INTERNATIONAL CHILD ABDUCTION PREVENTION AND RETURN ACT OF 2011; GLOBAL ONLINE FREEDOM ACT OF 2011; AND INTERNATIONAL FOOD ASSISTANCE IMPROVEMENT ACT OF 2012

MARKUP

BEFORE THE

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS

OF THE

COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

ON

H.R. 1940, H.R. 3605 and H.R. 4141

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INTERNATIONAL CHILD ABDUCTION PREVENTION AND RETURN ACT OF 2011; GLOBAL ONLINE FREEDOM ACT OF 2011; AND INTERNATIONAL FOOD ASSISTANCE IMPROVEMENT ACT OF 2012

TUESDAY, MARCH 27, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH,
AND HUMAN RIGHTS,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:34 p.m., in room 2200 Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the subcommittee) presiding.

Mr. SMITH. The subcommittee will come to order, and I want to thank each and every one of you for being here.

Pursuant to notice, the subcommittee meets this afternoon to mark up H.R. 1940, now titled the Sean and David Goldman International Child Abduction Prevention and Return Act of 2012; H.R. 3605, the Global Online Freedom Act of 2012; and H.R. 4141, now named the Donald M. Payne International Food Assistance Improvement Act of 2012.

[The information referred to follows:]

I

112TH CONGRESS
1ST SESSION

H. R. 1940

To ensure compliance with the 1980 Hague Convention on the Civil Aspects of International Child Abduction by countries with which the United States enjoys reciprocal obligations, to establish procedures for the prompt return of children abducted to other countries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2011

Mr. SMITH of New Jersey (for himself and Mr. WOLF) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on Ways and Means, Financial Services, the Judiciary, and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To ensure compliance with the 1980 Hague Convention on the Civil Aspects of International Child Abduction by countries with which the United States enjoys reciprocal obligations, to establish procedures for the prompt return of children abducted to other countries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "International Child Abduction Prevention and Return Act of 2011".

SEC. 2. FINDINGS; SENSE OF CONGRESS; PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The Department of State's Office of Children's Issues, which serves as the Central Authority for the United States for the operation of 1980 Hague Convention on the Civil Aspects of International Child Abduction, is currently handling approximately 1,793 open cases involving more than 2,488 children abducted by a parent or legal guardian from the United States to other countries. For a variety of reasons reflecting the legal and factual complexity of parental abduction cases and the significant obstacles to recovery, only a percentage of all cases are reported to the Department of State.

(2) In fiscal year 2010, the Central Authority for the United States responded to cases involving 696 children abducted from the United States to countries with which the United States enjoys reciprocal obligations under the Hague Convention, but during that same time period only 360 children were returned from Hague Convention countries to the United States.

(3) The number of outgoing international child abductions reported to the Central Authority for the United States increased by about 60 percent since 2006.

(4) In evaluating the obstacles to recovering children abducted from a parent in the United States, the first difficulty is presented by countries who are signatories to the Hague Convention, but have not acted in compliance with the responsibilities of the Convention. According to the Central Authority for the United States, St. Kitts and Nevis has not acted in compliance with the terms it agreed to as a party to the Hague Convention, and Bermuda, Brazil, Bulgaria, Burkina Faso, Mexico, Honduras, and the Bahamas have demonstrated patterns of noncompliance. The failure of these countries to meet their obligations is found in the actions of their designated central authorities, the performance of their judiciaries, as reflected in the legal process and decisions rendered to enforce or effectuate the Hague Convention, or the ability and willingness of law enforcement to insure the swift enforcement of orders rendered pursuant to the Hague Convention. Argentina, Australia, Austria, Costa Rica, France, Germany, Honduras, Hungary, Israel, Mexico, Ro-

mania, South Africa, Spain, Switzerland, and Turkey all failed to enforce return and access orders in 2010.

(5) The United States and other State Signatories to the Hague Convention have expressed their desire, through the Convention, "to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.".

(6) In evaluating and assessing the problem of the abduction of children from the United States, the Central Authority for the United States in fiscal year 2010 reported that it had been provided notice of 384 cases of parental abductions involving 523 children taken from the United States to countries with which the United States does not enjoy an agreement related to the treatment of parental abduction cases and that are not signatories to the Hague Convention, currently including for abductions and access cases a cumulative total of 156 children in Japan, 94 children in India, 60 children in Brazil, and 29 children in Russia. The number of reported cases likely represents an even smaller per-

centage of the total number of United States children impacted as the process for the location and recovery of abducted children differs significantly with each country, and there is currently no formal protocol for intervening in such cases.

(7) According to the Department of State's April 2010 Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction, "parental child abduction jeopardizes the child and has substantial long-term consequences for both the child and the left-behind parent.".

(8) Abducted children are at risk of serious emotional and psychological problems and have been found to experience anxiety, eating problems, nightmares, mood swings, sleep disturbances, aggressive behavior, resentment, guilt and fearfulness, and as adults may struggle with identity issues, their own personal relationships, and parenting.

(9) Left behind parents may encounter substantial psychological, emotional, and financial problems, and the majority have no means to generate the enormous financial resources required to pursue individual civil or criminal remedies to attempt to secure the return of their children, even if such rem-

edies were available or effective in foreign courts or political systems. Left-behind parents also often have to pursue child custody and other protective orders through expensive litigation at home.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States should set a strong example for other Hague Convention countries in the timely location and return of children wrongly removed from and retained in the United States.

(c) PURPOSES.—The purposes of this Act are to—

(1) protect United States children from the harmful effects of international child abduction and to protect the right of children to exercise parental access with their parents in a safe and predictable way, wherever located;

(2) provide parents, their advocates, and judges the information they need to enhance the resolution of family disputes through established legal procedures, the tools for assessing the risk of wrongful removal and retention of children, and the practical means for overcoming obstacles to recovering abducted children;

(3) establish effective mechanisms to provide assistance to and aggressive advocacy on behalf of parents whose children have been abducted from the

United States to a foreign country, from a foreign country to the United States, and on behalf of military parents stationed abroad;

(4) promote an international consensus that the best interests of children are of paramount importance in matters relating to their custody, and that it is in the best interest of a child to have issues of custody determined in the State of their habitual residence immediately prior to the abduction;

(5) provide the necessary training for military officials and training and assistance to military families to address the unique circumstances of the resolution of child custody disputes which occur abroad, or occur when a parent is serving abroad;

(6) facilitate the creation and effective implementation of international mechanisms, particularly the 1980 Hague Convention on the Civil Aspects of International Child Abduction, to protect children from the harmful effects of their wrongful removal and retention; and

(7) facilitate the compliance of the United States with reciprocal obligations contained in the Hague Convention regarding children wrongfully removed to or retained in the United States.

SEC. 3. DEFINITIONS.

In this Act:

(1) AMBASSADOR AT LARGE.—The term "Ambassador at Large" means the Ambassador at Large for International Child Abductions appointed under section 101.

(2) ANNUAL REPORT.—The term "Annual Report" means the Annual Report on International Child Abductions required under section 102.

(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—Except as otherwise provided, the term "appropriate congressional committees" means the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(4) CENTRAL AUTHORITY FOR THE UNITED STATES.—The term "Central Authority for the United States" has the meaning given such term in article 6 of the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(5) HAGUE CONVENTION.—The term "Hague Convention" means the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(6) HAGUE CONVENTION COMPLIANCE REPORT.—The term "Hague Convention compliance report" means the annual report on compliance with the Hague Convention required to be submitted by the Department of State to Congress under section 2803 of the Foreign Affairs Reform and Restructuring Act of 1998 (42 U.S.C. 11611).

(7) HAGUE CONVENTION SIGNATORY.—The term "Hague Convention signatory" means a country that has signed or acceded to the Convention and with which the United States has entered into a reciprocal agreement pursuant to the Convention.

(8) MOU.—The term "MOU" means a memorandum of understanding.

(9) MOU COUNTRY.—The term "MOU country" means a country or entity with which the United States has entered into a memorandum of understanding to resolve cases of international child abduction. Such MOUs shall include—

(A) identification of a specific protocol designed to establish and effectuate the urgent return of children abducted from the United States not later than six weeks after the date of the application for return of the child having

been received by the agency authorized for such purposes;

(B) identification of a specific protocol for the establishment and protection of the rights of both interim and ongoing parental access between children and their parents;

(C) identification of an official entity within the government possessing the authority to facilitate the resolution of child abduction cases in cooperation with the Office on International Child Abductions and left-behind parents in the United States;

(D) identification of the judicial or administrative agency possessing the authority to facilitate the prompt adjudication of a request for the return of an abducted child to the United States;

(E) identification of a law enforcement agency and available mechanisms and procedures to investigate and assist in the location, protection, and retrieval of an abducted child and to ensure the immediate enforcement of orders entered by the court in the habitual residence to return an abducted child to the United States;

(F) establishment of welfare and whereabouts visits between a United States embassy and a wrongfully removed or retained child; and

(G) additional requisite elements that shall be satisfied and maintained for purposes of section 201(b) as determined by the Secretary of State.

(10) NONSIGNATORY COUNTRY.—The term "nonsignatory country" means a country which is neither a Hague Convention signatory nor a MOU country to which a United States child has been abducted or in which a United States child remains wrongfully retained.

(11) OFFICE.—The term "Office" means the Office on International Child Abductions established pursuant to section 101.

(12) PATTERN OF NONCOOPERATION.—The term "pattern of noncooperation" means a national government's systemic failure, evidenced by the existence of ten or more parental child abduction cases which, after having been properly prepared and transmitted by the Central Authority for the United States remain unresolved within its borders after 18 months or, where there are fewer than ten unresolved cases, any cases still unresolved after nine

months from the time of receipt and transmittal by the Central Authority for the United States of a request to fulfill its international obligations with respect to the prompt resolution of cases of child abduction.

(13) RIGHTS OF ACCESS.—The term "rights of access" means the rights of a parent and child to enjoy reasonable unfettered contact both within and outside the State of the child's habitual residence.

(14) UNRESOLVED ABDUCTION CASE.—The term "unresolved abduction case" means an abduction case which has been properly documented to establish that pursuant to the law of the State of habitual residence of a minor child, an international abduction or wrongful retention of such child whose habitual residence immediately prior to the abduction was the United States, remains unresolved more than two months following the date of the receipt and transmittal by the Central Authority for the United States of the request for return of such child.

(15) UNRESOLVED ACCESS CASE.—The term "unresolved access case" means an application for the establishment of rights of parental access on either an interim or permanent basis, or the request for the enforcement of rights of parental access

(contact orders) which have been previously established by a court of competent jurisdiction, which remain unresolved more than two months following the date of the receipt and transmittal by the Central Authority for the United States of a request for assistance in the organization of rights of access.

TITLE I—DEPARTMENT OF STATE ACTIVITIES

SEC. 101. OFFICE ON INTERNATIONAL CHILD ABDUCTIONS; AMBASSADOR AT LARGE FOR INTERNATIONAL CHILD ABDUCTIONS.

(a) ESTABLISHMENT OF OFFICE.—There is established within the Department of State an Office on International Child Abductions that shall be headed by the Ambassador at Large for International Child Abductions appointed under subsection (b).

(b) APPOINTMENT.—The Ambassador at Large shall be appointed by the President, by and with the advice and consent of the Senate.

(c) DUTIES.—The Ambassador at Large shall have the following responsibilities:

(1) IN GENERAL.—The primary responsibility of the Ambassador at Large shall be to—

(A) promote measures to prevent the international abduction of children from the United States;

(B) advocate on behalf of children whose habitual residence is the United States and who have been abducted to another country;

(C) assist left-behind parents in the resolution of abduction or refusal of access cases; and

(D) advance mechanisms to prevent and resolve cases of international child abduction abroad.

