the committee in maintaining international parental child abduction as a policy priority in our bilateral relationships and to press for a tangible resolution to these cases.

The CHAIRMAN. Then finally, with reference to—and we look forward also to meeting with you on the exit controls and other possibilities for preventative efforts.

So we are out there pushing countries to join the Hague Convention, which is a treaty. Do you get any pushback that the United States does not sign certain treaties and countries along the way who say: “why should we sign that treaty if you do not sign X treaty”?

Ambassador JACOBS. Thank you for that question. I am often asked why we have not signed the Convention on the Rights of the Child. My response is that I will put the laws of the United States up against the laws of any other country in the way we protect children.

No one has ever used the Abduction Convention to hold us up to sign something else. I think that as the Convention spreads around the world we have better arguments. When it first came into force for us, most of the countries were in Western Europe. But if we look at it now, Japan and Korea have joined. China is very interested. Philippines is putting together their legislation. They should be a partner soon. So the treaty is really spreading to Asia, Latin America, Europe, the United States.

We need to work on the Middle East and we need to work on Africa. A number of African countries have signed onto the Convention, but they have never written any implementing legislation. So

we want to work with them, either alone or with bilateral partners or with The Hague Permanent Bureau, to help them write the legislation so that they will be able to implement it properly.

That is a long answer to a short question. I am sorry.

The CHAIRMAN. I asked you because when I was in Mexico this past recess the Mexican Senate asked me the question on the Convention on the Rights of the Child: Why do you not adopt it? So we were going back and forth. As I listened to Mexico being a large number, it sort of tickled my thoughts about whether people push back on us because of the nature of this.

Senator CORKER. I will say, I very much enjoy the relationship we have and especially your answer on the treaties issue, because I will put our treatment of children, of women, of disabled, up against any other country in the world. The answer you gave was the right answer, so thank you so much.

The CHAIRMAN. And we just look to spread that high standard throughout the world by getting others to join treaties, including ourselves, to promote those.

Ambassador JACOBS. What I try to tell them is, you know, anybody can sign a treaty, but implementing it and living up to its ideals are something that we take very seriously.

Senator CORKER. We may be debating another treaty later on and I would like to call you to be a witness. Thank you so much.

Ambassador JACOBS. Which one is that, sir? [Laughter.]

The CHAIRMAN. I think the State Department will talk to you before then, so—

[Laughter.]

The CHAIRMAN [continuing]. Seeing no other members present—

Senator CORKER. We have the honest answer today, thank you.

The CHAIRMAN. On a singular focus. But in any event, with the thanks of the committee and with a followup that we will be having with you, Ambassador, we will excuse you at this point. Thank you very much.

Ambassador JACOBS. Thank you very much. It was a pleasure to be here today. Again, we really appreciate the support that we get from you. Thank you so much.

The CHAIRMAN. Thank you.

As the Ambassador is excused let me introduce our second panel this morning. Many of them are parents who have had a child abducted—some have had the success of bringing their child back and others have not. Mr. Ernie Allen, the parents and Chief Executive Officer of the International Center for Missing and Exploited Children; David Goldman, cofounder and director of Bring Sean Home Foundation of Lincroft, New Jersey; Patrick Braden, a parent of an abducted child and CEO of Global Future: The Parents' Council on International Children's Policy, of Los Angeles; and Dr. Noelle Hunter, also the parent of an abducted child, of Morehead, KY, whose story is another reason why we are here today.

Thank you all for joining and providing insights for us. All of your statements will be fully included in the record. I would ask you to summarize it for about 5 minutes or so, so that we can enter into a conversation, as we just did with the Ambassador, which sometimes gives us our greatest insights. With that, we are going

to ask you to present your testimony in the order that I introduced you. So, Mr. Allen, you are first.

**STATEMENT OF ERNIE ALLEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, INTERNATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, WASHINGTON, DC**

Mr. ALLEN. Thank you very much, Mr. Chairman, Senator Corker. I am honored to be here. Mr. Chairman, in your opening remarks you talked about the extent of the problem, the numbers. What I would like to focus on briefly are the challenges that we are seeing regarding international parental child abduction.

Our organization funded research recently for the Hague Convention on the implementation of the Convention. It was conducted by our board member, Professor Nigel Lowe, of the Cardiff Law School in the United Kingdom. The conclusions of that research were troubling. First, we discovered that there has been a significant increase in the number of applications, up 44 percent since the last time it was surveyed.

Secondly, that there were fewer returns of children. The overall return rate was 46 percent, which was down from 51 percent 5 years earlier, and just 27 percent of those returns were judicially ordered.

Third, we found that the process is taking longer. The key element with regard to the Hague Convention is speed. The longer it takes, the lower the likelihood there is of successful resolution. In fact, there is an incentive to create delays, making it more likely that a court will find that a child is now settled and that it is not in his or her best interests to be returned to their country of habitual residence.

The standard is 42 days or 6 weeks. Our research found that the average time it took for a court to order the return of the child was four times that, 166 days, and that compared to 125 5 years earlier and 107 10 years earlier. In some countries, including the United States, judges may receive and handle a Hague case who have never handled one before and are unfamiliar with the Convention. There are nearly 10,000 State judges in the United States. In the United Kingdom, just 17 judges handle Hague cases.

Now, we have made great progress in this country through judicial training and through a judicial liaison function, but it is a challenge.

The challenges in non-Hague countries. Obviously, many non-Hague countries have deeply held and long-maintained traditions that result in a more rigid concept of what is in the best interest of the child. The challenges are enormous. That is why we are encouraged by the development of bilateral agreements with individual countries, and the United States has made great progress in that area.

The fourth conclusion from the research is that there is a growing tendency of courts in other parts of the world in return cases to undertake in-depth welfare inquiries before return is contemplated. The Hague Convention is about conflicts of law. It is about where the proper determination should be made. What we are finding is that a growing number of courts are saying: We do not care what the Convention requires; we are going to undertake

an in-depth examination of the entire family situation and consider a wide range of factors before ordering the child's return.

This is a problem, and it is a growing problem globally. There are some instances in countries in which they are even retrying custody issues in the country to which the child has been taken. So the use of the exceptions under the Convention appear to be increasing as judges find new reasons not to return children.

Of particular interest is the domestic violence exception. More abducting parents are alleging domestic violence by the custodial parent. Obviously, this is important. It requires thorough investigation. But it is clear from the research that, at least for some abducting parents, this appears to have become a strategy whether there is a factual basis or not.

Finally, there is no greater challenge under the Convention than simply providing access for the left-behind parent. Access applications are taking longer than ever before; an average of 338 days compared to 188 days for return. This is a problem.

Let me briefly summarize what we think needs to be done. First of all, we believe we need to reaffirm the importance of the Hague Convention and continue to persuade countries to become signatories.

Secondly, we believe that U.S. officials need to become stronger advocates for left-behind parents, add tools and resources to help them utilize the influence of the U.S. Government to bring about more resolutions. We think the State Department and Ambassador Jacobs are doing extraordinary work, but your question about are there enough tools, the answer is we think we need to add more tools.

Third, we believe we need to increase the speed with which these cases are addressed and resolved.

Fourth, we think a significant problem is enforceability of orders. Even in countries where courts order returns, there is a lack of enforcement of those returns and the children still do not come back.

Fifth, we need better data. We are going to undertake and fund additional research at the Hague to try to measure these trends.

Sixth, we need serious investigation of the impact of these recent court decisions, particularly by the European Court of Human Rights, which risk undermining the core premise of the Hague Convention.

Seventh, we think there needs to be serious attention to the lack of uniformity in the interpretation of the exceptions under the Hague Convention's article 13.

Eighth, we believe there needs to be more indepth investigations into the issue of domestic violence and the impact of those allegations on the work of the Convention.

We need to evaluate how the Convention is working in these early Islamic states which have become signatories, like Morocco and Turkey, and then try to replicate those lessons in other Islamic countries.

We need to improve judicial training.

And finally, we think there needs to be far greater attention to the support for the victim families.

Thank you very much.

[The prepared statement of Mr. Allen follows:]

## PREPARED STATEMENT OF ERNIE ALLEN

Mr. Chairman and distinguished members of the committee, I welcome the opportunity to appear before you today to discuss the challenges of international parental child abduction. We are deeply grateful for the committee's concern and leadership on these issues and its longstanding commitment to children. I also want to express my thanks to Ambassador Susan Jacobs for her leadership and for the State Department's expansion of its Office of Children's Issues and its commitment to become more engaged in these cases than ever before.

The International Centre for Missing & Exploited Children ("ICMEC") is a not-for-profit corporation, supported entirely by private funds and resources. ICMEC leads a global movement to protect children from exploitation and abduction. We have

- Trained law enforcement in 121 countries;
- Reviewed laws in 200 countries and worked with parliaments in 100 countries to enact new law on child pornography;
- Reviewed laws in 200 countries, developed model law on child sexual exploitation, and worked with parliaments and international bodies to change national legislation and international conventions;
- Created a research institute, the Koons Family Institute on International Law & Policy, to examine child abduction and sexual exploitation and launch policy initiatives with world leaders;
- Built a Global Missing Children's Network, now including 22 countries;
- Worked with Belgium, Romania, South Africa, Russia, Belarus, and others to establish national centers on missing & exploited children;
- Created a regional center, the Southeastern European Center on Missing and Exploited Children, serving 13 countries in the Balkan region;
- Entered into formal partnerships with Interpol, the Organization of American States, the Hague Conference on Private International Law, and others;
- Hosted international conferences, including a 2009 meeting of 400 Arab leaders in Cairo which produced "The Cairo Declaration," an agreement on child protection; a 2010 conference of judges from 15 countries at the U.S. State Department to examine cross-border transportation of children, resulting in the "The Washington Declaration," now cited in case law worldwide; and a 2011 forum in Rome in partnership with the Vatican, the Mayo Clinic and Il Telefono Azzurro, which produced "The Declaration of Rome" on children's rights;
- Managed private sector financial industry and technology industry coalitions to address child sexual exploitation;
- Launched a Global Health Coalition of pharmaceutical companies and health care institutions to attack the problem of child sexual abuse and exploitation not just from a legal and law enforcement perspective but as a public health crisis;
- And there is much more.

We created ICMEC in 1998 in large measure because of growing concerns about international parental child abduction and the operation of the Hague Convention on the Civil Aspects of International Child Abduction. In 1998 I joined with Lady Catherine Meyer, the wife of the then-British Ambassador to the United States, Sir Christopher Meyer, to cochair the International Forum on Parental Child Abduction, which brought together a global working group of experts in Hague Convention practice.

The attendees of that forum identified a series of problems including the lack of systematic data on the operation of the Hague Convention; wide variations in outcomes among the various Hague Convention countries; undue delay in reaching resolutions in cases; difficulty in locating children who are the subject of a Hague Application; lack of adequate support for victim families; varying competence and experience of attorneys and judges handling abduction cases within individual States; lack of uniformity in the interpretation of the Hague Convention particularly with the "exceptions" under Article 13; improper use of narrowly defined exceptions to return; lack of enforceability of some return and access orders; and much more. Even with all of the progress that we have made, it is striking how the challenges we face today are much the same.

In 2000 we held the Second International Forum on Parental Child Abduction. We concluded that the treaty itself should not be modified, and that its original intent was more important than ever before, but that we must do far more to support and assist signatories, helping to ensure that the true intent of the Convention is realized. The attendees adopted a resolution urging the Hague Permanent Bureau to produce and promote Practice Guides to assist in the implementation and operation of the Convention.

ICMEC proposed that the practice guides address the operation of Central Authorities, enforcement of orders, access and prevention. The production of these guides would build upon recognized best practices under the Convention, and provide a framework for applying the Convention. The good practices identified in the guides would not be legally binding upon signatory countries, but would serve as guidance to countries based upon the research and advice of experts in order to help ensure the most effective process possible.

To illustrate the kind of process we were recommending, in partnership with world-renowned expert, Professor Nigel Lowe of the Cardiff University School of Law in the United Kingdom, a member of the ICMEC board, ICMEC itself produced customized practice guides for 13 nations.

ICMEC formally proposed that this process be adopted at the Fourth Special Commission meeting at The Hague in March 2001 and implemented for all signatory countries. At that Special Commission meeting ICMEC successfully advocated for member states to support its proposal to create Guides to Good Practice to help implement the Convention. The proposal was adopted and ICMEC committed to assist in this effort.

In April 2003 at the Peace Palace at The Hague, ICMEC and the Hague Permanent Bureau entered into a formal Memorandum of Understanding to work together on these issues. Since then ICMEC and the Hague Permanent Bureau have collaborated on the creation of Guides to Good Practice to help existing and new Contracting States organize their judicial and administrative systems to effectively implement the Convention. And ICMEC has assisted the Hague Permanent Bureau in many other ways, including funding research on outcomes among member countries.

In October 2004 at The Hague ICMEC hosted a forum on International Child Abduction and the 1980 Hague Convention. We convened experts from across Europe and the United States. Out of this meeting came a number of questions and recommendations for ICMEC to explore in preparation for the 5th Special Commission meeting.

Among those questions was: Are Good Practice Guides alone enough to guarantee change?" We concluded they were not and agreed to explore methods for monitoring the implementation of Good Practice in all Contracting States.

We discussed the need to improve transfrontier access/contact between parents and children, and identified a series of challenges including the operation in some states of procedures which are both insensitive to the special features and needs of international cases and are the cause of unnecessary delays and expense; an inadequate level of international cooperation at both administrative and judicial levels; and the absence of firm legal provisions to enforce access.

We discussed the importance of providing support and assistance to newly contracting states. There was caution among existing member states about accepting treaty relationships with newly acceding states they believed ill prepared to fulfill their obligations. This trend gave rise to the question—"Are we doing enough to ensure the acceptance of newly acceding states?"

To help advance this engagement with non-Hague states, in 2006 I participated in the Hague Conference's Malta process, in which judges from Islamic countries and other non-Hague states came together in Malta to meet with judges and experts from other parts of the world to explore the challenges associated with international child abduction and seek solutions.

Our most recent joint conference with the Hague Permanent Bureau was the International Judicial Conference on Cross-Border Family Relocation, held at the U.S. State Department in March 2010. More than 50 judges and experts from 14 countries gathered to develop a framework for handling these cases.

At the conclusion of the 3-day meeting, the judges and other attendees adopted and issued the "Washington Declaration on International Family Relocation" which is a framework outlining the issues that should be considered by all judges to standardize how these types of cases are handled. The Declaration is already being used and cited in case law worldwide.

ICMEC is also active in promoting the ratification of the Hague Convention in non-signatory states. We are pleased that the total number of Hague signatories has climbed to 91 with its adoption by South Korea and Kazakhstan in 2013 and by Japan in 2014.

We are particularly hopeful about its adoption by Japan. To the best of our knowledge no U.S. child has ever been returned from Japan as a result of the actions of a Japanese court or the Japanese Government. I have met with, talked to, and tried to help many left-behind U.S. parents whose children were abducted to Japan. However, absent some ability to mediate or reach an agreed-upon settlement, the left-



behind U.S. parent simply does not get their child back. Cases go unresolved for years.

For the United States, Japan has the largest number of parental abduction cases of any non-Hague country, and is third in new cases following only Mexico and Canada among all Hague and non-Hague countries.

In 2009 ICMEC sent its Senior Policy Director to Japan to advocate for change. She addressed audiences of elected officials, Diet members, journalists, religious organizations, attorneys, NGOs and community activists. She participated in a press conference with diplomats from the United States, Canada, the United Kingdom and France, all of whom shared our concerns. In 2010 the Ambassadors of 12 countries, including the U.S., U.K., Australia, and Germany, signed a joint statement urging Japan to adopt the Hague Convention.

The then-Japanese Prime Minister Yukio Hatoyama said, “We have been condemned by the USA, Canada, the U.K., and France over this and I firmly believe we need to change things. The effect will be Japan coming into this century. We need to be clear though, these changes will take time. A very strong cultural change shifting from maternal primacy over the children is needed as well. I think we have already seen the beginning of this, but a change in laws is not the sole solution.”

Secretary of State Hillary Clinton discussed this issue with Japanese leaders, and President Obama raised it to the new Prime Minister, Shinzo Abe. We are delighted that Japan has now ratified the Hague Convention and put implementing legislation in place. We are hopeful that Japan’s action signals a new day of cooperation on these issues. However, Japanese leaders have told us that full implementation of the Hague Convention will take time and that fundamental legal and cultural challenges must be addressed.

In my quarter century of work with leaders of the Hague Conference, I have learned over and over again that a country’s ratification of the Convention does not guarantee implementation. Our efforts to produce good practice guides and undertake research to monitor the extent of compliance demonstrate that there are Hague signatories which still do not meet the letter and spirit of the Convention.

So, what are the challenges for the future? The committee asked that I address several questions.

*1—The scope of international parental child abduction, challenges to seeking the return of abducted children in countries which participate in the Hague Abduction Convention and countries which do not, and issues of U.S. reciprocity.*

The State Department estimates more than 1,000 outgoing international child abductions reported to the Office of Children’s Issues each year. About half of the children abducted to Hague Convention countries are returned. About 40 percent of the abduction cases involve children taken to countries which are not signatories to the Hague Convention.

*Challenges/Disturbing Trends*—ICMEC funded statistical research on the operation of the Hague Convention. This research was performed by Professor Nigel Lowe of Cardiff Law School in the U.K., a member of the ICMEC board. The research utilized 2008 data from member countries, and was presented to the 2011 Hague Special Commission. The conclusions were troubling:

There was a significant increase in the number of applications: There was a 44 percent increase in the total number of applications made under the Hague Convention in 2008 as compared to 2003, with a 45 percent increase in return applications and a 40 percent increase in access applications. A British study found that cases in the U.K. have risen 88 percent in the past decade.

*There were fewer returns of children*—The overall return rate was 46 percent, down from 51 percent in 2003 and 50 percent in 1999. Further, just 27 percent of the returns were judicially ordered, while 19 percent of the returns were voluntary. The data also showed that judicial refusals climbed to 15 percent, up from 13 percent in 2003 and 11 percent in 1999. In 2008 44 percent of the applications were decided in court, with 61 percent of court decisions resulting in a judicial return compared with 66 percent in 2003 and 74 percent in 1999.

*The Hague process is taking longer*—The key element in ensuring success in the Hague process is speed. The longer it takes, the lower the likelihood of successful resolution. In fact there is an incentive to create delays, making it more likely that a court will find that the child is now settled and that it is not in his or her best interests to be returned to their country of habitual residence.

Yet, the average time taken to reach a decision of judicial return was 166 days in 2008, compared to 125 days in 2003 and 107 days in 1999. A judicial refusal took an average of 286 days, compared to 233 in 2003 and 147 in 1999. Even for applications resulting in a voluntary return the average time was 121 days, compared to

98 days in 2003 and 84 days in 1999. The standard we seek in these cases is 42 days or 6 weeks.

The Hague Convention is not about child custody, it is about conflicts of law. Its stated goal is the prompt return of the child to his or her country of habitual residence. The longer the process takes, the less likely we are to achieve the kind of uniformity and consistency that we need across 91 countries.

The focus of the Hague Convention is on ensuring that the right jurisdiction makes the determination regarding the custody of the child by rigorously applying the principles of return to habitual residence, unless there are valid Article 13b defenses or some other impeding circumstances for nonreturn.

Based on the results of the survey, the 2011 Hague Special Commission emphasized the need for close cooperation between Central Authorities in the processing of applications and the exchange of information noting the principles of “prompt responses” and “rapid communication” as set out in the “Guide to Good Practice under the 1980 Convention—Part I—Central Authority Practice.

An encouraging development is the emergence of liaison judges and the increased cooperation between the members of the International Hague Network of Judges and the relevant Central Authority resulting in the enhanced operation of the Convention. In some countries, including the United States, judges may receive a Hague case who have never handled such a case before and are unfamiliar with the Hague Convention. The ability to confer with an expert judge who is experienced in Hague cases is important and increases the likelihood that a case will be handled properly.

Periodically, the U.S. itself has been accused by other countries of not observing reciprocity under the Hague Convention. There are nearly 10,000 state judges in the U.S. who could conceivably receive and handle a Hague case. In the United Kingdom just 17 judges handle Hague cases. Thus, judicial training and the judicial liaison function are of paramount importance in the U.S. The U.S. has made enormous progress in this regard.

*The Process in Non-Hague Countries*—Many non-Hague countries have deeply held and long maintained traditions that have developed over centuries in such a way that they hold a more rigid concept of best interests of the child. It is often difficult to resolve differences over the issue of child custody between a parent from a religious legal system and a parent from a secular legal system. The challenges can be enormous.

That is why we are encouraged by the movement to create bilateral agreements between Hague and non-Hague states. Such agreements provide a basis for resolution of these conflicts under the general principle of the Hague Convention—that is, by rigorously applying the principles of return to habitual residence, unless there are valid Article 13b defenses or some other impeding circumstances for nonreturn. Mediation between countries, particularly on access issues, has also met with some success.

Some of the better known examples of bilateral agreements are U.S./Egypt, U.K./Pakistan, France/Algeria, Belgium/Morocco, Canada/Lebanon, etc.

*There is a Growing Tendency of Courts in Return Cases to Undertake In-Depth Welfare Inquiries Before a Return is Contemplated*—The purpose of the Hague Convention is to achieve the speedy, summary return of abducted children to their countries of habitual residence where the courts in those countries make the determination as to proper custody.

Yet, there are a growing number of courts that are undertaking in-depth examinations of the entire family situation surrounding the child and considering a wide range of factors before ordering the child’s return. Their rationale is that they have an obligation to consider seriously allegations regarding “grave risks to the child” and make rulings regarding the full circumstances of the case. Thus, in some instances courts in countries to which the abducted child has been taken are effectively retrying the issue of custody in direct contravention of the underlying purpose of the Hague Convention.

This was an issue in recent cases before the European Court of Human Rights. For example, in the 2010 ECHR decision in *Neulinger & Shuruk v. Switzerland*, the court held that “basic norms of human rights require (a) that courts in every case under the Hague Convention . . . must consider the best interests of both the child and the child’s family and (b) that a child should not be returned to its habitual residence, even if that is required by the Hague Convention, if it is not in its best interests to do so.”

A second case considered by the ECHR was *X v. Latvia* in which the court initially held that “the Latvian courts’ approach in granting the return order lacked in-depth examination of the entire family situation and of a whole series of factors . . .” However, ultimately the ECHR permitted the return of the child to Australia per the provisions of the Hague Convention.

Obviously, a trend in which courts readjudicate what is in the best interests of the child potentially strikes at the heart of the Hague Convention. It is a concern of which policymakers in the U.S. and globally should be aware. ICMEC is consulting with policymakers in many countries, including European countries. It is our view that the Hague Child Abduction Convention, now 34 years old, represents far and away the best framework for resolving these complex, difficult cases, and that we need to preserve it as the primary instrument for handling these cases.

A third case of significant interest is *Lozano v. Alvarez*, heard by the U.S. Supreme Court on December 11, 2013. The *Lozano* case examines one of the exceptions to the return of the child under the Hague Convention. Article 12 of the Convention provides an exception to the obligation to return a child if the petition for return is filed more than 1 year after the child's removal and a preponderance of the evidence shows that the child is now settled in his or her new environment such that the return would not be in the child's best interests. The question is whether a court may equitably suspend this 1-year filing period provision when the abducting parent has concealed the whereabouts of the child.

*The Use of Exceptions*—The use of the exceptions allowed under the Hague Convention appears to be increasing, as judges find new reasons not to return children to their countries of origin. Of particular interest is the domestic violence exception. There are indications that more and more abducting parents are alleging domestic violence by the custodial parent. While this is an important factor and requires thorough investigation and consideration, it is clear that for some abducting parents, this appears to have become a strategy, whether there is a factual basis or not.

*Access for Left-Behind Parents*—Perhaps there is no challenge under the Hague Convention that is greater than that of simply providing access to the other parent. In the Conclusions and Recommendations of the June 2011 meeting, the Special Commission noted that access applications were markedly slower to reach a conclusion than return applications, taking an average of 338 days as compared to 188 days for return.

*2—What More Can Be Done to Achieve the Return of Abducted Children and Assist Their Left-Behind Parents?*

- We need to reaffirm the importance of the Hague Convention and work toward uniform, consistent global application and reciprocity, including pressing for more countries to become signatories.
- We need U.S. officials to become stronger advocates on behalf of left-behind parents and utilize the influence of the U.S. Government to bring about resolutions.
- We need to launch a global effort to increase the speed with which Hague Convention cases are addressed and resolved, reducing undue delays.
- We need to address the lack of enforceability of some return and access orders.
- We need to create more and better systematic data to measure the operation of the Hague Convention and evaluate the performance of individual countries.
- We need to investigate the impact of key decisions of the European Court of Human Rights and other courts which seem to potentially risk undermining the core premise of the Hague Convention.
- We need to address the lack of uniformity in the interpretation of the Hague Convention particularly with the “exceptions” under Article 13.
- We need to conduct more in-depth investigation into the impact of domestic violence on international parental child abduction.
- We need to build on the Malta process by evaluating how the Hague Convention is working in Morocco and Turkey, and seeking to replicate the positives associated with those experiences in other Islamic countries.
- We need to improve judicial training and address variations in caseload and experience of Central Authorities and judges in many countries.
- We need to provide greater support for victim families.

The CHAIRMAN. Thank you.  
Mr. Goldman.

**STATEMENT OF DAVID GOLDMAN, COFOUNDER AND  
DIRECTOR, BRING SEAN HOME FOUNDATION, LINCROFT, NJ**

Mr. GOLDMAN. I would like to express my appreciation to you, Chairman Menendez and Ranking Member Corker and members of the committee, for convening this hearing on the vital issue of international child abduction. Thank you for having us here today.

I am David Goldman and my son, Sean, was abducted to Brazil in 2004 at the age of 4 by his mother. Even after Sean's mother passed away in 2008, his maternal grandparents continued to deny me any access, in further violation of the Hague Convention. The only reason I do not appear before you today with a broken heart and broken family is because the President of the United States, the Secretary of State, the Senate, the House, and a number of individual lawmakers intervened with the Government of Brazil to finally bring my family together and my son home.

Although we will never regain, reclaim, those 6 lost years, my son is thriving, he is happy, and he is healthy, reunited with me and his family and loved ones back here in America. So despite all the heartbreak my son and family and I have endured, I am one of the truly lucky ones.

Unfortunately, there are thousands of families like mine in America today, who have suffered the same as me, but have little or no hope of having their abducted children returned, as you will hear from Patrick and Bindu Philips behind me and thousands of other families who are suffering. Most left-behind families cannot secure the intervention of the President, Secretary of State, Senate, and House on their behalf, nor should they be expected to.

These families should be able to rely on the U.S. Government to do that for them.

But what we have learned year after year through administration after administration is that, no matter how well intentioned our officials are, those who are responsible for returning abducted American children lack the tools to convince the 80-some odd signatories of the Hague Convention to fulfill their treaty obligation and return abducted American children.

These children are the voiceless victims. They have been stripped of half of their identities by the abducting parent and whisked away to a foreign country. They leave behind devastated families and friends and little more than memories of the place they called home for most of, if not all of, their lives. These abducted children can suffer severe psychological trauma caused by the abduction and the ensuing parental alienation they experience at the hands of their abductors, who seek to poison their memories and shatter their attachment to the left-behind parents. Child abduction is child abuse.

It is crucial that Congress acts now to provide the Department of State and the White House the tools they need to return our abducted children. Time is not on the side of the abducted children.

I read the testimony from a similar hearing held before this very committee more than 15 years ago in October 1998 on the issue of international child abduction.

Paul Marinkovich, a left-behind parent from California, testified, maybe in this room, maybe in the seat that I am in. He said: "We are here today with many other left-behind parents, questioning the lack of compliance of our Hague Convention by other countries. If we show these other countries that we are serious by our actions and our requests, then they start getting serious about the return of our children. If we do not treat the abductions of our children as a serious matter, then how can we expect those other countries involved to fight for our children's return?"

The problem was best summed by the statement of then-ranking member and later chairman of this committee, Senator Joseph Biden, now Vice President of the United States: "The act of taking a child across international borders is a heinous crime which is extremely heart-wrenching for the parent left behind and for the child or children affected. It is timely for this committee to review the operations of the Hague treaty."

I am trying to go as quick as I can and I summarize most of my statement.

The fundamental problem with the status quo is that there are no serious consequences or penalties for other nations who flagrantly, repeatedly, year after year, refuse or fail to return abducted American children. Go down the list of flagrant abusers and many are close allies to the United States. Yet concern for bilateral relations and instinct to put the relationship first keep successive administrations from sanctioning countries who are flagrant violators or even denouncing them publicly. Quiet diplomacy is always the first resort. But, as Bernard Aronson, former Assistant Secretary of State for Inter-American Affairs, who assisted me in securing my son's return, testified in a December 2009 hearing in the Tom Lantos Human Rights Commission on this very issue, and I quote: "A diplomatic request for which there is no real consequence for refusal is simply a sophisticated form of begging."

Mr. Chairman and members of this committee, I submit to you today that very little has changed in the nearly 16 years since this committee's last hearing on this issue. The names of the families have changed, but the stories are eerily similar in terms of how ineffectual our government has been because it has no serious tools to compel other nations to do their duty and there are few, if any, consequences if they refuse.

In my case, significant diplomatic pressure was applied at all levels, by Chairman Menendez, Congressman Smith, and the late Senator Frank Lautenberg, who put a hold on the renewal of the GSP trading privileges for Brazil and dozens of other nations. The act would have hurt Brazil economically and, low and behold, Sean was returned home a few days later.

Rather than having to resort to such extraordinary measures, should not Congress arm the U.S. Government with a menu of sanctions the State Department can apply at its discretion to flagrant abusers? That way, our diplomats can warn noncooperating nations of potential consequences and adverse congressional reaction and thereby increase the leverage available to our diplomats to return abducted American kids.

Almost done.

A second problem with the status quo is that——

The CHAIRMAN. Is that specifically in your notes?

Mr. GOLDMAN. No, but I see my light blinking here and I am trying to go through it, but it is such an important issue and there is so much to say. Thank you for your patience and your time.

A second problem with the status quo is the lack of accurate statistics and transparency concerning the dimensions of the problem and the record of other nations. We cannot properly analyze this problem without accurate data on abductions and returns. Yet these figures have become increasingly difficult to find. Unfortu-

nately, the State Department ceased publishing return figures starting in 2010.

With regard to return rates of abducted children, overall return rates of abducted children appear to be holding steady in the 40 percent range, although the rate is not higher for Hague Convention countries versus non-Hague countries. It is also worth noting that the return rates are not improving at a time when a higher percentage of overall abduction cases are to Hague Convention countries, 75 percent in 2012 versus 46 percent in 2007, suggesting that the Convention is not working the way it was designed.

I believe we need to take an honest view of the failures of this reciprocal treaty and what should be done about it. What good does it do to encourage other countries to join the Hague treaty if it will not lead to an increased number of returned children? That is the only way we can measure the success, is by the returns of the children.

When the International Parental Crime Act was passed in 1993, the number of abducted American children was estimated to be 10,000. We know that in the last several years the number of abducted children registered with our State Department is between 1,000 and 1,500 per year. Okay, so historically now several hundred children per year are returned, which suggests that every year we have an increased net number of roughly 800 to 1,000 children. Yet they say the active cases right now are only 1,035, involving 1,453 children. So the cases are increasing every year by 1,000, yet the number of open cases are still less than 2,000. It does not add up. We need some more transparency with that.

So in my closing, as you guys know, legislation just passed the House of Representatives last December in a rare show of bipartisan support, 398 to zero, to support these victims. I urge this committee to build on that strong foundation and pass this vitally needed legislation as soon as possible, and not risk having it bounced back and forth between the Senate and the House. The families of abducted children have no time to waste. So I really hope that we can get something passed to help these folks right away because time is the enemy. Every day that a child is abducted is a time away from their family and more suffering and a continuing crime.

[The prepared statement of Mr. Goldman follows:]

PREPARED STATEMENT OF DAVID GOLDMAN

Before I begin my testimony, I would like to express my appreciation to Chairman Menendez, Ranking Member Corker, and members of the committee for convening this hearing on the vital issue of international child abduction.

My name is David Goldman. My son, Sean, was abducted to Brazil in 2004 at the age of four by his mother. Even after Sean's mother died in 2008, his maternal grandparents continued to deny me access, in further violation of the Hague Convention. (For a more complete description of the details of my case, I refer you to my December 2009 testimony at the Tom Lantos Human Rights Commission hearing on International Child Abduction: [http://bringseanhome.org/David\\_Goldman\\_testimony.pdf](http://bringseanhome.org/David_Goldman_testimony.pdf).)

The only reason I don't appear before you today with a broken heart and broken family is because the President of the United States, the Secretary of State, the Senate, the House, and a number of individual lawmakers intervened with the Government of Brazil to finally bring my son home. Although I will never reclaim those 6 lost years, my son is thriving, happy and healthy, reunited with his grandparents, aunts, and loved ones. So despite all the heartbreak my son, my family, and I

endured, I am one of the lucky ones. Unfortunately, there are thousands of families like mine in America today who have suffered the same as me but have little or no hope of having their abducted children returned.

Most left-behind American families can't secure the intervention of the President, Secretary of State, Senate, and House on their behalf. Nor should they be expected to. These families should be able to rely on the U.S. Government to do that for them. But what we have learned, year after year, through administration after administration, is that no matter how well-intentioned our officials are, those who are responsible for returning abducted American children lack the tools to convince the 80 signatories of the Hague Convention to fulfill their Treaty obligations and return our abducted children.

These abducted children are the voiceless victims here. They've been stripped of half of their identities by the abducting parent, whisked away to a foreign country, and confronted by a language and culture many do not understand. They leave behind devastated families and friends, and little more than memories of the place they called home for most, if not all of their young lives.

Child abduction is child abuse and should be treated as a serious human rights violation by our country's leaders. These abducted children often suffer severe psychological trauma caused by the abduction and the ensuing parental alienation they experience at the hands of their abductors, who seek to poison their memories and shatter their attachments to the left-behind parent.

This is why it is crucial that Congress acts now to provide the Department of State and the White House with the tools they need to return our abducted children. I say that because time is not on the side of abducted children. As I prepared to testify, I went back and read the testimony from a similar hearing held before this very committee more than 15 years ago, in October 1998, on the issue of international child abduction.

Paul Marinkovich, a left-behind parent from California, testified: "We are here today with many other left-behind parents questioning the lack of compliance of our Hague Convention by other countries. If we show these other countries that we are serious by our actions and our requests, then they start getting serious about the return of our children. If we do not treat the abduction of our children as a serious matter, then how can we expect those other countries involved to fight for our children's return?"

Thomas Johnson, of Virginia, whose daughter Amanda was abducted to Sweden in 1994 and never returned, said: "A decade after U.S. ratification of the Hague Convention on the Civil Aspects of International Child Abduction, there is still no Central repository of reliable information and expertise in the executive branch that can quickly and effectively supply accurate basic data on the legal system, child custody institutions, law enforcement system, social welfare system, legal aid program, and Hague Convention performance of the abductor's country. The left-behind American parent thus has little basis for evaluating the options available."

But the problem was best summed up by the statement of the then-ranking member and later chairman of this committee. Senator Joseph Biden, now Vice President of the United States, said in 1998: "The act of taking a child . . . across international borders is a heinous crime, which is extremely heart wrenching for the parent left behind and for the child or children affected . . . it is timely for this committee to review the operations of the (Hague) Treaty."

In my work at the Bring Sean Home Foundation I interact every day with parents whose lives have been turned upside down by the abrupt abduction of their children. I feel their pain, because I have walked in their shoes. I advise them that the path ahead is long and painful, full of emotional ups and downs and, all too often, very few tangible results—often running up legal bills well into the six figures and risking bankruptcy for the left-behind family. I warn them that for all practical purposes, the State Department does not view its role as one of vigorous advocacy, but rather to provide assistance in making sure that the left-behind parent gets their day in court in the foreign country where their children have been taken. Sadly, having your day in court often does not result in the return of these children.

That is because the Treaty is easily manipulated to block or delay the return of the child, often by judiciaries subject to local political pressure and even outright corruption. An abducting parent need not ultimately win the legal case over the fate of the abducted child, but by using the appeal process to endlessly delay the legal proceedings long enough so that the abducted child can grow up, the abducting parent's case is strengthened solely based on the passage of time.

Sometimes this happens because judges lack an understanding of the principle tenets of the Treaty, and other times it happens because those same judges don't want to send the child home, perhaps because of gender bias or nationalistic reasons. To

remove these structural and political obstacles is precisely why the Hague Convention was negotiated and ratified by 80 nations.

My foundation has been assisting a father by the name of Devon Davenport of North Carolina, whose daughter Nadia was abducted to Brazil in 2009, just a few weeks after her birth. Mr. Davenport has fought admirably to bring Nadia home. In September 2010, a federal court first ordered her return to the U.S. Since then, the return order has been upheld by numerous appeals courts and the legal case is effectively over, yet Devon is still waiting, as I did, for the Brazilian courts to enforce their own return order and put Nadia back on a plane to the U.S. Our government should be demanding, not asking, that Nadia be returned.

The fundamental problem with the status quo is that there are no serious consequences or penalties for other nations who flagrantly, repeatedly, year after year, refuse or fail to return abducted American children. Go down the list of flagrant abusers and many are close allies of the United States, yet concern for “bilateral relations” and the instinct to put “the relationship first” keep successive administrations from sanctioning countries who are flagrant violators or even denouncing them publicly.

Quiet diplomacy is always the first resort, but as Bernard Aronson, former Assistant Secretary of State for Inter-American Affairs, who assisted me in securing Sean’s return, testified at a December 2009 hearing in the Tom Lantos Human Rights Commission on this very issue: “a diplomatic request for which there is no real consequence for refusal is simply a sophisticated form of begging.”

