

**CHRISTOPHER H. SMITH**

4TH DISTRICT, NEW JERSEY

CONSTITUENT SERVICE CENTERS:

MONMOUTH  
112 Village Center Drive  
Freehold, NJ 07728-2510  
(732) 780-3035

OCEAN  
405 Route 539  
Plumsted, NJ 08514-2303  
(609) 286-2571; (732) 350-2300

MERCER  
4573 South Broad Street  
Hamilton, NJ 08620-2215  
(609) 585-7878

2373 Rayburn House Office Building  
Washington, DC 20515-3004  
(202) 225-3765

<http://chrissmith.house.gov>



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## **“The Goldman Act to Return Abducted American Children: Reviewing Obama Administration Implementation”**

*Chairman Chris Smith (NJ-04)*  
*Hearing of the Subcommittee on Africa, Global Health,*  
*Global Human Rights, and International Organizations*  
*March 25, 2015*

The committee will come to order. I want to thank all of you—especially all of the left-behind parents I see in the audience—for joining us this afternoon to continue and increase attention on international parental child abduction, whose victims include primarily children denied the love and attention of one of their parents, and parents cut off from the children they love.

Every year, approximately 1,000 American children are unlawfully removed from their homes by one of their parents and taken across international borders. Less than half of these children ever come home.

Most of the left-behind parents in the audience today have not seen their children in years and know all too well the financial, legal, cultural, and linguistic obstacles to bringing their children home from a foreign country. Many of you had already been through U.S. judicial proceedings prior to the abduction, and the courts had settled custody and visitation, only to have a kidnapping spouse defy a court order. Others of you were caught completely by surprise when a spouse’s vacation turned into an abduction, a phone call in the middle of the night telling you that you will never again see your child.

Your suffering is exponentially compounded by knowledge of the pain caused to your child by the separation. Child abduction is child abuse. Parentally-abducted children are at risk of serious emotional and psychological problems, and may experience anxiety, eating problems, nightmares, mood swings, sleep disturbances, aggressive behavior, resentment, guilt, and fearfulness.

These young victims, like their left-behind parents, are American citizens who need the help of their government when normal legal processes are unavailable or have failed.

In 1983, the United States ratified the Hague Convention on the Civil Aspects of International Child Abduction to try to address abduction and access. This convention creates a civil framework for the quick return of abducted children and for rights of access for left-behind parents. Absent extenuating circumstances, the child, or children, are to be returned within 6 weeks to his or her country of habitual residence for the courts there to decide on custody, or to enforce any previous custody determinations.

The Convention has helped return some children but implementation has been unpredictable and spotty at best. Susceptible to abuse by taking parents or judges who either don't understand their obligations under the Convention or are unwilling to abide by them, the Convention has too often been stretched to provide cover for the abduction, rather than recovery of the child.

Some Hague Convention parties are simply not enforcing legitimate return orders. The State Department's 2014 Hague Convention Compliance Report highlights four countries—Brazil, Mexico, Romania, and Ukraine—that habitually fail to enforce return orders. Other countries—Costa Rica, Guatemala, Honduras, and the Bahamas—are non-compliant with the Convention.

In other words, abducted American children are not coming home from these countries and so many other countries where the Convention operates weakly, or with which the U.S. has no bilateral agreement of any kind.

To give one more example, Jeffery Morehouse a left behind parent will testify today that “there have been 400 cases of U.S. children kidnaped to Japan since 1994.” We do not know of a single case, however, in which the Government of Japan has issued and enforced an order for the return of an abducted child to the United States.

And, I must emphasize, that since they have signed the Hague, Japan's efforts have been breathtakingly unresponsive especially for abductions that occurred prior to their ratification of the Hague Convention.

Mr. Morehouse will testify that, “one year ago next week, at the very moment Japan acceded to the Hague Abduction Convention, parents joined us to hand-deliver 30 Article 21 Access applications (I joined those parents at the Japanese Embassy)...none of the BAC Home parents have received access to their kidnapped children. Japan's implementation of the Hague Abduction Convention is an abysmal failure. Sanctions under the Goldman Act will provide some of the necessary public pressures on Japan to create change to this ongoing human and family rights crisis.”

The status quo is simply unacceptable.

Over the last 5 years, many of you here today helped me write and pass through the Congress the Sean and David Goldman Child Abduction Prevention and Return Act. Today's hearing occurs more than seven months after the Goldman Act became law and gives us an

opportunity to hear from the State Department and parents whether the bill's key provisions are being implemented according to the law.

A brief refresher on Sean and David: David Goldman spent over 5 agonizing years trying to legally rescue his son, Sean, from an abduction to Brazil, which is a signatory nation, like the United States, to the Hague Abduction Convention.