(2) ADVISORY ROLE.—The Ambassador at Large shall be a principal adviser to the President and the Secretary of State regarding matters of international child abduction and refusals of rights of access, and shall make recommendations regarding—

(A) the policies of the United States Government toward governments with a pattern of noncooperation with respect to cases of international child abduction;

(B) coordination with other United States agencies regarding criminal prosecutions, Interpol assistance in the issuance of warrants and alerts, pending cases, training for United

States forces, and the negotiation of agreements to protect United States forces stationed abroad;

(C) policies to address international child abduction globally;

(D) the position of the United States Government on cases establishing the future functioning of the Hague Convention in the country at issue; and

(E) the position of the United States Government on a request to accept an accession to the Hague Convention.

(3) DIPLOMATIC REPRESENTATION.—Subject to the direction of the President and the Secretary of State, the Ambassador at Large is authorized to represent the United States in matters and cases relevant to international child abduction and refusals of rights to access in—

(A) contacts with foreign governments, the World Organization for Cross-border Co-operation in Civil and Commercial Matters, the Hague Conference on Private International Law, and other international organizations of which the United States is a member;

(B) multilateral conferences and meetings relevant to international child abduction; and

(C) advocating accession to the Hague Convention, or, where accession to the Hague Convention is not possible, negotiating MOUs.

(4) REPORTING RESPONSIBILITIES.—The Ambassador at Large shall have the reporting responsibilities described in section 102.

(5) CASE FILE MANAGEMENT SYSTEM AND INFORMATION PROTOCOL.—The Ambassador at Large shall establish a case file management system within the Office to ensure the maintenance of accurate, complete, and timely information, to the extent available, on all cases of international child abduction or refusal of access about which the Office is notified, as well as a protocol for the receipt and updating of such information with actions taken by the Office and responses by the respective country, as well as deadlines required by the Hague Convention or the MOU at issue.

(6) UNIFORM CASE INTAKE PROCEDURES.—The Ambassador at Large shall establish uniform case intake procedures, which also make note of deadlines for responses pursuant to the Hague Convention or MOU, where applicable.

(7) CIVIL SERVICE EMPLOYEES.—The Ambassador at Large, in cooperation with the Secretary of State, shall ensure that a majority of the personnel of the Office are composed of civil service employees or members of the Service (as such term is described in section 103 of the Foreign Service Act of 1980 (22 U.S.C. 3903)) who shall be permitted to remain with the Office for at least four years.

(8) LEGAL ADVICE.—The Ambassador at Large shall make available legal advice to case managers of the Central Authority of the United States on an as-needed basis to address country-specific legal issues and to provide such case managers with information that can be disseminated generally on questions frequently asked by left behind parents.

(9) USER FRIENDLY RESOURCES.—The Ambassador at Large shall establish user-friendly resources, including—

(A) a toll free number that goes directly to the Office; and

(B) a language line for left behind parents who do not speak English.

(10) ASSISTANCE TO JUDGES.—The Ambassador at Large shall—

(A) be responsible for producing and disseminating a training course for United States Federal and State judges likely to receive Hague Convention cases; and

(B) retain not fewer than four specially trained judges available on an as needed basis to advise United States Federal and State judges handling Hague Convention cases.

(d) FUNDING.—The Secretary of State shall provide the Ambassador at Large with such funds as may be necessary for—

(1) the hiring of staff for the Office;

(2) the conduct of investigations by the Office;

(3) the establishment of a case file management system;

(4) the translation of case documents in cases that may have systemic effect in the country in question;

(5) the development of training materials; and for

(6) necessary travel to carry out the provisions of this section.

SEC. 102. ANNUAL REPORT.

(a) IN GENERAL.—Not later than March 31 of each year or the first day thereafter on which the appropriate

House of Congress is in session, the Secretary of State, with the assistance of the Ambassador at Large, shall submit to Congress an Annual Report on International Child Abduction by providing detailed information with respect to unresolved cases about which the Central Authority for the United States has been notified. Each Annual Report shall contain the following:

(1) HAGUE CONVENTION SIGNATORY COUNTRIES.—Information on the following:

(A) A current list of those countries with which the United States has reciprocal obligations under the Hague Convention.

(B) A current list of those countries that have requested the United States to accept their accession to the Hague Convention.

(C) The number of pending cases of alleged abduction of or refusal of access to children from the United States in each the countries referred to in subparagraphs (A) and (B), broken-out by type with date of original application and country of detention.

(D) The proportion of cases of abduction of or refusal of access to children from the United States resolved in each country since the advent of reciprocal Hague Convention obliga-

tions and the length of time each such case was pending.

(E) For each pending unresolved case, including the current reporting year and previous years—

(i) the date of the alleged abduction or wrongful retention;

(ii) the date any administrative or judicial application pursuant to the Hague Convention was brought, if applicable;

(iii) detailed information about each such case, including in the case of judicial application having been filed, the court handling the matter and the procedural history, the specific actions taken by the United States chief of mission in the country to which the child is alleged to have been wrongfully removed or retained, and the date of submission of documents required by the application process; and

(iv) detailed information and an assessment of the lack of resolution about each such case together with a determination of any systemic issues related to the Hague Convention signatory country as

well as recommendation to enhance the protocol for the improvement of the resolution of future cases.

(F) A description of the efforts of the Secretary of State to encourage Hague Convention signatory countries to facilitate the work within such respective countries of nongovernmental organizations that assist parents seeking the return of children under the Hague Convention.

(G) Whether a state of reciprocity no longer exists between the United States and a Hague Convention signatory country such that United States parents, advocates, and judges should, in assessing the risk of wrongful removal or retention, require strong protective and preventative measures.

(H) All reporting requirements contained in the Hague Convention compliance report.

(2) MOU COUNTRIES.—Information on the following:

(A) A list of those countries that are MOU countries.

(B) A description of the basic elements of the memorandum of understanding entered into

with each country specified in subparagraph (A).

(C) Whether each such country is moving toward accession to the Hague Convention.

(D) The number of unresolved cases of wrongful removal or retentions of or refusal of access to children from the United States in each such country.

(E) The proportion of cases of abduction of or refusal of access to children from the United States resolved in each such country since the applicable MOU went into force.

(F) For each unresolved abduction or access case—

(i) the date of the alleged abduction or wrongful retention;

(ii) the date of any administrative or judicial process that was brought seeking the return of a minor child to the United States, or brought seeking rights of access to such child, and in the case of judicial process, the court in which the matter has been brought and the procedural history;

(iii) whether the protocols established pursuant to the applicable MOU have been followed;

(iv) detailed information about each such case, including the specific actions taken by the United States chief of mission in the country to which the child is alleged to have been wrongfully removed or retained and actions by the Central Authority for the United States;

(v) detailed information on and an assessment of the lack of resolution as well as a determination of any systemic issues related to the MOU country with specific attention regarding any failure of any of the requisite elements of the MOU; and

(vi) recommendations to amend the applicable MOU to improve the resolution of cases and ameliorate any systemic issues.

(3) NONSIGNATORY COUNTRIES.—Information on the following:

(A) A list of those countries that are neither Hague Convention signatory countries nor MOU countries.

(B) Information on efforts by the Department of State to encourage each such nonsignatory country to become a Hague Convention signatory country or MOU country.

(C) For each unresolved abduction or access case—

(i) the date of the alleged abduction or wrongful retention;

(ii) the date of any administrative or judicial process that was brought seeking the return of a minor child to the United States, or brought seeking rights of access to such child, and in the case of judicial process, the court in which the matter has been brought and the procedural history;

(iii) detailed information about each such case, including the specific actions taken by the United States chief of mission in the country to which the child is alleged to have been wrongfully removed or retained and any other action taken by the Central Authority for the United States;

(iv) detailed information on and an assessment of the reasons for the lack of a resolution in each such case as well as a

review of the systemic issues in the host country which may contribute to or enhance the wrongful removal or retention of children; and

(v) recommendations for specific actions which may be taken by the United States Government to improve the resolution of cases and ameliorate any systemic issues.

(b) EXCEPTION.—Each Annual Report required under this section may not include names of parties or of minor children. Other potentially party-identifying information shall also be excluded in cases in which the parent remaining in the United States or on a United States military installation has submitted a request in writing to the Central Authority for the United States that such information not be publicized. Information that is subject to attorney-client privilege may be provided with an executed waiver.

(c) ADDITIONAL THEMATIC SECTIONS.—Each Annual Report under this section shall also include—

(1) information on the number of unresolved cases affecting parents who are members of the Armed Forces and a summary of assistance offered to such left behind parents;

(2) information on the use of airlines in international child abduction, including which airlines are most commonly used in abduction, voluntary airline practices to prevent international child abduction, and recommendations for best airline practices; and

(3) information on actions taken by the Central Authority for the United States to train domestic and foreign judges in application of the Hague Convention.

(d) STANDARDS AND ASSISTANCE.—The Secretary of State shall ensure that United States diplomatic and consular missions abroad maintain a consistent reporting standard with respect to cases of international child abductions from the United States to the country in which each such mission is located, provide appropriate assistance to parents from the United States who are visiting such country to obtain the return, rights of access to, or visitation rights with an abducted child, and remain informed of developments in cases of children abducted from the United States to the country in which such mission is located.

(e) TERMINATION.—Upon publication of the first Annual Report required under this section, the requirement for the Secretary of State to submit the Hague Convention

compliance report, in addition to the Annual Report, shall terminate.

TITLE II—PRESIDENTIAL ACTIONS

SEC. 201. PRESIDENTIAL ACTIONS IN RESPONSE TO PATTERNS OF NONCOOPERATION IN CASES OF INTERNATIONAL CHILD ABDUCTIONS.

(a) RESPONSE TO INTERNATIONAL CHILD ABDUCTIONS.—

(1) UNITED STATES POLICY.—It shall be the policy of the United States to—

(A) promote the best interest of children in matters relating to their custody or rights of access by protecting them internationally from the harmful effects of their wrongful removal or retention;

(B) oppose practices or policies of the governments of foreign countries that fail to ensure children's prompt return to the United States in cases of international child abduction or the wrongful retention of a child, where the United States is the child's habitual residence immediately prior to such abduction, through the actions described in subsection (b); and

(C) oppose practices or policies of the governments of foreign countries that fail to ensure children's continued contact with their parents by providing for rights of access.

(2) REQUIREMENT OF PRESIDENTIAL ACTION.—Whenever the President determines that the government of a foreign country has engaged in a pattern of noncooperation, the President shall promote the resolution of the unresolved cases through one or more of the actions described in section 204(a).

(b) DESIGNATIONS OF COUNTRIES WITH PATTERNS OF NONCOOPERATION IN CASES OF INTERNATIONAL CHILD ABDUCTION.—

(1) ANNUAL REVIEW.—

(A) IN GENERAL.—Not later than March 31 of each year, the President shall review the status of unresolved cases in each foreign country to determine whether the government of each such country has engaged in a pattern of noncooperation during the preceding 12 months or since the date of the last review of each such country under this paragraph, whichever is longer. The President shall designate each country the government of which the President

has determined has engaged in a pattern of noncooperation as a Country With a Pattern of Noncooperation.

(B) BASIS OF REVIEW.—Each review conducted under subparagraph (A) shall be based upon information regarding government responses to unresolved cases of international child abduction with respect to each such country, including the number of cases and the length of time such cases have been pending, as described in the latest Annual Report and on any other evidence available with respect to each such country.

(C) IMPLEMENTATION.—Any review under subparagraph (A) of a country may take place singly or jointly with the review of one or more countries.

(2) DETERMINATIONS OF RESPONSIBLE PARTIES.—For the government of each country designated as a Country With a Pattern of Noncooperation under paragraph (1)(A), the President shall seek to determine the agency or instrumentality thereof that is responsible for the pattern of noncooperation by such government in order to appro-

priately target Presidential actions under this section in response.