Mr. Chairman and members of this committee, I submit to you today that very little has changed in the nearly 16 years since this committee’s last hearing on this issue. The names of the families have changed, but the stories are eerily similar in terms of how ineffectual our government has been because it has no serious tools to compel other nations to do their duty, and there are few, if any, consequences when they refuse. In my case, significant diplomatic pressure was applied at all levels by Chairman Menendez, Congressman Chris Smith, and the late Senator Frank Lautenberg, who put a hold on the renewal of GSP trading privileges for Brazil and dozens of other nations. The act would have hurt Brazil economically, and low and behold, Sean was home a few days later.

Rather than having to resort to such extraordinary measures, shouldn’t Congress arm the U.S. Government with a menu of sanctions the State Department can apply at its discretion to flagrant abusers? That way our diplomats can warn noncooperating nations of potential consequences and adverse congressional reaction and thereby increase the leverage available to our diplomats to return American kids.

A second problem with the status quo is the lack of accurate statistics and transparency concerning the dimensions of the problem and the record of other nations. We cannot properly analyze this problem without accurate data on abductions and returns, yet these figures have become increasingly difficult to find. Unfortunately, the State Department ceased publishing return figures starting in 2010. With regard to return rates for abducted children, overall return rates of abducted children appear to be holding steady in the 40 percent range, although the rate is not higher for Hague Convention countries versus non-Hague countries. It’s also worth noting that return rates are not improving at a time when a higher percentage of overall abduction cases are to Hague Convention countries (75 percent in 2012 versus 46 percent in 2007), suggesting that the Convention is not working the way it was designed. I believe we need to take an honest view of the failures of this reciprocal treaty and what should be done about it. What good does it do to encourage other countries to join the Hague Treaty if it won’t lead to an increased number of returned children?

When the International Parental Crime Act was passed in 1993 the number of abducted American children was estimated to be 10,000. We know that in the last several years, the number of abducted children registered with our State Department is between 1,000 and 1,500 per year. Historically, several hundred children per year are returned, which suggests that every year we have an increase in the net number of children abducted by roughly 800 to 1,000. Yet in 2013, the number of active cases according to the State Department was only 1,035, involving 1,453 children. The reason, I’m afraid, is that cases are closed by the State Department for a long list of reasons in addition to an actual return of the abducted child. Some are instances in which the parent simply runs out of money to fund his litigation in the country where their child has been taken. Shouldn’t you, as the peoples’ representatives, and left-behind parents, have an accurate accounting of the dimensions of the problem and confidence that no child’s case will be written off prematurely?

My hope for this hearing is that members of this committee and all Senators will reach out to your colleagues in the House to work together to strengthen the capacity of the U.S. Government to return abducted children with real sanctions and



tools, and also to ensure that information about cases and reports is transparent and available to the public along with the performance of individual countries.

As you know, legislation which does just that passed the House of Representatives last December 398–0 in a rare show of bipartisan, unanimous support for these victims. I urge this committee to build on that strong foundation and pass this vitally needed legislation as soon as possible, and not risk having it bounced back and forth between the Senate and the House. The families of abducted children have no time to waste.

My fear is that if this committee and the full Senate don't take up this cause quickly and mid-term elections start to loom, this committee will convene yet another hearing, perhaps years from now, and we will hear the same heartbreaking stories from a new group of parents making the same urgent requests for help, with even more families shattered by the loss of their children.

As I conclude my remarks, I would like to share with you a quote by former Congressman Barney Frank, who said at a July 2011 congressional hearing on international child abduction: "We sometimes hold back in using our legitimate moral authority because we worry about somehow alienating other countries. Now, I want America to be reasonable and fair in its dealings with other people, but, as a general rule, it does seem to me that most countries in this world need us more than we need them. I don't want to abuse that, but I think we sometimes assume that we can't press hard because people will get mad at us . . . a reasonable assessment of what the relationships are should allow us to press cases on their merits and not be held back by some fear that we will somehow lose influence."

In other words, it's time for America to lead on this issue. Time is the enemy here and for left-behind families and their children, those lost years can never be recovered. We face a rare political moment where we have a unanimous, bipartisan consensus in the House on this issue. Let's not let the perfect be the enemy of the good. Now is the time to act.

The CHAIRMAN. Well, thank you.

Mr. GOLDMAN. I am sorry for taking too much time.

The CHAIRMAN. Let me just make a quick observation before I call on Mr. Braden. I was not on the committee, nor was I the chairman 15 years ago. I can assure you that we are not going to have another hearing like this in the future, because we are going to have an action item, working with the ranking member, to build upon the House-passed bill.

I agree with you, time is of the essence. Also, we are not going to get multiple bites at having the type of legislation that we collectively want to see. So we want to build upon what the House does, particularly work on some preventive measures, like exit controls, that I think are going to be very important. So we are going to work expeditiously to get there and we are going to have action.

Mr. Braden.

**STATEMENT OF PATRICK BRADEN, CHIEF EXECUTIVE OFFICER, GLOBAL FUTURE: THE PARENTS' COUNCIL ON INTERNATIONAL CHILDREN'S POLICY, LOS ANGELES, CA**

Mr. BRADEN. Thank you, Chairman Menendez, Ranking Member Corker, and the rest of the members of the committee, for inviting me to testify. I think pretty much everybody on your side of the dais knows there is nothing more important to me.

I ask that my full statement be included in the record along with the supplemental reference materials.

The CHAIRMAN. Without objection.

Mr. BRADEN. Thank you, sir.

I wanted to agree with you, we are not going to get another bite at this apple probably for another 7 to 10 years. It seems like legislation takes that long to create around here and get passed. On that thought, I would love to see, if this body is going to create a

piece of legislation on this issue, let us make it a meaningful piece that really does stop abductions, prevent them, and return the children that are already abducted like my daughter.

I want to tell you a little bit about my daughter's case. I do not have time. You guys probably know much about it, but I want to tell you a little bit about what my organization's done over the last 8 years, Global Future: The Parents' Council on International Children's Policy. I want to tell you about exhaustion of remedies. We also have some excellent ideas for consideration of solutions, including one that 2 years ago had 10 members of the Senate Judiciary Committee ready to move through in the form of an amendment to another bill and, unfortunately, that bill was supposed to be a clean bill, so it sort of stopped, and I have not really pressed it much in the last couple of years.

But that bill will stop 98 or 99 percent of all outgoing international parental child abductions and it will save billions and billions and billions of dollars. I have gone through this with economists, the Judiciary Committee, and a number of people, and I would like to maybe talk about some of those things later, because I want to tell you a little more about some of the other stuff.

In my daughter's case, I asked the court for travel-restraining orders in an effort to protect her from the same abuse her mother suffered in her youth. Despite a bunch of confusing maneuverings by Ryoko's attorney, Mr. James Kelso Lindsay, everything went right in court for my daughter, Melissa. Custody and protective orders, passport surrender orders, travel ban orders, shared custody orders were all in place, and that gave me comfort and I really did not think anything could happen to my daughter.

Pressure from her attorney, her parents, and a Japanese attorney who helped plan the criminal abduction of Melissa caused Ryoko to cave in. A genuine Japanese passport in a false name was used for Melissa and Ryoko simply got on a plane with our daughter on March 16, 2006, and covertly left the United States with our daughter. Once the All Nippon Airways plane left the airport, all legal protections and rights were effectively stripped for Melissa.

This is not a case where I somehow consented or acquiesced to any foreign laws, customs, or jurisdiction. I availed myself of every possible legal protection and prevention under U.S. law to prevent those risks. It was a criminal kidnapping. Within days, local and Federal arrest warrants were issued.

I later sued Ryoko's Los Angeles attorney, Mr. Lindsay, for malpractice by aiding and abetting an international parental child abduction. I fought the case alone because malpractice attorneys do not like to sue other attorneys. I won the demurrer and the motion for summary judgment in pro per and eventually won the whole case. I have been told that I was the only person ever in America to successfully sue opposing counsel for malpractice arising out of a family law action and win, and I am not a lawyer. A few years later I worked with another New Jersey constituent of yours, Mr. Chairman, and he won his case as well.

The issue of a child's separation from a parent is rarely as simple as it seems at face value. Abduction case facts are complicated. Not all cases are abductions. If we are to create legislation on this subject, we need to first understand the language and categories of all cases.

The most egregious kinds of cases will be U.S. jurisdiction cases where foreign nationals broke U.S. law on U.S. soil. They include abuses of human rights, have bases and remedies available in criminal, civil, and family law.

By contrast, foreign jurisdiction cases are defined by transgression of human rights for which there may only be a civil or diplomatic remedy. The U.S. Government simply cannot unwind the legal facts and legal distress in every case. Jurisdiction is the primary foundational element which dictates the appropriate venue where any remedy or relief can be found. The legal facts determine what areas of law can or cannot be used. Potential remedies are controlled by the facts and careful responsibility should guide our usage of the descriptive words.

For example, the use of and the definition of the word "abduction." In U.S. law it has very specific meaning. Misuse of these words creates dangerous and damaging misperceptions. I want to give you a quote here from Jeff Slowikowski, a good friend of mine and General Holder: "Misperceptions about family abduction can potentially cause further trauma to the abducted child. These misperceptions can also lead to an increase in the incidence and duration of family abductions." I want to repeat that: "These kinds of misperceptions can lead to an increase in the incidence and duration of family abductions."

In our work we have seen immediate—and everywhere in America—we have seen immediate and robust law enforcement responses, like investigations, interviewing accomplices, tracking cellphone and credit card data, issuance of amber alerts, arrest warrants, quick extradition of the abductors. But that takes place in domestic child abductions. That is the Federal response in domestic child abductions.

In international child abductions, there is never such an urgent response. In fact, I was met after my daughter's abduction, I was met with the same phrase over and over and over again, from my Congressman, the judge, the law enforcement, the FBI. They all said to me: Without the further cooperation of the Government of Japan, there is nothing more we can do for you.

I just do not believe that. I know so many people up here—I see that my time is up and I just want to say, exhaustion of remedies. I have spent 800 days of my life in these buildings. I have met with former Presidents, every single living Secretary of State, Vice Presidents, maybe 40 or 50 foreign dignitaries, 1,600 staffers on the Hill here I have met with. I have met with virtually every single Senator in office today. And I wake up every morning and I do not know what more I can do, that I did not do yesterday, to bring my daughter back.

I just want to say, thank you for holding this hearing and I will look forward to your questions.

[The prepared statement of Mr. Braden follows:]

PREPARED STATEMENT OF PATRICK BRADEN

I want to thank you Chairman Menendez and Ranking Member Corker and members of the committee for inviting me to testify. Sincerely, nothing means more to me than working out the problems on this issue that my daughter faces, so thank you very much.

I ask that my full statement be included in the record as well as some supplemental reference materials.

First, I want to tell you just a little about my daughter Melissa's case and what I and my organization, Global Future, The Parents Council on International Children's Policy have done over the last 8 years. I'll include ideas about working through the challenges and problems throughout. Then I'd like to offer a series of ideas for consideration as solutions, and discuss some of the recent developments and special challenges that Japan presents us.

It is my sincere belief that the only meaningful solutions to international parental child abduction, in terms of remedy and prevention, will be found primarily in the Judiciary and under law enforcement. We have seen in domestic kidnappings an immediate and robust law enforcement response with regard to investigations, interviewing accomplices, tracking phone and credit card data, issuing Amber Alerts and arrest warrants, quick extradition of perpetrators, and heroic recoveries of children, without hesitation.

In international parental kidnappings there is never such an urgent response. Instead, in a very high percentage of cases children remain abducted, and here we are at another hearing on the same subject, the same as in 2004 and the same as in 1998 going over the same old ground. Therefore, the Federal response to international parental child abduction ("IPCA") must more closely match the successful model of the Federal response to domestic parental child abductions. Otherwise, these children will continue to be denied equal justice under the law, and be deprived of their civil and constitutional rights. (Please see the attached Global Future New Parents Primer #1.)

In addition to the Judiciary component, future success on the IPCA issue must include Foreign Relations and Homeland Security components. None of these three aspects can be by-passed, if we want to honestly represent to American Families that meaningful progress on this issue has been achieved. Some of the real changes will have to be (1) a stronger priority on enforcement of existing laws and treaties; (2) more streamlined and real-time direct communications between family courts and law enforcement, especially at border crossings; (3) implementation of exit controls; and (4) developing and maintaining a more closely aligned, truly shared respect for the laws and judicial orders between all global partner nations.

Action by the Foreign Relations channel is subject to limitation by sovereignty, diplomatic considerations, U.S. and international law, and international treaties. Departmental creep and stove piping the work by each of the three Departments over a long time has contributed to the current state of a failed and incoherent Federal response for all of these children.

Melissa's case started when her mother Ryoko, was pressured by her parents to return to Japan with our daughter, shortly after her birth. I was especially fearful that their financial and controlling influences could sway her, even though she had never proposed that idea and we had never discussed any of us moving to Japan. Ryoko previously discussed with me and a bilingual psychologist in over year of counseling, that she suffered a long-term terrible abuse in her youth at the hands of her father. That psychologist is able to break the privacy vow and discuss what he heard from Ryoko, if subpoenaed by a congressional committee or judge. So I asked the court for a restraining order in an effort to protect our daughter from that same trauma, and from being subjected to any foreign jurisdiction, laws customs, traditions, where she would be less protected than in the United States. That entered us into the family court system in Los Angeles. Despite the maneuverings by Ryoko's attorney James Kelso Lindsay, everything went right for Melissa in court. I was lucky that Ryoko never denied her personal abuse history, and that there really weren't many serious mistakes in the case by either my attorney or the judge. We went through 11 months of proceedings. Shared custody was ordered, with daily visitation. There were several protective orders in place such as passport surrender, no travel, and more. (Please see attached Judges order from March 8, 2006 #2.)

Ryoko eventually succumbed to the pressure from her attorney, her parents, and a Japanese attorney her parents hired, who together planned and executed the criminal abduction of Melissa. She had a Japanese passport created in a false name for our daughter. Then by a combination of acts of deception, coercion, and fraud, she went to the airport and got on a plane with our daughter on March 16, 2006. Once the All Nippon Airways plane left the ground, all U.S. law protections, and U.S. rights were effectively stripped from Melissa. After hearing our judge order, specifically, no travel to Japan with our child, and the passport surrender, I believed that nothing like this could have ever happened. I also felt confident that if something did happen, the courts, law enforcement and the U.S. Government would quickly remedy the situation. This is not a case where I consented or somehow acquiesced to our child being subjected to any foreign laws, customs, or jurisdiction. In fact, like the many other cases that I highlight within the work of Global Future (several members of which are here today and you may have met with me here regularly), I availed myself of every possible legal protection and prevention under U.S. law and within the courts to ensure that Melissa would never be subject to any foreign law and especially jurisdiction. It was a criminal kidnapping, resulting in local and Federal arrest warrants. (Please see attached FBI arrest warrant #3.)

So that brings me to the differences between the various types of cases and the differences in the U.S. Government obligations in each of the different types of cases. (Please see the attached Global Future Differences Between The Cases, document #4, and the Japanese Hague instrument legal definitions, the most recently deposited definitions currently at The Hague, #5.) The issue of a child's separation from a parent is rarely as simple as it appears at face value. Abduction cases are complicated. Many cases of parent-child separation are not "abductions." If we are to create legislation on this subject, we need to better understand the categories of cases, and the appropriate measures, as warranted by the facts of each case. Any legislation attempting to currently define or redefine all cases on some "same" basis, and then place all cases in the same bucket with the same limited sets of diplomatic remedies, severely discriminates against the cases that have a clear-cut basis in U.S. law and law enforcement's statutory obligation to act. The response to international child kidnapping should be exactly on par with the federal response to domestic kidnappings. Even the Japanese recognize and differentiate between these important semantic legal foundations.

It is now (and once again) clear that criminally abducted children do not have equal protection under the law. Each and every case, criminal or civil, U.S. jurisdiction or foreign jurisdiction, has a tragically sad and compelling aspect with regard to the children. But children by virtue of their minority and law, are subject to and controlled by their parents' decisions. Sometimes parents unwittingly make bad legal decisions or take a risk, and later do not want to accept the resulting legal reality. So there are wrongful retentions and wrongful removals. There are criminal cases, there are civil cases, and there are foreign jurisdiction cases, U.S. jurisdiction cases, cases with violations of family law, and human rights cases.

The most egregious cases will be U.S. jurisdiction cases, which include abuse of human rights, and have bases and remedies available in criminal, civil, and family law. By contrast, foreign jurisdiction cases are defined by a transgression of human rights, for which there may be only civil remedies.

There has been every variety of extraordinary legal cases, such as Tom Sylvester's, that still don't end in remedy or relief. In addition to having a criminal child abduction case from the U.S. to Austria, and continuing U.S. jurisdiction, he won in the Hague only to face endless appeals and he also won in the E.U. Court of Human Rights and in the European Convention, none of which returned his daughter to her legal home in Ohio. Please see attached testimony submission (some of which came from the 2004 House hearing by Tom Sylvester, #6), and ask yourself if anything has changed since then, or since the previous hearing he testified in, in 1998.

Although they may appear similar, every case is unique by fact, and remedies are controlled by the facts. Careful responsibility should guide our usage of the various descriptive words, describing the various types of cases. Correct usage is of the utmost importance. For example, the use of and the definition of the word "abduction." In U.S. law, the word has very specific meaning, (please see the attached Black's Law Dictionary definition, #7). Misuse of the word "abduction" and other relevant words creates misperceptions. These misperceptions are then spread through the media and eventually will confuse law enforcement and judicial officers as well as the American public and cause harm. Below is a quote from the Department of Justice's Office of Juvenile Justice and Delinquency Prevention ("OJJDP") 2010 publication entitled "The Crime of Family Abduction" signed by Jeff Slowikowski and Attorney General Eric Holder: "Misperceptions about family abduction can poten-

tially cause further trauma to the abducted child. These misperceptions can also lead to an increase in the incidence and duration of family abductions.”

The U.S. Government simply cannot unwind the legal facts and legal distress of every case. For example, cases where a parent consents to the travel and places his or her child on a plane, defines this common case model as a foreign jurisdiction-wrongful retention case, with only civil and Hague remedies, if the foreign country is a Hague partner. It is not by fact or definition a criminal abduction. It's unrealistic to expect that we will ever see another Senator hold up billions of dollars of foreign funding on behalf of a wrongful retention case, as Senator Lautenberg courageously did. There are thousands of criminal abduction cases where such strong action has not yet been taken. Holding up foreign aid does not demonstrate successful diplomacy, nor a success of the Hague.

Basically, all cases can be sorted by jurisdiction first, and legal facts second. There are U.S. jurisdiction cases, and foreign jurisdiction cases. Under the principles of international law, jurisdiction is the primary element and will dictate the appropriate venue where any remedy or relief can be decided on any case. The legal facts will determine what areas of law can be used for remedy or relief. Legal facts can't be changed after the fact.

Six months after Melissa's abduction in August 2006, I made my first trip to Capitol Hill. By November 2006, I made up my mind that I was going to educate every single legislator and every relevant government department on the issue. This gave me hope, a purpose, and it was a good use of my time and energy. It kept me sane, but more importantly, I had decided that if the U.S. Government is now the de-facto parent for Melissa in Japan, that this work was now my only way of parenting her. Since then, I have spent about 100 days per year, here in these buildings. Today, I stand at about 800 days of my life here. I have taken the time of so many members, some of whom are now gone from public service or have even passed away. I have now met with over 1,600 congressional staffers, a few maybe over 100 times. I have spoken with every living Secretary of State, former Presidents and Vice Presidents, and a few hundred foreign dignitaries. Today, I want to thank all of you for your time, indulgence, hard work, and occasionally your patience with me. When I come here, I am almost a one-issue guy. That issue is my daughter Melissa. Please forgive me. I feel like I have lost everything already, but I am not the victim here. My daughter is the victim and I am her father charged with fixing her problems. That is why I keep coming back, and remain committed to this work.

Back in my first year other tracks of work were developing too. I bought a law library in 2007 and studied ideas in potential strategic litigation and law. The day before the statute ran out, I filed suit against Ryoko's lawyer and his entire firm for malpractice by aiding and abetting in an abduction. I desperately fought the case alone for the first 14 months while interviewing over 420 malpractice attorneys, all of which passed on handling the case. I won the demurrer and the motion for summary judgment in pro persona, and finally found two of the best civil attorneys in California to handle my trial for a fee. We won.

I was told at that time that I was the only person in America to successfully sue opposing counsel for malpractice, arising out of a family law action, and win. It was painfully bittersweet, and I don't recommend that anyone attempt it. However, I did work with another New Jersey resident who copied the suit and won his case as well. His may be the only other example to date.

I also filed suit against the All Nippon Airways trying to establish that airlines have a duty to protect children and their families from the harm that comes from abductions. We lost my first case, but reworked it and refiled a better version in another case in California, and then planned and filed refined versions in two more cases in Florida and Pennsylvania simultaneously. This kind of work is continuing. After 3 years of working with Rep. Jim Oberstar, and the House Transportation Committee, he ordered a GAO report, which explored the problems and potential remedies with airlines used in the commission of child abductions. (Please see attached GAO Report 11-602, #8.) There are many other ideas in the strategic litigation channel, but most of those are more appropriate for a future judiciary hearing.

Today I also want to discuss how international child abduction violates these children's civil and constitutional rights.

A little background first. In the history of law, no-fault divorce, shared custody, and children's rights are still in their infancy. Just 60 years ago, international marriages were a tiny fraction of what they are today. Even 20 years ago it was a lot of very slow work to meet a potential spouse on the other side of the planet, if you didn't travel and spend time there. Today, ease of international travel and globalization make it possible to meet and talk with thousands of people from every

possible location on the planet. And it is happening faster and faster, and more and more children with dual or even triple nationalities, are born every day.

Timing is everything for work on certain issues. Yesterday, was the time for meaningful progress on this issue. If this body intends to take up legislation on foreign nationals crossing our borders illegally coming in to our country, that would then be the appropriate time to take up work on American children being kidnapped out of our country.

The Etan Patz case was the very first abduction case to really change the way American society and law enforcement deals with child abductions. It is now 35 years old, and still remains unresolved. As a result of that seminal watershed case, we got legislation creating National Center for Missing and Exploited Children ("NCMEC"<sup>5</sup>), law enforcement created new ways of investigating cases, photos became a new tool and were then first used on milk cartons. Many of the far reaching implications of that case took America into a new phase of awareness of the crime of child abductions.

The Hague treaty on the Civil Aspects of International Child Abductions is now only 30 years old and was a great start for its time. The Hague framework is expanding worldwide, but the massive loopholes continue to be widened and foreign judges and attorneys continue to exploit in order to deny returns.

The International Parental Kidnapping Crime Act ("IPKCA") became law in 1993, and in the legislative history, the original authors were clear that it was the prosecution of the criminal abduction cases that would drive the deterrent to all forms of child abductions and wrongful retentions. I believe that is still the only effective path forward today, and was a visionary insight by those authors that unfortunately has never had a chance to be demonstrated. Just a few emblematic prosecutions each year would send a message everywhere that we as Americans believe that protecting these children's rights to equal justice under the law is more important than either parents' selfish considerations, or acts of revenge and control that leave children as the real victims of a crime.

These prosecutions send a message worldwide that we won't accept forum shopping, that any properly entered and valid first-in-time judicial decisions would and should remain in force, that those judicial determinations would actually be enforced especially when the children are abducted, and cannot be undermined through means of fraud and deception. The IPKCA plan was clear; the Department of State was to serve DOJ by assisting in resolving the most egregious criminal cases. Prioritizing extradition requests, and holding countries to their extradition treaty obligations seemed to be the simple practical key to the authors of IPKCA and helped reinforce the rights of all children.

Knowledge about the potential consequences would absolutely deter most would-be child abductors, and would provide incentive for resolution of greater numbers of wrongful retention and foreign jurisdiction access cases. Essentially, bad actors will resist the temptation when they know the consequences might really negatively affect them if they choose to take such an action.

After 1993, it seems clear that DOJ became frustrated by the unresolved criminal abduction cases piling up, and with the lack of DOS support on resolving the international criminal cases. So eventually, over time, the portfolio of work on these cases migrated from DOJ to DOS.

I have to say here that I personally know about 100 people who work at DOS who sincerely would love nothing more than to bring Melissa home today. Over time and study, I came to realize that there are thousands of deeply committed and concerned people working in the DOS. But from the bottom of the DOS to the top, returning our children is just not in their job description or ability. They are not law enforcement officers; their job is diplomacy and they answer to the administration and to Congress.

Here in the foreign relations channel, we could rewrite portions of DOS' Foreign Affairs Manual in order to better serve these emblematic international Child Abduction cases. Creating better Welfare and Whereabouts reports, taking current photographs and videos to return to the left behind parents with, and including professional child development and social science evaluations may help create a more positive view of the U.S. Government response in appropriate cases, and would address the psychological and emotional traumas that these children experience. (Please see the attached paper by Sarah Lyons, #9.)

In fact 3 years ago, Global Future wrote a proposal (among a long list of proposals over a few years) for a sweeping reform of the Welfare and Whereabouts ("W&W") visit program. This may be something that can be more appropriately done by this committee in the foreign relations channel. (Please see the attached version of the Foreign Affairs Manual on this subject, #10.) The W&W visit program is still one area that does give some parents some solace and comfort. It also may be the only

U.S. Government obligation in some types of access or foreign jurisdiction cases that can be executed.

Former Assistant Secretary Kurt Campbell and current Assistant Secretary Janice Jacobs acknowledged publicly that another of our proposals became a new DOS policy. That particular idea is one we are most proud of. "The aged-out cases proposal." After abducted children age out of minority, in appropriate cases, the DOS no longer needs to go through an abducting or wrongfully retaining parent in order to talk with the child. That person is now in their majority, still has American citizenship, still has an American family, society, and cultural aspect of their identity, which may have been wrongfully denied to them previously. They may have inherited property or money, they may want to seek employment or education here in the U.S., they may be eligible for various programs or might want to join some branch of our government or military. The point is that the Embassy can directly contact these abducted children without the barriers that they unfortunately faced while the child was in their minority.

There is no way for us to write a law demanding that the administration engage another nation, but we can have Foreign Service officers fulfill that promise written inside the front page of every U.S. Passport.

Left behind parents are a uniquely desperate and vulnerable group. They are persons who are at the most desperate time of their lives. They are susceptible to all kinds of scams and frauds. In fact when Googling IPCA, the top sites that come up will reveal scam artists who regularly prey on left-behind parents and their families using their children as bait. There are literally hundreds of spurious organizations that use real and falsified stories and images of parent and child separations to solicit money for personal gain. There are hundreds of paramilitary snatch-back organizations, most of which successfully extract between \$30,000 and up to \$1,000,000 per case, from desperate and trusting parents, without ever intending to return the children. The Internet has created so much in the way of good for humanity. It also has increased the opportunities for scams and cons in an exponential way. In an area mostly overlooked by law and law enforcement, filled with desperate and trusting parents, these fraudsters have easy pickings. Many operate under false identities, and they face very little in the way of consequences.

I was as desperate and vulnerable as any parent in early 2006. However I was lucky to discover in time that I had been solicited by one of these con artists very soon after my daughter's abduction. I researched him and found that his real story was entirely the opposite of what he portrayed on the Internet. By attending two court trials against him months later, I learned that he had a notorious record of domestic violence, abuse, identity theft, false identity, unpaid child support, vexatious litigation, and fraud, primarily victimizing his Japanese wife, the mother of their child. I was appalled. Today, he runs one of three Internet-based organizations purportedly advocating for left-behind parents whose children are in Japan, that all happen to be run by persons with abuse histories that have been vetted judicially or by law enforcement. Individuals like this undermine the work of Congress on our children's behalf, and add to the time they will be held in captivity abroad.

One of our central pillars in Global Future became calling out abusers and demanding that they be prosecuted. We stand in support of victims of domestic violence ("DV") and against abusers, with a no-tolerance policy. Cases where abuse allegations adjudicated by Judges or vetted by law enforcement officials won't qualify for any type of association with our group or our work. At the same time, we object to being painted with that same brush by DV organizations and must work even harder to expose abusive individuals hiding amongst the left-behind parent community. By virtue of their nature, we found that abusive individuals retaliated in any number of ways when we rejected them for inclusion in or association with our work.

From these same individuals and their organizations, myself and my organization have received death threats, cyber threats, and cyber bullying attacks while these people hid by using false identities on the internet. My e-mail has been hacked, my credit card hacked, my Facebook page disabled, our Web site disabled, and they even put porn ads on my daughter's Facebook page after I could no longer access it. Indeed I have even been threatened to be killed if I so much as testify on the subject of IPCA or expose the true facts of some cases. We have decided that the entire community of left-behind parents must be carefully vetted if we are ever to make clear progress. (Please see the attached draft copy of the Global Future Congressional Protocol for Vetting Left-Behind Parent and Child Abduction Cases, #11.) Indeed both legislators and the entire advocacy community suffers when these people abusively dominate the internet presence, and attempt to hijack our advocacy movement and work on the issue.



Until we began Global Future, no child had ever been returned from Japan through a legal process. Today, and in history, there has been only one single child legally returned from Japan. Although we worked with numerous agencies and departments of the U.S. Government, the return of Dr. Garcia's daughter to her lawful home in Milwaukee, was largely a result of the planning, education, and work of Global Future. That was our third criminally kidnapped child returned to their lawful home in the U.S. (Please see the attached Garcia case study narrative, the Global Future Justice case study hand-out, and the NCMEC database report on the Garcia case, #12.)

Over the entire 7 years of Global Future's existence, we examined and analyzed hundreds of cases. We have worked with families in reconciliations, mediations, civil, criminal, and family court proceedings. All along building on ideas that we have perceived as in the realm of what's possible, without letting the goal of the perfect result stop us from getting anywhere. We developed a set of plans that we believed was possible to affect a safe legal return. One of our members, Mr. Alejandro Mendoza of New Jersey offered his case as the first prototype. It was huge and courageous risk. Our feelings of responsibility if it were to fail, and commitments to making it work, were the highest. Law enforcement officials in New Jersey agreed, and we eventually brought both children back to their lawful home.

All along we were working on several cases at once. Dr. Moises Garcia's case was especially unique and promising in terms of all of the facts. (Please see the attached narrative of his case.) It is highly unlikely that we will ever see another case with the variety of and complete exhaustion of every possible favorable ruling in both countries. With that as background, and our recent success in the Mendoza case, Dr. Garcia convinced us that we could bring his daughter home. Again it was an even higher level of responsibility and fear of failure. It was Japan this time and no one had ever been successful in Japan. (Please see attached NCMEC database report on this case.) We cautiously applied many of the same ideas and principles as in the Mendoza case and on December 23, 2011, Dr. Garcia's daughter was back in her lawful home in Wisconsin.

This case is by far and away, the most highly emblematic of any within international child abductions. This is the model case to study. It demonstrates the key to unlocking hundreds or thousands of criminal abduction cases, which in turn creates the deterrent and incentivizes resolutions in all other kinds of cases.

Today, we live in a civilization within a highly globalized world. We no longer can live in a world where this issue can be kicked down the road. It seems that the U.S. Government is entirely in control of the fate of my daughter and all other abducted American children.

Please don't let my daughter or any of these children slip away. Please use this opportunity to pass meaningful legislation that reinforces protections for our children, and their original jurisdiction. Legislation that prioritizes and protects the justice components. Legislation that will result in children being returned to their lawful homes.

The CHAIRMAN. Thank you, Mr. Braden.  
Dr. Hunter.

**STATEMENT OF NOELLE HUNTER, PH.D., PARENT OF AN  
ABDUCTED CHILD, MOREHEAD, KY**

Dr. HUNTER. Chairman Menendez, Ranking Member Corker, and members of the committee: On behalf of my 6-year-old daughter, Muna, my family, and my fellow parents, all of whom have had their children kidnapped to far-away lands, I thank you so much for recognizing this issue of parental child abduction as one of great concern. Indeed, it is time to pass meaningful legislation to contain this pandemic and eradicate this terrible pain it has caused all too often.

I would like to share my personal story and offer some ideas that this distinguished body, you, can take to strengthen laws, support legal remedies, and prompt changes in the way that our Federal Government and our Federal agencies work in concert with us parents and other organizations to bring our children back home.

On December 27, 2011, my daughter, Muna, was taken by her father from the only home she has ever known, in Morehead, KY, and spirited away to Bamako, Mali, in West Africa without my knowledge or consent. Previously, in October of that year, a Kentucky circuit court judge had issued a joint custody ruling for us, acknowledging the right to equally parent our child. That same decision ordered that I retain her U.S. passport. The judge understood that there was a risk that her father would take her, and that is the very action that brings me before you today.

When I took Muna to the designated custody exchange location, even then I anticipated what was about to happen, but I was powerless to do anything because no law had yet been broken. The FBI later confirmed that Muna was taken away from JFK Airport on a Mali-bound flight.

I immediately opened a case with the Department of State Office of Children's Issues and the National Center for Missing and Exploited Children. As I tried to get Muna back home, across the world in Mali where she was taken a civil war had broken out. Imagine my horror. My 4-year-old daughter, a U.S. citizen born in Kentucky, was illegally taken away to now a war-torn country and there was nothing that I could do, and apparently nothing that I have done so far, that has returned her to my borders.

We need to fix this. It has been 793 days, more than 2 years, since Muna was abducted and I have done everything that a mother can do to bring her home. I am like many of my fellow parents in that regard: We need your help.

I am pleased to say that I do have the unified support of my Kentucky delegation. Senator Paul has reached out to members of the State Department and to the members of the Mali Government. In the U.S. House of Representatives, Chairman Rogers has been consistent in his support and outreach efforts on our behalf. And I do not really even have time to tell you of the varied and creative and unwavering support that the Senate Minority Leader, Mitchell McConnell, has given to this case. Since the first day I brought it to his office, he has come alongside me and my family to press with high-ranking members of the Mali Government, at the U.S. Department of State, and even in the Justice Department to secure Muna's return. But she is still not home.

Muna's kidnapping speaks to the greater problem of why there must be fundamental changes in the way that international parental child abduction is addressed at the Federal level. When I traveled to Bamako last summer to petition the courts to recognize pre-existing U.S. court orders for custody and return, I was unsuccessful. In Bamako, I virtually begged to spend time with my own daughter. But that court would not affirm my status as her mother.

I returned from Bamako without Muna, but with an even stronger resolve to advocate for her and the rights of every U.S. child who has been unlawfully removed from U.S. soil and very often in violation of court orders, and always in violation of the international principles of the rule of law. That is why the process for parents working with Congress and Federal agencies must be streamlined. It is my opinion that the next logical step is to recognize that international parental child abductions are foremost a matter of justice

rather than diplomacy, though diplomacy has its place. The focus of this issue and action must be properly transferred to the Department of Justice because in nearly all cases this is a matter of criminality. Parental abduction is child abuse.

We must urge the nations to place greater pressure upon their own citizens to adhere to the international rule of law and return these children to their home country. In conjunction with such urgings, the Justice Department should make the issuance of Federal warrants under the International Parental Kidnapping Crime Act of 1993 standard practice. I would like to see this happen in my own case because, despite high-level conversations with the State Department, my efforts of my family and my delegation to incentivize my ex-husband to return with her, she is still not here and justice is now our only recourse.

This body has heard testimony about the Hague Convention as a means for justice and remedy. Though I cannot speak from personal experience about the efficacy of the Hague Convention because the Republic of Mali is not a signatory, I can relay the sentiments of several of my fellow parents whose children are abducted to signatory nations. It is in their experience a paper tiger that compounds their personal grief and financial woe, rather than serves as a means to end their abduction and bring them home.

But Federal warrants get the job done. This is one action that I recommend this body consider as a front-line defense and deterrent. My friend, Alissa Zagaris, and her son, Leo, join us today sitting out in the audience as a result of this process. Alissa went the route of the Hague Convention and was confounded at every turn, until the FBI rightly issued a penal abduction warrant, and Leo is under her roof today.

A final point that I would like to urge the committee to consider is how this government might enact strong prevention mechanisms to foil attempts to unlawfully remove our children in the first place. Exit control, as you properly said, sir, must be a key element of any meaningful legislation and implementation. To this day, I do not know how Muna left this country, because the judge ordered that I keep her U.S. passport. In the same way the Department of Homeland Security attempts to monitor persons entering this country, it should employ with equal or even greater scrutiny persons leaving it, especially children.

In closing, I want to thank you, Mr. Chairman, Ranking Member Corker, and this committee for allowing this issue to come before you. I believe in my country and I have studied it and have seen with my own eyes this country solve problems that we once thought were intractable. International parental child abduction is no exception. I stand with my fellow parents, Mr. Goldman, Mr. Braden, Rick Myers, whose sons, Dean and Adi, were abducted to Israel, Yedi Flaquer, whose son, infant son, is in Israel, Sally Plink, whose children, Jared and Cassidy, were abducted to the Netherlands, the very seat of the Hague Convention, in pleading with you to find better solutions to help us return our children.

This is a crime of the heart against our most vulnerable citizens. They need us and they need justice. Finally, this Nation was founded on the fundamental principle of liberty and they have been deprived of this inalienable right. The only right remedy for this dep-

rivation is justice, and there can be no rest for these persons or nations who thwart liberty until justice rolls down and we look up and see our children returning home.

Thank you.

[The prepared statement of Dr. Hunter follows:]

PREPARED STATEMENT OF DR. NOELLE HUNTER

Chairman Menendez, Ranking Member Corker and members of the committee, on behalf of my 6-year-old daughter, Muna, my family, and my fellow parents who also have had their children kidnapped to far away lands, I thank you for recognizing the issue of international parental child abduction as one of great concern.

Modern society is a global society. Today in the U.S. there are more couples of mixed citizenship (nationalities) than ever. But when these relationships fail and the family unit breaks apart, these children become more than victims of divorce, they often become victims of international kidnappings. This current scourge wreaks emotional havoc on children and families with alarming frequency. Indeed it is time to create meaningful legislation to contain this pandemic and eradicate the terrible pain caused all too often.

I would like to share my personal story and offer some ideas that this distinguished body—you—can take to strengthen laws, support legal remedies and prompt changes in the way that our Federal Government and our federal agencies work in concert with parents and other organizations to bring our children back home.