Despite Mr. Goldman's airtight case that demonstrated an egregious example of both child abduction and wrongful retention, the Hague treaty was unavailing, and the outcomes in the Brazilian courts largely proved infuriating, infirm, and ineffective.

David Goldman waged his case by the book and won judgments in the New Jersey courts. Yet both Sean and David were made to suffer emotional pain for over half a decade as one delaying ploy after another was employed by the abducting party. In the end, because of the father's abiding love for his son and an indomitable will, the Goldmans today are united and happy.

To underscore: the Goldman Act was not intended to simply reform the system, but to bring about a fundamental sea change in U.S. diplomacy so that State Department officials would see themselves as advocates for the return of abducted American children.

Now under the Goldman Act, when a country fails to appropriately address an abduction case pending more than 12 months, the law requires the Secretary of State to take action. When a country has more than 30% of its US cases pending for more than a year, the law requires the Secretary of State to designate the country as "Non-Compliant" in an annual report, and take action.

The Goldman Act specifically lists the increasingly escalating actions that Congress has in mind, from a demarche—or a protest through diplomatic channels—to a public condemnation to a delay or cancellation of one or more bilateral visits and even the withdrawal, limitation, or suspension of foreign assistance including non-humanitarian aid and including security assistance to the central government of a country. These are serious sanctions that must be seriously applied by a country that takes parental child abduction seriously.

We may also request extradition where appropriate.

If these measures sound pointed, it is because they are intended to focus the destination country on quick and accurate resolution of abduction and access cases, and we hope to find out today, from Ambassador Jacobs, how these tools are being used, and with what frequency.

The Goldman Act was written to cover countries that have signed the Hague Convention, such as Brazil; countries that have not signed the Convention, such as India; and countries that have a mix of open abduction cases from before and after signing the Hague Convention, such as Japan.

In 2013, India was the number three destination in the world for parents who abducted from the United States. Currently, there are 64 known open abduction and denial of access cases involving India. And yet the United States does not have any sort of resolution mechanism with India. Moms and dads left behind in the United States are forced to enter a labyrinthine foreign court system known for its incessant appeals and multi-year delays.

But now the Goldman Act applies. India will now face real penalties for any case that has been pending for more than one year, and will be “named and shamed” in the State Department’s report. As with the State Department’s annual trafficking report, there is morally suasive value in simply reporting what a country does, and some countries will I am sure respond to such moral pressure.

Thus we expect the State Department to apply these penalties zealously, and to work with India on establishing a bilateral agreement for the efficient and fair resolution of abduction and access cases. If the State Department faithfully applies the law as written, it will be in India’s interest to come to the negotiating table.

The same holds true for Japan, even though Japan recently signed the Hague Convention. In the upcoming April report, Congress expects that Japan will be evaluated not just on its handling of new abduction cases after it joined the Hague Convention last year, but on its work to resolve ALL open abduction cases, including the 67 cases I and others have been raising with the State Department for the last 5 years.

Among such cases is that of Michael Elias, who has not seen his children, Jade and Michael Jr., since 2008. Michael served as a Marine who saw combat in Iraq. His wife, who worked in the Japanese consulate, used documents fraudulently obtained with the apparent complicity of Japanese consulate personnel to kidnap their children, then aged 4 and 2, in defiance of a court order, telling Michael on a phone call that there was nothing that he could do, as “my country will protect me.”

Her country will protect her, but what is our country doing to protect Michael and his children?

While the State Department has touted Japan’s accession to the Hague Convention as an accomplishment, Japan has said the Convention would only apply in post-ratification cases. As Ambassador Jacobs knows, I and several others predicted that unless a MOU or other bilateral agreement was concluded with Japan, American children and their Left Behind parents will be left behind in perpetuity. I ask to my friends at the State Department, what then is to happen for parents already suffering from abductions prior to ratification? Would they be left-behind again—this time by their own government?

I know Ambassador Jacobs, who is here to testify today, as recently as February 2014 in her testimony before the Senate, stated that she would continue to make “progress with the Japanese government on resolving existing cases in the spirit of the Convention.”

We will have the chance to ask Ambassador Jacobs what progress has been made on resolving existing cases, including that of Michael Elias, and U.S. Navy Captain Paul Toland.

The Goldman Act requires accountability for the Japanese government on the abduction cases open at the time Japan signed the Convention. Unless Japan resolves scores of American cases before the end of next month, nearly 100% of abduction cases in Japan will still be unresolved and Goldman Act penalties will apply.

The Goldman Act has given the State Department new and powerful tools to bring Japan, and other countries, to the resolution table. The goal is not to disrupt relations but to heal the painful rifts caused by international child abduction. I look forward to hearing testimony on the Department's use of the tools Congress has given it and their effect.