(3) CONGRESSIONAL NOTIFICATION.—Whenever the President designates a country as a Country With a Pattern of Noncooperation under paragraph (1)(A), the President shall, as soon as practicable after such designation is made, transmit to the appropriate congressional committees information relating to—

(A) the designation of the country, signed by the President; and

(B) one or more of the Presidential actions described in paragraphs (10) through (16) of section 204(a) carried out against such country.

(c) PRESIDENTIAL ACTIONS WITH RESPECT TO A COUNTRY WITH A PATTERN OF NONCOOPERATION.—

(1) IN GENERAL.—Subject to paragraphs (2), (3), and (4) with respect to each Country With a Pattern of Noncooperation designated under subsection (b)(1)(A), the President shall, after the requirements of sections 202 and 203 have been satisfied, but not later than 90 days (or 180 days in case of a delay under paragraph (2)) after the date of such designation of a country under such subsection,

carry out one or more of the following actions under subparagraph (A) or (B):

(A) PRESIDENTIAL ACTIONS.—One or more of the Presidential actions described in paragraphs (10) through (16) of section 204(a).

(B) COMMENSURATE ACTIONS.—Commensurate action in substitution to any action referred to in subparagraph (A).

(2) AUTHORITY FOR DELAY OF PRESIDENTIAL ACTIONS.—If, on or before the date that the President is required to take action under paragraph (1) with respect to a Country With a Pattern of Noncooperation, the President determines and certifies to Congress that a single, additional period of time not to exceed 90 days is necessary—

(A) for a continuation of negotiations that have been commenced with the government of such country to bring about a cessation of the pattern of noncooperation by such country, or

(B)(i) for a review of corrective action taken by such country after designation of such country as a Country With a Pattern of Noncooperation, or

(ii) in anticipation that corrective action will be taken by such country during such 90-day period,

the President shall not be required to take such action until the expiration of such period of time.

(3) EXCEPTION FOR ONGOING PRESIDENTIAL ACTION.—The President shall not be required to take action under this paragraph (1) with respect to a Country With a Pattern of Noncooperation if with respect to such country the following apply:

(A) The President has taken action pursuant to such paragraph in a preceding year.

(B) Such action is in effect at the time such country is designated as a Country with a Pattern of Noncooperation under subsection (b)(1)(A).

(C) The President reports to Congress the information described in paragraphs (1), (2), (3), and (4) of section 203(a) regarding the actions in effect with respect to such country.

(D) At the time the President designates a country as a Country With a Pattern of Noncooperation, if such country is already subject to multiple, broad-based sanctions imposed in

significant part in response to human rights abuses, and such sanctions are ongoing, the President may determine that one or more of such sanctions also satisfies the requirements of this subsection. In a report to Congress pursuant to paragraphs (1), (2), (3), and (4) of section 203(a), the President shall specify the specific sanction or sanctions that the President determines satisfy the requirements of this subsection. Such specified sanctions shall remain in effect subject to section 208.

(d) RULE OF CONSTRUCTION.—A determination under this Act, or any amendment made by this Act, that a foreign country has engaged in a pattern of noncooperation shall not be construed to require the termination of assistance or other activities with respect to such country under any other provision of law, including section 116 or 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2151(n) and 2304).

SEC. 202. CONSULTATIONS.

(a) NOTIFICATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), in accordance with existing law and regulation, the Secretary of State shall notify in writing the member of the House of Representatives rep-

resenting the district of a left behind parent when such parent reports an international child abduction to the Department of State. The Secretary shall maintain a computerized data tracking system to track and monitor such reported international child abduction cases.

(2) EXCEPTION.—Paragraph (1) shall not apply if the left behind parent does not consent to the notification described in such paragraph.

(b) DUTY TO CONSULT WITH FOREIGN GOVERNMENTS.—The President shall—

(1) request consultation with the government of a country to which a child is alleged to have been wrongfully removed or retained, regarding the pattern of noncooperation giving rise to action under section 204; and

(2) if agreed to, enter into such consultations, privately or publicly.

(c) DUTY TO CONSULT WITH LEFT BEHIND PARENTS IN THE UNITED STATES.—The President shall consult with left behind parents of children in the foreign countries, or appropriate representatives or representative groups of such parents, concerning the potential impact of United States policies to promote the resolution of unresolved cases in countries described in subsection (a).

(d) DUTY TO CONSULT WITH OTHER UNITED STATES INTERESTED PARTIES.—The President shall, as appropriate, consult with other United States interested parties regarding the potential impact of intended action in countries described in subsection (a) on economic or other interests of the United States.

SEC. 203. REPORT TO CONGRESS.

At such time as the President decides to take action under section 204 in response to a country that the President has designated as a Country With a Pattern of Noncooperation and the President decides to take action under paragraphs (10) through (16) of section 204, the President shall transmit to the appropriate congressional committees a report on the following:

(1) IDENTIFICATION OF PRESIDENTIAL ACTIONS.—An identification of the action or actions described in paragraphs (10) through (16) of section 204 (or commensurate action in substitution thereto) to be taken with respect to such country.

(2) DESCRIPTION OF VIOLATIONS.—A description of the unresolved cases of child abduction giving rise to the action or actions to be taken by the President.

(3) PURPOSE OF PRESIDENTIAL ACTIONS.—A description of the purpose of the Presidential action or actions.

(4) EVALUATION.—

(A) DESCRIPTION.—An evaluation, in consultation with the Secretary of State, the Ambassador at Large, the parties described in subsections (c) and (d) of section 202, and other parties the President determines appropriate, of—

(i) the impact upon such unresolved cases in such country;

(ii) the impact upon the government of such country;

(iii) the impact upon the population of such country; and

(iv) the impact upon the United States economy and other interested parties.

(B) AUTHORITY TO WITHHOLD DISCLOSURE.—The President may withhold part or all of such evaluation from the public, if classified, but shall provide the entire evaluation to Congress.

(5) STATEMENT OF POLICY OPTIONS.—A statement that noneconomic policy options designed to bring about a resolution of the pattern of noncooperation in such country have reasonably been exhausted, including the consultations required in accordance with section 202.

SEC. 204. PRESIDENTIAL ACTIONS.

(a) DESCRIPTION OF PRESIDENTIAL ACTIONS.—Except as provided in subsection (c), the President may take the following actions with respect to a country that the President has designated as a Country With a Pattern of Noncooperation under section 201:

(1) A private demarche.

(2) An official public demarche.

(3) A statement of nonreciprocity under the Hague Convention.

(4) A public condemnation.

(5) A public condemnation within one or more multilateral fora.

(6) The delay or cancellation of one or more scientific exchanges.

(7) The delay or cancellation of one or more cultural exchanges.

(8) The denial of one or more working, official, or state visits.

(9) The delay or cancellation of one or more working, official, or state visits.

(10) The restriction of the number of visas issued to nationals of such country pursuant to subparagraphs (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

(11) The withdrawal, limitation, or suspension of United States development assistance in accordance with section 116 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n).

(12) Directing the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the Trade and Development Agency not to approve the issuance of any (or a specified number of) guarantees, insurance, extensions of credit, or participation in the extension of credit with respect to such government or the agency or instrumentality of such government determined by the President to be responsible for such pattern of noncooperation.

(13) The withdrawal, limitation, or suspension of United States security assistance in accordance with section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304).

(14) In accordance with section 701 of the International Financial Institutions Act of 1977 (22 U.S.C. 262d), directing the United States executive directors of international financial institutions to oppose and vote against loans primarily benefitting the such government or the agency or instrumentality of such government determined by the President to be responsible for such pattern of noncooperation.

(15) The denial, withdrawal, suspension, or limitation of benefits provided pursuant to title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.), relating to the Generalized System of Preferences.

(16) Ordering the heads of the appropriate United States agencies not to issue any (or a specified number of) specific licenses, and not to grant any other specific authority (or a specified number of authorities), to export any goods or technology to such government or to the agency or instrumentality of such government determined by the President to be responsible for such pattern of noncooperation, under—

(A) the Export Administration Act of 1979;

(B) the Arms Export Control Act;

(C) the Atomic Energy Act of 1954; or

(D) any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.

(17) Prohibiting any United States financial institution from making loans or providing credits totaling more than $10,000,000 in any 12-month period to such government or to the agency or instrumentality of such government or determined by the President to be responsible for such pattern of noncooperation.

(18) Prohibiting the United States Government from procuring, or entering into any contract for the procurement of, any goods or services from such government or from the agency or instrumentality of such government determined by the President to be responsible for such pattern of noncooperation.

(b) COMMENSURATE ACTION.—Except as provided in subsection (c), the President may substitute any other action authorized by law for any action described in paragraphs (1) through (16) of subsection (a) if such action is commensurate in effect to the action substituted and if such action would further the purposes of this Act as specified in section 2(c). The President shall seek to take all appropriate and feasible actions authorized by law to

obtain the cessation of such pattern of noncooperation. If commensurate action is taken under this subsection, the President shall transmit to the appropriate congressional committees a report on such action, together with an explanation for taking such action.

(c) EXCEPTIONS.—Any action taken pursuant to subsection (a) or (b) may not prohibit or restrict the provision to such country of medicine, medical equipment, or supplies, food, or other humanitarian assistance.

SEC. 205. EFFECTS ON EXISTING CONTRACTS.

The President shall not be required to apply or maintain any action under this section 204—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities, to satisfy requirements essential to the national security of the United States;

(B) if the President determines in writing and transmits to Congress a report that the government of a foreign country or the agency or instrumentality of such government to which such action would otherwise be applied is a sole source supplier of such defense articles or serv-

ices, that such defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(C) if the President determines in writing and transmits to Congress a report that such defense articles or services are essential to the national security of the United States under defense co-production agreements; or

(2) to products or services provided under contracts entered into before the date on which the President publishes in the Federal Register notice of such action in accordance with section 207.

SEC. 206. PRESIDENTIAL WAIVER.

(a) IN GENERAL.—Subject to subsection (b), the President may waive the application of any of the actions described in paragraphs (10) through (16) of section 204(a) (or commensurate action in substitution thereto) with respect to a country that the President has designated as a Country With a Pattern of Noncooperation under section 201, if the President determines and so reports to the appropriate congressional committees that—

(1) the government of such has satisfactorily resolved the unresolved cases giving rise to the application of any of such actions and—

(A) if such country is a Hague Convention signatory country, such country has taken measures to ensure future compliance with the provisions of the Hague Convention;

(B) if such country is an MOU country, such country has taken measures to ensure future compliance with the provisions of the MOU at issue; or

(C) if such country is a Nonsignatory country at the time the abductions or retentions resulting in the unresolved cases occurred, such country has become a Hague Convention signatory country or a MOU country;

(2) the exercise of such waiver authority would further the purposes of this Act; or

(3) the important national interest of the United States requires the exercise of such waiver authority.

(b) CONGRESSIONAL NOTIFICATION.—Not later than the date of the exercise of a waiver under subsection (a), the President shall notify the appropriate congressional committees of such waiver or the intention to exercise such waiver, together with a detailed justification thereof.

SEC. 207. PUBLICATION IN FEDERAL REGISTER.

(a) IN GENERAL.—Subject to subsection (b), the President shall ensure publication in the Federal Register of the following:

(1) DETERMINATIONS OF GOVERNMENTS, AGENCIES, INSTRUMENTALITIES OF COUNTRIES WITH PATTERNS OF NONCOOPERATION.—Any designation of a country that the President has designated as a Country With a Pattern of Noncooperation under section 201, together with, when applicable and to the extent practicable, the identities of agencies, instrumentalities, or officials determined to be responsible for such pattern of noncooperation.

(2) PRESIDENTIAL ACTIONS.—A description of any action under paragraphs (10) through (16) of section 204(a) (or commensurate action in substitution thereto) and the effective date of such action.

(3) DELAYS IN TRANSMITTAL OF PRESIDENTIAL ACTION REPORTS.—Any delay in transmittal of a report required under in section 203.

(4) WAIVERS.—Any waiver issued under section 206.