My daughter, Muna, was taken from our home in Morehead, KY, in December 2011. Just 2 days after Muna, her sister Rysa and I had spent a sweet Christmas together, she was spirited away by her father without my knowledge or consent to his home country of Bamako, Mali, West Africa.

Previously in October of that year, a Kentucky circuit court judge had issued a joint custody ruling granting Muna's father and me equal parenting, recognizing each's fundamental right to parent our child.

That same decision ordered that I retain possession of Muna's U.S. passport. It stipulated that her father must give me a detailed itinerary if he wished to travel overseas with her. The judge understood there was a risk that her father would take the very action that brings me before you today.

When I took Muna to the designated custody exchange location, her father demanded the passport from me. I refused to give it to him because he did not provide me with a travel itinerary as the order stipulated.

Even then, I anticipated what was about to happen, but I was powerless because I had no proof that he was about to take her. A week later on New Year's Day as I sat at the restaurant waiting for their return, the time passed when he was supposed to return her to my custody . . . my stomach knotted with every passing minute and I knew.

The FBI later confirmed that my Muna was taken away from the only home she had known on December 27, on a Mali-bound plane out of JFK airport.

I immediately opened a case with the Department of State Office of Children's Issues and the National Center for Missing and Exploited Children. It would take 13 very long days, a state felony warrant for custodial interference, and pleadings from me to local law enforcement before Muna and her father would be entered into INTERPOL and the National Crime Information Center (NCIC) database.

As I tried to get Muna back home, across the world in Mali where she had been taken, a civil war broke out. Imagine my horror! My 4-year-old daughter, a U.S. citizen born in Kentucky, was illegally taken away to a war zone and nothing I have done so far has brought her back home. We need to fix this.

For over 2 years now, I have done what any mother can do to bring her back home. I've contacted high-ranking officials of the Malian Government here and in that country. I've stage a protest in front of the Mali Embassy here in Washington. I've met with the Malian Ambassador to the United Nations. I've rallied my family, my Morehead community, and global support, thanks to social media. I've made several trips to Washington to lobby for her return here in Congress, and last summer I traveled to Mali to petition for her return . . . unsuccessfully!

I'm pleased to say that I have the unified support of my Kentucky delegation. Senator Paul has reached out to the Mali Government on Muna's behalf. In the U.S. House of Representatives, Chairman Rogers has been consistent in his support and outreach efforts to the State Department and to officials of the Mali Government.

I don't even have time allotted today to tell you of Senate Minority Leader Mitch McConnell and his varied, creative, unwavering and action-oriented support. From

the first day I made Muna's case known to him, he has been at my side, pressing for her return in the Department of State and in the Department of Justice. Yet still . . . my Muna is not home.

Muna's kidnapping speaks to the greater problem of why there must be fundamental changes in the way international parental child abduction is addressed at the federal level.

I have spent more than \$20,000 in my efforts to return Muna. That amount includes attorney fees, the costs of numerous trips to Washington, overseas travel and other expenses.

My family's own meager resources quickly dwindled, but thanks to my home community, online supporters and total strangers, Muna's cause continues. My expenses pale in comparison to other parents who have spent upward of \$100,000, some of whom have come to financial ruin as they pursue their God-given rightful roles to parent their own children.

Four months after Muna was taken, the Office of Children's Issues showed me proof of life, my daughter's life, in the form of a photograph taken by the consular officer in Bamako after they conducted a routine welfare and whereabouts visit with her and her father.

That first photograph and report that she was alive and physically okay meant everything to me, because in Mali a political coup toppled a democratically elected President and that country was in turmoil. Before that report, I didn't know whether Muna was alive or dead.

Subsequent checks yielded additional pictures, and at the strong and consistent urging of Senator McConnell, the consular officer continued to attempt to reach out to her father to check on Muna, sometimes with success, sometimes not. Sadly, the latter has been the case most recently.

When I traveled to Bamako last summer to petition the courts there to recognize preexisting U.S. custodial and return orders, I was unsuccessful. Yet, it was the consular officer's presence at a hearing that gave me comfort. By design, the State Department can do nothing to facilitate Muna's return—only create avenues for me to pursue that end. In Bamako, I begged to spend time with my own child, but the courts would not affirm my status as her mother.

Broken hearted, I returned from Bamako without Muna but with an even stronger resolve to advocate for Muna's rights as a U.S. citizen and for every U.S. child that is unlawfully removed from U.S. soil, often in violation of court orders, and always in violation of the internationally recognized principles of the rule of law.

In addition to my delegation's efforts and the work of the Office of Children's Issues, I believe that part of my success in keeping Muna's case before this body and the Department of State lies in my specialized knowledge of government organization and operation, which I acquired through education and through my former service to the Nation as an intern in the office of Senator Jay Rockefeller.

Still, none of this has yielded the goal. Muna is still not home. And what of my fellow parents who do not know how or by what means to press this matter? One of them is (figuratively) paralyzed by his inability to engage his case at the federal level. This is why the process for parents to work with Congress and federal agencies must be reevaluated and streamlined.

It is my opinion that the logical next step is to recognize that international child abductions are foremost a matter of justice rather than diplomacy, though diplomacy has its place.

There is continued need for the Department of State to facilitate intercountry relations in these matters when it advances opportunities for initial welfare and whereabouts checks; and the assistance of country consular officers when a left behind parent travels to a country for visitation and/or legal proceedings is invaluable. In this regard, the Department of State is helpful to an extent, but I and other parents know that the State Department can never return our children.

The focus of this issue and action must properly be transferred to the Department of Justice because, in nearly all cases, this is a matter of criminality. Parental abduction is child abuse. Sometimes, I force myself not to think of what Muna must be feeling in the 793 days since she was taken from her mother, her sister, her extended family, her preschool, her church family and all of the people and places that I know she remembers.

I don't have to wonder about the psychological toll, because the FBI's Web site makes clear the long-term effects of parental alienation when a child is separated from his or her primary attachment figure . . . who in the case of Muna . . . is me!

In this nation, courts typically are quick to take action to address child abuse when it occurs in towns and cities across the land. It follows that the Federal Government should do likewise when U.S. citizens are unlawfully removed from U.S.

soil, and their abductions are facilitated by the parent and, by extension, sanctioned by the country to which the children are taken.

Most of these countries enjoy friendly relations with the United States, and enjoy all of the economic, political, and cultural benefits that such friendships engender. Our Federal Government should be asking for more than the principle of sovereignty dictates that our friendly nations should give.

We must urge the nations to place greater pressure upon their own citizens to adhere to the rule of law and return these children to their home country. In conjunction with such urgings, the Justice Department should make the issuance of federal warrants under the International Parental Kidnapping Crime Act of 1993 (Crime Act) standard practice.

I would like to see this happen in my own case. The efforts of my family, my delegation, and even the FBI to generously incentivize Muna's father to return with her have utterly failed. Justice is our only recourse. This body has heard testimony about the Hague Convention as a means for justice and remedy.

Though I cannot comment from personal experience about the efficacy of the Hague Convention, as the Republic of Mali is not a signatory, I can relay the sentiment of several fellow parents whose children are abducted to signatory nations. It is, in essence, a convoluted paper tiger that compounds their personal grief and financial woe, rather than serves as a means to an end that brings their children home.

My friend Alissa Zagaris, who went the route of the Hague Convention, was confounded at every turn until the FBI rightly issued a federal warrant under the Crime Act, and soon after, her son Leo was in these United States under his mother's roof once again. This is one of the actions that I recommend this body consider as a frontline defense and deterrent.

A final point that I urge the committee to consider is how the Federal Government might enact strong prevention mechanisms to foil attempts to unlawfully remove our children from the country in the first place.

Exit controls must be a key element of any meaningful legislation and implementation. To this day, I don't know how she left this country without her passport. In the same way that the Department of Homeland Security attempts to monitor persons entering this country, it should employ equal or greater scrutiny of persons leaving it, especially children.

In closing, I want to thank you again, Mr. Chairman, for allowing this issue to come before committee for insight and discussion. I believe in my country and what it stands for. I have studied and have seen with my own eyes this great Nation solve what were thought be intractable problems.

International parental child abduction is no exception. I implore you, for Muna and all of our children unlawfully held in foreign lands, to work cooperatively with the executive branch, the judicial branch and organizations like NCMEC to enact meaningful legislation that returns our children unto our borders. This is a goal to which I am irrevocably committed—it is my life's work.

I stand with my fellow parents including Rick Myers, whose sons Dean and Adi are abducted to Israel, Yedi Flaquer, whose infant son, Eliav, also is in Israel, and Sally Plink, whose children, Jared and Cassidy, were abducted to the Netherlands, the very seat of the Hague Convention, in pleading with our government to find better solutions to return our children.

Parental kidnapping is a crime of the heart and a crime against our most vulnerable citizens who cannot defend themselves. They need us. They need justice.

This Nation was founded on the fundamental principle of liberty, and they have been deprived of this inalienable right. The only right remedy for this deprivation is justice, and there can be no rest for those persons or nations who thwart liberty until justice rolls down and we look up and see our children returning home. Thank you.

The CHAIRMAN. Well, thank you all for some very riveting testimony and some very important insights. I assure you, as I said to Mr. Goldman, that it is the committee's intention to produce a product that can move as far along in trying to create the tools necessary to both prevent as well as to achieve return of children who have been abducted.

Let me ask one or two questions based upon both what I have read of your testimonies and what I have heard here today. I think both Mr. Allen and Mr. Goldman, and maybe others in their testimony, have talked about countries' bilateral agreements in the ab-

sence of the Hague Convention, but my understanding is that the success of these is dubious. For example, Mr. Allen, you referenced a bilateral agreement between the United States and Egypt, and my understanding is that none of these agreements have resulted in the return of abducted children.

I am trying to get a sense, to the extent that this is one element of a much broader universe of things we have to do. Should we be focusing our resources and time on getting bilateral agreements, or on getting people signed up to the Hague Convention? Because the bilateral agreement is almost a false promise if it does not ultimately create any opportunity for the return of children.

Mr. ALLEN. Mr. Chairman, I think my underlying premise is that there are countries, because of their religious history, because of their legal structure and attitude, who are not likely to become signatories to the Hague Convention. We have tried very hard to advocate for that in the Islamic world, for example.

I made the point that I think the fact that Morocco and Turkey are now signatories is a potential breakthrough and that we should look at Morocco and Turkey and that experience and then try to replicate it in other places. What our view is, recognize that these nations are not likely to become signatories to a Convention with 91 other countries because signing onto that Convention appears to compromise their own national sovereignty, that a better approach than spending all of our efforts to persuade those countries to sign on is to engage them one on one.

There have been success stories. I think by and large the success story between the United Kingdom and Pakistan has been cited as a model. Western European countries—in French Africa, Algeria, and France have an excellent bilateral partnership. I do not suggest it is a panacea, and we have participated in meetings with Islamic judges to try to explore common ground and ways that we can address this short of—I mean, obviously it would be great of all these countries would become Hague signatories. Right now that is not realistic.

So my view is that approaching it in that parallel way, engaging these countries, trying to persuade them to become signatories to the Convention, but recognizing if they are not going to do that at least we need to have open dialogue between those countries and the United States to deal specifically one case at a time with cases involving American families, is probably the best way to proceed.

The CHAIRMAN. Well, I am just concerned because I have seen that we have bilateral agreements or memorandums of understanding with Egypt, Lebanon, and Jordan and they have not produced the return of a child. So I get where you are coming from. We prefer The Hague, but in the absence of that maybe this is a venue. But it is only a venue of value if, in fact, it creates a venue for returning children at the end of the day.

Mr. ALLEN. Well, I think the State Department has had some success by confronting these countries, going to the countries on a case-by-case basis, and has brought some children back. So my ultimate recommendation to you is we need to strengthen the tools, as Mr. Goldman said, that the U.S. Government has to exert leverage on these countries so that they view that it is in their best interest to cooperate with us and to create some reciprocity.

The CHAIRMAN. On that we are in agreement.

Let me ask you. You mentioned an improvement, but still a challenge, in terms of the judiciary understanding of the Hague Convention and the authorities therein. Is there an effort under way, or is there an effort that needs to be undertaken, to help the judiciary in this country understand the law?

Mr. ALLEN. Yes, there have been efforts. Yes, we need a lot more of it. The challenge we faced here, you remember a few years ago the United States had a huge problem with our Western partner, Germany, and the chancellor of Germany said: "The issue for us is we have a federal judicial system. The German Government cannot tell a state judge how to deal with a particular case."

Dialogue was created between the United States and Germany, a working group, a task force. There has been great progress. So ultimately there are countries, even in the Western world, who have not been happy with the reciprocity of the United States. A Hague case lands in the court of a judge who basically does not know about the Hague and says: "I am going to be a judge, I am going to do what judges do, and that is hear the totality of the facts; I am just not going to send this kid back to the U.K."

So that is the problem. For the Hague to work it has to be fast and the response of every judge in every setting needs to be that their first obligation, absent the application of one of these exceptions under the Convention, is the return of the child to the country of habitual residence. That still does not happen in a lot of places.

The CHAIRMAN. Mr. Goldman.

Mr. GOLDMAN. There are a few issues. A judge here, even on a return order or if one parent says, hey, please, I am afraid that my ex or my current, we are not getting along spouse, is going to abduct our child, say, to Mexico, and the judge here is going to look at it, Mexico is a Hague treaty partner, so if the parent does abduct the child the Mexican Government will return that child. They do not look at the statistics, and that is where we go back to we need complete transparency of the return rates from other countries.

As Mr. Allen pointed out, the criteria—the spirit of the treaty is expeditious return of the child. When the criteria is that the left-behind parent has been exercising their custodial rights, they filed the petition within a year, and the habitual residence was the country that the child was removed from, it is deemed that is where the child should be returned, and that country needs to return that child right away. That is where we have the big flaw where it is not expeditious and it takes, like in my case, 6 years.

These judges in these other countries view these cases as well as custodial cases. They are not looking at the premise and they try to make them, the kid is in our country, we are going to try this case, we are the judge. And they do not look at—they need to be educated. These judges need to be educated in our country on returning and allowing children to leave and returning abducted children here and judges in other countries need to be educated, almost like I would suggest a panel of judges that are only Hague case judges. They can do their other practice, but when you have a Hague case there should be in certain districts judges that deal directly with Hague, so they know it and they return the child.



We, as Ambassador Jacobs said, we will protect the child as well as any other country. So if the abductor claims that they have been abused or something, we have great mechanisms and I would put our child protection services over most other countries.

The CHAIRMAN. Let me ask Mr. Braden, because I think I saw in your testimony the interplay—and Dr. Hunter also may want to respond to this. A left-behind parent who has worked with both the Department of Justice and the Department of States in pursuit of getting their child returned—how has that interagency coordination been on international abduction cases? From your perception and experience, is there a better approach in interfacing both of them?

Mr. BRADEN. Thank you very much, Mr. Chairman. That is a right on point question. In my opinion, resolving these and the way the Departments work, basically the Departments stovepipe all of their work. I know there is a little bit, I know about some inter-agency communications and stuff, but maybe that is an area.

We have a great opportunity right now with a possible piece of legislation. I want to say that interdepartmental cooperation, various treaties and laws and departments working together, could do a much better job.

In a lot of ways, this issue belongs much more in the Department of Justice. We can stop child abductions. My organization, we brought back, my team, we brought back the only child ever returned from Japan through a legal process. There is of course a foreign relations component to that, there is a homeland security component to it, and there is a judiciary component to it. We have to have all of these departments, nongovernment organizations, but it is about enforcement of the laws, and the enforcement of the laws in a few emblematic prosecutions a year would go a long way to creating a deterrent and putting a last line of defense at every border that we have.

The CHAIRMAN. Dr. Hunter, did you want to respond?

Dr. HUNTER. Yes, thank you, Mr. Chairman. That is a good question. I would like to say very briefly that my experience with Office of Children's Issues is very positive. It is very good. I have good caseworkers who have been empathetic and tried various solutions to help me communicate with the consular officer. So I have no personal qualms with how it has worked for me so far.

The issue is that only in the recent months has the Office of Children's Issues, my caseworker, started working with the FBI. If we could do it over again, if I could have a caseworker immediately and then also be assigned to someone in the Justice Department, in this case the FBI, in the very beginning, we probably could have worked in tandem to—maybe even Muna would be home by now.

So I think that what Mr. Braden is suggesting is very true. For me, there is a role for the State Department and I think all of us and the legislation that is before this body right now suggest that there is a continued role for the State Department. But also, this issue must probably be located in the Justice Department because it is matters of criminality and nothing short of putting some incentive for a particular parent to return and then, by extension, their country feeling some pressure—those are the only things that

at this point are the most critical remedies for me as we go forward.

The CHAIRMAN. Very succinctly, because I want to turn to Senator Corker. I have exceeded my time.

Mr. GOLDMAN. Thank you. First of all the Hague Convention is the civil remedy. One of the things—in my case, I could have used the IPKCA and filed criminal charges right away because my son was being illegally held in a foreign country. However, the first thing a judge would say in that foreign country is: “We are not going to return that child because if the parent ever wants to come back and visit that child they will be prosecuted and go to jail.” That is why we need our country on a nation-to-state basis—we need to just have, as she said, an emblematic menu per se of the sanctions that we will put on these countries and they will return our children immediately once this legislation is passed; it will have impact.

Secondly, the exit control. My son was spirited away to Brazil with my blessing. I did not know that an abduction was taking place. As well as Bindu; she actually flew to India with her husband and family under the guise of a vacation, and once there she was told: “You get out; I am taking the kids and you are done.” So exit controls can help a lot of abductions, but there are also abductions that have been without us even realizing that they are taking place.

Thank you.

The CHAIRMAN. Senator Corker.

Senator CORKER. Mr. Chairman, thank you.

Mr. Allen, thank you for your professional presentation today, and the three of you for your personal and professional presentations. They are riveting and certainly have a big impact.

I just want to say to the chairman, you and I both were just in a hearing on monetary easing and zero interest rate policy. While we know those things affect citizens and we care about those, I think one of the most important things that you and I have done together was work on the immigration bill, which directly affected people immediately if it were to come to law. I thank you for your leadership there. I think we have an opportunity here, which we rarely have in the United States Senate, to pass something that will directly impact people in a real way, and that is a real privilege, for us to be in that position. I look forward to working with you in that regard, and I certainly look forward to hearing from the witnesses and others who are in the audience to figure out a way to make sure that when we pass something—and I think we will—it actually means something.

I do not look at this issue as today—and I could be wrong—as us taking a first step. I look at this as us having a window of opportunity to address something in a real way. I appreciate Congressman Smith. He has been great. He has called over. Mr. Braden, I think I have seen you more here than my family by far. I just appreciate it. And Dr. Hunter and David, just outstanding presentations.

There is a concern that the bill that came over from the House is a good piece of legislation, but that it could be made much stronger, that if we are really going to address this right now it

needs to be—and again, I thank him for pushing this issue, but it needs to be even more in depth and comprehensive. I am just wondering—I know you have said a few things here, but if you could wave a wand and cause some additional elements to be a part of this bill, I wonder if you might expand on what that might be?

Mr. GOLDMAN. Absolutely, we need transparency in the reporting of abductions. We need each Congressman of the district of a constituent to be notified and be able to—that Congressman to be able to contact the State Department and get advocacy. The parents need advocacy.

The criminal aspect, it is the Department of Justice, and we are dealing here with the civil remedies. That is where the sanctions can go. You can start with the demarche and then the memorandums of understanding, but all the way to the economic sanctions. If we have some strong, powerful quivers or arrows in our arsenal, most likely we will not have to use them, but the countries will see what is coming down the pike. As in our case when Senator Lautenberg withheld that trade bill, my son was returned.

So I think we do have a great foundation with that legislation, and possibly the study of the criminal aspects or to amend the bill once we get something through now can help. But time is the enemy of these families and I am just afraid that we have a unanimous bipartisan passage of this bill. Tweak it, yes, make it a little stronger if you guys see something. But we do not want to alter it too much because I am afraid that it is just going to get bounced back and forth, and these families will not have any help that they need immediately.

Senator CORKER. Patrick.

Mr. BRADEN. Thank you for the question, Senator.

Senator CORKER. And I have raised the question because in the hallways you have told me that there are things that need to be added. So this is your opportunity.

Mr. BRADEN. I have got a list and I have got—I think as my submission will record. I think if this body intends to take up legislation on border controls for people coming into the country, that is the appropriate time to take up border controls for children being illegally kidnapped out. These children effectively have their constitutional civil rights stripped from them through a criminal act that leaves them as the victim of the crime. The left-behind parents, we are not—I am not a victim of crime and I recommend to all my people in my organization that: Who is the bigger victim, you or the child?

When it comes to the things that we can add to it, I suggest that we go back to the 1993 IPKCA and look at the congressional notes there. The authors of that bill, I think, had visionary foresight. They put in the notes that it would be, based on the current state of things, with no exit controls, the Hague treaty, what we need is we need a deterrent and we need to demonstrate and send a message to the rest of the world that we value these children's rights, we will not tolerate forum-shopping for custody or something.

One criminal prosecution a year for a child abduction would go a long way toward creating a deterrent for would-be criminal kidnapers. In addition to that, it incentivizes mediations for all of

those other cases that do not qualify for the stronger sets of remedy.

So I will put together a laundry list for you. I want to say one other thing on that subject, on that bill. Not all cases—cases are different. Case facts are different and the facts determine the possible remedies. So we need—what we need is different sets of remedies for different kinds of cases, but create the incentive and deterrent, incentive to mediate and reach resolutions on difficult cases where there may not be any remedies, and you can get there by prosecuting one or two criminal actors per year. I think that does the deterrent effect and educates people who are thinking they might get away with this.

Senator CORKER. Dr. Hunter.

Dr. HUNTER. Thank you, Senator Corker, for the question. I am in agreement with Mr. Braden about the need to essentially have people in countries feel the burn about what it means to commit a crime and abduct a child who cannot defend themselves. So I am in agreement with that.

Also, there is a role for continued civil remedies as well as these criminal remedies. I would also like to add to that, in terms of this wish list of things that could be added. You made a very important point, Mr. Chairman, in asking about the passport issuance alert program. It is an educative component. I am an educator and so I am always harping on my students in the classroom to know what you are talking about.

In this case of these relationships between people from different countries that fall apart for whatever reason and the children are left in the wake, some of that could be prevented by having a public information campaign coming out of the State Department, in the schools, as you suggested, in our social service agencies, all of the places where parents would likely show up, to have them begin to think that, hmm, this could happen to me, because universally when I tell people in my community or other folks, they have never heard of this before. They have maybe seen it once or twice. But it could happen.

As a matter of fact, in Kentucky there are two Kentucky residents that are friends of mine and one abducted the child and took him to Germany. So it is not necessarily always international cases. It can be U.S. citizens doing it, too. But that passport alert program as an educative component on a national level would get parents thinking about it, and then, should they be in the position that some of us have, they have already got some of these pegs in place that might prevent an abduction.

Senator CORKER. Well, I thank each of you. I think you can see that this committee is going to be working together very quickly to try to create something legislation. I appreciate the chairman's leadership on this, and I do hope and know that you will interact with our offices as this moves ahead. I think that needs to be done fairly quickly, it seems.

But I want to thank all of you for your efforts, for your strength of character, for your persistence, and certainly for having the courage to be before us today and to do the things you have done to unify your family and to continue to try to make that happen for those who have not. So thank you very much.

The CHAIRMAN. Let me join the ranking member in thanking you.

Dr. Hunter, just one last question. Is my understanding correct that your child actually left the country without a passport?

Dr. HUNTER. Without her U.S. passport, yes, sir. Until this day, I do not know how she left. The judge ordered that I retain it and when my ex-husband picked her up for his time-sharing on the custody he demanded it from me. I refused to give it to him because I suspected what might happen. So I do not know how she left the country without her U.S. passport.

Mr. BRADEN. Mr. Chairman, if I may.

The CHAIRMAN. Very briefly.

Mr. BRADEN. With regard to the passport issuance program, we have four programs. The passport issuance program is really great, but it only works for U.S. passports. And in addition to that, if they already have the passport these abductions take place without knowledge, through deception and covertly. We have the no-fly list, the passenger manifest check, the terrorist watch list. But basically, none of these programs really do anything to prevent child abductions at the border exits.

The CHAIRMAN. I recognize, as Mr. Goldman suggested, that there will be times in which there was not an expectation that the child is going to be abducted, and this would not prevent that. But I look at it as one mechanism among many that we ought to call upon.

Well, I want to join Senator Corker and saying thank you so much for your willingness to share your stories. They make this a very real issue before the committee versus speaking about it abstractly. If I were a child, I would want one of you as my parents, because obviously you have done an extraordinary effort in trying to bring your children back. So we congratulate you on your force of character and courage to continue to pursue reunification with your children.

I think, as you heard here, we have a bipartisan commitment to make this happen, and that is always great. It is a continuation of a long year of working with Senator Corker on a variety of critical issues which we have come together to achieve, and I think we will work on this one rather expeditiously to try to make it happen.

will ask unanimous consent for this and any other parental testimony to be submitted for the record. Bindu Philips has a statement for the record and I will ask consent for it to be included. Without objection, so ordered.

We will hold this hearing open to Monday close of business to provide an opportunity for those who wish to submit any statements or any questions for the record.

With the thanks of the committee, this hearing is adjourned.

[Whereupon, at 12:50 p.m., the hearing was adjourned.]

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ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

RESPONSES OF SPECIAL AMBASSADOR SUSAN JACOBS TO QUESTIONS  
SUBMITTED BY SENATOR ROBERT MENEDEZ

*Question.* Please discuss the role and effectiveness of the Children's Passport Issuance Alert Program (CPIAP).<sup>1</sup> Are there any challenges regarding interagency coordination that result in suboptimal performance of the program?

*Answer.* The Office of Children's Issues, Prevention Branch, administers the Children's Passport Issuance Alert Program (CPIAP), which is one of the most effective tools in preventing international parental child abduction. On average, the Prevention Branch reviews more than 300 passport applications per month. In 2013, the Prevention Branch entered more than 5,500 children into our CPIAP database and has managed more than 10,000 CPIAP cases since November 2011.

Once we enroll a child in CPIAP, we place an entry in the Department of State's passport system. Any parent or legal guardian can request that his/her child be enrolled into CPIAP. Only U.S. citizens under the age of 18 can be entered. Parents can find additional information about CPIAP by visiting our Web site: [www.travel.state.gov](http://www.travel.state.gov).

When a domestic passport agency or overseas embassy or consulate receives a passport application for that child, a Prevention Officer reviews the application. The Prevention Officer will contact the person (most often a parent or legal guardian) who requested CPIAP enrollment. That parent or legal guardian can then confirm his/her consent to the passport or can provide additional information that may help the passport adjudicator make an informed decision on the application. This process can stop unauthorized or fraudulent attempts to secure a passport for a minor.

The Department of State is solely responsible for managing CPIAP. As such, interagency coordination does not affect any performance factors.

*Question.* The 2012 OIG inspection also described a history of difficult relations between the Office of Children's Issues and the National Center for Missing and Exploited Children (NCMEC), which previously had full responsibility for incoming international parental abduction cases. According to the Inspector General's report, "NCMEC has significant resources, particularly its relationships with law enforcement, that can aid in locating abducted children. NCMEC can also assist in media campaigns to locate children. The organization continues to assist in funding parental travel and the repatriation of some children."

- ◆ What is the current state of relations between the two organizations?
- ◆ What additional, mutually beneficial areas of collaboration might enhance the effectiveness of both organizations in addressing their shared mission?
- ◆ How are tasks previously handled by NCMEC now handled by State?

*Answer.* Beginning in 1995, the National Center for Missing and Exploited Children (NCMEC) handled the processing of "incoming" cases (involving children abducted to the United States) on behalf of the Department of State, under a three-way Memorandum of Agreement with the Department of Justice. These activities included receiving applications under the Hague Abduction Convention for return of, or access to, abducted children from foreign Central Authorities, locating children who were the subject of Hague Abduction Convention applications within the United States, attempting to achieve voluntary returns or access where possible, and referring left-behind parents (LBPs) to attorneys, including attorneys willing to work on a pro bono or reduced-fee basis for qualified parents.

The Department of State appreciates the excellent work that NCMEC performed for 12 years on behalf of the U.S. Central Authority (USCA). On April 1, 2008, the Office of Children's Issues (CA/OCS/CI) resumed the critical function, under the Convention, of processing incoming cases. The benefits of this decision include: (a) less confusion among counterparts in foreign central authorities, who now deal directly with CA/OCS/CI on both incoming and outgoing cases; and (b) increased leverage for outgoing cases since assisting foreign counterparts with incoming cases builds more productive relationships. Since 2008, the USCA carries out the functions of locating children, attempting voluntary resolutions, and assisting parents in finding legal counsel in incoming cases, which NCMEC previously handled.

The Department of State enjoys an excellent working relationship with NCMEC at all levels. NCMEC's role as a law enforcement support organization has complemented our mission to locate and return children to their countries of habitual residence. CA/OCS/CI and NCMEC country officers regularly discuss both outgoing and incoming abduction cases, and we work together to locate abducted children and to facilitate their return. Most LBPs have open cases in both organizations, and we routinely share information about our respective efforts to help parents resolve their

children's cases. Supervisors regularly discuss issues of mutual concern and ways in which we can collaborate more closely. Most recently, during the February 2014 IPCA bilateral working group meeting between Brazil and the United States, CA/OCS/CI officers and the five-person Brazilian delegation visited NCMEC's offices in order to educate the Brazilians on NCMEC roles and look for ways for closer collaboration between our three parties.

Both the USCA and NCMEC play important roles in the process of locating abducted children. While the Department of State has robust resources and has a high success rate of locating children with the help of local and state law enforcement agencies, NCMEC also has an extensive network of law enforcement contacts and the skill to locate children quickly and efficiently. We continue to discuss with NCMEC ways in which we can more efficiently share information.

*Question.* On January 24, 2014, Japan became the 91st Contracting State to the Hague Abduction Convention. The Convention will enter into force for Japan on April 1, 2014. Please discuss the implications, if any, of Japan's new status on current U.S. return and access cases. How will the Department address cases that will not be grandfathered in by ratification of the Convention?

*Answer.* As in other countries, when the return remedy of the Convention is unavailable, the Department of State continues to take all appropriate steps to seek the resolution of these cases. In these instances, we work closely with parents to provide information about domestic and foreign resources that may help parents to resolve their children's cases. We raise individual cases with foreign governments, requesting, through diplomatic channels, that they help to facilitate the return of abducted children to the United States and assist parents to obtain access, confirm their children's welfare, and understand their options. We monitor legal proceedings as a case unfolds in court, attend hearings when appropriate, engage with child welfare authorities, advocate for consular and parental access, coordinate with law enforcement authorities when parents choose to pursue criminal remedies, and work day-to-day to explore all available and appropriate options for seeking abducted children's return to their countries of habitual residence.

The resolution of existing abduction cases in Japan continues to be of the highest priority to the Department of State. The Japanese Government has stated that parents with existing cases opened prior to the date when the treaty enters into force for Japan will not be able to request the return of an abducted child under the Convention because the treaty will not be applied retroactively. This decision is consistent with the approaches taken by other Convention partners. The Department will continue to press Japan for the resolution of all existing cases using all appropriate channels and means as described above.

Parents with existing cases may be able to use the Convention to request access to their children after the treaty enters into force for Japan. For processing purposes, we began accepting applications for access on March 1, 2014, and will forward those that are complete to the Japanese Central Authority beginning on April 1, 2014, when the treaty enters into force for Japan.

For parents who do not wish to file a Hague access application, we will maintain open abduction cases and continue to press Japan for their resolution. The Department of State has established a bilateral working group with Japan to address the challenges of non-Convention remedies. In Japan, the bilateral working group meetings provide an important forum for dialogue between the Embassy and the Ministry of Foreign Affairs (MOFA), and have resulted in the creation of MOFA's pilot mediation program that may assist existing non-Convention cases. In addition, Department officials use the working group meetings to raise individual cases, advocate for consular and parental access, and to explore all available and appropriate options for seeking the return of abducted children to their countries of habitual residence.

*Question.* The State Department has historically advocated for focusing primarily on increasing the number of Hague Convention participants, rather than seeking out bilateral Memoranda of Understanding (MOUs) on the facilitation of return and access cases. In your view, are there non-Hague countries which for various religious, cultural, and legal reasons, are unlikely to ever join the Convention? For such countries, would MOUs be an appropriate alternative? Please discuss the relative benefits and limitations of MOUs as a viable means to facilitate returns and access. Please also discuss the specific MOUS the State Department entered into with Lebanon, Jordan, and Egypt. Did those MOU's result in the return of children? The Ambassador mentioned in her testimony the return of one child from Egypt. Did the MOUs result in increased access for certain cases?

Answer. We strongly believe the Hague Abduction Convention is the best tool for resolving international parental child abduction cases. We do not believe it would be effective to pursue arrangements or agreements with countries outside the framework of the Convention. Rather, we believe that encouraging non-Convention countries to accede to the Convention is the best way to support and protect the interests of abducted children.

The Convention is effective in part because it provides one civil legal framework which may be implemented consistently around the world for securing the prompt return of children to their country of habitual residence. By contrast, MOU provisions vary widely. Accordingly, they provide no consistent basis for returning children to their country of habitual residence. In fact, absent a legally binding agreement, an instrument would not provide a basis for a foreign court to order the return of a child. This results in uncertainty and unreliability. If we were to pursue a legally binding agreement with another country, it would likely need to be reciprocal, as the foreign government would also want to see benefit from the instrument. This would mean that the instrument would likely require Senate approval. Therefore, MOUs would not be a realistic alternative to the Convention. Moreover, negotiating for MOUs will divert resources from promoting the Convention.

Current MOUs relating to parental child abduction between the United States and Egypt, Jordan, and Lebanon address establishing access between parents and abducted children. All have failed to result in resolution of, or improved parental access in, individual cases, although the Jordanian MOU allows the U.S. Embassy's consular section to have access on behalf of the parents to abducted children. No child has ever been returned to the United States as a result of an MOU. Additionally, the United Kingdom's (U.K.) Foreign and Commonwealth Office reports the U.K.'s MOU with Pakistan has not resulted in a single court order granting access. We have no reason to believe that MOUs pertaining to returning children will be any more effective.

We no longer believe there are countries that cannot become party to the Convention. In the past, we had concerns about Islamic countries implementing the Convention or becoming party to, because of possible conflicts with Sharia law. However, Morocco became party to the Convention, demonstrating that the Convention can be implemented in nations with separate religious courts. We have also seen the expansion of the Convention in Asia, and we look forward to working with the Hague Permanent Bureau's new Asia Pacific Regional Office in Hong Kong to encourage membership in the Hague Conventions.

*Question.* The Hague Convention has been criticized as lacking effective mechanisms to compel compliance among participating countries. In your view, are the existing diplomatic tools to encourage cooperation sufficient for addressing patterns of noncompliance among Hague countries? What are the merits and limitations of applying sanctions, aid conditionality, or other forms of diplomatic consequence to noncompliant states? How, if at all, might these limitations be addressed?

Answer. We are constantly monitoring our current treaty partners to encourage them to meet their responsibilities under the Convention. Each year, the Department of State prepares a report for Congress on Convention partner countries' compliance with the treaty. However, our engagement with Convention partner countries regarding compliance issues and concerning longstanding cases is not only done annually. We are engaged in a constant dialogue with foreign governments on these issues. The report itself serves as an important tool in these discussions, and we work with foreign governments to encourage improved compliance and urge that longstanding cases be resolved. Countries universally dislike being cited in the compliance report, and we have seen instances where countries have improved their performance or worked to address systemic problems compelled by a desire to improve performance in order to be removed from the report in future years.

The Department of State welcomes additional and improved tools to encourage the return of children to their habitual residence and resolution of individual cases. The existence of foreign assistance restrictions or a U.S. sanctions regime in cases of international parental child abductions may discourage other countries from joining the Convention and would put the United States out of line with the international community, potentially weakening our relationships with existing Hague partners, causing strain on bilateral relationships and making future multilateral efforts on IPCA (a significant benefit of the current regime) difficult, if not impossible. Countries already party to the Convention may object if the United States creates a disincentive to accession for countries where they, too, have challenges with international parental child abduction.

Additionally, new treaty partners, such as Japan, who have recently become party to the Convention often do so at heavy domestic political costs and in response to



significant U.S. encouragement, have indicated that the possibility of unilateral actions by the United States would be very detrimental to bilateral relations. Japan in particular is a country with which the United States has a security alliance that we believe forms the pillar of peace and security in East Asia. It is contrary to the United States foreign policy interests to sanction Japan. Diplomacy is the most effective strategy for shifting cultural and political ideologies that are necessary to engender changes in the law.

*Question.* 6(a). In 2000, the U.S. Government Accountability Office (GAO, formerly the General Accounting Office) reported that left-behind parents, among others, have criticized the U.S. Government's response to parental child abductions.<sup>2</sup> Among other noted challenges, GAO described gaps in federal services to left-behind parents and weaknesses within the existing case-tracking process, which impaired case management and program coordination across U.S. federal agencies.

- ◆ (a) Please describe the current relationship between, and the roles and respective responsibilities of the State Department and other federal agencies, including the U.S. Departments of Justice and Homeland Security, in responding to international parental child kidnapping cases.

*Answer.* The Department of State chairs the IPCA Interagency Working Group, as established by Section 11609 of the International Child Abduction Remedies Act (42 U.S.C. 11609). This group, comprised of several U.S. Government agencies including Department of Homeland Security (DHS), Department of Defense (DOD), Department of Justice (DOJ), and Department of State representatives with equities in IPCA, has developed, under the leadership of the Office of Children's Issues, into an important forum for discussion of a wide range of issues such as: the implications of domestic violence in IPCA cases, cross-border issues with Mexico and Canada, and identifying best practices for information-sharing. In addition to the regular meetings of the working group, ongoing, close communication at the working levels across agencies ensures that interagency cooperation is a priority. The next working group meeting is scheduled for April 2014.

The Department works in conjunction with the Department of Justice on IPCA cases when left-behind parents elect to pursue criminal charges against the child's taking parent. We are not a law enforcement agency, but we routinely coordinate with the Federal Bureau of Investigation (FBI) on matters that may have a criminal component.

- ◆ (b). Ninety one countries have adopted the Hague Convention. What is the difference in the return rate of abducted children from countries that have adopted the Convention and those countries that have not?
- ◆ (c). If the results of return of abducted children are not significantly different, please explain the benefit of the legal framework of the Hague convention?

*Answer.* In CY 2013, out of a total of 522 reported returns of abducted children from Hague and non-Hague countries [including voluntary returns], 73 percent of the total returns came from Hague countries and 27 percent came from non-Hague countries. These percentages represent a breakdown of the total reported returns that occurred last year rather than an average rate of return from each Convention partner or non-Convention country which is not possible to calculate accurately due to the individual nature of each case and the fact that return information is often self-reported and may not be complete.

In the Department's experience, the ability of a parent or legal guardian to secure a court-ordered return is much greater in a country that is a Convention partner. For example, in 2013, out of the 522 total reported returns, 113 involved children returned from Convention partner countries as a result of a court order in a Hague proceeding. From non-Hague countries during the same period, the Department is aware of only two children, in the same family, who were ordered returned to the United States as a result of court proceedings under the domestic law.

- ◆ 6(d). I am also concerned about a whether we are meeting our obligations under the Convention. In terms of reciprocity, is the U.S. falling short, particularly in the length of time for Hague abduction cases to be resolved in our courts?

*Answer.* As reflected in our annual reports, we look at three areas of implementation in order to define "compliance." One is the Central Authority function. We believe that the USCA functions efficiently on incoming cases and that we are responsive to the requests of Foreign Central Authorities. The second is judicial performance. Our courts generally interpret the Convention appropriately. Finally, we consider law enforcement performance. Our compliance is exemplary in this last category, especially in comparison to other countries. Our return orders are directly enforceable, by state law enforcement for state court orders and federal marshal

enforcement for federal court orders. Abductors and their attorneys know that non-compliance is not an option. Thus the USCA's enforcement measures are effective.

Many foreign Central Authorities complain about the difficulty of securing affordable legal counsel in the United States. Given the fact that the United States made a reservation permitted by Article 26 of the Convention and therefore is not obligated under the Convention to cover any of the costs of litigation in the United States, except insofar as those costs may be covered by our legal aid system, this is not a compliance issue. However, the process of obtaining counsel can be daunting for a foreign applicant. The USCA assists foreign applicants by maintaining a list of attorneys who volunteer to take these cases pro bono or for reduced fees for qualified applicants. In addition, we have dedicated one full-time position to locating affordable legal representation options for eligible Hague Convention applicants, and to building and maintaining the volunteer attorney network.

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#### End Notes

<sup>1</sup>See <http://travel.state.gov/content/childabduction/english/preventing/passport-issuance-alert-program.html>.

<sup>2</sup>GAO/NSIAD-00-10.

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#### RESPONSES OF ERNIE ALLEN TO QUESTIONS SUBMITTED BY SENATOR ROBERT MENENDEZ

*Question.* The State Department has historically advocated for focusing primarily on increasing the number of Hague Convention participants, rather than seeking out bilateral Memoranda of Understanding (MOUs) on the facilitation of return and access cases.

- ◆ In your view, are there non-Hague countries which for various religious, cultural, and legal reasons, are unlikely to ever join the Convention? For such countries, would MOUs be an appropriate alternative? Please discuss the relative benefits and limitations of MOUs as a viable means to facilitate returns and access. Please also discuss the specific MOUS the State Department entered into with Lebanon, Jordan, and Egypt. Did those MOU's result in the return of children? The Ambassador mentioned in her testimony the return of one child from Egypt. Did the MOUs result in increased access for certain cases?

*Answer.* I strongly believe that our primary aim should be to increase the number of Hague Convention signatories. There is reason for optimism. The number of signatory countries has climbed to 91 with the addition of South Korea, Kazakhstan, and Japan in the past year. Yet, that number is still less than half of the countries on the planet.

While we have not had a positive history with certain non-Islamic countries like Japan, I am particularly skeptical about the likelihood of ratification of the Convention by countries in the Islamic world. We are encouraged by Morocco's ratification of the Convention in 2010; Turkey's ratification a decade earlier; and hope that it signals that others will follow. Morocco also ratified the 1996 Hague Child Protection Convention, and offers a possible model for building bridges between the Islamic world and Western law.

Yet, there are fundamental challenges. Courts in the Islamic world do not approach child custody or family law issues from the same perspective as Western courts. There are different approaches on equality between men and women, and there are differences regarding nondiscrimination. Religious and cultural issues are uppermost. Thus, it is difficult to imagine that many of these countries will ever be willing to join in an international treaty whose primary purpose is to ensure that the court which makes the final decision is the court in the country of the child's habitual residence, in many cases a country whose law is not based on the Sharia and the Islamic tradition.

Thus, while recognizing that bilateral agreements are far from panaceas, I do believe they have value, particularly with regard to ensuring access for left-behind parents. At a minimum they establish a framework for communication between two countries and a process for expediting legal reviews. Islamic courts are very reluctant to order access rights for a non-Islamic mother. Thus, the primary successes appear to be based on encouraging and negotiating voluntary solutions. Where those are not achievable, the value of the bilateral process drops dramatically.

We are not privy to the State Department's details regarding specific successes arising from their MOUs with Lebanon, Jordan, and Egypt. However, our under-

standing is that there have been some returns, and that the greatest benefits relate to facilitating access.

A central feature of many of the existing bilateral agreements is the establishment of consultative committees composed of representatives of each country with a goal of facilitating settlements of complex cases and ensuring communication and cooperation. A good example of this approach is the France/Egypt agreement, now more than 30 years old. Under the agreement they search for and locate the child; provide information on the physical and emotional status of the child; encourage voluntary return; and work to ensure access for the left-behind parent. The France/Morocco and France/Tunisia agreements closely parallel the Hague Child Abduction Convention itself. However, none of these agreements specifically address the question of appropriate jurisdiction to resolve the child custody dispute.

Australia, France, Canada, Egypt, and Lebanon have concluded what are called "bilateral consular agreements." The premise of these agreements is that it is in the best interests of the child to have regular contact with both parents; ensure the right of access for the left-behind parent; and create advisory commissions to promote amicable solutions to the disputes. Reportedly, there have been numerous successes through these agreements, particularly between Canada and Egypt.

Perhaps the bilateral agreement most often cited as the model is the U.K./Pakistan agreement adopted in 2003. At the Malta meeting in 2010 Pakistani Supreme Court Justice Tassaduq Hussein Jilani cited 150 cases successfully resolved through this process. The principles of the U.K./Pakistan agreement mirror the Hague Convention in emphasizing that in normal circumstances the welfare of the child is best determined by the courts in his country of habitual residence; that if a child is removed from that country, the judge of the country to which the child has been taken shall not ordinarily exercise jurisdiction; and most importantly, both the U.K. and Pakistan designate one judge from each country to act as liaison judge, overseeing and monitoring the cases.

*Question.* The Hague Convention has been criticized as lacking effective mechanisms to compel compliance among participating countries.

- ◆ In your view, are the existing diplomatic tools to encourage cooperation sufficient for addressing patterns of noncompliance among Hague countries? What are the merits and limitations of applying sanctions, aid conditionality, or other forms of diplomatic consequence to noncompliant states? How, if at all, might these limitations be addressed?

*Answer.* I do not think that existing diplomatic tools are adequate. I favor strengthening them and providing new tools for the U.S. Government. These tools should range from demarches and public statements, to symbolic actions like canceling visits or exchanges, to economic sanctions.

There is understandable reluctance in many instances to utilize sanctions or other mechanisms against friendly nations or against countries which we are trying to influence in other spheres. Nonetheless, when we launched the International Centre for Missing & Exploited Children in 1999 in a ceremony at the British Embassy in Washington, DC, the then-First Lady Hillary Clinton said, "these are not simple legal disputes, they are a matter of human rights." She was exactly right. I believe that the U.S. Government needs to be willing to act on behalf of its citizens and their children. In so many high-profile cases it is only the intervention of senior government leaders with their counterparts in other countries that results in the return of a child. U.S. officials should always be willing to advocate and act on behalf of U.S. children.

I am also convinced that we won't need to exert this kind of influence and use these kinds of tools often. Having done it a few times and demonstrated that we are serious about this problem, I am convinced that we will need to use these tools and remedies far less frequently in the future.

However, I should note that this is a reciprocal process. If we press foreign governments to do a better job of returning our children, we have to ensure that we do the same to ensure that our courts return their children.

Finally, I believe there is merit in establishing these new tools for intervention by senior administration officials in international parental child abduction cases legislatively. An act of Congress empowering officials to act and providing them with a specific set of tools and actions which they may utilize sends a powerful message that this is important and that Congress is not only urging action but is empowering officials to act.

*Question.* In 2000, the U.S. Government Accountability Office (GAO, formerly the General Accounting Office) reported that left-behind parents, among others, have criticized the U.S. Government's response to parental child abductions (GAO/

NSIAD-00-10). Among other noted challenges, GAO described gaps in federal services to left-behind parents and weaknesses within the existing case-tracking process, which impaired case management and program coordination across U.S. federal agencies.

- ◆ Please describe the current relationship between, and the roles and respective responsibilities of the State Department and other federal agencies, including the U.S. Departments of Justice and Homeland Security, in responding to international parental child kidnapping cases.

Answer. The Hague Convention is a civil instrument. Thus, it is appropriate that the U.S. Central Authority reside at the State Department. Nonetheless, I helped work on the 1993 International Parental Kidnapping Crime Act, which provides the ability to address these cases as criminal acts. The role of the U.S. Department of Justice is important. Federal law enforcement helps in the location of abducted children and abductors, and it uses felony warrants against abductors to help resolve cases, etc. Within the Department of Homeland Security, ICE and Homeland Security Investigations are also key components in the law enforcement response to child abduction. U.S. law enforcement personnel located overseas are often involved and play a key role in locating abducted children and assisting in efforts to bring about their return.

We support and encourage the strongest possible collaboration between federal agencies on these cases, and to implementing the gaps that the GAO report cited. Regarding those gaps, there has been significant progress since the GAO report in 2000.

One of the areas in which the threat of criminal prosecution or the issuance of felony warrants can be of greatest value is in influencing abductors to negotiate settlements. There have been several cases in which a child's abductor was an international businessman for whom travel was essential. The existence of U.S. felony warrants or an Interpol Red Notice for the arrest of a wanted person, or an Interpol Yellow Notice regarding the missing child can be a source of serious inconvenience for an international businessman who needs to travel from country to country. It can act as an inducement for the abductor to become reasonable and enter into settlement negotiations. The threat of criminal prosecution can be an important tool in resolving some of these cases.

However, criminalizing this process also carries risks. In much of the rest of the world there is significant opposition to the U.S. criminalizing this civil process. Some countries, among them some of our closest friends and allies, may be less likely to order a child returned if the abductor faces possible criminal prosecution.

So, this option must be used sparingly and carefully, with awareness that there can be unintended consequences.

*Question.* You certainly understand the frustration and pain left-behind parents face. Is there anything else we can do to incentivize countries to return children?

Answer. I do understand the frustration and the sense of powerlessness. I have heard the anguish of searching parents and understand the sense that nobody cares and that our government is more concerned with not offending a foreign nation than advocating for its citizens whose children have been taken from them.

The United States should be a global leader on behalf of the Hague Convention, the same kind of advocate in the field of international parental child abduction that we are in the fight against human trafficking. The United States should be a champion for the core premise of the Hague Convention, the swift return of abducted children to their countries of habitual residence whose courts are the proper deciders of the child's custody. The U.S. should also be a champion of reciprocity. We should not ask other countries to do something that we are not willing to do ourselves. Thus, we need to be willing to intervene and bring pressure on U.S. judges or officials who knowingly or unknowingly are unwilling to follow the precepts of the Hague Convention.

However, first and foremost I believe that the U.S. needs to be far more willing to exert influence and use its diplomatic and other tools to bring pressure on foreign governments to resolve these cases. We even need to be willing to exert pressure on our friends and allies.

*Question.* Please discuss the role and effectiveness of the Children's Passport Issuance Alert Program (CPIAP). Are there other tools we could be using to prevent the abduction of children?

Answer. The CPIAP is an important tool for preventing international parental child abduction. Even if a parent has legal custody awarded by a U.S. court, that order may not be recognized if the child is taken to a foreign country. Thus, preventing that child from being taken out of the country is essential.

The State Department's Children's Passport Issuance Alert Program allows parents to register their U.S. citizen children in the State Department's Passport Look-out System. Thus, if a passport application is submitted for a child who is enrolled in CPIAP, the State Department alerts the parent to verify whether the parent approves passport issuance. We commend the State Department for establishing this important program and for its aggressive promotion of it.

However, the larger problem is that the United States does not have exit controls. U.S. law enforcement in most cases will not prevent a child from leaving the country unless there is a court order clearly prohibiting the removal of the child from the United States.

The next step in enhancing our prevention efforts needs to be addressing the lack of exit controls. As you heard in the hearing it is not difficult today to get these children out of the country.

*Question.* Ninety one countries have adopted the Hague Convention. What is the difference in the return rate of abducted children from countries that have adopted the Convention and those countries that have not? If the results of return of abducted children are not significantly different, please explain the benefit of the legal framework of the Hague Convention?

Answer. The challenge is that there is not the kind of independent, systematic international monitoring in the area of international parental child abduction that is necessary. I have had discussions with the leadership of the Permanent Bureau at the Hague on this matter. It is virtually impossible for them to do it, because their role is to be a resource for member countries. They don't feel that they can also be a referee or judge of the performance of individual countries. It requires an independent, objective third party to do that. And it requires far better, more timely case outcomes data and monitoring.

That was part of the purpose of the statistical analysis that ICMEC funded in 2011 through Professor Nigel Lowe of the Cardiff Law School in the U.K. Professor Lowe was able to collect data from 60 of the then-81 member countries. As part of that analysis he attempted to calculate outcomes by the member countries that received applications.

Another challenge in doing this kind of analysis is that there are multiple outcomes. Applications can be rejected. There can be voluntary returns. There can be judicial returns by consent. There can be judicial returns without consent. There can be judicial refusals. There can be access agreed or ordered. At any given time there are cases still pending. Some applications are withdrawn.

Just examining cases in which there was judicial refusal to return a child to the country of habitual residence, and while acknowledging there can be legitimate reasons for not returning a child per the exceptions provided under the Convention, the following represents a kind of indicator of how prevalent nonreturn is among Hague signatory countries (I have chosen a few countries in order to illustrate the range of outcomes and to demonstrate the complexity of trying to measure degree of compliance):

Australia—75 applications; 16 refusals  
 Austria—28 applications; 12 refusals  
 Bulgaria—21 applications; 8 refusals  
 Canada—49 applications; 4 refusals  
 Colombia—31 applications; 5 refusals  
 France—75 applications; 12 refusals  
 Germany—115 applications; 21 refusals  
 Ireland—48 applications; 1 refusal  
 Israel—24 applications; 3 refusals  
 Italy—46 applications; 11 refusals  
 Mexico—168 applications; 34 refusals  
 The Netherlands—40 applications; 9 refusals  
 New Zealand—37 applications; 3 refusals  
 Panama—9 applications; 5 refusals  
 Poland—67 applications; 26 refusals  
 Romania—51 applications; 9 refusals  
 South Africa—17 applications; 4 refusals  
 Spain—64 applications; 15 refusals  
 Switzerland—26 applications; 1 refusal  
 Turkey—63 applications; 11 refusals  
 Ukraine—30 applications; 5 refusals  
 U.K./England and Wales—199 applications; 15 refusals  
 USA—283 applications; 20 refusals

Many cases are resolved through voluntary consent of the parties, and there are some cases in which for a variety of reasons, judicial refusal is the correct response.

Nonetheless, since the primary purpose of the Hague Convention is to ensure that custody is handled in a court of the country of habitual residence and to ensure the speedy return of the child to that court, a possible indicator of concern is if there is a high percentage of these cases that result in judicial refusals to return the child.

The U.S. State Department conducts its own Hague compliance review which it submits to Congress. This review identifies countries in various stages of noncompliance or concern regarding U.S. cases. In its most recent compliance review in 2013 the State Department found Costa Rica and Guatemala not compliant; identified “patterns of noncompliance” in The Bahamas, Brazil and Panama; and listed “enforcement concerns” in Argentina, Australia, France, Mexico, the Netherlands, and Romania.

While comprehensive data are hard to collect, at least anecdotally historically return rates are much lower in non-Hague countries. Thus, I would argue that it is far better to have an established process in place and a clear legal and administrative framework for addressing these cases. When there are issues of noncompliance, it is also far easier to address them with countries that have taken the legal step of ratifying the Convention and by so doing have made a policy statement of its intent to comply with the provisions and expectations of the Convention.

*Question.* I am also concerned about a whether we are meeting our obligations under the Convention. In terms of reciprocity, is the U.S. falling short, particularly in the length of time for Hague abduction cases to be resolved in our courts?

*Answer.* The United States has made great progress in meeting its reciprocity obligations under the Hague Convention. I commend Ambassador Jacobs and the Office of Children’s Issues for their commitment. OCI has significantly beefed up its staffing and is bringing far more resources to this problem than ever before.

The primary challenge that we face in the United States is the complexity and diversity of our judicial system. In the United Kingdom there are 17 specialist judges who hear Hague cases. In the United States there are nearly 10,000 state judges, many of whom could possibly receive and handle such a case.

There has been great emphasis on training, and the creation of a judicial liaison function in the U.S. has been helpful, enabling judges who know little or nothing about the Hague Convention and receive a case to reach out for help and education.

However, the time it takes to get resolution in the U.S. is a continuing problem. In Professor Lowe’s analysis (of 2008 cases) of the 60 countries examined, the U.S. was the fifth-worst in terms of the number of days it takes to get a case to court. The mean time in the U.S. was 207 days (nearly 7 months—remembering that the standard for complete resolution of these cases is 6 weeks/42 days). The U.S. trailed only South Africa (270 days); Ukraine (250 days); Brazil (225 days); and the Czech Republic (221 days). And the 207 days in the U.S. can be contrasted with 14 days in the U.K., 14 days in Norway, 15 days in Poland, 24 days in Portugal, 35 days in Australia, 54 days in Canada, 66 days in Ireland and 72 days in Germany.

The number of days in a U.S. court once the cases are received is a moderate, reasonable 106 days. Nonetheless, in contrast it takes a British court 48 days; a Canadian court 69 days; and a German court 89 days.

Time is the key variable in making the Hague Convention work and getting more internationally abducted children home. And the time it takes to complete the process in the United States is a serious problem.

*Question.* We have heard concerns from advocates cases, and some percentage of abduction cases, however small in number, involve domestic violence. How do you address these cases?

*Answer.* We take domestic violence allegations very seriously. They need to be investigated thoroughly and action taken when they are proven. The Hague Conference created a study group on this issue in 2011 and issued a paper on the subject.

Article 13b of the Hague Convention states, “A court need not return a child if the return would pose a grave risk . . . that . . . return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.”

In the Hague domestic violence report a key conclusion is as follows, “The Hague return proceedings must be conducted expeditiously and the proper management of domestic violence allegations should not compromise a swift disposal of the return application, which is strongly in the interest of the child and the family. More consistency and clarity in dealing with cases where domestic violence is raised as a defense under Article 13(1)(b) could assist in keeping return (and access) procedures

under the Convention expeditious, without depriving the taking parent of the opportunity to present, or to have presented adequate evidence and to seek relief or protection where needed. Indeed, clear guidance on the effective and expeditious handling of these cases could reduce appeals and other legal challenges.”

The Hague Conference is considering the development of a best practices guide regarding handling domestic violence allegations without compromising the basic purpose of the Convention. We support this kind of process and feel that it is timely and necessary.

*Question.* On January 24, Japan ratified the Hague Convention. One concern with this is that abduction cases in Japan that existed before ratification will be grandfathered out, and will not be subject to Convention processes. How do you think we should address these cases that are not grandfathered in, where these children may not be returned because the Convention was ratified?

*Answer.* I rejoice at Japan’s ratification of the Hague Convention, but I view Japan’s action with caution and reservations. Ratification of the Hague Convention is not a panacea. Further, I share your concern that it does nothing to address or resolve the cases of so many U.S. parents who have fought for so long to get their children back from Japan, or at least gain reasonable access to them.

There is also something to be learned from history about this problem. In the 1990s the U.S. and other countries were engaged in the same kind of battle with Germany. President Clinton raised this issue personally to Chancellor Gerhard Schroeder. A bilateral working group was established which made great progress. However, one German leader said, “judge us by what we do from this point forward, not by the older cases.”

My answer to the problem of the older U.S. cases in Japan is escalating U.S. Government advocacy and pressure on behalf of the U.S. parents and increasing willingness to use real leverage to resolve each case, one at a time. I understand that Japan is a trusted, respected ally, deservedly so. It is a country with whom we share many values and which is central to our Asia and global policy. However, I do not believe that these priorities are mutually exclusive. As I indicated at your hearing, I believe that U.S. leaders need better, more effective tools for engaging foreign leaders on these cases, and greater willingness to utilize them.

The Japan problem is not a new one. I have met with, talked to and tried to help many left-behind U.S. parents whose children were abducted to Japan. The clear conclusion one has to draw is that absent some ability to mediate or reach an agreed-upon settlement, the left-behind parent simply does not get their child back.

Under Japanese law, only one parent gets custody over children after a divorce, whereas rulings on joint custody are often seen in Europe and the United States. The impact of Japan’s law and tradition is that Japanese courts almost always force children of U.S./Japanese marriages to live with their Japanese mothers, leaving left-behind fathers with almost no recourse.

Parents who attempt to proceed in the Japanese family courts are at a disadvantage as courts tend to favor Japanese nationals. Joint custody decrees are virtually nonexistent and visitation rights for noncustodial parents are uncommon. When a custody decree is issued, judges and officials are often reluctant to enforce them. Further, taking-parents have a low incentive to voluntarily resolve or mediate cases as there is no pressure placed on them by government or court officials.

In response to earlier calls for action, initially the Japanese Foreign Ministry replied that “there is a part of this convention that is alienated from the Japanese legal system . . . there are several issues that need to be thoroughly discussed, including the consistency with our country’s judicial system on families.”

And this is not a problem unique to the United States. Several years ago, then-Japanese Prime Minister Yukio Hatoyama said, “We have been condemned by the USA, Canada, the U.K., and France over this and I firmly believe we need to change things. The effect will be Japan coming into this century. We need to be clear though, these changes will take time. A very strong cultural change shifting from maternal primacy over the children is needed as well. I think we have already seen the beginning of this, but a change in laws is not the sole solution.”

Thus, while I celebrate Japan’s ratification of the Hague Convention, I do not believe it will solve all problems, particularly with the older cases. And I am particularly concerned about the additional conditions and exceptions that the Japanese Government added as prerequisites for its ratification of the Hague Convention.

The challenges for effective implementation are many and significant. In the United States there is a coordinated national system for locating and returning missing children. In Japan, there is not.

In Japan the courts only have those powers specifically granted to them by statute. Thus, an entire statutory framework must be established to empower Japanese

courts to implement the Convention. An entire procedural code must be created covering trials, appeals, and enforcement.

The implementing legislation allows the losing party to apply for a new trial after all appeals are exhausted. Is this consistent with the stated goal of the Hague Convention of bringing about the prompt return of the abducted child?

The provisions of the Japanese legislation do not allow the imprisonment of abductors nor do they allow the seizure of the child. These provisions leave me less than fully confident that court orders, even if issued, will in fact be enforceable.

The legislation adds exception language allowing the court to consider whether there are circumstances making it difficult for the taking parent or the parent requesting return to properly care for the child in the country of origin. Does this suggest that the Japanese court may reconsider the initial custody determination?

The Implementing Act is long and complex. Some legal scholars have expressed concern that because Japan was pressured into ratifying the Hague Convention by the international community that it may be doing so without really changing its behavior in these cases. The Hague Convention is fundamentally about conflicts of law. Its core principle is that the return of children to their home jurisdiction is the rule, not the exception. One observer noted, "Japanese courts could conceivably continue using their own internalized views of what is best for children, which has always resulted in children remaining in Japan."

*Question.* Data provided by your organization presented to the 2011 Hague Special Commission indicate that there has been a significant increase in the number of applications for the return of abducted children. To what can you attribute this increase? Is it because there are more abducted children or because more citizens are aware of the Convention and are filing applications?

*Answer.* It is difficult to answer your question precisely. However, in our judgment the answer is both. First, as the globe has shrunk, there are more multinational, multicultural marriages. That is a good thing. However, as marriages increase, so do divorces and child custody battles. Second, the number of signatory countries in the Hague Convention is increasing. That too is a good thing. However, as more countries participate, more petitions are filed by their citizens seeking relief. And finally there is growing awareness of the services and infrastructure available to help these parents. The U.S. State Department has made a major investment in its Office of Children's Issues. More U.S. parents are aware of the State Department's services and resources, and are asking for help.

It is also important to note that the increase in the number of applications identified by Professor Nigel Lowe's research only reflects the number of applications routed through Central Authorities and not to the incidence of child abduction overall. Thus, while I have concern about the impacts of these increases on the ability to handle the volume swiftly as anticipated by the Hague Convention, in many ways the increase is an encouraging sign. It may, in fact, indicate that more parents in these situations are asking for help and are receiving it.

Nonetheless, my view is that the reason for the increase in applications is a combination of those factors and others, and that the numbers will continue to grow.

*Question.* I understand from your testimony that the Hague process for returning abducted children is taking longer than years. The longer a case takes, the lower the likelihood of a successful resolution. Why are the causes of delay? Do you have any concrete suggestions for making the process more expeditious?

*Answer.* There are many causes for delay: caseload, lack of familiarity with the Convention on the part of some judges, etc. However, my particular concern is that there is an incentive for the taking parent to make the case go on as long as possible. Thus, delay has become a strategy.

One of the exceptions provided under the Convention is Article 13b, "that the child is old enough and has a sufficient degree of maturity to knowingly object to being returned to the Petitioner and that it is appropriate to heed that objection

Most of the children being abducted are very young. The average age found in the survey was 6.4 years. If the process takes a long time, the taking-parent can easily argue that the child has adapted to his or her new surroundings, has friends, and that it would be harmful and disruptive to return him or her to their previous place of habitual residence. This was a primary argument made in the *Sean Goldman* case in Brazil.

One of the more famous U.S. cases involving this rationale was the *Sylvester* case from Ohio, in which the child was abducted and taken to Austria by her noncustodial mother. The father pursued the return of the child to the U.S. via the Hague Convention and prevailed in an Austrian court, which ordered the child's return.



However, the mother fled with the child, preventing the enforcement of the order. By the time the mother was apprehended several years later, an Austrian appeals court determined that because of the passage of time, a return of the child to the United States would not be in her best interests.

There is an incentive to delay, "to run the clock out." The Hague Convention works best when it operates speedily.

Article 11 of the Convention sets a 6-week (or 42 day) standard for the length of time within which a case should be concluded. However, that standard is not precise or enforceable. In the latest research the average time taken to reach a decision of judicial return of the child was 166 days, as compared with 125 days in 2003 and 107 days in 1999. In cases in which judges ultimately refused to return the child, the decision took 286 days in 2008, compared with 233 in 2003 and 147 in 1999. Delays are particularly troubling in connection with access cases. The average time it took to reach a final outcome in access cases in 2008 was 309 days if there was a voluntary agreement for access, 357 if access was judicially ordered, and 276 days if access was refused.

Professor Lowe also examined the issue of time by country. He looked at two questions: the number of days before a case is sent to court; and the number of days it takes a court to decide the case.

The countries examined that take the longest amount of time before a case is sent to court are the following:

- South Africa—270
- Ukraine—250
- Brazil—225
- Czech Republic—221
- United States—207 Bulgaria—161

By contrast in the U.K. it takes 14 days.

The countries examined that take the longest amount of time before a court decides the case are the following:

- Ecuador—526
- Ukraine—414
- Panama—285
- Bulgaria—257
- Cyprus—241
- Greece—231

In contrast, in the U.S. the number of days in court is 106 and in the U.K. it is 48.

*Question.* In your testimony, you highlight that it is important for judges, including judges in the United States, to have experience in Hague Convention cases in order to better understand them if and when they arise. What progress have you seen in judicial training in the United States and abroad?

*Answer.* In our battles with Germany more than a decade ago, one of the points made by Chancellor Schroeder was that Germany had a federal system and that the German Government could exert no controls over state judges and judicial systems. In many ways the U.S. is in a similar position.

As I pointed out in my testimony there are nearly 10,000 state judges in the U.S. Many of them could possibly receive and handle a Hague case whether or not they knowledge or prior experience. There has been a concerted effort to train U.S. judges at many conferences. However, more training is necessary and appropriate.

The U.S. has more in-coming Hague cases than any other country. In Professor Lowe's research in 2008 the U.S. received 283 applications; followed by the U.K. (200); Mexico (168) and Germany (115).

One important development is the concept of liaison judge, pioneered by Lord Justice Mathew Thorpe of the United Kingdom. The liaison judge is a designated member of the judiciary who acts as a channel of communication and liaison with Central Authorities, with other judges in their own jurisdictions and with judges in other countries. In the U.S., because of the complexity of the judicial system and the jurisdictional issues, a group of judges experienced in these cases formed a judicial liaison committee, rather than attempting to designate a single judge.

In addition, an International Hague Network of Judges has developed facilitating communication and understanding between judges involved in these cases worldwide.

RESPONSES OF AMBASSADOR SUSAN JACOBS TO QUESTIONS  
 SUBMITTED BY SENATOR EDWARD J. MARKEY

*Question.* Your testimony alluded in general terms to Congress' role in abductions but declined to make any comments on H.R. 3212 or suggestions for similar legislation in the Senate in a public hearing. Could you please discuss which sections of H.R. 3212 the State Department sees as most helpful, which are most likely to have unintended consequences, and what additional enforcement tools might be useful?

*Answer.* We appreciate congressional interest in addressing the important issue of international parental child abduction (IPCA). We share with Congress the goals of H.R. 3212: to prevent IPCA, to return children expeditiously to their countries of habitual residence, and to strengthen and expand membership in the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the Convention) worldwide.

The Department recognizes that the intent behind H.R. 3212 is to provide us with more tools for resolving cases. We are working with committee staff to determine how to address the areas where we believe the bill will not achieve its stated objectives and might even be counterproductive. Our biggest concerns are:

- Memoranda of Understanding (MOUs)—In our experience, MOUs are ineffective. Previously the Department thought this might be a viable alternative to pursue with countries that were uninterested in joining the Convention. We signed three MOUs and subsequently have never been able to obtain a return from these countries. Because MOUs are not legally binding we have found they actually undermine the Convention as countries do not see the need to take further action once they have signed the nonbinding MOU. The Convention is effective in part because it provides a civil legal framework which may be implemented consistently around the world for securing the prompt return of children to their country of habitual residence. By contrast, MOU provisions vary widely. Accordingly, they provide no consistent basis for returning children to their country of habitual residence. In fact, absent a legally binding agreement, an instrument would not provide a basis for a foreign court to order the return of a child. This results in uncertainty and unreliability. Moreover, negotiating MOUs will divert resources from engaging directly on resolving cases.
- Access—The bill seeks to direct our work toward pursuing contact between the left-behind parent and child during the pendency of a Hague application for return of the child to his or her habitual residence. We routinely try to help left-behind parents gain access and/or information about their children. However, because access is often treated as a custody matter, parents who seek formal "access" may be required to acquiesce to the jurisdiction of a foreign court, which could negatively affect any claims for return under the Convention. By mixing these two terms the bill could potentially have a negative effect on our shared goal of returning these children.
- Military cases—We agree that our service members face special challenges in resolving IPCA cases and we work closely with the Department of Defense through the Interagency Working Group to ensure that military parents receive the full support of both federal agencies in any IPCA case. However, H.R. 3212's attempts to define the habitual residence of children of military parents who live overseas are problematic. The determination of which country is a child's habitual residence is not made by the U.S. Central Authority but rather is a question of fact for a judge to determine in the context of a court hearing on a Hague petition for return. Although the Convention does not define this term, the United States cannot unilaterally interpret the term in a manner that would be inconsistent with the intent of the negotiators.

The Department is interested in working with Congress to identify new ways to prevent abductions from occurring. The Department of State already collaborates with the Department of Homeland Security on information-sharing to prevent abductions in progress, under existing authorities of the two agencies. Tools to assist in preventing children, of any citizenship or nationality, from boarding a flight exiting the United States in violation of a court order from a court of competent jurisdiction may be one avenue to explore. Additionally, current law and regulations allow a child to travel to certain destinations within the Western Hemisphere without a valid passport. Further requirements for travel documentation of children could be explored. This would add useful prevention tools to H.R. 3212.

*Question.* If you cannot provide any comments on H.R. 3212 now, could you please let me know when the State Department expects it will be able to provide comments?

Answer. The Department has been routinely engaged with committee staff on working to explore additional tools to achieve our shared goals.

*Question.* I understand the argument that, in countries that respect the rule of law, the executive branch cannot force courts to issue the rulings it wants in particular cases. But as you know, there are many situations where foreign court orders a child's return, or orders that a left-behind parent be given visitation rights, and those orders remain unenforced. Would stronger pressure on foreign governments be more productive in those cases? If so, what types of actions would be appropriate and effective?

Answer. We believe that directly engaging our foreign counterparts in discussions regarding possible solutions to individual cases in the context of a bilateral working group is a more productive means to effect change and resolutions than external pressure. Sanctioning foreign governments for failure to enforce return orders may have a chilling effect by making judges less likely to order the return of a child knowing that country could be subject to sanctions if that order is not effectively enforced.

One of our best examples of how diplomatic engagement can result in better enforcement of court orders is Mexico. Following years of compliance concerns with Mexico, we instituted a Department-wide effort to cultivate closer relationships with key Mexican Government officials to encourage them to adopt measures to ensure that court orders under the Convention would be enforced. As a result, in each of the past 4 years, more than 150 abducted children have been returned from Mexico (including 250 in 2010), which is significantly more than any previous year. These numbers include more than 200 children who were returned by court orders in Hague Convention cases.

*Question.* Other witnesses testified that in general, access applications under the Hague Convention on average took far longer than return applications, and were far less likely to be successful. Do you believe that is accurate? If so, what can the United States do to assist parents who wish to at least see and hold their children overseas?

Answer. The Department of State provides assistance to parents seeking access under the Hague Abduction Convention. Under the Convention, access may, or may not, involve an abduction across international borders, and courts generally view access as a substantive custody issue. Article 21 of the Convention, which addresses access, is broadly drafted and only requires signatory countries to facilitate a parent's ability to pursue access via the country's domestic legal system. It does not require the country to grant access. The length of Hague proceedings for access depends upon the country's interpretation of its responsibilities under the Convention as they pertain to access and the underlying domestic law governing the case.

In partial response to the shortcomings of the Convention concerning access, the international community subsequently negotiated the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children. The United States recently signed this Convention and is considering how it could be implemented in the United States before it would be transmitted to the Senate for its approval.

*Question.* Are there any steps Congress or the State Department could take to reduce delays in entering information on abductions into the National Crime Information Center (NCIC) database, or reporting abductions that involve criminal violations to INTERPOL?

Answer. The Department works in collaboration with the National Center for Missing and Exploited Children to support law enforcement in their response to reports of international parental child abduction.

In the event that a child is wrongfully removed from or retained outside the United States, the parent must decide whether to report the child missing to U.S. law enforcement. While law enforcement is solely responsible for entering children into the National Crime Information Center (NCIC) database and reporting cases to INTERPOL, the Department provides support to parents regardless of whether they engage law enforcement.

There are already federal laws that guide law enforcement in responding to cases of missing or abducted children. The Missing Children Act (1982) requires law enforcement to enter a missing child into NCIC even if the abductor has not been charged with a crime. [Missing Children Act, 28 U.S.C. 534 (1982).] The National Child Search Assistance Act (1990) eliminates waiting periods, requiring law enforcement agents to immediately enter a Missing Person File and to liaise with the National Center for Missing and Exploited Children. [42 U.S.C. §§ 5779, 5780 (1990).]

*Question.* Are there any steps Congress or the Office of Children's Issues could take to ensure that when a family court judge issues an order placing restrictions on overseas travel with a child, information about the child and the noncitizen parent is more promptly and reliably added to the Department of Homeland Security's Prevent Departure list?

*Answer.* Since the Department of Homeland Security (DHS) is the agency responsible for the administration of the Prevent Departure list, we do not want to speculate on tools that might be useful to DHS to utilize this program. However, we look forward to continued discussions with Congress and DHS on this issue.

*Question.* In June 2011 the Government Accountability Office evaluated two possible programs for preventing overseas abductions: (a) creating a high risk abductor list and incorporating it into standard airport security procedures for overseas flights; (b) requiring parental consent letters for children traveling overseas with only one parent.

GAO concluded that the former option would be more effective, and create fewer logistical problems or burdens for families traveling with children.<sup>1</sup> Do you agree with that conclusion?

*Answer.* We support the creation of more prevention tools but they need to be explored with DHS, the airlines, and any other interested entities to discuss practical questions and potential unintended consequences. Such unintended consequences for either option might include, but are not limited to, document authentication issues, easily obtainable fraudulent documents, undue burden on noncustodial adults traveling with children for school or other organizational trips, or placing limitation on parents' travel even when they are not traveling with their children.

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End Note

<sup>1</sup> Government Accountability Office Report 11-602, Commercial Aviation: Program Aimed at High Risk Parent Abductors Could Aid in Preventing Abductions, June 2011, available at <http://www.gao.gov/new.items/d11602.pdf>.

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STATEMENT SUBMITTED BY SENATORS BEN CARDIN  
AND BARBARA MIKULSKI OF MARYLAND

THE EDEANNA CHEBBI CHILD ABDUCTION CASE:  
MARYLAND CHILDREN ABDUCTED TO TUNISIA

Thank you for holding a hearing on the very important issue of international parental child abductions.