(b) LIMITED DISCLOSURE OF INFORMATION.—The President may limit publication of information under this section in the same manner and to the same extent as

determinations described in section 654(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2414(c)), if the President determines that the publication of such information—

(1) would be harmful to the national security of the United States; or

(2) would not further the purposes of this Act.

SEC. 208. TERMINATION OF PRESIDENTIAL ACTIONS.

Any action taken under this Act or any amendment made by this Act with respect to a foreign country shall terminate on the earlier of the following dates:

(1) Not later than two years after the effective date of such action unless expressly reauthorized by law.

(2) Upon the determination by the President, in consultation with the Office, and certification to Congress that the government of such country has taken substantial and verifiable steps to correct the pattern of noncooperation at issue that gave rise to such action.

SEC. 209. PRECLUSION OF JUDICIAL REVIEW.

No court shall have jurisdiction to review any Presidential determination or agency action under this Act or any amendment made by this Act.

SEC. 210. UNITED STATES ASSISTANCE.

(a) IMPLEMENTATION OF PROHIBITION ON ECONOMIC ASSISTANCE.—Section 116(e) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(e)) is amended—

(1) in matter preceding paragraph (1), by inserting "and in consultation with the Ambassador at Large for International Child Abduction" after "Freedom";

(2) in paragraph (3)(B), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(4) whether the government—

"(A) has engaged in a pattern of noncooperation regarding unresolved cases of alleged international child abduction or denial of rights of access, as such terms are defined in the International Child Abduction Prevention Act of 2009; or

"(B) has failed to undertake serious and sustained efforts to locate children allegedly abducted to the country when such efforts could have been reasonably undertaken.".

(b) IMPLEMENTATION OF PROHIBITION ON MILITARY ASSISTANCE.—Section 502B(a)(4) of the Foreign Assist-

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following new subparagraphs:

"(C) has engaged in a pattern of non-cooperation regarding unresolved cases of alleged international child abduction or denial of rights of access, as such terms are defined in the International Child Abduction Protection Act of 2009; or

"(D) has failed to undertake serious and sustained efforts to locate children allegedly abducted to the country when such efforts could have been reasonably undertaken.".

(c) EXPANDED CONSULTATION.—Section 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(b)) is amended, in the first sentence, by inserting "and with the assistance of the Ambassador at Large for International Child Abduction," after "the Ambassador at Large for International Religious Freedom,".

SEC. 211. MULTILATERAL ASSISTANCE.

Section 701 of the International Financial Institutions Act (22 U.S.C. 262d) is amended by adding at the end the following new subsection:

"(h) In determining whether the government of a country engages in a pattern of gross violations of internationally recognized human rights, as described in subsection (a), the President shall give particular consideration to whether such government—

"(1) has engaged in a pattern of noncooperation regarding unresolved cases of alleged international child abduction or denial of rights of access, as such terms are defined in the International Child Abduction Prevention Act of 2009; or

"(2) has failed to undertake serious and sustained efforts to locate children allegedly abducted to such country when such efforts could have been reasonably undertaken.".

SEC. 212. AMENDMENT TO GENERALIZED SYSTEM OF PREFERENCES ELIGIBILITY FOR GENERALIZED SYSTEM OF PREFERENCES.

Section 502(b)(2) of the Trade Act of 1974 (19 U.S.C. 2462(b)(2)) is amended—

(1) by inserting after subparagraph (H) the following new subparagraph:

"(I) Such country is a country with a pattern of noncooperation regarding unresolved cases of alleged international child abduction or denial of rights of access, as such terms are defined in the International Child Abduction Prevention Act of 2009."; and

(2) in the flush left matter after subparagraph (I)—

(A) by striking "and (H)" and inserting "(H)"; and

(B) by inserting after "D))" the following: "and (I)".

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. AMENDMENT OF RESTRICTION FOR THE ISSUANCE OF PASSPORTS FOR CHILDREN UNDER AGE 14.

Section 236(a)(2)(B) of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 is amended—

(1) in clause (ii), by striking "or" at the end;

(2) in clause (iii), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following new clause:

"(iv) in cases in which the child is living outside the United States, such person is a United States citizen, has joint custody over the child, and is executing the application for issuance of a passport outside the United States.".

SEC. 302. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary for each of fiscal years 2010 through 2013 to carry out this Act and the amendments made by this Act.

○

I

112TH CONGRESS
1ST SESSION

H. R. 3605

To prevent United States businesses from cooperating with repressive governments in transforming the Internet into a tool of censorship and surveillance, to fulfill the responsibility of the United States Government to promote freedom of expression on the Internet, to restore public confidence in the integrity of United States businesses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2011

Mr. SMITH of New Jersey (for himself, Mr. WOLF, and Mr. MCCOTTER) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on Ways and Means and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To prevent United States businesses from cooperating with repressive governments in transforming the Internet into a tool of censorship and surveillance, to fulfill the responsibility of the United States Government to promote freedom of expression on the Internet, to restore public confidence in the integrity of United States businesses, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Global Online Freedom Act of 2011".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The political and economic benefits of the Internet are important to advancing democracy and freedom throughout the world, but the potential benefits of this transformative technology are under attack by authoritarian governments;

(2) A number of repressive foreign governments block, restrict, otherwise control, and monitor the

Internet, effectively transforming the Internet into a tool of censorship and surveillance.

(3) A number of United States businesses have enabled repressive regimes to compromise the security of Internet users engaged in peaceful discussion of political, social, and religious issues and severely limit their access to information and communication channels by selling these governments or their agents technology or training.

(4) A number of United States businesses have provided repressive governments with information about Internet users who were the company's clients or were using the companies' products, that has led to the arrest and imprisonment of the Internet users.

(5) The actions of a number of United States businesses in cooperating with the efforts of repressive governments to transform the Internet into a tool of censorship and surveillance have caused Internet users in the United States and in foreign countries to lose confidence in the integrity of United States businesses.

(6) Information and communication technology companies are to be commended for cooperating with civil society organizations, academics, and investors

in founding the Global Network Initiative, in order to provide direction and guidance to the Information and Communications Technology companies and others in protecting the free expression and privacy of Internet users. Human rights due diligence by companies makes a difference.

(7) The United States Government has a responsibility to protect freedom of expression on the Internet, to prevent United States businesses from directly and materially cooperating in human rights abuses perpetrated by repressive foreign governments, and to restore public confidence in the integrity of United States business.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(A) the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Finance of the Senate.

(2) ELECTRONIC COMMUNICATION AND OTHER TITLE 18 DEFINITIONS.—The terms "electronic com-

munication", "electronic communications system", "electronic storage", and "contents" have the meanings given such terms in section 2510 of title 18, United States Code.

(3) FOREIGN OFFICIAL.—

(A) IN GENERAL.—The term "foreign official" means—

(i) any officer or employee of a foreign government or of any department; and

(ii) any person acting in an official capacity for or on behalf of, or acting under color of law with the knowledge of, any such government or such department, agency, state-owned enterprise, or instrumentality.

(B) STATE-OWNED ENTERPRISE.—For purposes of subparagraph (A), the term "state-owned enterprise" means a commercial entity in which a foreign government owns or controls, directly or indirectly, more than 50 percent of the outstanding capital stock or other beneficial interest in such commercial entity.

(4) INTERNET.—The term "Internet" has the meaning given the term in section 231(f) of the Communications Act of 1934 (47 U.S.C. 231(f)).

(5) INTERNET-RESTRICTING COUNTRY.—The term "Internet-restricting country" means a country designated by the Secretary of State pursuant to section 104(a) of this Act.

(6) INTERNET COMMUNICATIONS SERVICES.—The term "Internet communications services"—

(A) means a method for providing communications services via the Internet, including electronic mail, Internet telephony, online chat, online text messaging, Internet bulletin boards, or Web pages; and

(B)(i) includes providing Internet access; but

(ii) does not include activities conducted by a financial institution (as such term is defined in section 5312 of title 31, United States Code) that are financial in nature, even if such activities are conducted using the Internet.

(7) INTERNET CONTENT HOSTING SERVICE.—The terms "Internet content hosting service" and "content hosting service" mean a service that—

(A) stores, through electromagnetic or other means, electronic data, such as the content of Web pages, electronic mail, documents, images, audio and video files, online discussion boards, or Web logs; and

(B) makes such data available via the Internet.

(8) INTERNET SEARCH ENGINE.—The term "Internet search engine" or "search engine" means a service made available via the Internet that, on the basis of a query consisting of terms, concepts, questions, or other data input by a user, searches information available on the Internet and returns to the user a means, such as a hyperlinked list of Uniform Resource Identifiers, of locating, viewing, or downloading information or data available on the Internet relating to such query.

(9) LEGITIMATE FOREIGN LAW ENFORCEMENT PURPOSES.—

(A) IN GENERAL.—The term "legitimate foreign law enforcement purpose" means for the purpose of enforcement, investigation, or prosecution by a foreign official based on a publicly promulgated law of reasonable specificity that proximately relates to the protection or pro-

motion of the health, safety, or morals of the citizens of the jurisdiction of such official.

(B) RULE OF CONSTRUCTION.—For purposes of this Act, the control, suppression, or punishment of peaceful expression of political, religious, or ideological opinion or belief shall not be construed to constitute a legitimate foreign law enforcement purpose. Among expression that should be construed to be protected against control, suppression, or punishment when evaluating a foreign government's claim of a legitimate foreign law enforcement purpose is expression protected by article 19 of the International Covenant on Civil and Political Rights.

(10) PERSONALLY IDENTIFIABLE INFORMATION.—The term "personally identifiable information"—

(A) includes any information described in section 2703(c)(2) of title 18, United States Code; and

(B) does not include—

(i) any traffic data; or

(ii) any record of aggregate data which cannot be used to identify particular persons.

(11) PERSONALLY IDENTIFIABLE INFORMATION USED TO ESTABLISH OR MAINTAIN AN ACCOUNT.—The term "personally identifiable information used to establish or maintain an account" does not include—

(A) information collected in the course of establishing or operating accounts for communications within a company;

(B) information collected in the course of the purchase, sale, shipment, or distribution of goods, including transactions for goods or services utilizing the Internet, other than communication services on which a political, religious, or ideological opinion or belief may be expressed; or

(C) personally identifiable information volunteered in an electronic communication, other than in a communication made in the course of establishing an account for Internet communications services, such as an electronic mail signature line or an electronic mail, on-line video, or Web page in which the author volun-

tarily provides personally identifiable information.

(12) SUBSTANTIAL RESTRICTIONS ON INTERNET FREEDOM.—The term "substantial restrictions on Internet freedom" means actions that restrict or punish the free availability of information via the Internet for reasons other than legitimate foreign law enforcement purposes, including—

(A) deliberately blocking, filtering, or censoring information available via the Internet based on the expression of political, religious, or ideological opinion or belief, including by electronic mail; or

(B) persecuting, prosecuting, or otherwise punishing an individual or group for posting or transmitting peaceful political, religious, or ideological opinion or belief via the Internet, including by electronic mail.

(13) TRAFFIC DATA.—The term "traffic data" means, with respect to an electronic communication, any information contained in or relating to such communication that is processed for the purpose of the conveyance of the communication by an electronic communications system or for the billing thereof, including any Internet Protocol address or

other means of identifying a location within an electronic communications system, but that cannot be used to identify a particular person. Such term cannot be used to include the contents of any electronic communication.

(14) UNITED STATES BUSINESS.—The term "United States business" means—

(A) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship that—

(i) has its principal place of business in the United States; or

(ii) is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States; and

(B) any issuer of a security registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l).

SEC. 4. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, and the application of such pro-

vision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.

TITLE I—PROMOTION OF GLOBAL INTERNET FREEDOM

SEC. 101. STATEMENT OF POLICY.

It shall be the policy of the United States—

(1) to promote as a fundamental component of United States foreign policy the right of every individual to freedom of opinion and expression, including the right to hold opinions, and to seek, receive, and impart information and ideas through any media and regardless of frontiers, without interference;

(2) to use all appropriate instruments of United States influence, including diplomacy, trade policy, and export controls, to support, promote, and strengthen principles, practices, and values that promote the free flow of information without interference or discrimination, including through the Internet and other electronic media; and

(3) to deter any United States business from cooperating with officials of Internet-restricting countries in effecting the political censorship of online content.

SEC. 102. SENSE OF CONGRESS.

It is the sense of the Congress that—

(1) the President should, through bilateral, and where appropriate, multilateral activities, seek to obtain the agreement of other countries to promote the goals and objectives of this Act and to protect Internet freedom; and

(2) to the extent that a United States business empowers or assists any foreign government in its efforts—

(A) to restrict online access to the Web sites of the Voice of America, Radio Free Europe/Radio Liberty, Radio Free Asia, Al-Hurra, Radio Sawa, Radio Farda, Radio Marti, TV Marti, or other United States-supported Web sites and online access to United States Government reports such as the annual Country Reports on Human Rights Practices, the annual Reports on International Religious Freedom, and the annual Trafficking in Human Persons Reports, or

(B) to compromise the security of Internet users, severely limit their access to information and communication channels through censoring of information or malicious attacks,

such business is working contrary to the foreign policy interests of the United States and is undercutting United States taxpayer-funded efforts to promote freedom of information for all people, including those in undemocratic and repressive societies.

SEC. 103. ANNUAL COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.

(a) REPORT RELATING TO ECONOMIC ASSISTANCE.—Section 116 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n) is amended by adding at the end the following new subsection:

"(g)(1) The report required by subsection (d) shall include an assessment of the freedom of electronic information in each foreign country. Such assessment shall consist of the following:

"(A) An assessment of the general extent to which Internet access is available to and used by citizens in that country.

"(B) An assessment of the extent to which government authorities in that country attempt to filter, censor, or otherwise block or remove Internet content, as well as a description of the means by which such authorities attempt to block or remove protected speech.

"(C) A description of known instances in which government authorities in that country have persecuted, prosecuted, or otherwise punished an individual or group for the nonviolent expression of political, religious, or ideological opinion or belief via the Internet, including electronic mail.

"(D) A description of known instances in which government authorities in that country have sought to collect, request, obtain, or disclose the personally identifiable information of a person in connection with that person's nonviolent expression of political, religious, or ideological opinion or belief, including without limitation communication that would be protected by the International Covenant on Civil and Political Rights.

"(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic mission personnel shall consult with human rights organizations, technology and Internet companies, and other appropriate nongovernmental organizations.

"(3) In this subsection, the term 'Internet' has the meaning given the term in section 231(f) of the Communications Act of 1934 (47 U.S.C. 231(f)).".

(b) REPORT RELATING TO SECURITY ASSISTANCE.—Section 502B of the Foreign Assistance Act of 1961 (22

15 U.S.C. 2304) is amended by adding at the end the following new subsection:

"(j)(1) The report required by subsection (b) shall include an assessment of the freedom of electronic information in each foreign country. Such assessment shall consist of the following:

"(A) An assessment of the general extent to which Internet access is available to and used by citizens in that country.

"(B) An assessment of the extent to which government authorities in that country attempt to filter, censor, or otherwise block or remove Internet content, as well as a description of the means by which such authorities attempt to block or remove protected speech.

"(C) A description of known instances in which government authorities in that country have persecuted, prosecuted, or otherwise punished an individual or group for the peaceful expression of political, religious, or ideological opinion or belief via the Internet, including electronic mail.

"(D) A description of known instances in which government authorities in that country have sought to collect, request, obtain, or disclose the personally identifiable information of a person in connection

with that person's communication of ideas, facts, or views where such communication would be protected by the International Covenant on Civil and Political Rights.

"(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic mission personnel shall consult with human rights organizations, technology and Internet companies, and other appropriate nongovernmental organizations.

"(3) In this subsection, the term 'Internet' has the meaning given the term in section 231(f) of the Communications Act of 1934 (47 U.S.C. 231(f)).".

SEC. 104. ANNUAL DESIGNATION OF INTERNET-RESTRICTING COUNTRIES; REPORT.

(a) DESIGNATION.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State shall designate Internet-restricting countries for purposes of this Act.

(2) STANDARD.—A foreign country shall be designated as an Internet-restricting country if the Secretary of State, after consultation with the Secretary of Commerce, determines, based on the review of the evidence that the government of the country

is directly or indirectly responsible for a systematic pattern of substantial restrictions on Internet freedom during any part of the preceding 1-year period.

(b) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State shall transmit to the appropriate congressional committees a report that contains the following:

(A) The name of each foreign country that at the time of the transmission of the report is designated as an Internet-restricting country under subsection (a).

(B) An identification of each government agency and quasi-government organization responsible for the substantial restrictions on Internet freedom in each foreign country designated as an Internet-restricting country under subsection (a).

(C) A description of efforts by the United States to counter the substantial restrictions on Internet freedom referred to in subparagraph (B).

(D) A description of the evidence used by the Secretary of State to make the determina-

tions under subsection (a)(2) and any ongoing multilateral discussions on freedom of speech and the right to privacy referred to in such subsection.

(2) FORM.—The information required by paragraph (1)(C) of the report may be provided in a classified form if necessary.

(3) PUBLIC AVAILABILITY.—All unclassified portions of the report shall be made publicly available on the Internet Web site of the Department of State.

SEC. 105. REPORT ON TRADE-RELATED ISSUES OR DISPUTES DUE TO GOVERNMENT CENSORSHIP OR DISRUPTION OF THE INTERNET.

(a) REPORT.—Not later than 90 days after the date of the enactment of this Act, the United States Trade Representative, in consultation with the Secretary of State and the Secretary of Commerce, shall transmit to the appropriate congressional committees a report on—

(1) any trade-related issues or disputes that arise due to government censorship or disruption of the Internet among United States trade partners; and

(2) efforts by the United States Government to address the issues or disputes described in paragraph (1) either bilaterally or multilaterally.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States should pursue trade policies that expand the information economy by—

(1) ensuring the free flow of information across the entire global network;

(2) promoting stronger international transparency rules; and

(3) ensuring fair and equal treatment of online services regardless of country of origin.

TITLE II—CORPORATE TRANSPARENCY AND ACCOUNTABILITY TO PROTECT ONLINE FREEDOM

SEC. 201. DISCLOSURE OF BLOCKING AND SURVEILLANCE BY INTERNET COMMUNICATIONS SERVICES COMPANIES.

(a) IN GENERAL.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

"(r) DISCLOSURE OF BLOCKING AND SURVEILLANCE BY INTERNET COMMUNICATIONS SERVICES COMPANIES.—

"(1) DISCLOSURE.—Each Internet communications services company that operates in an Internet-restricting country shall include in the annual report of the company information relating to the company, any subsidiary of the company, and any entity under the control of either of such companies, relating to the following:

"(A) HUMAN RIGHTS DUE DILIGENCE.—Internal company policies that address human rights due diligence through a statement of policy that mirrors the Guidelines for Multinational Enterprises issued by the Organization for Economic Co-operation and Development, and whether such policy—

"(i) is approved at the most senior level of the company;

"(ii) explicitly states the company's expectations of personnel, business partners, and other parties directly linked to its operations, products, or services;

"(iii) is publicly available and communicated internally and externally to all personnel, business partners, other relevant partners, customers, and users;

"(iv) is reflected in operational policies and procedures necessary to embed it through it throughout the company; and

"(v) is independently assessed by a third party to demonstrate compliance in practice, which should include—

"(I) whether the assessment was conducted under the supervision of any third party organization or multi-stakeholder initiative;

"(II) a description of the assessment process;

"(III) a description of measures taken to ensure the assessor's independence; and

"(IV) inclusion of the assessor's public report.

"(B) NON-COMPLIANCE.—If the company's policy does not comply with any of the requirements of subclauses (I) through (IV) of subparagraph (A)(v), an explanation of why the company's policy does not meet each such requirement.

"(C) POLICIES PERTAINING TO THE COLLECTION OF PERSONALLY IDENTIFIABLE IN-

FORMATION.—If the company collects or obtains personally identifiable information, the contents of wire or electronic communications in electronic storage, or the contents of wire or electronic communications in a remote computing service on the Internet, the details of any internal policies or procedures of the company that set out how the company will assess and respond to requests by the governments of Internet-restricting countries for disclosure of such information or communications.

"(D) RESTRICTIONS ON INTERNET SEARCH ENGINES AND INTERNET CONTENT HOSTING SERVICES.—If the company creates, provides, or hosts an Internet search engine or an Internet content hosting service, all steps taken to provide users and customers with clear, prominent, and timely notice when access to specific content has been removed or blocked at the request of an Internet-restricting country.

"(2) AVAILABILITY OF INFORMATION.—The Commission shall make all information reported by an issuer pursuant to this subsection available online to the public.

"(3) DEFINITIONS.—In this subsection:

"(A) INTERNET COMMUNICATIONS SERVICES COMPANY.—The term 'Internet communications services company' means an issuer that—

"(i) is required to file an annual report with the Commission; and

"(ii)(I) provides electronic communications services or remote computing services; or

"(II) is a domain name registrar, domain name registry, or other domain name registration authority.

"(B) ELECTRONIC COMMUNICATIONS SERVICES.—The term 'electronic communications services' has the meaning given such term under section 2510(15) of title 18, United States Code.

"(C) INTERNET-RESTRICTING COUNTRY.—The term 'Internet-restricting country' has the meaning given such term under section 3 of the Global Online Freedom Act of 2011.

"(D) REMOTE COMPUTING SERVICES.—The term 'remote computing services' has the meaning given such term under section 1711(2) of title 18, United States Code.".

(b) RULEMAKING.—Not later than the end of the 270-day period beginning on the date of the enactment of this Act, the Securities and Exchange Commission shall issue final rules to carry out section 13(r) of the Securities and Exchange Act of 1934, as added by subsection (a).

TITLE III—EXPORT CONTROLS ON CERTAIN TELECOMMUNICATIONS EQUIPMENT

SEC. 301. EXPORT CONTROLS ON CERTAIN TELECOMMUNICATIONS EQUIPMENT.

(a) IN GENERAL.—Section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405), as continued in effect under the International Emergency Economic Powers Act, is amended by adding at the end the following:

"(t) CERTAIN TELECOMMUNICATIONS EQUIPMENT.—

"(1) IN GENERAL.—The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate Federal departments and agencies, shall establish and maintain, as part of the list maintained under this section, a list of goods and technology that would serve the primary purpose of assisting, or be specifically configured to assist, a foreign government in acquir-

ing the capability to carry out censorship, surveillance, or any other similar or related activity through means of telecommunications, including the Internet, the prohibition or licensing of which would be effective in barring acquisition or enhancement of such capability.

"(2) INTERNET-RESTRICTING COUNTRIES.—Notwithstanding any other provision of law, the Secretary shall prohibit the export of goods or technology on the list established under paragraph (1) to a government end user in any Internet-restricting country.

"(3) WAIVER.—The President may waive the application of paragraph (2) with respect to export of goods or technology on the list established under paragraph (1) on a case-by-case basis if the President determines and certifies to Congress that it is in the national interests of the United States to do so.

"(4) DEFINITIONS.—In this subsection—

"(A) the term 'Internet-restricting country' means a country designated by the Secretary of State pursuant to section 104(a) of the Global Online Freedom Act of 2011;

"(B) a 'government end user' in a country is an end user that is a government of that country, or of a political subdivision of that country, or is an agency or instrumentality of such a government; and

"(C) an 'agency or instrumentality' of a government is an 'agency or instrumentality of a foreign state', as defined in section 1603 of title 28, United States Code.".

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the President shall revise the Export Administration Regulations and any other regulations necessary to carry out the amendment made by subsection (a).