The U.S. State Department is alerted to approximately 1,200 international parental child abductions each year. As a signatory to the Hague Convention on the Civil Aspects of International Child Abduction, the U.S. has led in the fight to protect the rights of children and parents, working to ensure that the appropriate legal custody agreements are enforced in all cases. However, when a child is abducted by a parent to another country, the ability of the U.S. to act depends on each individual country. The results can be devastating, not only to the child but to the entire extended family as well. That is why we must continue to examine ways to improve the U.S. response and capability in this matter, and continue working to improve the process of reuniting children with the appropriate parent.

We have become personally involved in the case of Edeanna Chebbi and her two children, who were abducted by their father, Faical Chebbi, to Tunisia in November 2011. Edeanna and Faical were divorced in the state of Maryland in January 2011. Ms. Chebbi was awarded full custody rights to the children. Despite a protective order not to remove the children from the U.S., Mr. Chebbi abducted the children to Tunisia in November 2011. Since January 2012, Ms. Chebbi has resided in Tunisia in order to be closer to her children, Eslam, age 7, and Zainab, age 4, and to pursue her legal right to custody of the children.

In the fall of 2012, a Tunisian court recognized the U.S. divorce and custody papers allowing Edeanna to live with her children in the United States. Mr. Chebbi appealed this ruling but his appeal was denied and the children were ordered to be returned to Edeanna. At this point Edeanna has only been reunited with her daughter, while her son continues to be held by his father. Despite this clear direction from the Tunisian court system, Mrs. Chebbi continues to face additional judicial and bureaucratic obstacles that prevent her from returning to the U.S. with her children.

Unfortunately this story is all too familiar. We are encouraged that the Senate Foreign Relations Committee is working to craft legislation that would empower the

U.S. to resolve international parental child abduction cases more efficiently. We hope that such legislation will ensure that U.S. diplomatic and consular missions have the necessary resources to address cases involving abducted children in their country of post and that appropriate mechanisms are in place to address and resolve existing international parental child abduction cases around the world.

We look forward to working with you both to resolve outstanding international parental child abduction cases and to streamline the resolution of future incidents. Thank you for the opportunity to share our thoughts on this matter.

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STATEMENT SUBMITTED BY EDEANNA M. JOHNSON-CHEBBI,  
FOUNDER AND EXECUTIVE DIRECTOR, RETURN U.S. HOME

My name is Edeanna Johnson-Chebby. My children, Eslam (7) and Zainab (5) Chebby were illegally abducted by their father, Faical Chebby (presently one of the top 10 Most Wanted by the FBI for parental child abduction) on November 11, 2011.

I could certainly fill pages of testimony describing the enormous emotional aspects of our family's turmoil. I could also highlight the vast statistics of the severity and reach of International Parental Child Abduction (IPCA) that show at least 1 child becomes victim to this abuse every single day. I could outline the manifestation of this horrendous crime in the Arab world which finds that nearly 80% of parental abductions to the MENA are committed by fathers in an act of retaliation or vengeance. And I could clearly outline the research and medical testimony that defines IPCA as a form of child abuse and the lasting detriment it causes to child victims. However, my hope is that by providing details of the enormous legal and political steps that have been taken to bring our family together, the Committee will understand just how desperately left-behind parents need strong, consequential support from the U.S. government (as provided for in H.R. 3212) in order to bring our babies home.

In the months prior to Eslam and Zainab's abduction I had procured every legal means of ensuring the prevention of this act. Following a slew of violent incidents and threats on my life from the children's father, I obtained a protective order in February 2010 which allowed Eslam, Zainab and I to relocate from our family home. That same month I registered both children with the State Department's passport issuance alert program. In July 2010, a circuit court judge in our county ordered that neither parent shall depart the U.S. with either child. In January 2011 the children's father signed a legal separation agreement providing me full legal and physical custody of our children. In March 2011, I personally met with the passport issuance officer at the Tunisian embassy in Washington, D.C. I provided him copies of every legal document mentioned above and received assurance that the Tunisian embassy would not violate U.S. laws to issue Tunisian passports to Eslam or Zainab without my knowledge or consent. Clearly, I had put in place every possible assurance to prevent the abduction that my babies' father had promised.

On November 11, 2011, Faical Chebby picked up the children for his scheduled weekend visitation and headed directly to Dulles airport where he boarded a Lufthansa flight to Tunis, Tunisia with Eslam and Zainab in tow. Despite their personal promise to uphold U.S. law, the Tunisian embassy in Washington, D.C. allowed Eslam and Zainab to obtain Tunisian birth certificates and passports, issued in September 2011, without my knowledge or consent. With these newly printed identities, and failing any security checks or inquiries for entry documentation as they exited U.S. borders, my children (then aged 5 and 2) were torn from the only family, land, language and home they had ever known.

Had any exit requirements or minimal inquiries regarding the children's or their father's passports been conducted, Eslam and Zainab would be safe at home right now.

When I received a phone call from the children's father on November 12, 2011, stating that the children were with him and that I would never see them again, my initial response was one of shock and numbness. My second response was certainty that the clear criminality of this event would result in the immediate return of Eslam and Zainab to me in the U.S. As days turned into weeks, it was clear that the only means to ensure that my babies were not forgotten, and that our case was not dismissed, was to take every available means of political, legal and public action possible. In December 2011, I and 50 other supporters took to the streets to protest in front of the Tunisian embassy in Washington, D.C. While this action did procure necessary media attention to our case, it did little more than provoke sneers and mockery from the Tunisian consul and members of the embassy staff looking onward from their office doors.

By January 2012, federal warrants with an extradition demand were produced by the Assistant U.S. Attorney and the FBI for Faical Chebbi. Both children were issued yellow alerts through Interpol, and their father was placed on red alert. Additionally, Senator Barbara Mikulski personally delivered a letter supporting the return of Eslam and Zainab to the U.S. to the Tunisian government on an official visit to the country that same month. Despite these measures, I was informed by the U.S. Consul, the FBI, and legal counsel in Tunisia that, because no treaties or agreements existed between Tunisia and the U.S., I would have to pursue the legal recognition of our divorce and custody agreements in Tunisia.

An official case was opened for recognition and enforcement of our U.S. custody and divorce decree in Tunisia, and on January 18, 2012, I boarded a plane to that country to pursue this new legal course, and to be close to my children. I was initially promised that our legal case would take only a matter of weeks to reach resolution. It is now 2 years one month and thirteen days since my arrival, and we are still awaiting enforcement. The attached legal brief provides a detailed review of our 2 year battle. In short, I have won legal recognition of our custody and divorce orders in the First Instance Court, the Appellate Court, and the right of enforcement up to the Supreme Court of Tunisia. In full expectation of the immediate enforcement of our judgment, I exercised my legal rights of custody and retained Zainab following visitation in September 2013. Since this date, any and all contact with Eslam has been withheld from both Zainab and me. Through relationships with corrupt judges, police, members of the Ministry of Justice, and influence from a corrupt brother-in-law within the Ministry of Interior, Faical Chebbi has managed to continue the illegal imprisonment of Eslam in his custody.

In spite of U.S. law, international law, and Tunisian law, the children's abusive father continues to carry on without punishment or consequence for his criminal actions. Alternatively, Eslam, Zainab and I are being arbitrarily detained by a Tunisian government that has verbally affirmed—in a private meeting with a representative from the Ministry of Justice—that they will not enforce custody to a U.S. citizen, nor allow Eslam or Zainab to be removed from Tunisia. Were H.R. 3212 a law today, the tools of the U.S. Consul, U.S. Ambassador, the FBI, and my congressional representatives to counter the abuse of law in our case would be strong and consequential enough to ensure that Eslam, Zainab and I were reunited and returned home to America with expediency.

Without specific action taken by the U.S. government on our behalf, I began my own organization, Return U.S. Home, and have spent the past 2 years waging a very public political campaign to bring awareness and resolution to our family's plight. These actions have included a second rally at the Tunisian embassy in Washington, D.C.; an international petition—signed by 19,222 supporters—targeted at President Obama and then Secretary of State Hillary Clinton to work to bring Eslam and Zainab home; and more than 15 targeted letter writing campaigns to the U.S. Department of State, the Secretary of State, the U.S. President, and various members of Congress and congressional committees seeking the intervention and support of the U.S. government to protect these innocent children and to bring us home to our beloved America. While members of the State Department, the National Center for Missing and Exploited Children, and the staff of my congressional representatives have all applauded these efforts, we still lie in wait for a significant response from the U.S. government. Again, were H.R. 3212 a law today, I believe these efforts would have resulted in my children's return many months ago.

My family would have lost all hope were it not for the unyielding support of Senators Barbara Mikulski and Benjamin Cardin. In particular, Senator Mikulski's personal devotion to our case and actions on our behalf have sustained my faith in the U.S. government in times where I have felt most hopeless. Recently, Senator Mikulski personally wrote to both President Obama and President Marzouki (of Tunisia) demanding their immediate action to enforce the laws of both countries to return Eslam and Zainab to my custody. Unfortunately, there has been no response from either presidential office.

Contrarily, I have been personally humiliated by the agreeable American response to requests for aid, enormous financial grants and commitments, and political slaps on the back from a fledgling Tunisian government. While we beg for our country's support for the security of 2 of its most vulnerable citizens, our cries are met with silence. The actions of our beloved country thus far have made clear that politics precedes our American lives. Were H.R. 3212 a law today, the U.S. Senate and President would be required to reverse this scenario, and Eslam and Zainab would finally be the priority.

Briefly stated, Eslam, Zainab and I need the immediate, consequential intervention of the U.S. government at its highest levels if we are ever to have hope of being a family again. I continue to utilize every imaginative means of resolving our case.

I have become an expert on U.S., international and Tunisian law in order to reunite my family—and at least 4 other families suffering the abuse of IPCA to Tunisia—and to educate and encourage our supporters. I continue to reach out to our Congress, the President, Secretary of State, and the FBI, begging for intervention on our behalf—to simply demand the enforcement of the law.

These activities will continue until my family is reunited and free from imprisonment in Tunisia. Sadly, I have less confidence that these actions will procure a just result until concerted, consequential actions are taken by the U.S. government against Tunisia in support of our reunification and return. Without consequence for their refusal to implement even their own laws, the Tunisian government will continue to open their pockets to American money while obstructing the enforcement of justice, for the imprisoned American citizens within its borders.

In closing, I am in full support of the immediate passing and enactment of the legislation before you. I stress that you cannot act quickly enough to ensure the necessary aid that we left-behind parents so desperately need from our government in order to end the abuse of parental child abduction against our children.

While I am fearful that altering the language of the proposed legislation will result in harmful delays and debate, I do applaud the Committee's interest in ensuring that prevention measures are also taken into account. Therefore, I offer my personal suggestions for consideration:

1. Specific language explicitly defining Parental Child Abduction as either child abuse or a violation of the abducted child(ren)'s human rights.
2. Routine enforcement of Homeland Security and Customs and Border Patrol procedures that require notarized or court certified documentation of the authority to travel for any minor under the age of 16 departing the U.S. either alone or with one adult.
3. Utilizing the NCIC (National Crime Information Center) database to initiate travel warnings for parents in cases where courts have issued travel bans for their children.

I would like to thank the Committee for its concern and expressed devotion to the issue of IPCA. I would also like to thank the Office of Children's Issues (specifically Afuah Owusu Baafi), the National Center for Missing and Exploited Children (specifically Rami Zahr), the FBI (specifically agent Jeff Johannes), and the U.S. Ambassadors, Consuls and Vice Consuls who have worked so diligently and relentlessly on our case. Additionally, I am so grateful for the support of Senators Mikulski and Cardin who have undoubtedly ensured that our family's case remains one of some political concern within Tunisia and at home. Finally, I cannot express enough gratitude to the multitudes of friends, family and supporters, many of whom are complete strangers, who have leapt in through civic engagement to share their voices for the innocent and silenced victims of this horrendous crime, Eslam and Zainab. Our family would be nowhere without you all!

Sincerely,  
Edeanna M. Johnson-Chebbi

ATTACHMENT 1:

Translated from Arabic  
Mr. Kamel Boujeh

LEGAL PROCEEDINGS TAKEN BY EDEANNA MARCELLA JOHNSON  
AND A SUMMARY OF THE LEGAL ISSUES

*I.—Proceedings taken by Edeanna Marcella Johnson*

- Mrs. Edeanna Marcella Johnson filed a suit before the First Instance Court of Tunis 2 in order to obtain the exequatur allowing the enforcement in Tunisia of the decree absolute #3 CAD 07552-11 handed down by the county court of Prince George—Maryland on October 26, 2011 since this proceeding is required for enabling her to request the guardianship of her children "Islem" and "Zaineb" and since her ex-husband obtained an instant decision handed down by the Family Judge concerning the guardianship of the children as soon as he arrived to Tunisian Territory.
- October 2, 2012, a first instance judgment was handed down in favor of Edeanna ordering the enforceability of the judgment pronounced in U.S.
- November 5, 2012, Edeanna's ex-husband, Faical Chebbi lodged an appeal against the aforesaid exequatur (appeal proceeding hinders and stops the enforceability of the exequatur pursuant to the provisions of article 146 of Commercial and Legal Proceedings Code)

- May 22, 2013, the Court of Appeals in Tunis pronounced the judgment #44680 in favor of Edeanna and confirmed the first instance judgment.
- July 4, 2013, Edeanna informed her ex-husband Faical Chebbi about the appeal decree through the report #5752 transmitted by the Attorney-at-law, Mrs. Yusra Menara (within 20 days from the date of notice, the judgment becomes final and enforceable pursuant to the provisions of article 287 of Commercial and Legal Proceedings Code)
- July 19, 2013, Faical lodged an appeal at Supreme Court against the appeal judgment #44680, he applied to the Prime Judge at the Supreme Court in order to stop the enforceability of the said judgment but his request was thrown out ( lodging appeals against judgments at Supreme Court does not hinder their enforceability, however, the Prime Judge of the Supreme Court may uncommonly order the suspension of enforceability pursuant to the provisions of article 194 of Commercial and Legal Proceedings Code)
- After 20 days from the notice date, Edeanna became the legal guardian of “Islem” and “Zaineb”
- Faical Chebbi refused to abide by the appeal judgment despite the refusal of his application to hinder enforceability that he submitted to the Prime Judge of the Supreme Court (his refusal to give the children is deemed an offence pursuant to law #2/1962 dated May 24, 1962)
- Further to the refusal of Faical to abide by the judgment, Edeanna kept “Zaineb” and refused to give her back since she is her legal guardian.
- August 28, 2013, Edeanna filed a complaint to the Public Prosecutor at the First Instance Court of Tunis 2 against Faical Chebbi for the kidnapping of her children from U.S. and his refusal to return “Islem” despite the judgment pronounced against him and about which he has been legally informed. The complaint was enrolled under #18517/2013 at Juvenile Squad Department (investigation team reporting to judicial Police). The said department heard Edeanna and proceeded to the enforcement of the appeal decision ordering the return of “Islem” to his mother. But the Family Judge at the First Instance Court of Tunis 1 expressed objection and requested to let the matter unchanged, i.e. “Zaineb” with Edeanna and “Islem” with Faical. It should be noted that the suit file was not brought before the aforesaid judge.
- The Juvenile Squad informed the Public Prosecutor at the First Instance Court Tunis 2 who transferred the file to his colleague at the First Instance Court of Manouba since Faical resides in Manouba.
- Up to this date, Edeanna did not have “Islem” despite the fact that she is his legal guardian pursuant to a final and enforceable appeal decision handed down by a Tunisian Court.

*II.—Proceedings taken by Faical against Edeanna :*

- November 19, 2013, Faical filed the complaint #7054705/2012 to the Public Prosecutor at the First Instance Court of Tunis 1 against Edeanna, he accused her to have instructed a gang known for child abduction to kidnap “Islem” and “Zainab”
- November 22, 2012, the complaint was brought before the examining magistrate, chamber 18 of the First Instance Court of Tunis 1. Further investigation and file study, the examining magistrate stated that Edeanna was not implicated in that matter.
- Faical lodged the lawsuit #5762 before the Family Judge where he requested the return of “Zaineb” pretending that his ex-wife is having sexual intercourse in the presence of her daughter.
- “Islem” and “Zaineb” were examined by psychologist, the allegations of Faical were refuted and his request was rejected on July 4, 2013.
- October 12, 2013, Faical filed a suit enrolled under #27/92140 before the Chamber of Personal Statute at the First Instance Court of Tunis 1 requesting the guardianship of “Islem” and “Zaineb.” The said lawsuit is postponed to March 3, 2014.
- November 4, 2013, Faical lodged the complaint #8779 before the Family Judge about the return of “Zaineb,” the suit is planned for the hearing of February 19, 2014.

SUMMARY

- Edeanna is the legal guardian of “Islem” and “Zaineb” however Faical refuses to return “Islem” to his mother and even to allow her to see him. He is liable to three months imprisonment further to this indictable offence.



- Faical pretends that Edeanna may leave the country with the children; this is not true since the children are not allowed to leave the country, and therefore, Edeanna cannot take them abroad without the authorization of the competent Judge.
- kidnapping “Islem” and “Zaineb” from U.S. is deemed an offence indictable in Tunisian law and American Law. American authorities have the right to request Tunisian authorities to hand him over pursuant to the current proceedings against him in U.S. and according to the international bench warrant. In case Tunisian authorities refuse to hand him based on the fact that no country can be urged to hand over one of its citizens, Faical should be actionable before Tunisian Courts for kidnapping children.

True translation to the original, *Tunis February 15, 2014*  
Henda Dekkak, *Sworn Translator*

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STATEMENT SUBMITTED BY LAUREN THORLEY, NORTH CAROLINA

I live in the state of North Carolina and I grateful for your service to our great state. I am asking that you please submit my statement as a statement of testimony to the Senate Committee on Foreign Relations to be included as part of the official record of the Committee’s recent hearing on International Parental Child Abduction. It was due today at the close of business but given the closure of the Federal Government for the inclement weather, I am looking for direction on potential extension of filing, etc. of a statement for the record regarding this matter.

Each year over 1,000 children are abducted from American homes and taken to a foreign country. Many become permanently out of reach of U.S. law and are never returned leaving behind a suffering parents and extended family. This has happened to my brother, Brian Childers, and his children Aidan and Lillian (Lily) Childers. Aidan and Lily’s mother, Katy Shilton Campbell, took my nephew and niece to Scotland in 2009 and has never allowed their return to U.S. soil. It has been heart breaking to watch my brother be stripped of his role as a father. Brian is a loving dad who has always been most concerned with his children’s best interest. Personally, I am devastated that my two children have never been able to know their cousins. In addition, I feel a void in not being able to love and know my own nephew and niece.

On February 27, 2014 U.S. Sen. Robert Menendez (D-NJ), Chairman of the Senate Foreign Relations Committee, held a hearing on International Parental Child Abduction. The Senate Foreign Relations Committee is looking at legislative options to bring back these abducted children back. I ask that you please submit my statement as a statement of testimony to the Senate Committee on Foreign Relations to be included as part of the official record of the Committee’s recent hearing on International Parental Child Abduction. I know you have co-sponsored legislation that seeks to protect children in your Child Custody Protection Act of 2013. I applaud your efforts to protect our innocent children in the Unites States and ask that you make every effort you can to help protect our American children in every part of the world by submitting my statement.

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STATEMENT SUBMITTED BY BRIAN STEPHEN CHILDERS

My name is Brian Stephen Childers. I am a 37 year old father of two. Like many others I have been victimized by the parental abduction of my children by my former wife. My two children are Aidan and Lilian Childers who are 11 and 8 years old, respectively.

When my former wife, Katy Shilton Campbell, and I divorced in 2009, we agreed on a very liberal joint custody arrangement and planned to co-parent our children. She did ask for, and I granted, permission to take the children to Scotland for one school year on the premise that her mom was ill and needed her close by to help. This agreement, and the agreement that she would return to the U.S. with the children, were incorporated into the Divorce Agreement that was filed with the courts of Montgomery County, Maryland.

At the end of the period of living in Scotland (approximately eight months ending in June 2010), Katy informed me that she was not going to move back to the U.S., that she had met someone else and that she was unilaterally making these decisions. Of course, I was grief stricken and upset and told her we would have to come to an acceptable arrangement for all parties. My lawyers began drawing up those agreements with her attorneys in the U.S. Then out of the blue I was served papers from Scottish court—she had filed a court case to have herself named as sole guard-

ian in Scotland and to have a residency order in place to prohibit me from taking the kids outside of Scotland. I went to court there, I hired a lawyer and I submitted myself to a farcical examination by the Scottish courts—losing custody and contact with my children. During the proceedings, I noted the following:

- The Scottish courts paid no interest to the legal agreements made in American court and vocally lamented that, as I was not British, had no real rights when it came to the children or to adjudicating custody through arbitration.
- The Scottish curatrix (court-appointed investigator) interviewed me once to establish her assessment of my fitness as a father. She conducted her interview in a hotel bar. She never spoke with or attempted to communicate with anyone else from my family, my friends, my employer or anyone else who could establish my qualifications as a parent. The resulting report was full of illogical conclusions and an obvious bias in favor of my wife. In the end, the curatrix's report concluded that my young children (who were interviewed in the presence of my ex-wife and who were undoubtedly influenced as to what they were expected to say) wanted to stay in Scotland and that was all that mattered. Furthermore, because the court surmised that I intended to remove the children from their mother, it allowed the order to remain that the children should stay in Scotland.
- The costs of the proceedings (which I was made to pay for) were exorbitant and yielded me nothing. My costs incurred and paid were approximately \$70,000.

With the Scottish court victory, my ex-wife felt justified and emboldened to make my communications with the children and our relationship even more difficult—not allowing me to speak with them regularly, confiscating letters sent to them by me and my family, threatening me at every turn with police action (for “harassment” and for “not respecting the court’s judgment”), and driving a wedge between me and the children in any way she could. My ex-wife went to great lengths to advise me and my family that all interaction with the children was only because she “allowed” it. I still managed to make several trips to Scotland to see my kids and to spend to time with them, knowing full well that my wife’s real aim was to drive me completely from their lives. In October 2013, I called my kids at a previously agreed time (which was rarely honored by my ex-wife) and heard my 10 year old son say “although he knew I loved him very much, he didn’t want to speak to me again.” A few days later, their telephones were disconnected and all communication ceased. When I contacted my ex-wife’s attorney with a request to see the children, she told me Katy had no intention of allowing me any more access to my children and further attempts to contact my children will be construed as harassment and referred to the police. I have not seen or heard anything from the children since October 2013.

I think it’s important to note that, through October 2013, I conducted myself in absolute compliance with both our original divorce agreement and the Scottish court’s residency order. The Maryland courts allowed me to revise the divorce agreement to reduce my child maintenance payments (which are now being paid into a savings account for their future), noting in its findings: “[t]he Scottish Courts have declined to enforce the American agreements made between the parties.”

All of my consultations—with the U.S. Department of State, with the Scottish police, with the Scottish Social Services organization, with my lawyers in Scotland—have yielded the same answers: that as an American man, I have no hope of winning any case in Scotland. I have had explained to me dozens of times how the Scottish court system is antiquated and unjust with respect to family cases. I have been told by many legal experts that I have basically no chance to win any more custody or access to my children, independent of who I am but merely based on the prevailing legal system there. I have pointed out to these groups that I have videos of the children talking about visiting America, talking about writing letters and communicating with family and generally having a great time together with me, as if it would at least raise questions as to my ex-wife’s argument that it’s their desire to not have a relationship with me. But everyone always responds that nothing beyond the mom’s wishes matters in Scotland.

Every day I wake up feeling ill. I go about my days in an awkward state of grieving for my children, who are still alive, yet who I may never see again. I go through scenarios in my head to figure out what to say when I see the children next, if ever. I feel pain that my family has also lost their grandchildren, their niece and nephew, their cousins. When I am asked in informal settings if I have children, I don’t know how to answer the question honestly.

I know my case is very different—I allowed my ex-wife to take the children in the first place; we were joint custodians in the U.S.; and I have never believed my

children's lives were in danger and their temporal needs were unmet. But I cannot reconcile how I have lost my children simply based on my wife's wishes. As an extremely law-abiding American with a good paying job and who was a great parent—who even volunteered hundreds of hours in not-for-profit work every year—it pains me to think that convicted felons in prison have more access to their children than I do.

This needs to change. I hope something can be done. Thank you.

Respectfully,  
 Brian Childers, *left-behind father of Aidan and Lilian Childers (abducted in Scotland)*

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STATEMENT SUBMITTED BY DENNIS BURNS

My name is Dennis Burns. I am a left behind father of an international parental child abduction. I am in earnest support of legislation which would address consequences to countries which are non-compliant with Hague Convention guidelines on International Child Abduction.

Today I respectfully and sincerely address the hearts of those who hear these words from a Parent who has been forced apart from their children's lives for 3 and a half years. If you are a parent, you may not quite be able to process that concept. As the parent who has endured this, I can say that the numb state of my own heart and mind still doesn't completely grasp this reality either.

In September of 2010 when the U.S. State Department informed me that the International Hague Convention which would be handling my Abduction case was designed to return children within 6 to 8 weeks, I was heartbroken. I could not understand why it would take so long to uphold the justice of a clear cut, black and white case of international parental abduction. Only three weeks prior, a Colorado Judge had named me the primary residential parent of our two young angels and it was decided they would live in Colorado and not relocate to Argentina as my spouse at the time was legally pursuing throughout our acrimonious 13 month divorce and custody proceedings.

When I was named the primary residential parent in the final orders, my ex-wife took our daughters and fled the United States to Argentina with three airline tickets her family arranged and paid for.

My first instinct was to fly down there and be with them. How long would it take before I could go? I had to see them. That was all I knew and that would be the only thing that would help the pain from the hole in my heart I felt in those first weeks. I soon discovered that there are different levels of pain your heart must endure when you are shackled without your children who you love immeasurably.

The next dagger was the information that Ana, my ex-wife, had filed charges of violence and abuse on me in Argentina and I was never even in the country. To top it off, my new attorney had discovered that she had also filed paperwork to register our daughters as permanent citizens of Argentina. I was advised that if I was to travel to Argentina I would be served paperwork which would only allow me 3-5 business days to contest otherwise the citizenship could be granted to the girls. It was also quite possible I would be arrested in the Buenos Aires airport upon landing in the country if the abuse charges were not cleared up first. This would leave me helpless to defend their citizenship. I could not believe what I was hearing.

It took 17 long months to clear all these legal obstacles before I could finally travel and see my daughters. During those 17 months Ana had moved jurisdictions 3 times causing tremendous delays to an already painfully slow system. Every time she changed jurisdictions, I was forced to procure a new attorney in that area and the paperwork would drag for months to reach the new court system. It once took one of the transitions 6 months to deliver the case file to the other court only 45 minutes away. There are no words to describe the helplessness a parent feels who faces such heartless lack of concern for their children's critical state of innocence being crushed by the neglect of a legal system enabling this crime.

The bottom line is that a mockery is being made of the justice systems of The United States and Argentina. The system has allowed my ex-wife to dictate the course of injustice these past 3 years. She is vengeful of being told what to do by the U.S. court system and vengeful of a father who will not give up on the love he has for his daughters. Every legal move I have made has been countered with months of separation from Skype or phone calls. Every holiday being cut off from communication for over three years now. Not knowing what schools they attended for almost 2 years. Not knowing what doctors were treating them or who was baby-sitting them. And most recently, over 3 years later myself and my family have been

completely cut off from all communication, including Skype, telephone and personal visits. This past November 8th was Victoria's 7th birthday and we were not allowed to even see her on Skype. This recent Thanksgiving, my father emailed Ana to request that my daughters be allowed to briefly Skype with all their cousins and grandparents on the holiday. She replied "Stop with the email Harassment. All future emails will be blocked." This was a shock to our family. How could a cordial email asking to skype with his granddaughters be considered "Harassment." This last Christmas was no exception either. Emails were ignored, there was no contact allowed and the gifts we mailed to Argentina were never confirmed to be even picked up from the customs. It has now been over 5 months since I have last even Skyped or heard a word from my daughters. This latest cut off is also in direct violation of the laws of the U.S. and Argentina. There is a current court order from Argentina allowing me 3 Skype visits per week with my daughters. As with everything else in Argentina, the justice system is a snail's pace so there are no consequences for this violation either.

One of the most painful moments in this 3 year abduction so far was an email I received two years ago from Ana simply stating that our 5 year old daughter Victoria was in an accident and in the hospital and was being put in a full body cast. No further information. After 4 hours of rejected phone calls, unanswered emails, and verging on a mental breakdown, Ana finally emailed a picture of her in a full body cast with a brief explanation that she fell. It took another day to discover it was at a playground. And to this day, I still don't know the details of what happened to her. I was never even allowed the doctors name or hospital.

My current case lies with the second of two Supreme Courts in Argentina who must uphold the last two court's decisions for Return to their home in the United States. These courts have been known to take years to make decisions. It has already been over three and a half years. Argentina has been a Hague Signatory country for over 100 years.

They should honor their commitment to the Treaty and abide by the guidelines. It is understandable, knowing what I know now, years after being immersed in this bureaucracy, that there could be some delays due to unforeseen circumstances. Perhaps even 6 months would warrant patience and understanding. But 3-5 years is plain irresponsible and in violation of the basic human rights of my daughters, myself, their grandparents and all our amputated family.

Argentina and other Hague signatory countries need to comprehend their personal investment to these child abduction cases and handle them in the expeditious manner they mandate. Sanctions beginning with mild aversions to these countries and ultimately financial sanctions would give the Hague Rules a set of teeth for countries who violate the basic human rights of children and families through their negligence in upholding the Hague Convention time frames for addressing International Child Abduction.

In closing, I would like to say that Parental Alienation Syndrome is a documented form of emotional and psychological child abuse. Every overdue day, month, and year that passes as a result of the irresponsible manner that my case and many other cases are processed is a violation of our basic human rights since we, as loving parents have reached the limit to our legal abilities. These non-compliant countries are the only ones capable of restoring our human rights by acting in a timely manner. Passage of a law which would impose sanctions on these non-compliant countries would lessen the future suffering of multitudes of children and left behind parents and families.

I truly thank you for allowing me your valuable time to hear my plight and I humbly request your support.

Thank you,  
Dennis Burns, *Left Behind Father of Victoria and Sophia Burns*

STATEMENT SUBMITTED BY PETER THOMAS SENESE, EXECUTIVE DIRECTOR,  
INTERNATIONAL CHILD ABDUCTION RESEARCH & ENLIGHTENMENT FOUNDATION

My name is Peter Thomas Senese, the Executive Director of the International Child Abduction Research & Enlightenment Foundation, a non-profit foundation dedicated to stopping international child abduction and trafficking and commonly referred to as the I CARE Foundation. I am a father who once had his child internationally abducted under the rules of the 1980 Hague Child Abduction Convention. I know I am one of the fortunate parents who were able to safely reunite with their child. There is not a day that goes by that I am not thankful that my son was not physically harmed during the time of his abduction. As a parent deeply familiar

with nonsensical and harmful acts revolving around international parental child abduction, and as a director of a leading child abduction prevention advocacy foundation, we, as a community of mothers, fathers, daughters and sons must work thoughtfully and unbowed together in order to assist all parent-victims reunite with their kidnapped children while swiftly installing meaningful child abduction prevention measures so we may protect innocent children and their families from future kidnapping.

The I CARE Foundation's global outreach aiding parents and children of abduction as well as targeted children of abduction is significant. We have played key and instrumental roles reuniting many abducted children with their left behind parents and have prevented the abduction of an exponentially larger number of children. Our ongoing research studies and published reports on abduction are well-distributed, and various abduction prevention techniques we have created or widely disseminated have had an impact on the 23% decline in the reported outgoing cases of American child abduction during fiscal years 2011 and 2012, as reported to Congress by the United States Department of State. We anticipate that the 2013 reported outbound abduction rate will demonstrate a decline in the abduction rate for a third consecutive year: a strong testimony to the collective work of the dedicated individuals working under the helm of Ambassador Jacobs and the leadership team at the Office of Children's Issues combined with the dedicated work of all non-government organizations. Despite advances in fighting against international parental child abduction and trafficking, cross-border child kidnapping remains a global pandemic that affects every country.

I would like to clarify one important issue before this honorable committee and for our Congressional leaders regarding the outbound international abduction rate of American children: Previous testimony presented to Congress states that the outbound rate of American children is estimated to be more than 1,000 cases. We believe it critical to note that these are the "reported" cases of abduction. Non-reported cases of international parental child abduction remain a real issue. Based upon immigration migration trends, a large undocumented residency population that includes American children born in the United States, lack of financial resources to litigate abduction, and a lack of understanding of rights, we believe that the "unreported" cases of abduction are significant and could be equal to or greater than the "reported" cases of abduction.

On behalf of the I CARE Foundation, I respectfully urge the honorable members of the Senate Committee On Foreign Relations and all members of Congress to recognize that children of abduction's dangerous journey does not end if and when they reunite with their targeted chasing parent. I urge all esteemed lawmakers when considering the path of steps our Congress may take in order to help resolve the international parental child abduction crisis to consider the report shared by the Department of Justice issued in 2013 stating that children-victims of parental child abduction face extreme risk of physical violence at the hands of their abducting parent. Filicide—child murder at the hands of a parent—may appear to be an extreme notion, but the grotesque reality is that thousands of children's live around the world are taken by their sociopathic parent. American children are not immune to filicide As a community of abduction advocates and stakeholders we must be mindful children of abduction suffer short and long-term trauma during and after their abduction: alienation and isolation from members of their loving family, risk of severe physical violence at the hands of their abducting parent including filicide, and suicide in their post-abduction world are all consequences of this unthinkable crime against innocence.

Today our Senate has a unique opportunity to create new law and policy that can protect American children from abduction and assist reunite those children who remain kidnapped.

On behalf of the I CARE Foundation, I respectfully submit our view on the suggested legislation before Congress and this honorable Committee On Foreign Relations concerning the proposal of whether the United States Government should create law that allows the President of the United States to levy sanctions against countries that do not appear to comply with the 1980 Hague Child Abduction Convention and as conveyed by the Honorable Chairman Senator Menendez during hearings that took place before the committee on February 27th, 2014, to determine what other preventive measures can be taken to protect children at risk of abduction.

We respectfully submit the following:

## PART I

SANCTIONING NON-COMPLIANT COUNTRIES TO THE 1980  
CHILD ABDUCTION CONVENTION

## WILL THE THREAT OF SANCTIONS HELP OR HURT AMERICAN CHILD VICTIMS?

We fully support the 1980 Hague Child Abduction Convention and advise against any Contracting State's legislation or policy that may undermine or jeopardize the authority and utilization of the 1980 Hague Child Abduction Convention. We believe our opinion that the sanctity of the 1980 Hague Child Abduction Convention must be protected is one shared by knowledgeable stakeholders who are dedicated to protecting the lives of targeted children from abduction and trafficking, including the leadership of Hague Convention Contracting State's Central Authorities and many knowledgeable attorneys practicing international family law.

It is our view that legislation creating the ability of the United States government to sanction non-complying governments of the Child Abduction Convention, though created with good intention to increase the effectiveness of the 1980 Hague Child Abduction Convention and with the intent to bring American children home may be legislation that not only will undermine the ability of the 1980 Hague Child Abduction Convention but may potentially significantly reduce the ability of left-behind parents to reunite with their child. In fact, we are conducting an ongoing survey of highly respected international family law practitioners located around the world who have litigated child abduction return cases, including representing American parents who have attempted to reunite with their abducted child. Participation to the survey ends on March 20th, 2014. We hope to share the survey's findings with Congress as we believe this study may provide important insight regarding the issues now discussed as polled by litigators around the world, including U.S.-based attorneys deeply familiar with parental abduction.

Recently, the I CARE Foundation shared information with every Central Authority concerning the proposed legislation now before Congress. We were extremely surprised to realize the vast United States Congress. The proposed law clearly was of keen interest to all stakeholders.

The main component of the legislation before Congress revolves around the failure of many governments around the world to expeditiously return abducted American children and to determine what mechanisms may be created and implemented that would allow abducted American children to come home. We support prudent and carefully executed initiatives that will bring children safely home. The focus of this legislation falls into two essential categories:

1. The failure of courts located in contracting member countries to follow the intent and spirit of the 1980 Child Abduction Convention and determine which country and court system has the correct right of jurisdiction regarding the welfare of a child.

With respect to the grave concern of abduction before Congress, it is critical to note two issues. They are:

- A. In courts around the world, including in the United States, there is a tendency by the judiciary to embark upon issues identified under Article 13 (1) of the Child Abduction Convention concerning 'The best interest of the child'. This concept has been expanded to include 'The best interest of the child and family.' Unless there is an extreme case of abuse, review of the Hague Convention's Article 13(1) was only designed to occur in extraordinary circumstances. However, what has occurred is that courts around the world are often ordering for an extensive review of 'The best interest of the child'. In doing so, the judiciary not only fails to uphold the intent and spirit of the abduction convention, but they create an environment that causes the targeted chasing parent incredible financial hardship while also allowing the abducting parent to create a 'Well-settled defense'. This issue appears to be the singular most challenging issue all targeted chasing parents face when trying to reunite with their kidnapped children during Hague abduction litigation.

Clearly untrained judges are creating a significant problem for all victimized parents. It is imperative that honorable members of Congress realize that the challenges created by untrained judiciary also occur for many parents living in other countries who have their child abducted to the United States. To underscore this issue, the United States does not have a centralized 'Judicial Special Court' focused on international parental child abduction the way the United Kingdom is equipped with 17 highly trained judges. Instead, when a child is abducted to the United States, the case may be reviewed by 1 of

10,000 family court judges, the majority of which are not trained in the complexities of Hague law. Thus, when considering how to approach issues of non-compliance, it is imperative that solutions that include heavy education and training are offered, while also acknowledging that issues of non-compliance are not only a foreign issue.

- B. The second key issue before this honorable Senate Committee On Foreign Relations is the outrageous failure by countries who have not become a party to the 1980 Hague Abduction Convention to return American children. Tragically, when a child is abducted to a non-Hague country there is a decreased chance the child will be returned. In many instances, the targeted chasing parent never sees their child. However, we point to strong breakthroughs in this behavior as shared below.