(2) EXPORT ADMINISTRATION REGULATIONS.—In this subsection, the term "Export Administration Regulations" means the Export Administration Regulations as maintained and amended under the authority of the International Emergency Economic Powers Act and codified, as of the date of the enactment of this Act, in subchapter C of chapter VII of title 15, Code of Federal Regulations.

(c) EFFECTIVE DATE.—Section 6(t) of the Export Administration Act of 1979, as added by subsection (a),

shall take effect on the date of the enactment of this Act and shall apply with respect to the export of goods or technology on the list established under paragraph (1) of such section on or after 1 year after the date of the enactment of this Act.

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112TH CONGRESS
2D SESSION

H. R. 4141

To direct the Administrator of the United States Agency for International Development to take appropriate actions to improve the nutritional quality, quality control, and cost effectiveness of United States food assistance, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2012

Mr. PAYNE (for himself, Mr. BERMAN, Mr. MCGOVERN, Ms. WOOLSEY, Mr. COHEN, and Ms. BASS of California) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To direct the Administrator of the United States Agency for International Development to take appropriate actions to improve the nutritional quality, quality control, and cost effectiveness of United States food assistance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "International Food Assistance Improvement Act of 2012".

SEC. 2. FINDINGS.

Congress finds the following:

(1) For more than 55 years the United States, backed by the support of the American people, has been committed to providing life-saving food assistance to developing countries and vulnerable populations around the world.

(2) As the largest donor of international food assistance, an essential tool in tackling malnutrition, the United States can lead the way in improving food aid quality to better target undernourished women and children.

(3) The United States contributes over one-half of all food aid supplies to alleviate hunger and support development and plays an important role in responding to emergency food aid needs and ensuring global food security.

(4) Over the past decade, increasing food prices and protracted humanitarian crises around the world have made United States food assistance even more critical and relevant. At the same time, these factors, combined with advancements in nutrition science, as well as severe and ongoing fiscal constraints, have led to an increased demand by policymakers and program implementers for new specially formulated and cost-effective products to meet the

nutritional needs of the world's most vulnerable populations.

(5) While United States food assistance is effective in providing critical calories and nutrients to millions of people during short-term emergencies, the long-term impacts of these programs have also been increasingly called into question for not meeting the nutritional needs of recipient populations.

(6) Reducing maternal and child malnutrition, especially in the critical 1,000 days between pregnancy and age 2, is a key priority of United States global food security and health initiatives, including food aid.

(7) Recent reports by the Government Accountability Office and the United States Agency for International Development recommended over 35 changes to United States food aid products and programs to improve the nutritional quality, quality control, and cost effectiveness of United States food assistance.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) even in this time of fiscal austerity, the American people support the United States Government's historic commitment to providing life-saving

food assistance to the world's most vulnerable populations;

(2) high food prices, coupled with growing constraints on available resources for foreign assistance require the United States Government to focus on creating efficiencies, improving quality controls, and maximizing cost-effectiveness and nutritional impact of United States food assistance programs;

(3) improving maternal and child health with supplemental nutrition products is a central objective of international food assistance programs; and

(4) the United States has shown considerable leadership in meeting the nutrition needs of pregnant women and small children through the 1,000 Days Partnership to support the Scaling Up Nutrition (SUN) movement.

SEC. 4. PROVISION OF AGRICULTURAL COMMODITIES.

Section 202(h) of the Food for Peace Act (7 U.S.C. 1722(h)) is amended by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—The Administrator shall use funds made available in fiscal year 2012 and subsequent fiscal years to carry out this title to improve the nutritional quality of United States food assistance, particularly for vulnerable groups such as

pregnant and lactating mothers, children under the age of five, with a focus on the cost-effective 1,000 days between pregnancy and age 2, when appropriate, and beneficiaries under the President's Emergency Fund for AIDS Relief in Africa (PEPFAR), including by—

"(A) adopting new specifications or improving existing specifications for micronutrient fortified food aid products, based on the latest developments in food and nutrition science;

"(B) strengthening necessary systems to better assess the types and quality of agricultural commodities and products donated for food assistance;

"(C) adjusting products and formulations, including potential introduction of new fortificants and products, as necessary to cost effectively meet nutrient needs of target populations;

"(D) testing prototypes;

"(E) developing new program guidance to facilitate improved matching of products to purposes having nutritional intent, including an updated commodity reference guide and decision tools;

"(F) developing enhanced guidance, in coordination with the Coordinator of United States Government Activities to Combat HIV/AIDS Globally and PEPFAR, to support the allocation of food commodities and products for nutrition support in HIV programming, using standardized indicators of impact;

"(G) providing improved guidance to implementing partners on how to address nutritional deficiencies that emerge among recipients for whom food assistance is the sole source of diet in emergency programs that extend beyond one year;

"(H) considering options for using United States-produced food fortification packages, including vitamin and mineral mixes, to fortify local foods in recipient countries, as appropriate; and

"(I) evaluating, in appropriate program settings and as necessary, the performance and cost-effectiveness of new or modified specialized food products and program approaches designed to meet the nutritional needs of the most vulnerable groups.".

SEC. 5. FOOD AID CONSULTATIVE GROUP.

(a) MEMBERSHIP.—Section 205(b) of the Food for Peace Act (7 U.S.C. 1725(b)) is amended—

(1) in paragraph (6), by striking "and" at the end;

(2) in paragraph (7), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(8) nutrition science experts from academia and nongovernmental organizations.".

(b) COORDINATION AND OVERSIGHT.—Section 205 of the Food for Peace Act (7 U.S.C. 1725) is amended—

(1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively; and

(2) by inserting after subsection (c) the following:

"(d) COORDINATION AND OVERSIGHT.—

"(1) IN GENERAL.—The Administrator shall work within the Group to take the actions described in paragraph (2) to increase coordination and oversight of food assistance programs established and implemented under this Act, with a primary focus on improving quality control and cost effectiveness.

"(2) ACTIONS DESCRIBED.—The actions referred to in paragraph (1) are the following:

"(A) Explore and test options for improved packaging and storage of products to improve shelf life, promote recommended usage by intended beneficiaries, and oversee field-testing of products.

"(B) Work closely with the Department of Agriculture, to undertake reforms in commodity acquisition and supply chain management, drawing on best commercial practices for vendor selection, quality assurance standards, overall management of the supply chain, and auditing of food aid commodity suppliers.

"(C) Develop mechanisms and partnerships to facilitate more private sector development and innovation in food aid products, packaging, and delivery in order to improve the cost-effectiveness, nutritional quality, and overall acceptability of the product.

"(D) Provide guidance to implementing partners on whether and how best to use food aid commodities, such as new specialized food products, including guidance on targeting strategies to ensure that the products reach their intended recipients.

"(E) As appropriate, work to strengthen monitoring of commodity quality by identifying and tracking key quality indicators to determine the full extent of quality problems, including emerging concerns.

"(F) Establish processes and system-wide protocols for effective monitoring and evaluation of impact, to inform improved program design and address improving cost-effectiveness.".

SEC. 6. STRATEGY AND REPORT.

(a) STRATEGY.—The Administrator shall ensure that any United States Government strategy relating to global food security includes a description of how food assistance programs carried out under the Food for Peace Act will contribute to, and be integrated with, such strategy.

(b) REPORT.—The Administrator shall ensure that comprehensive information regarding budgets and expenditures, monitoring and evaluation, policy, and coordination of food assistance programs carried out under the Food for Peace Act is included, as appropriate, in relevant reports submitted to Congress pursuant to the Foreign Assistance Act of 1961 and Acts making appropriations for the Department of State, foreign operations, and related programs.

SEC. 7. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the United States Agency for International Development.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(A) the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

SEC. 8. FUNDING.

Nothing in this Act or any amendment made by this Act shall be construed to authorize the appropriation of amounts to carry out this Act or any amendment made by this Act.

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Mr. SMITH. As our members are aware, these measures enjoy strong bipartisan support. They have been the subject of extensive hearings, and in the case of the Global Outline Freedom Act, I first introduced that legislation back in 2006 after hearings with Google, Yahoo!, and others as well as with the administration.

In like manner, the International Child Abduction Act, now named after Sean and David Goldman, was first introduced in 2009. And in like manner, we had a number of hearings on that legislation, vetting language and working on best practices and what ought to be included, and that is what is before the members today.

Thus, it is the intent of the Chair to consider these bills en bloc, and by unanimous consent include the substitute amendments sent to each of you on Friday, and an additional amendment sent to you yesterday. All members have copies of those documents before them.

Then after we have concluded our expedited consideration of these bills and amendments, I will be glad to recognize first myself, then my good friend and colleague, Ranking Member Bass, and other members including the vice chair, Mr. Fortenberry, and Mr. Turner and others who will then make statements on each of the pieces of pending legislation before us.

All members are given leave to insert written remarks into the record should they choose to do so.

Seeing that a reporting quorum is present, without objection, the following measures which the members have before them are considered as read, shall be deemed adopted, and are hereby reported favorably to the full Committee on Foreign Affairs: H.R. 1940, the Sean and David Goldman International Child Abduction Prevention and Return Act of 2012; the Smith amendment number 64 to H.R. 1940, the amendment in the nature of a substitute provided to your offices on Friday.

[The amendment referred to follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE

TO H.R. 1940

OFFERED BY MR. SMITH OF NEW JERSEY

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Sean and David Goldman International Child Abduction Prevention and Return Act of 2012".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FINDINGS; SENSE OF CONGRESS; PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Sean Goldman, a United States citizen and resident of New Jersey, was abducted from the United States in 2004 and separated from his father, David Goldman, who spent nearly six years battling for the return of his son from Brazil before Sean was finally returned to Mr. Goldman's custody on December 24, 2009.

(2) The Department of State's Office of Children's Issues, which serves as the Central Authority of the United States for the purposes of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, reported that, from fiscal year 2008 through fiscal year 2010, it received 3,239 new requests for assistance in the return of 4,728 children to the United States from other countries. For a variety of reasons reflecting the significant obstacles to the recovery of abducted children, as well as the legal and factual complexity involving such cases, not all cases are reported to the Central Authority of the United States.

(3) The number of outgoing international child abductions reported to the Central Authority of the

United States has increased by about 60 percent since 2006.

(4) Only about half of the children abducted from the United States to countries with which the United States enjoys reciprocal obligations under the Hague Abduction Convention are returned to the United States.

(5) The United States and Convention countries have expressed their desire, through the Hague Abduction Convention, "to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.".

(6) Compliance by the United States and Convention countries depends on the actions of their designated central authorities, the performance of their judiciaries as reflected in the legal process and decisions rendered to enforce or effectuate the Hague Abduction Convention, and the ability and willingness of their law enforcement to insure the swift enforcement of orders rendered pursuant to the Hague Abduction Convention.

(7) The Central Authority of the United States reports that nearly 40 percent of abduction cases and access cases involve children taken from the United States to countries with which the United States does not have Hague Abduction Convention obligations or other agreements relating to the resolution of abduction cases and access cases.

(8) According to the Department of State's April 2010 Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction, "parental child abduction jeopardizes the child and has substantial long-term consequences for both the child and the left-behind parent.".

(9) Abducted children are at risk of serious emotional and psychological problems and have been found to experience anxiety, eating problems, nightmares, mood swings, sleep disturbances, aggressive behavior, resentment, guilt and fearfulness, and as adults may struggle with identity issues, personal relationships, and parenting.

(10) Left-behind parents may encounter substantial psychological and emotional problems, and few have the extraordinary financial resources necessary to pursue individual civil or criminal remedies

in both the United States and a foreign country, even where available, or to engage in repeated foreign travel to attempt to procure the return of their children by evoking diplomatic and humanitarian remedies.

(11) Left-behind parents who are military parents may be unable to leave their military duties to pursue multinational litigation or take leave to attend multiple court proceedings, and foreign authorities may not schedule proceedings to accommodate such duties.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States should set a strong example for Convention countries in the timely location and return of abducted children in the United States whose habitual residence is not the United States.

(c) PURPOSES.—The purposes of this Act are to—

(1) protect children whose habitual residence is the United States from the harmful effects of abduction and to protect the right of abducted children to exercise access with their parents in a safe and predictable manner, wherever the child is located, while an abduction case is pending;

(2) provide left-behind parents, including military parents, their advocates, and judges the infor-

mation they need to enhance the resolution of abduction cases and access cases through established legal procedures, the tools for assessing the risk of abduction and denial of rights of access, and the practical means for overcoming obstacles to recovering an abducted child;

(3) establish measured, effective, and predictable actions to be undertaken by the President on behalf of abducted children whose habitual residence is the United States at the time of the abduction;

(4) promote an international consensus that it is in the best interest of children to have any issues related to their care and custody determined in the country of their habitual residence;

(5) provide the necessary training for officials of the United States Armed Forces and the Department of Defense to establish policies and provide services to military parents that address the unique circumstances of abductions and violations of rights of access that may occur with regard to military dependent children; and

(6) encourage the effective implementation of international mechanisms, particularly those established pursuant to the Hague Abduction Convention, to achieve reciprocity in the resolution of abductions

and to protect children from the harmful effects of an abduction.

SEC. 3. DEFINITIONS.

In this Act:

(1) ABDUCTED CHILD.—The term "abducted child" means a child who is the victim of an abduction.

(2) ABDUCTION.—The term "abduction" means—

(A) the alleged wrongful removal of a child from the child's country of habitual residence;

(B) the alleged wrongful retention of a child outside the child's country of habitual residence; or

(C) the alleged wrongful removal or retention of a military dependent child from the exercise of rights of custody of a military parent.

(3) ABDUCTION CASE.—The term "abduction case" means a case involving an application filed with the Central Authority of the United States by a left-behind parent for the resolution of an abduction.

(4) ACCESS CASE.—The term "access case" means a case involving an application filed with the

Central Authority of the United States by a left-behind parent for the establishment of rights of access.

(5) ANNUAL REPORT.—The term "Annual Report" means the Annual Report on International Child Abduction required under section 101.

(6) APPLICATION.—The term "application" means—

(A) in the case of a Convention country, the application required pursuant to article 8 of the Hague Abduction Convention;

(B) in the case of an MOU country, the formal document required pursuant to the provisions of the applicable MOU to request the return of an abducted child or to request rights of access, as applicable; and

(C) in the case of a nonsignatory country, the formal request by the Central Authority of the United States to the Central Authority of such country requesting the return of an abducted child or for rights of access to an abducted child.

(7) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Foreign Affairs of

the House of Representatives and the Committee on Foreign Relations of the Senate.

(8) CENTRAL AUTHORITY.—The term "Central Authority" means—

(A) in the case of a Convention country, the meaning given such term in article 6 of the Hague Abduction Convention;

(B) in the case of an MOU country, the official entity designated by the government of the MOU country within the applicable MOU pursuant to section 103(b)(1) to discharge the duties imposed on the entity in such MOU; and

(C) in the case of a nonsignatory country, the foreign ministry of such country.

(9) CHILD.—The term "child" means an individual who has not attained the age of 16.

(10) CONVENTION COUNTRY.—The term "Convention country" means a country other than the United States that has signed or acceded to the Hague Abduction Convention and with respect to which the United States has entered into a reciprocal agreement pursuant to the Hague Abduction Convention.

(11) HAGUE ABDUCTION CONVENTION.—The term "Hague Abduction Convention" means the

Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(12) LEFT-BEHIND PARENT.—The term "left-behind parent" means—

(A) regarding an abduction, an individual or entity, either individually or jointly, who alleges that an abduction has occurred that is in breach of rights of custody—

(i) attributed to such individual or entity, as applicable; and

(ii) exercised at the time of the abduction or that would have been exercised but for the abduction; and

(B) regarding rights of access, an individual with rights of custody who is requesting establishment of rights of access or who alleges that rights of access are being denied.

(13) LEGAL RESIDENCE.—The term "legal residence" means the congressional district and State in which an individual either is residing, or if an individual is residing temporarily outside the United States, the congressional district and State to which the individual intends to return.

(14) MILITARY DEPENDENT CHILD.—The term "military dependent child" means a child whose habitual residence is the United States according to United States law even though the child is residing outside the United States with a military parent.

(15) MILITARY PARENT.—The term "military parent" means an individual who has rights of custody over a child and who is serving outside the United States as a member of the United States Armed Forces.

(16) MOU.—The term "MOU" means a memorandum of understanding between the United States and a country that is not a Convention country to resolve abduction cases and rights of access cases in accordance with section 104.

(17) MOU COUNTRY.—The term "MOU country" means a country with respect to which the United States has entered into an MOU.

(18) NONSIGNATORY COUNTRY.—The term "nonsignatory country" means a country that is neither a Convention country nor an MOU country.

(19) PATTERN OF NONCOOPERATION.—

(A) IN GENERAL.—The term "pattern of noncooperation" means the persistent failure—

(i) of a Convention country to implement and abide by the provisions of the Hague Abduction Convention;

(ii) of an MOU Country to implement and abide by the provisions of the applicable MOU; and

(iii) of a nonsignatory country to cooperate with the United States to expeditiously resolve abduction cases and access cases within a reasonable period of time.

(B) CRITERIA.—Such persistent failure may be evidenced by one or more of the following criteria:

(i) The existence of 10 or more unresolved cases.

(ii) The failure of the Central Authority of the country to fulfill its responsibilities pursuant to the Hague Abduction Convention or the MOU, as applicable, or in the case of a nonsignatory country, the repeated failure of the Central Authority of the country to cooperate with the Central Authority of the United States to resolve unresolved cases.

(iii) The failure of the judicial or administrative branch, as applicable, of the national government of the country to implement the Hague Abduction Convention or the MOU, as applicable, or in the case of a nonsignatory country, the failure of the appropriate judicial or administrative branch of the national government of the country to expeditiously deliberate and render a decision in abduction cases and access cases.

(iv) The failure of law enforcement to locate abducted children or to enforce return orders or determinations of rights of access rendered by the judicial or administrative authorities of the national government of the country in abduction cases or access cases.

(20) RIGHTS OF ACCESS.—The term "rights of access" means the rights of contact between a child and a left-behind parent that may arise—

(A) as a provisional measure while an abduction case is pending; and

(B) by operation of law or by reason of judicial or administrative determination or by

agreement having legal effect under the law of the country in which the child is located.

(21) RIGHTS OF CUSTODY.—The term "rights of custody" means rights of care and custody of an abducted child, including the right to determine the place of residence of an abducted child—

(A) attributed to an individual or entity, either individually or jointly, and

(B) arising by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect, under the law of the country in which the child was an habitual resident immediately before the abduction.

(22) UNRESOLVED ABDUCTION CASE.—

(A) IN GENERAL.—Subject to subparagraph (B), the term "unresolved abduction case" means an abduction case that remains unresolved for a period that exceeds 6 weeks after the date on which the application for return of the child is submitted for determination to the judicial or administrative authority, as applicable, in the country in which the child is located.

(B) RESOLUTION OF CASE.—An abduction case shall be considered to be resolved if—

(i) the child is returned to the country of habitual residence, pursuant to the Hague Abduction Convention or MOU, if applicable;

(ii) a final determination is made by the appropriate administrative or judicial entity in the country in which the child is located that, pursuant to the Hague Abduction Convention or the MOU, if applicable, the child will not be returned to the country of habitual residence; or

(iii) the child attains the age of 16.

(23) UNRESOLVED ACCESS CASE.—

(A) IN GENERAL.—Subject to subparagraph (B), the term "unresolved access case" means an access case that remains unresolved for a period that exceeds 6 weeks after the date on which the application for the establishment of rights of access is submitted to the judicial or administrative authority, as applicable, in the country in which the child is located.

(B) RESOLUTION OF CASE.—An access case shall be considered to be resolved if—

(i) rights of access are established for the left-behind parent and such parent is allowed access to the child in accordance with such rights;

(ii) a final determination is made by the appropriate administrative or judicial entity in the country in which the child is located that the left-behind parent does not have rights of access; or

(iii) the abduction case related to the unresolved access case is resolved.

(24) UNRESOLVED CASES.—The term ''unresolved cases'' means unresolved abduction cases and unresolved access cases.

TITLE I—DEPARTMENT OF STATE ACTIONS

SEC. 101. ANNUAL REPORT.

(a) IN GENERAL.—Not later than March 31 of each year, the Secretary of State shall submit to the appropriate congressional committees an Annual Report on International Child Abduction.

(b) CONTENTS.—Each Annual Report shall, with respect to the preceding year, include the following:

(1) For each country with respect to which there was 1 or more abduction cases:

(A) Whether the country is a Convention country, an MOU country, or a nonsignatory country.

(B) The number of abduction cases and the number of rights of access cases, respectively, reported.

(C) The number of abduction cases and the number of access cases, respectively, that are pending.

(D)(i) The number of abduction cases and the number of access cases, respectively, that were pending at any point for more than 90 days after the date on which the Central Authority of the United States transmitted the application for each such case to the Central Authority of such country, and were not submitted by the Central Authority to the judicial or administrative authority, as applicable, of such country within the 90-day period.

(ii) The reason for the delay in submission of each case identified in clause (i) by the Central Authority of such country to the judicial or administrative authority.

(E) The number of unresolved abduction cases and unresolved access cases, respectively,

and the length of time each case has been pending.

(F) The number of unresolved cases in which law enforcement has failed to locate the abducted child or to enforce a return order or determinations of rights of access rendered by the judicial or administrative authorities of such country.

(G) The median time required for resolution of abduction cases and access cases, respectively, to be measured from the date on which the application with respect to the abduction case or access case is transmitted by the Central Authority of the United States to the Central Authority of such country to the date on which the abduction case or access case is resolved.

(H) The percentage of the total number of abduction cases and access cases, respectively, resolved.

(I) Detailed information about each case described in subparagraph (C) and on actions taken by the Department of State to resolve such case, including the specific actions taken

by the United States chief of mission in such country.

(J) Recommendations to improve resolution of abduction cases and access cases.

(2) A list of Convention countries and MOU countries that have failed to comply with any of their obligations under the Hague Abduction Convention or the MOU, as applicable, with respect to the resolution of abduction cases and access cases.

(3) A list of countries demonstrating a pattern of noncooperation.

(4)(A) Information on efforts by the Secretary of State to encourage other countries to become signatories to the Hague Abduction Convention or to enter into an MOU.

(B) The efforts referred to in subparagraph (A) shall include efforts to address pending abduction cases and access cases in such country.

(5) A description of the efforts of the Secretary of State to encourage Convention countries and MOU countries to facilitate the work of nongovernmental organizations within their respective countries that assist left-behind parents.

(c) EXCEPTION.—The Annual Report shall not include—

(1) the names of left-behind parents or children involved in abduction cases or access cases; or

(2) information that may identify a party involved in an abduction case or access case unless the party stipulates in writing to the Central Authority of the United States that such information may be included in the Annual Report.

(d) ADDITIONAL THEMATIC SECTIONS.—Each Annual Report shall also include—

(1) information on the number of unresolved cases affecting left-behind parents who are military parents and a summary of assistance offered to such left-behind parents;

(2) information on the use of airlines in abductions, including which airlines have been utilized to carry out an abduction, voluntary airline practices to prevent abductions, and recommendations for best airline practices to prevent abductions;

(3) information on actions taken by the Central Authority of the United States to train domestic judges in application of the Hague Abduction Convention; and

(4) information on actions taken by the Central Authority of the United States to train United States Armed Forces legal assistance personnel,

military chaplains, and military family support center personnel about abductions, the risk of loss of access to children, and the legal frameworks available to resolve such cases.