On Thursday, February 27th, 2014 the Honorable Chairman of the Committee On Foreign Relations Senator Menendez made a very important comment to Ambassador Jacobs concerning the plight of American parents who had children abducted to and remain detained in Japan. These parents tragically will not have legal course under the Hague Convention due to Japan's provisions when it deposited its signatory instruments and annexed the Child Abduction Convention. Specifically, Chairman Menendez stated that there should be increased diplomatic focus on the return of these American children.

We applaud Chairman Senator Menendez's notion to confer with American ambassadors and discuss the abduction matter. We believe that Chairman Menendez's suggestion to gather American ambassadors and hopefully give them immediate direction to focus on the collective return of American children abroad may, prior to the passage of new law creating sanctions, offer a swift and comprehensive understanding amongst foreign governments as to the seriousness of the American Congress for these countries to remedy existing inbound abduction cases while also allowing foreign leaders to explore their concerns revolving around their child citizens who have been wrongfully retained in the United States.

We believe that Honorable Chairman Senator Menendez and the esteemed Senator-members of the Committee On Foreign Relations should strongly consider directing all American ambassadors to swiftly and comprehensively engage the government leaders of the nations they are respectively assigned with an systematic solutions under a short-term time frame for all American children abducted prior to this good-intended legislation being moved to the Senate floor for vote.

We believe that should the United States government send out a comprehensive delegation of Ambassadors to discuss these matters under the guidance of the Senate's Committee On Foreign Relations and the incredible input by Ambassador Susan Jacobs, Congress and the American government can demonstrate a diplomatic solution-oriented agenda while all stakeholders around the world understand that the American government is extremely serious about the child abduction crisis.

We believe that a synchronized diplomatic effort by American Ambassadors under specific direction by Congress could create remarkable and immediate results that not only would result in the return of a large number of American children, but in demonstrating Congress' view of the gravity of the unacceptable situation at hand, the American government will create an urgency amongst all governments to address the global parental abduction pandemic.

We express concern that H.R. 3212 will create an unwanted precedent for the United States government to impose sanctions against countries that Congress believes are not complying to the terms and spirit of the 1980 Convention.

On the onset this may appear to be good legislation. After all, every stakeholder working to prevent abduction or assisting in reunification wants to protect children. However, we believe that H.R. 3212 has several negative drawbacks. We request that the Senate delay a vote seeking passage of H.R. 3212 in its existing form and instead consider alternative options along the lines of diplomacy and increasing the viability of the Hague Conference on Private International Law and the ability of the Permanent Bureau (Secretariat) of the Hague Conference to establish and sustain a judicial training program and other outreach programs that unquestionably will have a far-better global impact on protecting all children of the world, including American children.

Paramount to enabling the safe return of all children of abduction, we respectfully urge Honorable Chairman Menendez to call upon our Ambassadors spread across the world, and have them engage in meaningful and case-by case specific discussions with the government leaders of their respective assigned countries with the singular purpose of returning kidnapped children to their country of habitual residency. We believe diplomacy, particularly due to the strong message of intolerance our American lawmakers is sending, will create substantial results for all children.

It is our opinion that the primary reason why some countries appear to not comply with the 1980 Hague International Child Abduction Convention is because judiciaries overseeing these cases often do not have the knowledge or experience required to rule upon these cases in accordance to the spirit and intent of the abduction convention. We point out that an uninformed judiciary is not a problem that falls outside of the United States borders but is instead a worldwide problem. In fact, we are aware that many parents who have their children abducted to the United States often voice similar concern shared by American left-behind parents that the judiciary overseeing their Hague litigation is either not knowledgeable of international abduction matters or is not complying with the child abduction convention.

The answer to lack of knowledge on how to apply the Convention correctly, and in particular to avoid the pitfall of engaging in a full and time-consuming analysis of the best interest of the child when in fact the Convention is based on the core principle that the best interest of an abducted child is a swift return to his or her State of habitual residence, is not in sanctions, but rather in education, diplomacy and prevention. Education is particularly important in relation to the correct application of the 'grave risk' exception of Article 13(1)(b), which should only be applied in truly exceptional circumstances where its application is warranted and not be used as an excuse to undertake a full assessment of the child's overall situation and interests. Judges around the world—including American judges—need to understand that the primary goal of the Convention is to return abducted children as quickly as possible to their State of habitual residence, so that the authorities of this State can then take the relevant and appropriate decisions regarding custody or visitation rights.

Furthermore, we believe that (American) diplomacy is working. We point out for example that Japan ratified the 1980 Hague Child Abduction Convention on January 24th, 2014, following intense diplomatic and educational efforts conducted on the international scene. Similar diplomatic and educational efforts are being conducted in India, China, Thailand, Ghana, Russia, the Philippines, and in countries located in the Middle East such as Saudi Arabia and Egypt. In fact, United States Consular Affairs officials regularly meet with officials from the European Union, Canada, and Australia to help coordinate multilateral efforts to encourage countries to join and uphold the child abduction convention. In addition, the Department of State directs its diplomatic missions in non-Convention countries to approach host governments to encourage them to join the Convention, while in Washington, U.S. officials often raise the convention and encourage government officials to participate in the abduction convention.

We further point to the importance of the Hague Special Commission meetings where the practical operations of the Child Abduction Convention is discussed in detail among Contracting States. The consensus-based outcome of these meetings is a much more promising guide and source of improvement of the Convention's operation than unilateral actions as those suggested in H.R. 3212.

The truth is international parental child abduction is an epidemic that impacts the citizens of all nations. But there is progress. For example, we point to the Department of State's 2011 and 2012 Hague Compliance Reports presented to Congress which clearly states that the outbound international child abductions has declined by over 23% during fiscal years 2011 and 2012. We fully expect that 2013 will see another significant decline in the number of American international child abductions. Much credit must be given to the Department of State's Office of Children's Issues and the dedicated individuals who work to protect children. We also point out that American children of abduction are returning home at greater numbers than ever before because diplomacy is working. Of course we recognize that the number of American children returned home is not satisfactory. . We believe gains in the overall return rate will occur if we further increase diplomatic efforts including education and training efforts. Clearly, a stronger Permanent Bureau with greater reach can further increase the overall number of children worldwide who would be returned home while also potentially making significant gains in overall abduction prevention cases.

The following are additional reasons why H.R. 3212 should not be passed into law at this time, but instead first initiate a coordinated global effort by all American Ambassadors to engage in dialogue with leadership of the countries they are assigned to regarding the immediate return of American children to the United States.

1. The legislation that would result from passage of the bill would require the United States Government to negotiate separate, albeit similar, agreements with States that are not yet a party to the 1980 Hague Child Abduction Convention. This not only complicates the existing multilateral regime in place to



prevent and discourage parental child abductions, but redirects resources which could otherwise be used to encourage non-State Parties to consider joining the Hague Convention. As the Hague Convention, which currently has 91 Contracting States from around the world, is very widely considered an effective, valuable tool to safeguard the best interests of children who are wrongfully removed from their home country by a parent, the addition of several bilateral agreements would effectively undermine the value of the Hague Convention for all existing Contracting States because it opens the possibility for each of these new agreements to diverge from the text of the Hague Convention. These unique instruments would furthermore lack the Convention's established framework of good practices, procedures and monitoring on which to build an effective and widely accepted system for international child abduction cases. In short, the creation of multiple new and independent instruments would severely threaten the uniformity and universal application of the Convention and its value as a global tool.

2. By redirecting resources to the negotiation of new bilateral agreements or Memorandums Of Understanding ("MOU's"), fewer resources will be available to support States that are committed to becoming a party to or improving their existing practices under the Convention through more promising actions, such as joint diplomatic and educational efforts. As a result, taxpayer money and government time will be wasted on efforts to recreate the wheel and be much more limited in the benefits to the global community as a whole. It will also result in the diversion of resources which could be used to build on efforts to encourage joining the Hague Convention so that any progress in this respect will be discarded and be replaced by the new tactics and work required to negotiate a series of similar MOUs or bilateral agreements.

By entering into these alternate arrangements rather than taking steps toward joining the Hague Convention, States remain ineligible for support, training or advice relating to Convention practices and principles from bodies such as the Hague Conference. Such technical assistance programs have been concretely linked to sustainable development of good practices and proper implementation and operation procedures, resulting in a much greater likelihood of sustainable, long-term success in this area.

3. As the proposed legislation allows for either a bilateral agreement or an MOU to be concluded with those States which are not yet a party to the Hague Convention, it increases the risk of destabilizing the entire international system in place to address international parental abductions. The new agreements that would need to be reached with non-Hague Convention States would discourage or delay these States' efforts to join the Hague Convention and to apply it in cases which do not involve the United States. Furthermore, these additional agreements increase the likelihood that domestic authorities will develop inconsistent and possibly contradictory practices and procedures.
4. The bill also fails to resolve problems arising from the particular instrument used to reach an agreement with each non-Hague Convention State. For example, the legal obligations arising from a treaty, while clearly applicable to bilateral agreements, may not extend to an MOU. As a matter of law, the title of MOU does not necessarily mean the document is binding under international law.

Rather, this may depend on the intent of the parties as well as the position of the signatories. Such questions could lead to lengthy legal battles and thereby lead to uncertainty or procedural delays that could adversely affect the children the instrument was designed to protect. Furthermore, parliamentary approval of MOUs may not be required in some States on the basis that they do not impose binding obligations under international law. The legislation therefore threatens global advances toward universally accepted norms and practices. It provides States that were not interested in joining the Hague Convention in the past a loophole for taking concrete steps to this end by exploiting gaps in international law and applicable national procedural requirements for treaty ratification.

5. The legislation unabashedly intends to pressure States that are not parties to the Hague Convention to agree to apply Convention principles and obligations to cases of parental child abduction involving U.S. residents and vice versa. This hard-line approach is likely to result in political and diplomatic consequences that could have a negative impact on U.S. interests beyond parental child abduction matters. It could also generate a backlash from the affected States, resulting in a backlash that would hinder further progress on related

matters of international child and human rights as between not only the United States, but other countries as well.

6. Threats to sanction States that are not compliant with the 1980 Hague Convention may result in reluctance to develop sustainable and effective practices and procedures implementing and applying the intended rules even if a bilateral agreement or similar instrument is put in place.

It is our concern that should H.R. 3212 pass, the 1980 Hague Child Abduction Convention will be significantly undermined. Is there room for improvement? Of course there is and this is discussed in my testimony.

#### CONCLUSION AND RECOMMENDATION REGARDING IMMEDIATE SANCTIONS

We believe that prior to a Senate vote on sanctions occurring, that a fully orchestrated global effort led directly by each American Ambassador on foreign soil reporting under the auspices of the Senate's Committee On Foreign Relations engage in immediate diplomatic dialogue to review each existing case of American child abduction abroad. We believe that each Ambassador should prepare a comprehensive report concerning their engagement, including their view that if resolutions do not appear immediate, whether sanctions may entice foreign governments to return abducted American children. Should our American Ambassadors report the need for sanctions due to blatant failures, then our Congress should immediately take up this issue while immediately strengthening the Hague Conference Secretariat and enacting child abduction prevention steps as outlined herein. It is our strong belief that a synchronized diplomatic effort by our American Ambassadors under the direction of the United States Congress will result in the return of a rather large number of children, while also strengthening diplomatic global efforts amongst all nations in ongoing efforts to protect children.

## PART II

### KEY CHILD ABDUCTION PREVENTION SUGGESTED MANDATES: INCREASE THE BUDGET AND CAPACITY OF THE HAGUE CONFERENCE

We also suggest that the funding of the Hague Conference and the operations of its Permanent Bureau (Secretariat) be significantly increased so that it can fulfill its mandate more effectively and, in particular, organize effective training sessions for all relevant actors involved in the operation of the core Hague Conventions, including of course the Child Abduction Convention.

#### SECTION I—THE LIMITED RESOURCES AND MONUMENTAL TASK OF THE HAGUE CONFERENCE

The Regular Budget of the Hague Conference amounts to approximately 3.7 Million Euro. Considering (i) that the mandate of the Hague Conference is not only to develop new Conventions but also to monitor the practical operation of existing Conventions and to provide other post-Convention services; (ii) that over 140 States are currently parties to at least one of the 38 Hague Conventions (instruments) developed so far; (iii) that the Permanent Bureau—which counts only about 30 Full Time Equivalents—is more and more asked to provide technical assistance to States from around the world for the effective implementation of Conventions and their sound practical operation; we respectfully submit that this budget is nonsensical.

To better understand the real need to increase funding for the Hague Conference so that it may fulfill its mandates, it is believed that approximately 2 and ° Full Time Equivalents (employee personnel) within the Hague Conference dedicate their time toward the child abduction issue. Unquestionably, we must strengthen the viability of the Hague Conference Secretariat in order for it to effectively carry out its mandates. Without a robust and viable Hague Conference Secretariat all children of abduction, including American children will remain at grave risk regardless of sanctions.

For example, Article 13 of the 1980 Child Abduction Prevention offers a judiciary in a foreign country great latitude to determine if a child should be returned or not. This issue was explicitly discussed on the March 27th, 2014 before this honorable Senate Committee On Foreign Relations. Specifically, there is a very strong tendency for courts everywhere, including in the United States (and the 10,000 judges who may oversee a Hague Application case) to incorrectly utilize Article 13 to embark on a broad view of “Best interest of the child” which in the United States and abroad, has expanded to include the concept of best interest of the family of the child. This is contradictory to the intent, purpose, and spirit of the Child Abduction Convention. Without a fiscally viable Hague Conference Secretariat capable of

proactively educating and training all stakeholders including judiciary and support personnel to the abduction convention, we will continue to see the misinterpretation of key aspects of the convention such as Article 12 and Article 13, which in effect may appear to create non-compliance.

Despite the importance of its mandate, the broad nature of its work and the real impact of its Conventions on people's life and business transactions around the world, the Organization has been run on a shoestring for decades. If we want the (core) Hague Conventions to operate effectively and uniformly around the globe, the Organization needs much more resources to invest in its post-Convention services, including the provision of training and technical assistance.

The Organization's budget of approximately € 3.7 Mio is shared among the currently 74 Member States of the Organization (incl. the U.S.A). Each Member State contributes a number of "units" to the budget; the number of units to be paid by each Member State mirrors the system applied by the Universal Postal Union (see <http://www.upu.int/en/the-upu/member-countries.html>), with one notable exception: within the Hague Conference, the number of units to be paid by the biggest contributors is limited to 33 (as opposed to the 50 units to be paid by the top payers within the UPU). This cap of 33 units was introduced at the Hague Conference when the U.S.A became a Member of the Organization in 1964 and domestic U.S. legislation then required that the total contribution of the U.S.A to the budget of an intergovernmental organization not exceed a certain percentage (this domestic legislation has since been withdrawn but the cap of 33 units has remained in force until today). As a result, the 6 top payers of the Hague Conference (USA, Canada, Japan, United Kingdom, France and Germany) all only pay 33 units (as opposed to 50 units within the UPU; the other Member States pay 25, 20, 15, 10, 5, 3, 1 or 0.5 units, depending on their size, GDP, population, etc.). Since the value of one single unit amounts to slightly over € 6,000, the United States (and the other five big contributors) contribute slightly over ? 200,000 per year to the overall budget of the Hague Conference. The United States and other contributors financial participation is nearly the equivalent money of the estimated overall cost for one American parent who actively expenses monies in order to reunite with their internationally abducted child and the economy of the United States when we consider the expenses a parent incurs attempting to find, litigate, and reunite with their child, and, the overall economic secondary and tertiary costs including for many, loss of income and the direct consequence of a reduction of taxable income coupled with the adverse need for social services support, and finally, the weighted costs associated with judiciary expenses and law enforcement activity.

Again, in light of the Organization's importance we respectfully submit that this contribution is simply nonsensical. This is all the more so as the yearly U.S. contribution also needs to cover accrued unfunded pension liabilities; the yearly U.S. contribution to the operational budget of the Hague Conference thus only amounts to slightly over € 190,000. Despite the low insignificant budget, the Members of the Hague Conference—including the United States—have repeatedly requested the Secretary General of the Hague Conference to submit budgets that respect the zero nominal growth policy; as a result, and taking into account inflation developments, the budget of the Hague Conference has effectively decreased for many years. We would like to take this opportunity to salute the incredible output performed by the Permanent Bureau year after year with such limited resources—surely the Hague Conference must be one of the most cost-efficient international organizations there is. But more needs to be done if the operation of the Conventions is to be improved at the global level.

#### SECTION II—CONCLUSION AND RECOMMENDATION CONCERNING FINANCIAL MATTERS TO INCREASE VIABILITY

We recognize that the budget of an Intergovernmental Organization is a delicate matter that involves a series of policy considerations that may vary from one State to another. Against this background, we strongly recommend that the Committee, together with the relevant U.S. Government authorities (incl. the Department of State and the Office of International Affairs), reach out to the Secretary General of the Hague Conference, Dr. Christophe Bernasconi, to discuss the best options to:

1. Substantially increase the Regular Budget of the Hague Conference so that the basic mandate of the Organization, which includes the development of new instruments as well as the provision of training and technical assistance for the effective implementation and sound operation of existing instruments, can be met effectively;
2. Increase the U.S. contribution from currently 33 units to 50 units, thus bringing the practice within the Hague Conference in line with the practice within the

Universal Postal Union, and at the same time inviting the other big contributors to follow suit and also increase their contribution to 50 units (or 40 units in the case of Canada);

3. Put in place schemes that would enable the Organization to benefit from private funding;
4. Possibly increase the U.S. contribution to the voluntary Supplementary Budget of the Hague Conference with a view to funding specific support activities and technical assistance missions.

These suggestions seem all the more timely and appropriate as Secretary General Bernasconi has recently launched a process with Member States to review budgetary matters of the Hague Conference. The strong support of the U.S.A for the items mentioned above would be a key aspect of the envisaged process.

### PART III

#### KEY CHILD ABDUCTION PREVENTION SUGGESTED MANDATES: MANDATE EXECUTION OF AN INTERNATIONAL CHILD TRAVEL CONSENT FORM STEEP IN HAGUE LAW

##### SECTION I—THE INTERNATIONAL CHILD TRAVEL CONSENT FORM

Perhaps the singular most effective tool to prevent the international parental child abduction of American children and ensure their safe and immediate return to their home country is for Congress to mandate the use of a Hague-centric international travel child consent form and direct various government agencies connected to the welfare of our American child citizens and travel related matters to widely disseminate this form.

Clearly, the majority of international parental child abductions under the rules of the 1980 Hague Child Abduction Convention occur when a child is wrongfully detained in another country. Typically this occurs under the guise of a family vacation.

The I CARE Foundation has created a travel consent form that is steep in Hague-oriented case law with focus on Articles 1, 12, 13 and 20. The I CARE Foundation's International Travel Child Consent Form was created to remove a parent's legal defenses under Articles 12, 13, and 20 of the Hague Convention who may be scheming to abduct a child prior to an alleged 'family vacation' abroad while also establishing strong support for a child's immediate return under Article 1 of the Hague Convention.

Secretary General of the Hague Conference on Private International Law Dr. Christophe Bernasconi recently made the comments concerning the I CARE Foundation travel form:

I have had the possibility to look at the travel form and must say that I am impressed: this is the most comprehensive document of its kind that I have seen so far and there is little doubt in my mind that this is a most valuable and important effort to prevent child abduction.

We respectfully point out that there is a current trend for courts around the world to reconsider "The Best Interest of the Child" and include "The Best Interest of the Family" under Article 13 of the 1980 Hague Child Abduction Convention. Clearly, when courts engage in this analysis they create a direct contradiction to the expeditious intent of the convention, which inherently allow for 'Well-settled claims' to be lodged by the taking parent.

The I CARE Foundation's International Travel Child Consent Form and adjoining legal analysis was created as a mechanism to remove a would-be abductor's legal defense of abduction prior to the act and cause either law enforcement or courts located in the in-bound country to quickly return the abducted child to their home country of original jurisdiction.

##### SECTION II—CONCLUSION AND RECOMMENDATION CONCERNING TRAVEL CONSENT FORM

The I CARE Foundation's International Travel Child Consent Form has been an effective child abduction prevention tool. Use of the form protects against schemes of abduction to Hague countries and may be useful when abduction occurs to non-Hague countries.

We respectfully suggest that the United States Congress direct the appropriate U.S. governmental agencies to discuss the mandated use of a formal international travel child consent form based upon the design of the I CARE Foundation model. In addition, we respectfully suggest that the Department of State engage with the Hague Conference and suggest that a global Hague Travel Consent Form be developed under the auspices of the Hague Conference and that its use be made manda-

tory. We are convinced that the mandatory use of a globally recognized Travel Consent Form signed by the left-behind parent (and possibly a notary) will dramatically reduce the number of (American) children who are abducted and equally will assist in the expeditious return of children wrongfully detained abroad if they were abducted.

#### PART IV

##### KEY CHILD ABDUCTION PREVENTION SUGGESTED MANDATES: EXPAND THE PREVENT DEPARTURE PROGRAM TO INCLUDE UNITED STATES CITIZENS

###### SECTION I—OVERVIEW OF THE PREVENT DEPARTURE PROGRAM

The Prevent Departure Program is a little known but highly effective tool that can prevent against abduction of American children by non-nationals residing and present in the United States. The I CARE Foundation has assisted numerous parents successfully in liaising with the United States Department of State's Office of Children's Issues Abduction Prevention Unit in an effort to stop abduction using the Prevent Departure Program. The Prevent Departure Program does not apply to individuals possessing a right to U.S. citizenship.

The program applies to non-U.S. citizens physically located in America considered individuals at risk of child abduction. In order to create a more effective abduction prevention policy, we respectfully suggest that the United States Congress pass legislation authorizing for individuals regardless if they possess a right of American citizenship or not the Department of Homeland Security the ability of placing a high-risk child abductor on the secure screening border-crossing departure list.

The Department of Homeland Security oversees the Prevent Departure Program and it is monitored 24 hours a day. However, parents and their legal counsel should not contact the Department of Homeland Security, but instead all contact and communication must be directed through the Department of State. In cases of international parental child abduction, the Department of State's Office of Children's Issues has the ability of directly petitioning the Department of Homeland Security and request that a non-U.S. resident presently in the United States who is considered a high risk to abduct a child is placed on the Prevent Departure Program—which is essentially a secondary screening list.

What the "Prevent Departure Program" does is provide immediate information to the transportation industry, including all air, land, and sea channels a single point of contact at Customs and Border Protection (CBP), and provides a comprehensive database of individuals the United States believes may immediately depart to a foreign country.

The program only applies to aliens, and is not available to stop U.S. citizens or dual U.S./foreign citizens from leaving the country.

Under Section 215 of the "Immigration and Nationality Act" (8 U.S.C. 1185) and it's implementing regulations (8 CFR Part 215 and 22 CFR Part 46), it authorizes departure-control officers to prevent an alien's departure from the United States if the alien's departure would be prejudicial to the interests of the United States. These regulations include would-be abductions of U.S. citizens in accordance to court orders originating from the child's court of habitual residency.

If the abductor and child are identified, they will be denied boarding. In order to detain them after boarding is denied, there must be a court order prohibiting the child's removal or providing for the child's pick-up, or a warrant for the abductor.

In order for an at risk parent to participate in the program, all of the following must be demonstrated:

1. Subject may NOT be a U.S. citizen; and,
2. The nomination must include a law enforcement agency contact with 24/7 coverage; and,
3. There must be a court order showing which parent has been awarded custody or shows that the Subject is restrained from removing his/her minor child from certain counties, the state or the U.S.; and,
4. The Subject must be in the U.S.; and,
5. There must be some likelihood that the Subject will attempt to depart in the immediate future.

The Prevent Departure Program is not for everyone and should not be abused; however, in situations where an abduction threat is real and the targeting parent intent on abducting a child is a non-US citizen possessing the capacity to breach

court orders and abduct a child of a relationship, the Prevent Departure Program may be a useful tool.

The Prevent Departure Program is currently not listed as an abduction prevention tool on the Department of State's website; however, all individuals in the Office of Children's Issues Prevention Unit are deeply familiar with the program.

On an important note, the Prevent Departure Program does not apply to individuals who possess a right of U.S. Citizenship.

We, along with other major stakeholders, believe this should formally change. In fact, the Government Accountability Office issued a recent report concerning the Prevent Departure Program and suggested the creation of a secondary policy that would allow for individuals possessing a right of U.S. citizenship to be placed on a secure screening list if they are considered to be a high threat to abduct a child across international borders.

With respect to the Government Accountability Office's previously issued report recommending the creation of a Prevent Departure Program II that would prevent individuals possessing a right of U.S. citizenship from illegally removing a child from the United States, Jim Crumacker of the Departmental GAO/OIG Liaison Office of the Department of Homeland Security (DHS) concurs with the GAO recommendation to create a secondary security screening list in order to stop American child-citizens from being illegally abducted abroad; however, DHS cites challenges that exist to implement such a program. Specifically, "DHS strongly agrees that preventing international child abduction is a very important issue. The Department also agrees that expanding its current efforts along these lines to include pre-departure flight screening for potential U.S. citizen abductors could be helped in preventing some abductions." The response by DHS then states that there do exist challenges in implementing a secondary security-screening list when he states, "However, a number of challenges exist to visibly implementing a high-risk abductor list for U.S. citizens. These include potential constitutional, operational, privacy, and resource issues, among others. DHS remains committed to continuing its work with the U.S. State Department, the airlines, and other stakeholders to better prevent these abductions. DHS will consider options to expand its efforts, as reasonably appropriate."

According to the Government Accountability Office report, "Preventing international parental child abductions can be very difficult and depends on a number of factors, including the parent's knowledge of the abduction risk and the existence of clear custody status for the child. While prevention efforts available to parents, such as contacting the State Department to request a passport alert for a child, generally require that the parent have some knowledge beforehand of the risk that abduction might occur, abductions often occur when the parent has no such knowledge. In general, prevention efforts also require clear custody status. For example, in order for a parent to add a child and suspected abductors to the DHS' Prevent Departure list, the requesting parent must demonstrate that he or she has parental or custodial rights to the child and that there is a court order barring the child from traveling internationally with the suspected abductor. However, custody laws vary by state, and many parents may not have such clear custody documentation available." The report further states that according to the Department of Justice, as cited in the GAO report, "In cases where the parent is unaware of the abduction risk, and where there is no documentation of the child's custody status, preventing such abductions is extremely difficult."

The GAO report further emphasizes the need for a secondary prevent departure list when it states in its report, "Department of Homeland Security officials told us that their Prevent Departure list—which requires a custody or court order specifically banning the child in question from traveling internationally with a specified parent or someone acting on behalf of the parent—is quite effective at preventing abductions involving non-U.S. citizen abductors. Officials at the State Department added that a similar list for U.S. citizens would be very effective in cases where there was already a custody or court order preventing the child from traveling abroad with the specified parent."

#### SECTION II—CONCLUSION AND RECOMMENDATION CONCERNING EXPANDING THE PREVENT DEPARTURE PROGRAM

We respectfully urge the United States Congress to create legislation that would expand the scope of this existing program to include individuals who possess a right of American citizenship.

## PART V

## KEY CHILD ABDUCTION PREVENTION SUGGESTED MANDATES:

MODIFYING THE EXISTING WESTERN HEMISPHERE TRAVEL INITIATIVE POLICY TO REQUIRE ALL INDIVIDUALS REGARDLESS OF AGE DEPARTING FROM OR ENTERING THE UNITED STATES BY LAND, SEA, AND AIR PRESENT A VALID PASSPORT.

We respectfully and strongly urge our Congress to pass law that requires all individuals including children departing from and entering into the United States to present a valid passport and quash the existing policy permitting minors under the age of 16 years of age to present a photocopy of a naturalization document such as a birth certificate at the time of their border crossing as a full passport travel requirement for all individuals regardless of the method of travel unquestionably will prevent a significant number of reported and unreported cross-border parental abductions and could dramatically reduce the number of incidents of child trafficking.

The United States has limited border exit control tools in place that can prevent international parental child abduction outside of the methods in place established by the Prevent Departure Program (which has significant limitations and must be expanded upon as explained above).

SECTION I—INTERNATIONAL PARENTAL CHILD ABDUCTION AND TRAFFICKING  
AND THE WESTERN HEMISPHERE TRAVEL INITIATIVE

Today, very serious security gaps exist directly related to the Western Hemisphere Travel Initiative (referred to as WHTI) especially as it pertains to a child's international travel document requirements. These stunning flaws and loopholes provide substantial opportunity for illegal cross-border family or stranger child abductions and human trafficking incidents to occur to and from the United States. These border control security vulnerabilities presently utilized in illegally transporting children across U.S. borders in both incoming and outgoing parental abduction cases as well as being capitalized by smugglers who trade in human life needs to be immediately changed.

Specifically, the Intelligence Reform and Terrorism Prevention Act of 2004 created the WHTI to strengthen border security and is a joint Department of Homeland Security (DHS) and Department of State (DOS) plan that is carried out in part by the U.S. Customs Border Protection Agency (CBP). The intent of the initiative is to further protect and strengthen our nation's borders by requiring all travelers to and from Canada, Mexico, the Caribbean and Bermuda to present a WHTI compliant document that establishes identity and citizenship. Specific to children, the WHTI program allows children under the age of 16 years old traveling with one of their parents to cross the adjoining border of member countries by presenting a naturalization document including a photocopy of a birth certificate. Thus, children crossing from the United States to Mexico by land are not required to present a valid passport. Additionally, a minor under the age of 16 years old boarding a closed-circuit cruise ship embarking from and returning to an American port-of-call is also not required to present a valid passport, but instead a photocopy of a birth certificate or other naturalization papers.

The WHTI requirements for air travel took effect on January 23, 2007. According to U.S. Customs Border Protection, "All U.S. citizens and non-immigrant aliens from Canada, Bermuda, and Mexico departing from or entering the United States from within the Western Hemisphere at air ports-of-entry are required to present a valid passport (or NEXUS card, if utilizing a NEXUS kiosk when departing from a designated Canadian airport)." We believe that this stringent mandate for verifiable documentary identification prior to air travel has significantly reduced the ability to unlawfully remove a child from the United States.

Additionally, the U.S. increased the security of its child citizens when on February 1, 2008 new requirements under Public Law 106-113, Section 236 took effect requiring the permission of both parents prior to the issuance of a U.S. passport for children under the age of 16. According to the Department of State Office Of Children's Issues, "U.S. law requires the signature of both parents, or the child's legal guardians, prior to issuance of a U.S. passport to children under the age of 16. Generally, to obtain a U.S. passport for a child under the age of 16, both parents (or the child's legal guardians) must execute the child's passport application and provide documentary evidence demonstrating that they are the parents or guardians. If this cannot be done, the person executing the passport application must provide documentary evidence that he or she has sole custody of the child, has the consent of the other parent to the issuance of the passport, or is acting in place of the par-

ents and has the consent of both parents (or of a parent/legal guardian with sole custody over the child to the issuance of the passport).”

Due to the implementation of these new requirements, the ability to unlawfully transport children that do not possess dual citizenship across borders has become increasingly difficult, yet it still occurs due to the WHTI policy. The two-parent signature necessary for a minor child’s U.S. passport issuance has strengthened our border security and reduced the ability to present incomplete or fraudulent documentation in order to travel with a child across international borders. Thankfully, our child citizens are better protected than they were just a few years ago.

The fact is despite consistent double-digit growth in the reported outbound cases of American children being victims of international parental child abduction during the first decade of the millennium, fiscal years 2011 and 2012 reported a 23% decline in the reported outbound American children abduction rate and we expect the upcoming Department of State’s Compliance Report to Congress concerning international child abduction to demonstrate another decline. The point being, that it is our strongest position that our Congress focus on abduction prevention techniques as a way to solve the international parental child abduction crisis.

The two-parent signature requirement necessary for a U.S. Passport to be issued for a child has greatly reduced the opportunity that a passport will be issued without another parent’s knowledge or consent.

Unfortunately, documentation fraud is still very difficult to detect and remains a severe threat to our nation’s children, especially if initiated by parental forgery. Tragically, for many targeted-parent victims of international parental child abduction this type of fraud is common. Unquestionably, it is critical that precautionary steps continue to be taken before issuing passports to children due to substantial evidence of documentation fraud.

Additionally, and to our great concern, it appears to be relatively easy to obtain fraudulent or falsified identification or residency documentation.

In response to the rise of illegal entry and exodus to the United States, the implementation of WHTI policy has effectively narrowed the types of documents that are acceptable in proving identity and citizenship. Although this change is a critical step towards meeting the challenge of securing our borders there still remain significant security challenges due to certain allowable exemptions. Unfortunately, when it comes to cross border travel by children being transported by land or sea, numerous security defects exist. Unquestionably, individuals or organizations with intent to breach the law have exploited these policy flaws. Our nation’s children as well as children from other countries are suffering either as defenseless victims of international parental child abduction or as helpless slaves taken into the world of human trafficking, where the worst types of crimes against humanity are the norm.

The buying and selling of humans is the second largest criminal activity in the world. In the U.S., this problem is much more severe than commonly discussed. Of particular concern is that it is estimated that over 70% of all humans trafficked into the U.S. originate from Latin America: countries such as Mexico, Honduras, and El Salvador are well-known supply sources for human cargo.

A significant number of these enslaved are young children between 11 and 15 years old who originate from poverty-stricken communities, and who are lured into the dark world of slavery due to false promises of legitimate jobs and a better life in America. What awaits them is an inhuman slave world filled with torture, violence, and threats of death to family members they left behind if they ever attempt to flee their imprisoned “cantinas”—prison-like brothels where they are never allowed to leave. Tragically, sure death awaits those imprisoned into this inferno: they are either murdered, die of drug overdose, or die of disease and infection.

Due to limited border documentation requirements under WHTI policy, particularly for minors traveling, there is substantial concern that human traffickers are currently using this loophole in order to move their young human cargo into the United States from Mexico and Caribbean island-nations.

The presentation of fraudulent documents at border points has long existed and is well illustrated in the publication of Western Hemisphere Travel Initiative (WHTI) Land and Sea Final Rule that was released March 27, 2008 by the Department of Homeland Security. It was reported that CBP officers had intercepted over 129,000 fraudulent documents from January 2005–March 2008 from individuals trying to cross the border over an approximate 3½ year period (We were unable to locate current data; however, due to advancements in technology we believe this number of fraudulent documents has potentially increased). This is a substantial number; however, we must ask ourselves how many fraudulent documents were never uncovered and successfully used?



For U.S. Citizens, a Federal Statute mandates that any citizen of the U.S. must possess a valid U.S. passport to depart from or enter the U.S. Following is the text of Federal Statute 8 U.S.C. 1185 (b).

(b) Citizens Except as otherwise provided by the President and subject to such limitations and exceptions as the President may authorize and prescribe, it shall be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid United States passport.

When WHTI requirements for land and sea became effective on June 1, 2009 exceptions to the Federal Statute passport requirement were allowed. The new regulation states that U.S. citizens and citizens of Canada, Bermuda and Mexico may present a passport or other WHTI-compliant documents when entering or departing the United States at sea or land ports-of-entry from within the Western Hemisphere.

We point to the fact that Mexico followed by Canada are the two countries that have the most outbound American abduction cases. We point out that in numerous cases where an American child has been illegally removed from the United States to Mexico or Canada, our bordering nations have served as a launching point for an abductor and not the final destination.

Due to exceptions to the passport requirement, our research has concluded there exists distinct areas of vulnerability at the border for our children.

It is also important to note that according to the DOS, "Since March 1, 2010, all U.S. citizens—including children—have been required to present a valid passport or passport card for travel beyond the 'border zone' into the interior of Mexico. The 'border zone' is generally defined as an area within 20 to 30 kilometers of the border with the U.S., depending on the location." Concerns arise when you consider that entry into Mexico is allowed without a passport if a representation is made that you intend to remain within the designated "border zone."

#### SECTION II—SEA TRAVEL CLOSED-LOOP VOYAGES

Currently, according to CBP "closed loop" travel to adjacent islands allows for the same documentary exceptions under WHTI, as do contiguous countries. Specifically, "Travelers on 'closed loop' voyages are NOT subject to the same documentary requirements for entry to the United States as other travelers."

The CBP website indicates at least thirty-seven countries currently meet this definition. Adjacent islands are defined by statutes and regulation, specifically the Immigration and Nationality Act § 101(b)(5) and 8 Code of Federal Regulations § 286.1. CBP reports that adjacent islands to the U.S. are: "Anguilla, Antigua, Aruba, Bahamas, Barbados, Barbuda, Bermuda, Bonfire, British Virgin Islands, Cayman Islands, Cuba, Curacao, Dominica, the Dominican Republic, Grenada, Guadeloupe, Haiti, Jamaica, Marie-Galantine, Martinique, Miquelon, Montserrat, Saba, Saint Barthelemy, Saint Christopher, Saint Eustatius, Saint Kitts-Nevis, Saint Lucia, Saint Maarten, Saint Martin, Saint Pierre, Saint Vincent and Grenadines, Trinidad and Tobago, Turks and Caicos Islands, and other British, French and Netherlands territory or possessions bordering on the Caribbean Sea."

As indicated by the most current Hague Compliance Reports there is a substantial number of American children taken OUT of the U.S. and into contiguous or adjacent countries, and equally, a rather large number of children were brought INTO the U.S. from contiguous or adjacent countries who are Hague treaty partners. The annual Hague Compliance Report does not estimate how many unreported cases of abduction occur though we approximate that unreported cases of abduction are at least equivalent to the reported cases of abduction. We believe the overwhelming majority of unreported cases of abduction originate from either contiguous or adjacent countries. In addition the Hague Compliance Report does not indicate how many children are abducted into the U.S. from countries that are not Hague Treaty partners. We believe that the available data indicates a substantial security breach exists due to a lack of uniformity in documentary requirements while crossing international borders within the Western Hemisphere.

We are also very concerned that the documentary requirements for a "closed loop" cruise ship or other water vessel's voyage or itinerary to contiguous countries or adjacent islands allows travelers to be exempt from the documentary requirements necessary for other types of travel. The CBP defines "closed loop" as occurring when "a vessel departs from a U.S. port or place and returns to the same U.S. port upon completion of the voyage. U.S. child citizens who board a cruise ship at a port within the United States, travel only within the Western Hemisphere, and return to the same U.S. port on the same ship may present a government issued photo identifica-

tion, along with proof of citizenship (an original or copy of his or her birth certificate, a Consular report of Birth Abroad, or a Certificate of Naturalization). A U.S. citizen under the age of 16 will be able to present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by DOS, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services.”

Travel requirements for children traveling at sea are quite alarming. The porous documentation controls in place due to the WHTI facilitate child abduction opportunity at sea in unthinkable ways. For example, there are certain cruise ships that have ports of call in other countries that cater specifically to children. These cruise ships hold over 5,000 passengers and typically have weekly departures. With thousands of children boarding one of these cruise ships, we acknowledge it is clear there is substantial opportunity for a parental or non-parental child abduction to occur.

In a likely scenario for cruise ship related international parental child abduction or child trafficking, an individual could presumably board a cruise ship with a targeted child with limited or fraudulent documentation for the child, travel to WHTI designated foreign ports, disembark with the child at a port of call and simply choose not to re-board the ship, effectively circumventing the necessity of a passport which is required for other types of travel.

The potential to illegally remove a child across international borders via cruise ship travel is substantially magnified because currently there are no systematic data base controls and other security measures that would prevent a child’s illegal departure from the United States. Exemplifying this grave concern are direct statements made from the security departments of two of the world’s largest cruise lines operators. In statements made by both companies, neither have a security database that would enable a parent nor a court of law to place a child’s name on a “no-embankment” list due to specified court order. So even if a court order is issued that either directly names the cruise ship company as part of the action or if the court order references the cruise ship company to prohibit a child’s departure but does not list the cruise ship as part of the legal action, the cruise ship companies have nothing in place that would enable them to comply with the court order.

When representatives in the security departments of cruise ship companies were asked what could be done with a court order prohibiting a child’s departure, each spokesperson suggested that if the targeted parent knew what cruise ship and departure date their child was scheduled to travel on, then it would be up to the parent to contact local law enforcement.

Obviously, the ability for a single parent trying to protect their child’s abduction to run from cruise ship port to cruise ship port hoping to determine if their child is traveling on one of the ships is more than daunting and unrealistic, particularly since the vast majority of international child abductions are well planned, and cleverly orchestrated.

Remarkably, there is no systematic check to determine if a child’s name has been placed on any law enforcement or government travel alert lists. However, if a U.S. passport was required and the U.S. passport was scanned, then a border patrol agent would have immediate access to potentially critical information regarding the safety of the child. We call upon the cruise ships to act responsibly by establishing security procedures including a ‘no-embankment’ database that would assist in the prevention of international parental child abduction and human trafficking.

When we consider there are approximately 760 cruises scheduled to depart from the U.S. and travel in a “closed loop” to the Caribbean during fiscal year 2011, this becomes very concerning. Our worry increases after we consider there are 47 “closed loop” cruises scheduled to depart the U.S. to Canada during the same period. And finally, our concern surges when we realize that there are 379 cruises scheduled to depart the U.S. and travel in a “closed loop” to Mexico.

We express our grave concern that cruise ships may be utilized to transport children illegally to and from the U.S., Mexico, and Canada as well island nations of the Caribbean.

It is inconceivable that U.S. children are still permitted to travel to specific foreign countries in accordance with the WHTI without a passport. Today, nearly 40% of all U.S. citizens possess a passport. As that number continues to grow substantially each year it is unthinkable not to require a passport for a child to travel abroad.

#### SECTION III—U.S. PASSPORT CONCERNS AND STATISTICS

International parental child abduction and human trafficking are extraordinary issues where there is no such thing as “collateral damage.” The reality is that inter-

national parental child abduction will cost the United States economy billions of tax payer dollars over the next decade.

In the past, certain legislators have expressed concern that possession of a passport as a requirement to travel by either ground or sea to our neighboring countries would have a direct impact on commercial trade due to the cost of passports. The cruise ship industry, with many of its fleet of ships bearing the flags of nations other than the United States, has petitioned against the use of passports for "closed loop" travel since the conception of the WHTI. Obviously, the industry is concerned that the additional cost associated with a passenger having to obtain a passport may cause a potential traveling customer to view a cruise as too costly. However, statistics for new passport issuances over the past ten years according to the United States Department of State are 133,959,114 issued.

SECTION IV—CONCLUSION AND RECOMMENDATION CONCERNING  
MODIFYING THE WESTERN HEMISPHERE TRAVEL INITIATIVE

We recommend that the documentary requirements implemented for air travel in Phase One of WHTI be the same requirements necessary for cross-border land and sea travel. In the interest of the safety of all children, we request that there be no exceptions to the passport mandate for contiguous countries, adjacent countries or "closed loop" voyages. Specifically, that all children, regardless of age must possess a passport for any cross-border travel. Harmonization of the documentary requirements for all modes of travel and at all international borders will help us achieve a reduction in the heinous crimes of child abduction and human trafficking.

PART VI

SUMMARY: WHAT NEEDS TO BE DONE?

International parental child abduction is a complex matter. We believe the most effective way to protect children and targeted parents is through enhancing the ability of the Hague Conference. Diplomacy does work and we believe that if increased resources were provided to the Office of Children's Issues and to the Hague Conference, there would be a substantial increase in the number of children who are quickly returned back to the United States.

We believe that Congress should call upon all American Ambassadors to coordinate global diplomatic efforts and engage with leadership of the foreign countries they are respectively assigned to concerning each country's respective individual child abduction cases prior to the Senate voting on the proposed legislation. We believe there is a unique and significant opportunity to resolve many mutual abduction cases under the (ever increasing) scope of the Hague Child Abduction Convention, in lieu of the American Congress sending a message to the world that the United States will start sanctioning States that do not live up to Convention standards. We believe that a synchronized global effort by all American Ambassadors under the auspices of the United States Congress will have immediate, short and long-term benefits, including the return of many abducted American children.

When contemplating the issue of sanctions, we respectfully urge all esteemed policymakers to carefully consider the global problem all parents of abduction face when their child is parentally kidnapped. The problem of children not being returned to their home country is not one that American parents face alone. In fact, many parents who have had their children abducted to the United States have faced similar grave challenges reuniting with their wrongfully detained child that American parents face abroad. Part of the problem many of these foreign parents face stems from the existence of nearly 10,000 American-court family law judges, many who are not trained or knowledgeable in Hague Convention matters and who may be charged with oversight on an international parental child abduction case under the rules of the Hague Convention. History is demonstrating that many of the American court's judiciary are not addressing the short and narrow focus design of the 1980 Hague Child Abduction Convention: the very same problem that American parents are facing abroad.

Clearly, a critical step in protecting American children is to strengthen the Hague Conference Secretariat's reach. With a budget of 3.7 Million Euro the reality is that the Hague Conference does not have the financial resources needed to educate and train key stakeholders, and, with limited resources, the organization is financially handicapped in its outreach ability, including the ability to work with non-Hague Convention States as to the merits of joining the Convention and becoming a Member of the Conference. It is imperative that the global organization created with such a broad mandate that covers every cross-border aspect of civil and commercial law, including (but not limited to) the protection of children around the world, have

the resources to do so. Today—they simply do not. We urge Congress to provide increased funding to the Hague Conference.

It is important to note that approximately half of the Contracting States of the 1980 Hague Child Abduction Convention have already established a form of “concentrated jurisdiction” which ensures that only judges with particular subject matter expertise hear Hague Convention cases. These specialized courts, including those established in the United Kingdom are considered very effective. In fact, the tendency for new signatory countries to address the issue of a well-trained, specialized judiciary may be exemplified by Japan’s creation of two special courts created to hear child abduction cases. Of course, in the case of Japan, there is interest on seeing how Japan will implement the Hague Convention; however, a well-trained judiciary may see Japan as a fully complying Contracting State.

It would be extremely beneficial if the United States Congress requested for an analysis on how our American judiciary system could implement and create a centralized set of Special Courts’ established to handle international parental child abduction cases to ensure that the American judiciary no longer are part of the overall global problem of child abduction.

In order to protect children from international parental child abduction, we believe there are immediate, highly effective steps Congress can take via passage of new law that would be far-reaching and extremely impactful. This includes:

1. Implement law that mandates that all parents complete a Hague-centric international travel child consent form similar to the I CARE Foundation’s landmark child travel document. The I CARE Foundation’s travel consent form has been highly successful in protecting children at risk of abduction and offers all targeted parents with a sound, carefully legally constructed comparative law document that defends against all child abduction defenses and techniques taking parents presently use, and, further removes the penchant for courts around the world to wrongfully turn their attention all to often to Article 13 (1) of the Hague Child Abduction Convention. As it is strongly estimated that the vast majority of all international parental child abductions against American child-citizens occur due to a child’s wrongful retention abroad, we believe the creation of a Hague-centric travel consent form such as the I CARE Foundation’s travel form that has been strongly supported and identified by the Hague Conference Secretary General Dr. Christophe Bernasconi as a critical tool in the fight to protect children be immediately implemented for all children traveling abroad.
2. Implement new policy modifying the Western Hemisphere Travel Initiative to mandate all individuals regardless of age and form of travel departing from or entering into the United States to present a valid passport at the time of border crossing.
3. Implement new policy modifying the existing Prevent Departure Program and secondary security screening program to enable the Department of Homeland Security, through the petition of the Department of State to request that American Citizens are placed on the Prevent Departure Program if it is believed that these individuals are high-risk child abductors. By allowing for individuals of American citizenship to be placed on the security screening list, we effectively protect against abduction from individuals possessing dual citizenship.
4. We believe that like Hague Conference’s Permanent Bureau, the Office Of Children’s Issues at the United States Department of State is understaffed and underfunded. We believe that it is critical that OCI increase its personnel substantially in order to increase personnel within its Child Abduction Prevention Unit, increase the number of Abduction Case Worker staffers, increase the number of staffers in their Education and Outreach Unit in order to create and develop an expansive judiciary training program and outreach programs focused on abduction prevention and specific outreach programs to aid undocumented residents who have their American children abducted.
5. We believe that Congress should modify existing law that prohibits financial aid for American parent victims litigating to reunite with their kidnapped children. Unlike many other nations who provide financial aid to parents, the United States only offers reunification aid in special cases, and only upon a foreign court’s order that a child can be returned back to American jurisdiction. As legal costs for reunification are extremely high, one of the strategies abductors utilize is an attempt to financially drain the American parent. Sadly, this strategy often works. We believe Congress should change this antiquated law created when Congress annexed the 1980 Child Abduction Convention. American families are victims of the crime of kidnapping. If a child were abducted by a strang-

er, financial support and resources would not be an issue. As we have now come to learn through research and understanding, parental child abduction is just as severe and dangerous to a child as that of a stranger abduction. Without financial assistance, American left behind parents will be vulnerable to litigation techniques created to financially drain their resources.

The I CARE Foundation would like to thank all individuals and organizations for their dedication to protecting children of abduction. In particular we would like to acknowledge all parents who have a child who has been internationally abducted and offer these simple yet important words: "Know Hope." And to the lawmakers and policy administrators responsible for assisting families of abduction, the hope we as parents of abduction know and turn to is you.

[Editor's Note: Additional exhibits, originally appended to this statement, will be maintained in the committee's permanent record.]

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INFORMATION SUBMITTED BY GLOBAL FUTURE, THE PARENTS' COUNCIL ON  
INTERNATIONAL CHILDREN'S POLICY

*A Comparison of the Two Types of International Separations of a Child and Parent*

INTERNATIONAL CRIMINAL KIDNAPPING

VS.

PARENTS' VOLUNTARY SUBMISSION TO FOREIGN LAWS

1. *International Criminal Kidnapping*

Some common characteristics and facts:

- The U.S. government and U.S. courts have continuing jurisdiction over the child and the criminal perpetrators;
- The U.S. government at all levels, has an affirmative duty to protect its citizens, especially vulnerable children, and to enforce the laws that were broken on U.S. soil;
- The U.S. parent and the child were separated due to the crime of international kidnapping, which took place on U.S. soil;
- U.S. criminal laws are broken by foreign nationals on U.S. soil;
- U.S. Courts had previously established jurisdiction over the child's custody and parents;
- By signing a U.S. visa or green card, a foreign national submitted to U.S. jurisdiction and U.S. laws;
- U.S. Courts issued clear and binding custody orders prior to the abduction, that are now violated;
- Foreign nationals derive benefits from U.S. courts, including fair and equal justice under the law;
- U.S. judges issued contempt of court orders against the kidnapper violators;
- Kidnapper(s) planned and executed the crime(s) with accomplices, including family members and foreign attorneys, and possibly others;
- Kidnapper(s) perpetrated related crimes including passport fraud, extortion, and conspiracy;
- Local jurisdictions issued arrest warrants for the perpetrators;
- All crimes in connection with the kidnappings are extraditable offenses under existing treaty; and
- The child's U.S. Constitutional Rights have been violated, or even worse, effectively stripped from them by a foreign government, following the criminal act.

2. *Parents' Voluntary Submission to Foreign Laws*

Some common characteristics and facts:

- A foreign nation and its courts have legal jurisdiction;
- A U.S. parent consented to allowing the child to travel to the foreign nation, and/or waived access rights to the child before the child's travel to the foreign nation;
- No U.S. laws broken;

- The U.S. government has no mandate, authority or jurisdiction to enforce U.S. laws on foreign soil;
- The parent and child separation took place on foreign soil;
- A foreign nation might have no legal prohibition against one parent unilaterally separating the child from the other parent;
- A parent travels to or lives in a foreign nation with the child;
- U.S. citizens are greatly disadvantaged in foreign courts, especially Japan's, and cannot expect equal justice; and
- A U.S. parent voluntarily submits to a foreign court.

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*A Summary of the Missing Children Act  
and the National Child Search Assistance Act*

The Missing Children Act and the National Child Search Assistance Act, together require Federal, State, and local law enforcement agencies to enter descriptions of missing children into the NCIC Missing Person File (MPF) without any waiting period and without regard to whether a crime has been committed (A Report to the Attorney General on International Parental Kidnapping. Subcommittee on International Child Abduction of the Federal Agency Task Force on Missing and Exploited Children and the Policy Group on International Parental Kidnapping April 1999). States are required to “ensure that no law enforcement agency within the State establishes or maintains any policy that requires the observance of any waiting period before accepting a missing child or unidentified person report” (42 U.S. Code §5780). An Administrator is defined as an administrator of the Office of Juvenile Justice and Delinquency Prevention (42 U.S. Code §5772—Definitions). Included in the duties and functions of the Administrator is to submit a report to the President, Speaker of the House of Representatives, the Committee on Education and the Workforce of the House of Representatives, the President pro tempore of the Senate, and the Committee on the Judiciary of the Senate. However, the Administrator is not granted any law enforcement responsibility or supervisory authority over any other Federal agency. An Annual grant to National Center for Missing and Exploited Children which shall be used to, amongst other tasks, disseminate, on a national basis, information relating to innovative and model programs, services, and legislation that benefit missing and exploited children (42 U.S. Code §5773—Duties and functions of the Administrator). Law-Enforcement Policy And Procedures for Reports of Missing And Abducted Children defines a case of Family abduction when, in violation of a court order, a decree, or other legitimate custodial rights, a member of the child's family, or someone acting on behalf of a family member, takes or fails to return a child. This is also referred to as parental kidnapping and custodial interference. A missing child will be considered at risk when the 13 years of age or younger. Additionally, significant risk to the child can be assumed if investigation indicates a possible abduction. When is child considered at risk, and an expanded investigation, including the use of all appropriate resources, will immediately commence (Law-Enforcement Policy and Procedures for Reports of Missing and Abducted Children; A Model Developed by The National Center for Missing & Exploited Children Revised October 2011).

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*A Summary of the Crime Victims' Rights Act (CVRA)*

The “Crime Victims' Rights Act (CVRA): 18 U.S.C. §3771” provides crime victims the right to be reasonably protected from the accused. As stated in the Federal Judicial Center, October 24, 2005 report the language does not restrict application of Section 3771 only to felonies. It does not apply to the victims of state crimes, unless the underlying misconduct also violates federal or D.C. law (Crime Victims' Rights Act: A Summary and Legal Analysis of 18 U.S.C. 3771 Charles Doyle Senior Specialist in American Public Law April 24, 2012). The “crime victim” defined in is a person directly and proximately harmed as a result of the commission of a Federal offense. For a crime victim who is under 18 years of age, “legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights.”

Section 3771 also includes the reasonable right to confer with the attorney for the Government in the case. “Prosecutors should consider it part of their profession to be available to consult with crime victims about the concerns the victims may have which are pertinent to the case, case proceedings or dispositions. Under this provi-

sion, victims are able to confer with the Government's attorney about proceedings after charging" (150 Cong. Rec. S4268 (daily ed. April 22, 2004) (remarks of Sens. Feinstein and Kyl). Additionally, the CVRA provides the right to proceedings free from unreasonable delay. "Too often, however, delays in criminal proceedings occur for the mere convenience of the parties and those delays reach beyond the time needed for defendant's due process or the government's need to prepare. The result of such delays is that victims cannot begin to put the crime behind them and they continue to be victimized. It is not right to hold crime victims under the stress and pressure of future court proceedings merely because it is convenient for the parties or the court" (150 Cong. Rec. S4268-269 (daily ed. April 22, 2004)). As a remedy, Section 3771 affords the right to full and timely restitution as provided in law. "Statutes require the investigating and prosecuting agencies to: (1) identify child victims of an offense and provide the non-offending parent or guardians with notice of their rights and the services for which they may be eligible, including counseling, support, compensation, and restitution; and (2) notify victims of major events in the conduct of the cases.

The use of a multidisciplinary team and appointment of a guardian ad litem are encouraged in appropriate situations. Congress mandates that all Federal agencies dealing with victims of Federal crime maintain and adhere to written guidelines consistent with Federal law on victim-witness assistance. All Federal agencies that deal with International parental kidnapping crime victims must become conversant with their responsibilities under Federal victim-witness guidelines and regulations" (A Report to the Attorney General on International Parental Kidnapping. Subcommittee on International Child Abduction of the Federal Agency Task Force on Missing and Exploited Children and the Policy Group on International Parental Kidnapping April 1999). Alleged victims do not have a right to confer before charges have been filed, (150 Cong. Rec. S4260, S4268 (daily ed. Apr. 22, 2004)).

The Integrated entry and exit data system (8 U.S. Code § 1365a) is an electronic system that provides access to, and integrates, alien arrival and departure data that authorizes the collection of arriving and departing aliens by country of nationality, classification as an immigrant or nonimmigrant, and date of arrival in, and departure from, the United States. The Attorney General, in the discretion of the Attorney General, may permit other Federal, State, and local law enforcement officials to have access to the data contained in the integrated entry and exit data system for law enforcement purposes. Interagency Border Inspection System name checks (IBIS), managed by Customs and Border Protection, IBIS is a database of lookouts, wants, warrants, arrests, and convictions consolidated from over 20 agencies. A complete IBIS query also includes a concurrent check of selected files in the Federal Bureau of Investigation's (FBI) National Criminal Information Center (Department of Homeland Security Office of Inspector General a Review of U.S. Citizenship and Immigration Services' Alien Security Checks Office of Inspections and Special Reviews OIG-06-06 November 2005). "IBIS is critical to stopping an abduction at a U.S. border or international airport, as an IBIS query will reveal NCIC records and lookouts placed in IBIS by the FBI, INTERPOL, or other Federal law enforcement agencies, any of which may result in locating an abductor and child as they attempt to leave or reenter the country" (A Report to the Attorney General on International Parental Kidnapping. Subcommittee on International Child Abduction of the Federal Agency Task Force on Missing and Exploited Children and the Policy Group on International Parental Kidnapping April 1999).

*Justice Model Proves Successful in International Criminal Child  
Abductions: Case Studies in Kidnapping Resolution and Deterrence*

In three of the five following examples, law enforcement initially refused to file an arrest warrant for the abductor in criminal child kidnappings. Only the parents' persistent and constant pressure exerted in local law enforcement offices, supported by direct face-to-face meeting between the Global Future members and the relevant U.S. Congressmen, Senators, local judges and prosecutors, resulted in direct contact between the legislators and law enforcement officials. Without the establishment of this essential connection, the only leverage possible (arrest warrants) would have been lost, and the children would certainly not have been returned to their lawful homes in the U.S.

*The Mendoza family:* Children Returned from South Korea, June 26 2010. U.S. jurisdiction existed in New Jersey prior to the criminal abduction. An arrest warrant issued in Bergen County for the abductor. The abductor was arrested in Guam in March 2010. Bergen county officials initially did not want to extradite or spend money returning the children. Only after the father made a plea to the press, did

local officials agree to pay for the extradition. The lawful custodial father worked closely with Global Future LLC and New Jersey prosecutors and law enforcement, and legislators. After being detained, the abductor refused to cooperate and return the children to lawful custody with their father. The children were left without access or communication with either parent in Korea for 4 months, until the abductor cooperated and consented to the children's return to New Jersey. Indefinite incarceration incentivized the abductors cooperation. County prosecutors, the District Attorney, the U.S. Marshals, and Superior Court Judge all cooperated on the detention and extradition. The DOS took a supportive role in the return of the children. The lawful parent continues facing a daunting array of litigation in the family courts and has spent over \$1,200,000 to date in pursuit of justice for the children.

*The Garcia Family:* Child Returned from Japan to Wisconsin, 2011. This case represents the one and only child ever returned from Japan through a legal process, which built on the Mendoza case resolution process.

The DOS issued a statement prior to Karina's return stating that Japan stands alone amongst all nations on the planet, as it was unaware of any abducted American child returned through a legal process from Japan. This was a case with original U.S. jurisdiction established prior to the criminal abduction of the child to Japan. The father had primary custody in both the U.S. and later also in Japanese courts. Local and federal criminal arrest warrants were issued based on the facts of the case. The father won unprecedented Japanese legal decisions over four years while the child was being held in Japan, including winning in the Japanese Supreme Court, yet was unable to return the child to her lawful home. The father was a part of and worked closely with Global Future LLC, which worked with the Milwaukee District Attorney and Wisconsin federal legislators. We actually asked for and got the DOS to promise in writing not to interfere in, or communicate any part of the case to their Japanese counterparts.

In April 2011, the abductor was arrested in Hawaii, and later extradited to Milwaukee by the U.S. Marshals. The abductor then stated that she would sit in Jail for 50 years rather than cooperate in the child's return to her lawful home in Milwaukee. After 8 months in jail, she then cooperated, and Karina was returned on December 23, 2011. The abductor could have been released from jail in just one day, in exchange for returning the child immediately. All during that time she spent in jail, the child was being held in Japan without access to or contact with either parent. The entire arrest and recovery process was an exercise of seldom used U.S. law enforcement tools and strategy.

It appears that the abductors legal fees were all paid for by the Japanese government (until late 2013) which likely mounted well into the several hundreds of thousands of U.S. dollars. The family law case, the criminal case, and a civil case are still ongoing in Milwaukee. The Milwaukee District Attorneys office, the U.S. Marshals, and many legislators in Washington all cooperated in the return of the child. The father has spent over \$400,000 in costs, which are still mounting. The Milwaukee officials originally were resistant to spending money on returning the abducted child. The wide international media response verifiably contributed to deter other would-be abductions.

*The Hummell Family:* Children Returned to California from Czech Republic and France, 2013.

The Hummell case is unique in that it took place in California, after I had attended California Child Abduction Task Force meetings and law enforcement trainings in California for about four years. Direct access over a period of time to all California relevant law enforcement representatives, FBI, Prosecutors, District attorneys, the relevant A/ G official, as well as local DOJ representatives in those meetings and training sessions has changed the official perception of and response to international child abductions.

The LAPD, the FBI, and the Los Angeles District Attorney remained committed to this case and returned the children just weeks ago. The abductor will be extradited back to Los Angeles very soon.

This was a case of U.S. jurisdiction in Los Angeles, California prior to the abduction. The children were criminally abducted by the mother to Europe. Local and federal arrest warrants were issued based on the facts of the case. The abductor was caught in France after being on the run for approximately 18 months. The father spent over \$260,000 in approximately 18 months.

#### *Other case studies*

In two other important cases reported on by media, the law enforcement model proved successful, with elements that can be replicated in domestic and international cases alike:



*Cicero Illinois Case—Cicero to Mexico*

This was a case with U.S. jurisdiction in Cicero Illinois.

The Sheriff took the case to heart and remained committed to returning the children. This case demonstrates that even in a very small local jurisdiction, law enforcement can effect the return, if they have the will to remain committed and enforce the law.

Quinones brothers, ages 4 and 2, returned to Anaheim, California from Texas, in 2010. Anaheim police arrested several accomplices, leading to the children's recovery by Texas authorities, and the surrender of the abductor father. The abductors (father and grandfather) were believed to be headed with the children to Mexico, when law enforcement applied pressure on them through the arrest of accomplices.

In 2011, Cicero, Illinois police Chief Bernard Harrison recovered a boy kidnapped by father to Mexico in 2000. For a decade, Harrison worked closely with FBI and made productive contact with the abductor's relatives in Mexico.

*Web Links to Additional Information on Parental Child Abduction*

Black's Law Dictionary, <http://thelawdictionary.org/abduction/>.

"Japan-U.S. Relations: Issues for Congress," Congressional Research Service <https://www.fas.org/sgp/crs/row/RL33436.pdf>, Emma Chanlett-Avery, Coordinator Specialist in Asian Affairs; Mark E. Manyin, Specialist in Asian Affairs; William H. Cooper, Specialist in International Trade and Finance; Ian E. Rinehart, Analyst in Asian Affairs. August 2, 2013, CRS Report for Congress, Prepared for Members and Committees of Congress.

"National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children" (NISMA), 2002, [http://www.missingkids.com/en\\_US/documents/nismart2\\_overview.pdf](http://www.missingkids.com/en_US/documents/nismart2_overview.pdf).

"The Federal Bureau of Investigation's Efforts to Combat Crimes Against Children," Audit Report 09-08, January 2009, FBI Office of the Inspector General.

"Missing and Abducted Children: A Law-Enforcement Guide to Case Investigation and Program Management," Fourth Edition, 2011, Office of Juvenile Justice and Delinquency Prevention and National Center for Missing & Exploited Children®, Edited by Preston Findlay and Robert G. Lowery, Jr.

"A Family Resource Guide on International Parental Kidnapping," J. Robert Flores, Administrator, Office of Juvenile Justice and Delinquency Prevention. Original Printing February 2002; Reprinted May 2003; Revised January 2007, NCJ 215476. Prepared by Fox Valley Technical College under cooperative agreement number 2005-MC-CX-K034 from the Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office of Justice Programs (OJP), U.S. Department of Justice.

"Crime of Family Abduction: A Child's and Parent's Perspective" (May 2010). <https://www.ncjrs.gov/pdffiles1/ojjdp/229933.pdf>.

"When Your Child Is Missing: A Family Survival Guide" (May 2010). <https://www.ncjrs.gov/pdffiles1/ojjdp/228735.pdf>.

"A Review of U.S. Citizenship and Immigration Services' Alien Security Checks," Office of Inspections and Special Reviews, U.S. Department of Homeland Security, OIG-06-06, November 2005.

"Crime Victims' Rights Act: A Summary and Legal Analysis of 18 U.S.C. 3771," Charles Doyle, Senior Specialist in American Public Law April 24, 2012, CRS Report for Congress, Prepared for Members and Committees of Congress, Congressional Research Service, 7-5700. <https://www.fas.org/sgp/crs/misc/RL33679.pdf>.

"Family Abduction: Prevention and Response," 2009, Sixth Edition, Revised by Patricia M. Hoff. Copyright © 1985, 2002, and 2009 National Center for Missing & Exploited Children®. Project supported by Grant No. 2007-MC-CX-K001 awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

"Program Aimed at High-Risk Parent Abductors Could Aid in Preventing Abductions," Report to Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives, Commercial Aviation, June 2011, GAO-11-602.

STATEMENT SUBMITTED BY PAUL TOLAND, JEFFERY MOREHOUSE,  
AND RANDY COLLINS, BRING ABDUCTED CHILDREN HOME

In December, in a strong showing of bipartisan support, the House voted 398-0 to pass H.R. 3212—The Sean and David Goldman International Child Abduction Prevention & Return Act of 2013. International child abduction is a human rights violation and an ongoing form of child abuse in desperate need of greater congressional attention and action. Please show you care about the thousands of American families with internationally kidnapped children by swiftly pass this bill as written.

We appreciate discussion of important prevention strategies such as better exit controls through our airports and borders during the committee hearing. They are good ideas worth developing in future immigration legislation. Adding them here risks enormous delays for American families and children that need help today.

For most parents of internationally kidnapped children, frequently referred to as “Left-Behind Parents,” the outlook is bleak. Many of us face each morning not knowing where our children are being held. Holidays and birthdays pass with unbearable pain. For most, there has been little substantive help offered under the current system by the Office of Children’s Issues and the Department of State. In fact, there has been an unmitigated effort by the Office of Children’s Issues to close cases without actually creating a return of the abducted children. We have seen this with alarming frequency lately with the kidnappings to and within Japan. We are also concerned that return rates for children abducted to Hague Convention and non-Hague countries are not materially different, suggesting the treaty is largely ineffective and creates a false sense of hope for these parents.

Each year there are over 1,000 new cases of American children being abducted to a foreign country. H.R. 3212 is a vital step to create accountability and prescribe recourse for countries that are complicit in failing to return abducted children. For example, there have been nearly 400 registered cases of American children abducted to Japan since 1994. Currently the Department of State continues to maintain its longstanding policy of quiet diplomacy. The result is that the Government of Japan has not once assisted in returning a single abducted child.

More than 100 BACHOME parents have limited or no contact with their children. Men and women serving our country in the military in overseas bases are at extreme risk. In numerous cases they have come home to find their children and spouse have vanished. Our children have been cut off from their homes, families, and friends.

Most every parent and child has had an experience in a park, shopping mall or playground in which they momentarily can’t find his or her loved one. It is terrifying for those seconds or minutes. We, and our children experience this in every waking moment. It never ends.

Our victimized children need to be brought home. Rapid passage of H.R. 3212 is a step in this direction.

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STATEMENT SUBMITTED BY PAUL TOLAND, CAPTAIN, MEDICAL  
SERVICE CORPS, U.S. NAVY, ONLY LIVING PARENT TO ERIKA TOLAND

Senator Menendez, Senator Corker and other distinguished colleagues of the Senate Foreign Relations Committee, thank you for allowing me the opportunity to speak today. My name is Paul Toland. I am a Captain in the U.S. Navy with 25 years of service, and I am the only living parent of Erika Toland, abducted nearly 11 years ago and wrongfully retained in Japan by her grandmother.

Over 60 years ago, Japan regained full sovereignty under the Treaty of San Francisco, and since that time, not one of the thousands of children abducted to Japan has ever been returned to any foreign country by Japanese courts. It is truly a Black Hole from which no child ever returns. There is absolutely no hope once your child is taken to Japan. There is no visitation mechanism, no rights for non-custodial parents, and no enforcement mechanism to allow a parent to see his/her child.

I am left without any remaining options. Erika is essentially help captive in Japan, separated from her only living parent in a country that has never returned a child. I never dreamed that serving my country overseas in one of our allied nations would result in the loss of my child.

Four years ago, I testified in Congress regarding the abduction of Erika. There have been many such hearings about child abduction throughout the years in Congress. At one such hearing, the Chair of the Senate Foreign Relations Committee stated “Parents have reported to me the failure by the United States to initiate vigorous diplomatic and law enforcement tools seeking the return of their children. These parents report a sense of frustration, and I can understand that . . . with the obviously low priority placed on the return of abducted children compared to

other diplomatic relations.” At that same hearing, the ranking member of the Senate Foreign Relations Committee stated “the act of taking a child in violation of a custodial order is a heinous crime, which is extremely heart-wrenching for the parent left behind and for the child or children affected.”

These statements were made in 1998, with the last statement being made by then Senator Joseph Biden. Yet here we are, 16 years later, and nothing has changed. We still talk about how International Child Abduction is a terrible scourge and human rights tragedy, but the last 16 years have shown little or no progress.

As Mr. Bernard Aronson, former Assistant Secretary of State, summarized so well in his testimony in Congress four years ago, when he stated “all we have to show for it are musty hearing records and hopes that were raised but never fulfilled.”

Japan is supposedly an ally of the United States, so why does the United States continue to tolerate this behavior from Japan? Why does Japan continue to act in bad faith toward their allies—because they can! There are no consequences for Japan or other nations who refuse to return stolen children. We are faced with a U.S. State Department more interested in preserving relations with Japan than protecting the welfare of U.S. citizen children.

Benjamin Franklin said “Never confuse motion with action.” In recent years, we have witnessed a lot of motion in Congress and throughout the U.S. Government on this issue, but we have yet to see any real action—the kind of action that would result in the return of our children.

A recent bill, H.R. 3212, passed the House of Representatives by a vote of 398-0, and is an initial positive step in trying to change this pattern. This bill provides the government with the tools required to impose consequences on nations who refuse to return children. I ask your support for this important bill. The time for action is now because, let me tell you as a parent of a growing child, time is not on our side. Every day that passes in my daughter’s life is a day that I can never recover.

Thank you.

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STATEMENT SUBMITTED BY JEFFERY MOREHOUSE

My son, “Mochi” Atomu Imoto Morehouse, was kidnapped to Japan by his mother in June 2010. He was 6½ years old at the time. I have not heard from him since then but have spent every day trying to find way to bring him home.

Because of safety concerns for my son the court initially granted me temporary custody in May 2007. I was permanently designated the custodial in the state of Washington in June 2008 by mutual agreement of both parents. Based on evidence and her sworn statements in court documents, Michiyo Imoto Morehouse was allowed supervised only visitation for the first nine months due to: her violence in the home, alcohol abuse, psychological concerns and threats to abduct our son to Japan.

She was restrained from holding a passport for our son or taking him outside of the state of Washington. Additionally she agreed in court documents that the United States is the home country for our son. As a preventative measure in May and October of 2007, I wrote to all the Japanese consulates and the embassy in the U.S. requesting they reject any attempts by Michiyo to obtain a passport for Mochi.

April 2010, Michiyo attempted to obtain a passport from the Consulate of Japan in Seattle. They reject her based on my letters. On May 25, 2010, I filed a new motion based on her attempt to obtain passports. Subpoenaed records after the kidnapping reveal that on May 25, 2010 she purchased two tickets for a July 5th flight to Tokyo.

Knowingly in violation of court orders, on June 21, 2010, Michiyo crossed state lines with Mochi. She then lies to consular officials on the passport application and is given a passport for Mochi that day. Additionally the Consulate violates the Ministry of Foreign Affairs passport issuance policy of April 2010. In courts documents in Japan in June 2013 she admits to committing passport fraud. Though I have repeatedly asked Government of Japan officials to invalidate his passport and Mochi return to me. They have ignored my requests. Multiple requests for the Japanese Ministry of Foreign Affairs to provide me with Mochi’s location have been denied.

Requests for a copy of her fraudulent passport application by a Japanese judge and myself have been denied.

The same day, after fraudulently obtaining the passport, Michiyo changes the tickets to Japan for the next available flight on June 23, 2010.

According to the koseki (family registration certificate) in Japan, on June 25, 2010 it was entered that the “mother has custody” and the modification was filed “by the father and the mother.” This occurred the day after she kidnapped him to Japan.

Michiyo forged my signature. It was premeditated. In June 2013 she admitted to committing this crime in court documents.

In October 2012, I received a notice from the Toyama Family Court in Japan. According to the document Michiyo had applied for custody of Mochi. Without my knowledge she had the U.S. custody deleted in Japan claiming that it provided for joint custody. She knowingly lied again. Currently the basis for her motion for custody is being opposed in the Toyama Family Court. The assigned judge is Judge Naoyuki Kushihashi (case number: Heisei 24 nen(Ie)516). In March 2013 through February 2014, Judge Kushihashi denied requests for U.S. Officials to observe any of the eight hearings that have taken place.

Please help bring Mochi home. He is currently being held in the Toyama area in Japan. Every day he is kept by her is another day he is in danger. It is another day that he is cut off from his home, family and friends.

Sincerely yours,

Jeffery Morehouse, *Father of "Mochi" Atomu Imoto Morehouse*

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STATEMENT SUBMITTED BY STANLEY CHARLES THORNE, AMARILLO, TX

*[Original testimony before the Tom Lantos Human Rights Commission, U.S. House of Representatives]*

Distinguished Members of the Commission: My name is Stanley Charles Thorne. I am a citizen of the State of Texas and of the United States of America. My professional credentials are stated in my curriculum vitae and resume (attached for your convenient reference).

Examination of my curriculum vitae and resume will verify that for the past five years I have devoted my life to advocacy for parents and children. My full time work is to champion the rights of parents and children. I am recognized as an expert on Constitutional rights of citizens in family courts, and I am an outspoken advocate for a wide array of family law reforms.

My advocacy work is done in either my own personal name or *sub nom* The American Family Justice Project. I also work closely with and through the Center for Parental Responsibility, a Minnesota-based 501(c) (3) non-profit organization, of which I am a Board member. I am not on the Board or otherwise formally affiliated with any other organization.

Over the past three years it has been my honor to work closely with Mr. Patrick Braden, father of Melissa Braden, a U.S. citizen-child abducted to Japan on 16 March 2006 by her mother, Ryoko Uchiyama. As a result of my work with Patrick Braden, I have become thoroughly familiar with the facts of the Melissa Braden case and the growing problem of international child abduction.

A few weeks prior to the Commission hearing on 2 December 2009, I learned from 10 other U.S. citizen-parents about the facts of their cases of U.S. citizen-children abducted to Japan.

I personally attended the entire Commission hearing on 2 December 2009. I listened carefully to each of the U.S. citizen-parents who presented their testimony at that hearing (Panel 1), and each of the others who shared their expertise with the Commission (Panel 2).

I have prepared my written statement from this fact and issue specific frame of reference, combined with my unique personal perspective from over 25 years of rich life experience as a student of the political process, historian, policy analyst, attorney, counselor, mediator, speaker, author, and father of two sons (age 24 and 20) and one daughter (age 15).

I have asked Patrick Braden to submit my written statement as part of his submission for the record of the Hearing on International Child Abduction before the Tom Lantos Human Rights Commission of the United States House of Representatives in Washington, D.C. on 2 December 2009.

However, I stress that I submit these written comments only in my capacity as a private U.S. citizen, as I am not the legal representative of Patrick Braden, or Melissa Braden, or any other abducted U.S. citizen-child, their U.S. citizen-parent, or any organization. It is under these conditions that I respectfully submit this written statement.

The first section addresses aspects of diplomacy as a tool to resolve open cases and prevent new ones from occurring, followed by a section containing more specific points and suggestions.

*Continue formal foreign diplomacy by USDOS*

The issue of international child abduction historically has been addressed wholly within the context of United States foreign diplomatic relations, whether bi-lateral or multi-lateral. Accordingly, the sole agency of U.S. action in response to international child abduction has been the United States Department of State (USDOS). I characterize the array of formal proactive and remedial actions in this arena as "USDOS foreign diplomacy."

Over the years, left-behind U.S. citizen-parents with children in Japan have used every possible effort to resolve their open cases without any success. They have exhausted their resources and themselves and have turned for help and hope to the USDOS. Yet USDOS foreign diplomacy in U.S.-Japan bilateral relations prior to 2009 has never yielded a single tangible step toward resolving a single open case of a U.S. citizen-child kidnapped to Japan.

Events during 2009 indicate, but have not confirmed, that USDOS has raised the international child abduction problem to the highest levels of formal foreign diplomacy in U.S.-Japan bilateral relations. Secretary of State Clinton reportedly had the issue on her agenda for discussion with her counterpart in Japan in more than one meeting during 2009. And President Obama reportedly had the issue on his agenda for discussion with his counterpart in Japan during the summit conference 12-13 November 2009.

While these reports were encouraging to left-behind U.S. citizen-parents, USDOS has not released to them any details as to whether or not the issue actually was discussed, or the scope of any discussions that may have occurred. To the left-behind U.S. citizen-parents who desperately need information, this lack of follow-up communication from the White House and USDOS is discouraging, confusing, and unacceptable.

A left-behind U.S. citizen-parent with a kidnapped child in Japan has no hope of any remedy, except whatever is accomplished by and through USDOS foreign diplomacy. Under current circumstances, return of U.S. citizen-children from Japan to their left-behind U.S. citizen-parents is utterly, totally, and completely dependant upon whether or not United States foreign diplomacy gets results.

A lack of follow-up communication within a reasonable time after high-level bilateral talks with Japan by the President and Secretary of State seems to callously disregard the expectations of the left-behind U.S. citizen-parents raised by those talks. For them to know that the issue was not discussed at all would be better than waiting and wondering if it was, and wondering what USDOS plans to do next to resolve their open cases.

*Recommendation 1*

On behalf of left-behind U.S. citizen-parents with kidnapped children in Japan, the Commission should make a formal request to each of President Obama and Secretary of State Clinton for a written report to the Commission on whether or not they actually discussed abduction of U.S. citizen-children to Japan, and if they did, the details of those discussions, and what to expect next from formal USDOS foreign diplomacy to resolve the open cases. The report should be made public so that the Commission may distribute it to the general public and left-behind U.S. citizen-parents with kidnapped children in Japan.

More than one left-behind U.S. citizen-parent with a kidnapped child in Japan has requested, without success, a meeting with the President and Secretary of State. Even a private meeting between left-behind U.S. citizen-parents and staff personnel from either the White House or Secretary of State's office would signal that the issue is truly important to the President and Secretary of State.

As steps are taken in 2010 by the President and Secretary of State to press the issue with their Japanese counterparts, at some point in the process it will be appropriate for them to have a public meeting with left-behind U.S. citizen-parents. Sooner is better than later.

The U. S. Congress has unequivocally expressed Legislative Branch interest in addressing the issue of international child abduction in general, and especially in Japan. U.S. House Resolution 125 specifically mentioned the Melissa Braden case and the issue of U.S. citizen-children kidnapped to Japan. H. Res. 125 passed 11 March 2009 on a 418-0 roll-call vote. A letter dated 5 November 2009 from twenty-two U.S. Senators to President Obama called upon him to specifically address the issue with his counterpart in Japan during their summit conference in Japan 12-13 November 2009.

U.S. Senators and Congressman are demanding a change in Japan's track record on abduction of U.S. citizen-children kidnapped to Japan. It is long past time for

strong, decisive action from the Executive Branch to demand that Japan fully resolve the open cases now—that is, return kidnapped U.S. citizen-children from Japan to their left-behind U.S. citizen-parent in the United States, and arrest and extradite the kidnapers and their accomplices to the U.S. for prosecution by U.S. authorities.

An integral part of any Executive Branch plan to progressively increase pressure on Japan to resolve open cases should include a series of private and public gestures by the Executive Branch calculated to signal to not only all left-behind U.S. citizen-parents with kidnapped children in Japan, but also to Japan, that the issue is truly important to the Executive Branch of the United States government.

#### *Recommendation 2*

On behalf of left-behind U.S. citizen-parents with kidnapped children in Japan, the Commission should make a formal, written request to each of President Obama and Secretary of State Clinton for a meeting between left-behind U.S. citizen-parents with kidnapped children in Japan. As a step in the process of progressively increasing pressure on Japan to resolve open cases, the Commission's request should be made public and broadly disseminated.

*Activate formal law enforcement diplomacy by USDOJ.*—To my knowledge, the United States Department of Justice (USDOJ) has had virtually no role in international child abduction cases, either proactive or remedial. This is surprising in light of the fact that a substantial number of the open international child abduction cases are straight criminal kidnapping cases to which USDOJ can and should devote their resources. I refer to a specific subset of the open case population that I describe below as “U.S. jurisdictional cases.”

I am confident that if specifically tasked to act in U.S. jurisdictional cases, USDOJ could utilize already-open law enforcement channels with good effect to obtain not only arrest and extradition to the U.S. of the criminal perpetrator, but also obtain prompt return of the abducted U.S. citizen-child to their home in the United States.

I characterize the array of formal proactive and remedial actions in this arena as “USDOJ law enforcement diplomacy.” As a new initiative to supplement traditional USDOS foreign diplomacy, the United States should bring to bear USDOJ law enforcement diplomacy on the international child abduction problem, especially in respect of Japan. I will make specific suggestions about how to activate USDOJ law enforcement diplomacy later in this paper.

*Activate informal legal diplomacy by U.S. lawyers and judges.*—Traditional USDOS foreign diplomacy, supplemented by new initiatives in USDOJ law enforcement diplomacy, can and should be complimented by an additional new initiative—the informal efforts of U.S. lawyers and judges who have personal relationships with foreign counterparts, especially in Japan.

As globalization has accelerated over the past decade, international child abduction has been a slowly growing problem for all nation-states. The international child abduction problem will only be exacerbated with the accelerating pace of globalization, and international child abduction has markedly increased in recent years.

At the same time, global business, commerce, and cultural exchange has brought more and more U.S. lawyers and judges into working relationships that are routinely exercised outside the formal channels of USDOS foreign diplomacy and USDOJ law enforcement diplomacy. I refer here to the multitude of U.S. lawyers and judges (civilian, military, and government) who are in frequent, regular contact with foreign lawyers and judges outside the formal channels of either USDOS foreign diplomacy or USDOJ law enforcement diplomacy.

I have personal knowledge of and experience with the power of informal networking by and between U.S. lawyers and judges and foreign lawyers and judges who are involved in global business, commerce, and cultural exchange. I characterize the array of informal proactive and remedial actions in this arena as “informal legal diplomacy.” Informal legal diplomacy cannot and should not be underestimated as a tool to effect the return of U.S. citizen-children. If properly activated, informal legal diplomacy may be the most powerful tool available to bring enough pressure to bear that open cases are resolved.

#### *Recommendation 3*

USDOS foreign diplomacy to address international child abduction most certainly should be continued at the highest levels, and as robustly as pos-

sible, with a focus upon aggressive action to resolve the open cases that languish year after year.

*Recommendation 4*

USDOJ law enforcement diplomacy most certainly should be engaged to open a new front from which to aggressively attack the international child abduction problem. Again, the focus should be upon the open cases in which the location of the U.S. citizen-child(ren) and the criminal perpetrator are known because, to date, the criminal fugitive from U.S. justice has been given safe haven in a foreign country.

*Recommendation 5*

USDOS foreign diplomacy and USDOJ law enforcement diplomacy should unequivocally communicate (i.e. loudly, clearly, and often) that it is unacceptable for any foreign nation to harbor a criminal kidnapping fugitive from U.S. justice who has violated the human rights of the U.S. citizen-child(ren) they abducted and their left-behind U.S. citizen-parent.

*Recommendation 6*

Informal legal diplomacy can and should be brought to bear on the problem by a USDOJ campaign to reach U.S. lawyers and judges, raise their awareness of the international child abduction problem, and call upon them to informally press upon their foreign counterparts for the return of U.S. citizen-children illegally abducted in violation of U.S. law.

*Recommendation 7*

Recognize that a child has a human right to frequent, continuing, unfettered access to each parent, so as to enjoy a meaningful parent-child relationship with each parent.

A child's right to a meaningful parent-child relationship with each parent is a human right of the first order, and fundamental to the dignity and well-being of every human being. It follows that the first order of business for every government is to protect the human rights of the child-citizen. Otherwise, the essential building block upon which the society is based, the family, is weakened in a way that weakens both the society-at-large and the government. Weakness in recovery of U.S. citizen-children illegally abducted to foreign nations in violation of U.S. law signals a weakness of national will that threatens U.S. national security.

*Recommendation 8*

Recognize "U.S. jurisdictional cases" as a subset of international child abduction cases, as distinguished from "foreign jurisdictional cases."

The population of worldwide international child abduction cases may be categorized in many ways. It is useful to consider a fact-based categorization stemming from the fact-pattern underlying each individual case. Established "conflicts-of-laws" principles of both U.S. domestic and international law operate so as to give jurisdictional primacy to the nation that first asserts legal jurisdiction over both the child(ren) and the subject matter of parental rights to possession of the child(ren).

For purposes of discussion in this paper, a "U.S. jurisdictional case" may be defined as one in which—prior to the abduction—

- Each parent and their child(ren) were physically within the U.S., that is, within the geographic jurisdiction of the United States;
- Each parent and their child(ren) were subject to the exercise by a U.S. court of "personal jurisdiction" a/k/a "in personem jurisdiction";
- Each parent and their child(ren) were subject to the exercise by a U.S. court of "subject matter jurisdiction" over each parent-child relationship; a U.S. court obtained personal jurisdiction over each parent and their child(ren);
- The U.S. court asserted subject matter jurisdiction over the parent-child relationship of each parent;
- The U.S. court adjudicated—as between the two parents—possession of the child(ren); and
- The U.S. court entered written orders to give effect to the judgment—usually including surrender of the child(ren)'s passport, specific restrictions on the child(ren)'s travel outside to geographic jurisdiction of the U.S. court, etc.

For purposes of discussion in this paper, a "foreign jurisdictional case" may be broadly defined as one that is not a "U.S. jurisdictional case," that is, any case in

which the facts prior to abduction of the child(ren) did not result in lawful exercise by a U.S. court of personal jurisdiction over each parent and their child(ren) and subject matter jurisdiction over the parent-child relationship of each parent.

The key and most conspicuous fact of the U.S. jurisdictional case is that the child was kidnapped from within the U.S. and taken to a foreign country, so that U.S. law has primacy and controls the disposition of the kidnapping case. In contrast, the key and most conspicuous fact of the foreign jurisdictional case is that the child was already outside the U.S. when kidnapped, so that U.S. law does not have primacy and control the disposition of the kidnapping case.

*Recommendation 9*

Recognize that in a U. S. jurisdictional case, the U. S. court has no meaningful authority to address a post-judgment international child abduction unless and until both the perpetrator and the abducted child are physically present before the court in the U.S. Consequently, an international child abduction case is beyond the reach of the U. S. court to resolve without decisive intervention by the United States.

When, in a U.S. jurisdictional case, a U.S. court has adjudicated—as between the two parents—possession of the U.S. citizen-child(ren), and then there is an abduction to Japan, the act of abduction simultaneously constitutes:

- An act of civil contempt or criminal contempt, or both, of the U.S. civil court orders—punishable by the U.S. court that entered the orders prior to the abduction—with fines or incarceration, or both;
- An act of criminal conduct punishable by U.S. criminal law enforcement authorities (either state or federal, or both) with fines or incarceration, or both;
- An act of tortious interference with the parental rights of the left-behind U.S. citizen-parent punishable un a U.S. civil court by a civil action for monetary damages paid from the perpetrator to the left-behind U.S. citizen-parent.

However, none of these remedial measures is actionable unless and until both the perpetrator and the abducted child are physically in the U.S. and present before the U.S. court(s).

Consequently, an international child abduction case is beyond the reach of the U.S. court (that obtained jurisdiction prior to the abduction) to resolve without decisive intervention by the United States that results in the physical return of both the perpetrator and the abducted child back to the U.S. court.

*Recommendation 10*

Recognize an international child abduction case is beyond the reach of any U.S. citizen-parent to resolve without decisive intervention by the United States.

When viewed from the perspective of a left-behind U.S. citizen-parent, a U.S. jurisdictional case is the most egregious kind of international child abduction case because the U.S. legal system failed in the first instance to protect and preserve their parent-child relationship, and then that failure is compounded by the failure of U.S. diplomatic and legal means to effect either the prompt recovery of their child(ren) or the punishment of the criminal fugitive who kidnapped the child(ren).

The manifest injustice of all of this is exacerbated when the U.S. citizen-child is abducted to Japan because Japanese policy ignores lawful U.S. court orders and gives refuge in Japan to the criminal fugitive.

In many U.S. jurisdictional cases, the left-behind U.S. citizen-parent knows where in Japan the perpetrator is living with the abducted child(ren), but Japanese policy allows the perpetrator to hide in plain sight behind a wall of protection built and maintained by Japanese policy.

To date, that wall has been strong enough that no U.S. citizen-child abducted to Japan has ever been returned by U.S. diplomatic or legal means. That is a sorry state of affairs that must be ended at the earliest possible moment.

In every U.S. jurisdictional case, the left-behind U.S. citizen-parent has every right to ask of their U.S. government why the reach of the United States of America is too short or too weak to get their child(ren) back from Japan and punish the criminal wrongdoer who took the child(ren).

*Recommendation 11*

Recognize that foreign jurisdictional cases have little basis for resolution beyond the exercise of robust foreign diplomacy by USDOS. On the other hand, U.S. jurisdictional cases not only have the exercise of robust foreign diplomacy by USDOS as a basis for resolution, they also have as additional basis for resolution the exercise of robust law enforcement diplomacy by



USDOJ and the vigorous exercise of informal legal diplomacy by U.S. lawyers and judges.

In every diplomacy context involving a U.S. jurisdictional case, the application of well-established “conflicts-of-laws” principles will result in both a moral and legal position favorable to the return of the perpetrator and abducted child(ren) to the U.S. court that had lawfully established and exercised jurisdiction prior to the abduction.

The conflicts-of-laws analysis is straightforward and may be simplistically summarized as follows. Determine whether “personal jurisdiction” over each parent and their child(ren) and “subject matter jurisdiction” over their parent-child relationships were established in a U.S. court prior to the abduction of the child(ren).

If a U.S. court obtains jurisdiction and adjudicates parental rights prior to the abduction without any competing jurisdictional claim from a foreign court, then use existing law enforcement mechanisms (such as U.S.F.B.I. and Interpol arrest warrants) to effect arrest of the perpetrator wherever they may be found.

Upon arrest of the perpetrator, then use existing law enforcement mechanisms (e.g. international “extradition” principles) to obtain return of the perpetrator to the U.S. court that had jurisdiction over the child(ren) prior to the abduction.

If both a U.S. court and a foreign court assert jurisdiction over the same child(ren), then use existing international “conflicts-of-laws” principles to resolve the conflicting claims of jurisdiction.

#### *Recommendation 12*

Recognize that in a U. S. jurisdictional case, the perpetrator is aided and abetted in the actual abduction by various accomplices who should be aggressively identified, located, arrested, and punished as criminal co-conspirators of the perpetrator.

USDOJ law enforcement officials at all levels should unequivocally communicate (i.e. loudly, clearly, and often) to U.S. federal, state, and local law enforcement agencies:

- That it is unacceptable for anyone to aid, abet, or harbor a criminal kidnapping fugitive from U.S. justice who has violated the human rights of the U.S. citizen-child(ren) they abducted and their left-behind U.S. citizen-parent;
- That U.S. federal, state, and local law enforcement agencies should aggressively investigate and prosecute international child abduction cases as high law enforcement priority;
- That arrest, extradition, and prosecution of criminal kidnapping perpetrators (and their accomplices) by both U.S. and foreign law enforcement authorities executing U.S.F.B.I. and Interpol warrants should routinely occur as a matter of reciprocity among all nation-states;
- That conspicuous, aggressive investigation and prosecution of international child abduction cases by U.S. federal, state, and local law enforcement agencies will serve as the best deterrent of future international child abduction cases; and
- That the USDOJ expects full cooperation on international child abduction cases from not only foreign law enforcement authorities, but also U.S. federal, state, and local law enforcement authorities. Constitutional rights of parent and child

While the Constitutional rights of each U.S. citizen-parent and each abducted U.S. citizen-child is a subject beyond the scope of this paper, it is noteworthy that in various contexts, the Supreme Court of the United States has recognized and protected parental rights under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution.

Throughout the modern era, the Supreme Court of the United States has consistently emphasized the importance of the family and repeatedly described the rights of citizens in parenting and family rights as “fundamental” or “basic civil rights.”

- “[T]he right ‘to marry, establish a home and bring up children,’ ... and ‘the liberty to direct the upbringing and education of children,’ ... are among ‘the basic civil rights of man.’” *Griswold v. Connecticut*, 381 U.S. 479, 503 (1965) (Mr. Justice White, concurring.)
- “The rights to conceive and to raise one’s children have been deemed essential ... basic civil rights of man ... far more precious ... than property rights ... It is cardinal with us that the custody, care, and nurture of the child reside first in the parents. ... The integrity of the family unit has found protection in the Due Process clause of the Fourteenth Amendment, ... the Equal Protection

Clause of the Fourteenth Amendment, and the Ninth Amendment . . .” (citations omitted). *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

- “[T]he rights of fatherhood and family were regarded as essential and basic civil rights of man.” *Vlandis v. Kline*, 412 U.S. 441, 461 (1973) (Dissent of Mr. Chief Justice Burger and Mr. Justice Rehnquist).
- “The rights to conceive and to raise one’s children have been deemed ‘essential,’ ‘basic civil rights of man,’” *Weinberger v. Salfi*, 422 U.S. 749, 771 (1975).
- “[O]ne of the ‘basic civil rights of man’ is the right to marry and procreate.” (citations omitted) *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 463 (1985).
- “[T]he liberty . . . to direct the upbringing and education of children, . . . are among ‘the basic civil rights of man.’” *Thornburgh v. American Coll. of Obst. & Gyn.*, 476 U.S. 747, 773 (1986) (Mr. Justice Stevens, concurring).
- “The rights to conceive and to raise one’s children have been deemed ‘essential,’ . . . ‘basic civil rights of man,’” (citations omitted.) *Hodgson v. Minnesota*, 497 U.S. 417, 447 (1990).
- “[I]t cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000).

#### *Recommendation 13*

It is axiomatic that in the American system of justice the parent-child relationship of each parent and child is protected as a fundamental right of Constitutional proportions. More so than any other category of fundamental rights recognized in American law, the human rights of each abducted U.S. citizen-child and each left-behind U.S. citizen-parent deserve protection by the United States. Yet, in the typical international child abduction case, these Constitutional rights are extinguished by abduction of the child and they remain extinguished unless and until the abducted U.S. citizen-child is returned to their left-behind U.S. citizen-parent. The United States of America can and should use every possible means to resolve open international child abduction cases as an urgent law enforcement priority.

#### *Recommendation 14*

Recognize the need for USDOJ to establish and maintain an official, central data repository and clearinghouse for data related to both at-risk and abducted U.S. citizen-child(ren).

As a function of USDOJ law enforcement duties, USDOJ should establish an official, central repository and clearinghouse for data related to both at-risk and abducted U.S. citizen-child(ren), including a registry for U.S. court orders that in any way restrict travel by U.S. citizen-child(ren) outside the United States.

The utility of the registry would be multi-faceted. For example, the same registry could serve a public notice function, and as a point of reference for any exit control officer or consular official to learn of U.S. court orders for passport surrender, and as an authoritative resource for both domestic and foreign law enforcement personnel to determine the status of any particular at-risk or abducted U.S. citizen-child.

Once the functions of the registry are defined, its existence should be widely communicated to judges, lawyers, and U.S. federal, state, and local law enforcement agencies, so they are aware of the registry as a resource.

#### *Recommendation 15*

Recognize the need for enhanced exit controls over the departure from the United States of minor U.S. citizen-children in international travel.

In the recent Federal Aviation Administration (FAA) Reauthorization Act, Section 809 required the Comptroller General to study and report to Congress “. . . to help determine how the [FAA] . . . could better ensure the collaboration and cooperation of air carriers . . . and relevant Federal agencies to develop and enforce child safety controls for adults traveling internationally with children.”

The Commission should make a written request to the Comptroller General as to the status of the study and report to Congress. If the report has been submitted to Congress, the Commission should issue a press release identifying the study and report and how members of the press and public may obtain a copy. If the report has not yet been submitted to Congress, the Commission should make a formal writ-

ten request for the Comptroller General to make every possible effort to expedite completion of the study and submission of the report to Congress.

*Recommendation 16*

Recognize the critical role of the Tom Lantos Human Rights Commission of the United States House of Representatives to sound the clarion call to all U.S. governmental agencies for:

- Constant and unrelenting urgency in resolving the open case of each and every kidnapped U.S. citizen-child;
- Dramatically enhanced and improved USDOS foreign diplomacy in open foreign jurisdictional cases;
- New USDOJ law enforcement diplomacy in open U.S. jurisdictional cases;
- New informal legal diplomacy in all open cases, both foreign and U.S. jurisdictional; and
- Decisive, proactive implementation of new safeguards to prevent new cases of international abduction of U.S. citizen-children.

*Conclusion*

I sincerely appreciate the opportunity to offer my thoughts for the record of the Hearing on International Child Abduction before the Tom Lantos Human Rights Commission of the United States House of Representatives in Washington, D.C. on 2 December 2009. I urge the Commission to act with urgency to resolve all open foreign and U.S. jurisdictional cases with dispatch.

Respectfully submitted,  
Stanley Charles Thorne, *Amarillo, Texas 79109*

STATEMENT SUBMITTED BY BINDU PHILIPS

Mr. Chairman and distinguished members of the Committee, it is my honor and privilege to submit this testimony for the record today and I thank you for taking your valuable time to hear of my plight. My name is Bindu Philips and it is my ardent hope that my story shall capture your attention today.

While I have held many roles in my life, none has been more meaningful to me than that of motherhood. Twelve years ago, I was blessed to become a mother of twin boys—my precious children, Albert Philip Jacob and Alfred William Jacob. When my children were born my ex-husband, Sunil Jacob, and I made a joint decision that I would stay home with them and be their primary caretaker. I was an active and loving mother in every aspect of our children's lives. My children came first in everything I did and in every decision I made.

Tragically, my world and that of my innocent children, was violently disrupted by my ex-husband, Sunil Jacob in December of 2008, when he orchestrated the kidnaping of the children during a vacation to India. I would note that the children, my ex-husband and I are American citizens and that the children were born in America, which is the only nation they identified with as home.

Sunil Jacob worked in the financial industry, and was laid off by his employer, Citi Group, late in 2008. My ex-husband pressed me to agree to a family vacation to India during the children's winter break. My ex-husband was both physically and emotionally abusive to me, and I feared the consequences of refusing him. I had seen return plane tickets dated January 12, 2009, and I had every reason to believe that we would be home in a few weeks to resume our life in the United States. Had I known what would follow I would never have boarded that flight to India.

On reaching India I was not only physically and emotionally abused by my ex-husband but also by his parents. I was finally, very cruelly separated from my children with no means to communicate with them.

I could not bear the separation from my children and on learning that they were admitted to a local school in India, I approached the Principal requesting that I be allowed to see my children and I was granted permission. As soon as my ex-husband learned about this, he transferred them to another school and gave the school strict orders that neither the mother nor any of the maternal relatives should be allowed to see or communicate with the children.

I contacted the U.S. Consulate in Chennai, India, for assistance. Yet absent an order granting me custody of the children, there was little that the consulate could do for me.

I would like to point out that Sunil Jacob's plan to kidnap the children and sequester them in India out of my reach was not a decision that was quickly or lightly reached. Subsequent events showed how carefully he had planned his actions.

Unable to communicate with the children, I ultimately returned to the United States four months later on April 9, 2009. I literally came home to an empty house. Our residence in Plainsboro was devoid of all furniture and possessions and both cars were gone from the garage. While in India, my ex-husband had his 3 friends strip the entire house of everything inside. They took everything, leaving me with not even a single photograph of my children. He had not paid the mortgage on the Plainsboro home, nor the utilities or nor an equity line of credit which he had transferred to India, and left me with this additional financial burden.

Heart broken and impoverished, I had to start from nothing and survived initially on the graciousness of good people. My neighbors allowed me to move in with them briefly and a local church gave me a car. Shortly thereafter, I found employment, secured an apartment and purchased a car of my own.

Over the last four and a half years I continue to uncover information that shows how deceptive my ex-husband Sunil Jacob is. The investigation reports from Plainsboro Police Station show that he had planned the move to India as early as March of 2008. He had communicated his intentions to the principal of the children's elementary school, without my knowledge. In November of 2008, one month before the trip to India, Sunil Jacob obtained an Indian visa for him and the children, known as OCI, Overseas Citizen of India that would allow him and the children to stay for an extended period of time in India, since the children are American citizens and without the OCI visa they can stay in India only for 6 months. Indian OCI visa is granted to minor children only after the approval of both parents. Sunil Jacob obtained this visa by fraudulent means as I have not signed on any OCI application for my children. Sunil Jacob, an American citizen, deceptively abducted my American citizen children and is staying in India, out of my reach and that of the Hague Convention, indefinitely. (Please note India does not honor dual citizenship.) I came to know that he has two software firms in India and recently got information that he is also the owner of a resort in India that was registered in 2007; that's when we were still married. I also came to know that he has remarried. In 2013, Sunil Jacob's family member confirmed with the Plainsboro police that the separation of the children from me was planned well in advance.

Frustrated but determined, on May 14, 2009, I filed a petition with the Superior Court of NJ for custody of our children. Sunil Jacob tried to delay the matter by arguing that the U.S. did not have jurisdiction to hear the case, but the American Courts, both at the superior court and appellate levels, have held that jurisdiction was indeed proper in the Superior Court Family Part. My ex-husband was in contempt of the court order granting me parenting time over the children' winter break although he participated in this hearing over the phone. The flight information was conveyed to Sunil Jacob by the U.S. consulate, my American attorney, my father and me. The Honorable Superior Court of New Jersey granted me residential and legal custody of the children. The Plainsboro police and FBI have issued arrest warrants against Sunil Jacob. Please note in 2007, while Sunil Jacob was working at Citi Group, he was involved in an unknown incident at his office that resulted in an FBI enquiry on him.

It is significant that the Honorable Barry A. Weisberg, Judge of the Superior Court Family Part in New Jersey, not only granted me sole custody of the children and demanded their immediate return to the United States, but also held that Sunil Jacob must comply with a psychiatric evaluation and a risk assessment upon his return of the children. Clearly, Judge Weisberg, an experienced jurist in the Family Part, felt that Sunil Jacob's conduct was evidently that of a man who was disturbed. I fear for the safety of our children and their emotional wellbeing in their father's care.

Despite having kidnapped our children, Sunil Jacob filed for custody of the children in the Indian Courts after the U.S child custody was filed. This case is currently pending at the Honorable Supreme Court of India. In addition to wrongfully keeping the children from me, Sunil Jacob has thwarted every effort I have made to even speak to our children and let them know that I love them. Beyond the kidnapping, Sunil Jacob continues to file false court cases against members of my family and me in India and is brain washing and alienating the children from their own mother. He believes that if his campaign of harassment becomes too much to bear, we will back away from the quest for me to regain custody of our children. He must learn that this will not happen; he must be held accountable for his reprehensible actions.

On my children's birthday in December 2013, I had birthday wishes published in a local Indian newspaper, since Sunil Jacob has not allowed me to communicate with my children even on their birthday. I also created a website (<http://albertalfredbindu.blogspot.com/>) so that I could send my love, motherly advice and let my children know that I am trying my best to be reunited with them. Sunil

Jacob filed two more Indian court cases on me in December and obtained a court order preventing me from posting new messages on the website. He manages to get court orders and then drags the court case for years. The Superior Court of New Jersey awarded me sole legal and residential custody of the children in December 2009 and I am not able to see or communicate or even post messages to my own beloved children.

I have put everything I have into my mission to be reunited with my children. I have rebuilt myself financially and made a viable career path for myself. I have made a new home for the children to return to, as I was forced to sell the marital home to satisfy the debts my ex-husband created. It must be remembered that America is the children's home—it is where they were born, where the children they lived. They must be brought home to American soil. I implore the Senate to assist me in righting the wrongs that have been done to the children and me by my x-husband, Sunil Jacob.

Every day I awaken to the heart-wrenching reality that I am separated from the children that I love more than anything in the world. I have done everything that I can think to do in this nightmarish situation, and I will never give up on my children. Yet, I am here because I can no longer fight the good fight on my own. I respectfully request that you, the members of the Senate, help me to make my voice heard in a way that shall be meaningful and allow me to be reunited with my children who need the love and nurturing of their mother.

Please help me to end this nightmare that Sunil Jacob has created for my family. Please help my precious children and me—I do not want to know and cannot imagine a meaningful life without them. Please act not just for the benefit of two innocent children and their broken-hearted mother; please think of all the other children and parents caught in similar nightmarish situations due to hostile-minded parents who abduct children to overseas nations.

I thank Senator Robert Menendez and Congressman Chris Smith for being champions for the noble cause of reuniting the children with their left behind parents.

Thank you from the bottom of my heart for accepting my humble and fervent plea during your otherwise pressing schedules. I shall always be grateful for this time and for the opportunity to share my story and that of my children.

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#### REVIEW OF ACCULTURATION PSYCHOLOGY RESEARCH

*Prepared by Sarah L. Lyons Doctoral Candidate in Psychology,  
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Many international parental abduction cases involve bicultural children who are moved from the country of one parent to the country of the other. An extensive psychological literature speaks to the psychological consequences of negotiating cultural identities, although this research has not been applied to the issue of international parental abduction.

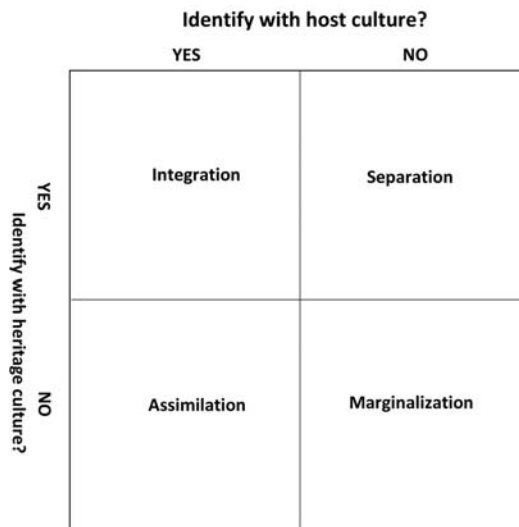
Acculturation is widely defined as “those phenomena which result when groups of individuals having different cultures come into continuous first-hand contact, with subsequent changes in the original culture patterns of either or both groups.”<sup>1</sup> . In other words, acculturation is a process that one undergoes during ongoing exposure to multiple cultures, and it applies to immigrants, refugees, sojourners, and expatriates. It is also relevant for children of immigrants and bicultural individuals whose parents come from different cultural backgrounds. Individual modes of acculturation have been described in terms of an acculturation strategy framework.<sup>2,3</sup> Individuals display preferences for:

- How much they wish to maintain ties with their culture of origin, or heritage culture
- The extent to which they want to have contact with people outside their cultural group and participate in the mainstream society of the culture of settlement, or host culture

Preferences for these two dimensions are reflected in attitudes and behavior across a number of domains such as culture, customs, language, values, neighborhood community, marriage, and employment . Acculturation strategies have frequently been described in terms of four categories developed by psychologist John Berry:<sup>2</sup>

- *Assimilation*: These individuals primarily value participating in the larger host society and forgo contact with their culture of origin community. They identify with being a national of the country of settlement and may have abandoned their family's cultural traditions or only speak the language of the host society.

- *Separation*: These individuals prioritize contact with their culture of origin community and decline to participate in mainstream society. These individuals may be reluctant to adopt new customs or traditions and prefer not to socialize with people who do not belong to their own cultural group.
- *Integration*: These individuals seek to participate in the larger society while also maintaining cultural values, norms and customs from their culture of origin. These individuals are able to experience belongingness in the mainstream community while not sacrificing their heritage culture.
- *Marginalization*: These individuals are not interested in maintaining their culture of origin or forming relationships with others outside the cultural community.<sup>6,235</sup> They lack a sense of belongingness to either culture and do not feel as if they fit in.



**Figure 1. Berry's Acculturation Model**

#### *Outcomes for Acculturation Strategies*

Decades of research have illuminated outcomes for each of these strategies. Across various studies of immigrants, integration is typically found to be the most preferred of the acculturation strategies, and marginalization the least preferred.<sup>7</sup> These strategies are associated with a number of psychological, health and life outcomes. The outcomes of acculturation strategies are often discussed in terms of psychological (i.e., well-being, mental health) and sociocultural (i.e., ease in social situations) adaptation.<sup>89</sup>

Across the board, integration has repeatedly been associated with psychological well-being and is related to less acculturative stress, which is the psychological impact of adaptation to a new culture.<sup>10,11</sup> Integration is also related to positive long-term health outcomes,<sup>12,10</sup> greater psychological and sociological adaptation including school adjustment and behavior issues, and higher self-esteem as compared to the separation or marginalization strategies.

In comparison, marginalization is linked with a number of negative outcomes. Marginalization has been related to alienation, psychosomatic stress and deviance, including delinquency, substance and familial abuse.<sup>6</sup> Marginalization has been associated with personality characteristics such as high unsociability, neuroticism, anxiety, and closed-mindedness.<sup>12</sup> The marginalized are also susceptible to the experience of anomie, which refers to a sense of instability or uncertainty that comes from a lack of purpose.<sup>14</sup>

The assimilation and separation strategies are more or less beneficial depending on the context. The separation and assimilation strategies fulfill certain belongingness needs that can help diminish the effects of acculturative stress; having a sense of community and a social support system in place prepares individuals to contend with personal hardships.<sup>15</sup> However, each of the strategies comes with drawbacks as a consequence of alienation from either the host or heritage culture.

Assimilation into the mainstream culture distances the immigrant from their heritage culture, and can lead to ethnic- and self-hatred.<sup>16</sup> Assimilation has been associated with disorders such as depression, substance abuse and anorexia, delinquency and family conflict.<sup>17,18</sup> However, separation has also been associated with depression, obsessive-compulsive disorder and withdrawal,<sup>19</sup> general dissatisfaction in life, as well as negative life events like divorce and hospitalizations.<sup>20</sup> The separation strategy keeps immigrants from feeling comfortable and competent in their new environment, and can lead to loneliness and isolation.<sup>16</sup>

#### *Contextual Factors Surrounding Acculturation Strategies and Outcomes*

It is implied that an acculturation strategy is a matter of choice; the individual prefers to associate with one culture or another. In fact, immigrants' choice of acculturation strategy is constrained by the options for socialization in their environment. The individual's acculturation strategy in some part depends on the climate of the host society. For a person to endorse the separation strategy there must be a community of other individuals from the heritage culture; for a person to endorse the assimilation strategy, the host society must demonstrate willingness to incorporate immigrants as members of their society. National policies and institutional ideologies to some extent constrain the acculturation choice of immigrants.<sup>21,5</sup> Societies that are receptive to multiculturalism encourage integration strategies; societies that subscribe to the "melting pot" metaphor of immigration are likely to produce assimilation strategies; societies where minority groups are segregated from the rest of society will result in the adoption of the separation strategy; finally, societies that are not welcoming to immigrants (i.e., have no immigrant communities) and have excluded them from participating in mainstream society will force individuals into the marginalization strategy.

Many factors beyond acculturation strategy influence immigrants' adjustment to society and level of acculturative stress. Adjustment is related to age of immigration, in that it is easier to adapt to a new environment at a younger age, although adolescents may struggle with identity issues.<sup>6,10</sup> Cultural distance between the culture of origin and culture of settlement also plays a role; for cultures different across dimensions such as values, norms and religious beliefs, adjustment is more challenging. There are gender differences in adjustment patterns; females have a more difficult time than males due to different definitions of gender roles across cultural contexts. Education affects the process as well; individuals who are more highly educated have more job mobility and possess higher status, and also may be equipped with better tools to handle acculturative stress.<sup>6,10</sup> Finally, individual characteristics related to personality, psychopathology and self-esteem act as protective or risk factors against acculturative stress.<sup>6,10</sup> It is important to note that despite challenges inherent in the acculturation process, many immigrants are actually better off than their native-born peers with respect to outcomes such as health, education and criminal behavior, a phenomenon known as the immigrant paradox.<sup>16</sup>

Given that international parental child abduction is a multinational issue and each case is characterized by unique circumstances, the previously described outcomes for acculturating individuals are likely to depend on a number of cultural and individual factors.

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