(e) REPEAL OF THE HAGUE CONVENTION COMPLIANCE REPORT.—Section 2803 of the Foreign Affairs Reform and Restructuring Act of 1998 (42 U.S.C. 11611) is repealed.

SEC. 102. STANDARDS AND ASSISTANCE.

The Secretary of State shall ensure that United States diplomatic and consular missions abroad—

(1) maintain a consistent reporting standard with respect to abduction cases and access cases involving abducted children in the country in which such mission is located for purposes of the Annual Report;

(2) designate at least one official in each such mission to assist left-behind parents from the United States who are visiting such country to resolve cases involving an abduction or rights of access; and

(3) monitor developments in cases involving abducted children in the country in which such mission is located.

SEC. 103. MEMORANDUM OF UNDERSTANDING.

(a) IN GENERAL.—The Secretary of State shall seek to enter into an MOU with every country that is not a Convention country.

(b) MOU PROVISIONS.—An MOU shall include, with respect to the applicable MOU country—

(1) identification of the Central Authority;

(2) a protocol to identify, locate, and effectuate the return of an abducted child identified in an abduction case not later than 6 weeks after the application with respect to the abduction case has been submitted to the judicial or administrative authority, as applicable, of the country in which the abducted child is located;

(3) a protocol for the establishment and protection of the rights of access;

(4) identification of the judicial or administrative authority that will promptly adjudicate abduction cases and access cases;

(5) identification of a law enforcement agency and available law enforcement mechanisms and procedures to ensure the immediate enforcement of an order issued by the authority identified pursuant to paragraph (4) to return an abducted child to a left-behind parent, including by—

(A) conducting an investigation to ascertain the location of the abducted child;

(B) providing protection to the abducted child after such child is located; and

(C) retrieving the abducted child and making the appropriate arrangements for such child to be returned to the country of habitual residence;

(6) a protocol to establish periodic visits between a United States embassy or consular official and an abducted child to allow the official to ascertain the child's location and welfare; and

(7) such other provisions as determined to be appropriate by the Secretary of State.

(c) RULE OF CONSTRUCTION.—

(1) IN GENERAL.—Nothing in this Act shall be construed to prohibit the United States from proposing and entering into a memorandum of understanding with a Convention country to further clarify the reciprocal obligations of the United States and the Convention country under the Hague Abduction Convention.

(2) TREATMENT OF OBLIGATIONS OF CONVENTION COUNTRY.—In those instances in which there is a memorandum of understanding as described in

paragraph (1), the obligations of the Convention country under such memorandum shall be considered to be obligations of such country under the Hague Abduction Convention for purposes of this Act.

SEC. 104. NOTIFICATION OF CONGRESSIONAL REPRESENTATIVES.

(a) NOTIFICATION.—Except as provided in subsection (b), the Secretary of State shall notify in writing the Member of Congress and Senators representing the legal residence of a left-behind parent when such parent reports an abduction to the Central Authority of the United States.

(b) EXCEPTION.—The notification requirement under subsection (a) shall not apply if the left-behind parent does not consent to the notification described in such subsection.

(c) MEMBER OF CONGRESS DEFINED.—In this section, the term "Member of Congress" means a Representative in, or Delegate or Resident Commissioner to, the Congress.

TITLE II—PRESIDENTIAL ACTIONS

SEC. 201. PRESIDENTIAL ACTIONS IN RESPONSE TO UNRESOLVED CASES.

(a) RESPONSE TO INTERNATIONAL CHILD ABDUCTIONS.—

(1) UNITED STATES POLICY.—It shall be the policy of the United States to—

(A) promote the best interest of children abducted from the United States by establishing legal rights and procedures for their prompt return and by promoting such rights and procedures through actions that ensure the enforcement of reciprocal international obligations; and

(B) recognize the international character of the Hague Abduction Convention, and the need for reciprocity pursuant to and the uniform international interpretation of the Hague Abduction Convention, by promoting the timely resolution of abduction cases and access cases through 1 or more of the actions described in section 205.

(2) REQUIREMENT OF PRESIDENTIAL ACTION.—Whenever the President determines that the

government of a foreign country has failed to resolve an unresolved abduction case or unresolved access case, the President shall oppose such failure through one or more of the actions described in subsection (b).

(b) PRESIDENTIAL ACTIONS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the President, in consultation with the Secretary of State, shall, as expeditiously as practicable in response to the failure described in subsection (a) by the government of a foreign country, take 1 or more of the actions described in paragraphs (1) through (17) of section 205(a) (or commensurate action as provided in section 205(b)) with respect to such country.

(2) DEADLINE FOR ACTIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), not later than March 31 of each year, the President shall take 1 or more of the actions described in paragraphs (1) through (17) of section 205(a) (or commensurate action as provided in section 205(b)) with respect to each foreign country the government of which has failed to resolve an unresolved ab-

duction case or access case that is pending as of such date.

(B) EXCEPTION.—In the case of an action under any of paragraphs (10) through (17) of section 205(a) (or commensurate action as provided in section 205(b))—

(i) the action may only be taken after the requirements of sections 203 and 204 have been satisfied; and

(ii) the March 31 deadline to take the action shall not apply.

(3) AUTHORITY FOR DELAY OF PRESIDENTIAL ACTIONS.—The President may delay action described in any of the paragraphs (10) through (17) of section 205(a) (or commensurate action as provided in section 205(b)), as required under paragraph (2), if the President determines and certifies to the appropriate congressional committees that a single, additional period of time, not to exceed 90 days, is necessary—

(A) for a continuation of negotiations that have been commenced with the country to resolve the unresolved case; or

(B) in anticipation that the case will be resolved by such country during such 90 day period.

(c) IMPLEMENTATION.—

(1) IN GENERAL.—In carrying out subsection (b), the President shall—

(A) take 1 or more actions that most appropriately respond to the nature and severity of the failure to resolve the unresolved cases; and

(B) seek to the fullest extent possible to target action as narrowly as practicable with respect to the agencies or instrumentalities of the foreign government that are responsible for such failures.

(2) GUIDELINES FOR PRESIDENTIAL ACTIONS.—In addition to the guidelines under paragraph (1), the President, in determining whether to take 1 or more actions under paragraphs (10) through (17) of section 205(a) (or commensurate action as provided in section 205(b)), shall seek to minimize any adverse impact on—

(A) the population of the country whose government is targeted by the action or actions; and

(B) the humanitarian activities of United States and foreign nongovernmental organizations in the country.

SEC. 202. PRESIDENTIAL ACTIONS IN RESPONSE TO PATTERNS OF NONCOOPERATION IN CASES OF INTERNATIONAL CHILD ABDUCTIONS.

(a) RESPONSE TO A PATTERN OF NONCOOPERATION.—

(1) UNITED STATES POLICY.—It shall be the policy of the United States to—

(A) oppose institutional or other systemic failures of foreign governments to fulfill their obligations pursuant to the Hague Abduction Convention or MOU, as applicable, to resolve abduction cases and access cases; and

(B) promote reciprocity pursuant to and compliance with the Hague Abduction Convention by Convention countries and compliance with the applicable MOU by MOU countries.

(2) REQUIREMENT OF PRESIDENTIAL ACTION.—Whenever the President determines that the government of a foreign country has engaged in a pattern of noncooperation, the President shall promote the resolution of the unresolved cases through

one or more of the actions described in subsection (c).

(b) DESIGNATIONS OF COUNTRIES WITH PATTERNS OF NONCOOPERATION IN CASES OF INTERNATIONAL CHILD ABDUCTION.—

(1) ANNUAL REVIEW.—

(A) IN GENERAL.—Not later than March 31 of each year, the President shall review the status of abduction cases and access cases in each foreign country to determine whether the government of such country has engaged in a pattern of noncooperation during the preceding 12 months or since the date of the last review of such country under this subparagraph, whichever period is longer. The President shall designate each country the government of which has engaged in a pattern of noncooperation as a Country With a Pattern of Noncooperation.

(B) BASIS OF REVIEW.—Each review conducted under subparagraph (A) shall be based upon information contained in the latest Annual Report and on any other evidence available.

(2) DETERMINATIONS OF RESPONSIBLE PARTIES.—For the government of each country designated as a Country With a Pattern of Noncoopera-

tion under paragraph (1)(A), the President shall seek to determine the agencies or instrumentalities of such government that are responsible for the pattern of noncooperation by such government in order to appropriately target actions under this section in response.

(3) CONGRESSIONAL NOTIFICATION.—Whenever the President designates a country as a Country With a Pattern of Noncooperation under paragraph (1)(A), the President shall, as soon as practicable after such designation is made, transmit to the appropriate congressional committees—

(A) the designation of the country, signed by the President; and

(B) the identification, if any, of responsible agencies or instrumentalities determined under paragraph (2).

(c) PRESIDENTIAL ACTIONS WITH RESPECT TO A COUNTRY WITH A PATTERN OF NONCOOPERATION.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3) with respect to each Country With a Pattern of Noncooperation designated under subsection (b)(1)(A), the President shall, after the requirements of sections 203 and 204 have been satisfied, but not later than 90 days (or 180 days in case of

a delay under paragraph (2)) after the date of such designation of the country under such subsection, take 1 or more of the actions under paragraphs (10) through (17) of section 205(a) (or commensurate action as provided in section 205(b)).

(2) AUTHORITY FOR DELAY OF PRESIDENTIAL ACTIONS.—If, on or before the date that the President is required to take action under paragraph (1), the President determines and certifies to the appropriate congressional committees that a single, additional period of time not to exceed 90 days is necessary—

(A) for a continuation of negotiations that have been commenced with the government of such country to bring about a cessation of the pattern of noncooperation by such country, or

(B) for a review of corrective action taken by such country after designation of such country as a Country With a Pattern of Noncooperation under subsection (b)(1)(A) or in anticipation that corrective action will be taken by such country during such 90-day period,

the President shall not be required to take such action until the expiration of such period of time.

(3) EXCEPTION FOR ONGOING PRESIDENTIAL ACTION.—

(A) IN GENERAL.—The President shall not be required to take action under paragraph (1) with respect to a Country With a Pattern of Noncooperation if—

(i) the President has taken action pursuant to paragraph (1) with respect to such country in a preceding year, such action is in effect at the time such country is designated as a Country with a Pattern of Noncooperation under subsection (b)(1)(A), and the President submits to the appropriate congressional committees the information described in section 204 regarding the actions in effect with respect to such country; or

(ii) subject to subparagraph (B), the President determines that such country is subject to multiple, broad-based sanctions imposed in significant part in response to human rights abuses and that such sanctions also satisfy the requirements of this subsection.

(B) ADDITIONAL REQUIREMENTS.—If the President makes a determination under subparagraph (A)(ii)—

(i) the report under section 204 and, as applicable, the publication in the Federal Register under section 208, shall specify the specific sanction or sanctions that the President has determined satisfy the requirements of this subsection; and

(ii) such sanctions shall remain in effect subject to section 209.

(d) RULE OF CONSTRUCTION.—A determination under this section that a foreign country has engaged in a pattern of noncooperation shall not be construed to require the termination of assistance or other activities with respect to such country under any other provision of law, including section 116 or 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2151(n) or 2304).

SEC. 203. CONSULTATIONS.

(a) DUTY TO CONSULT WITH FOREIGN GOVERNMENTS.—

(1) IN GENERAL.—As soon as practicable after the President makes a determination under section 201 in response to failures to resolve unresolved cases and the President decides to take action under

paragraphs (10) through (17) of section 205(a) (or commensurate action as provided in section 205(b)) with respect to that country, or not later than 90 days after the President designates a country as a Country With a Pattern of Noncooperation pursuant to section 201(b)(1)(A), the President shall—

(A) request consultation with the government of such country regarding the failures giving rise to designation of that country as a Country With a Pattern of Noncooperation regarding the pattern of noncooperation or to action under section 201; and

(B) if agreed to, enter into such consultations with such country, privately or publicly.

(2) DUTY TO CONSULT WITH LEFT-BEHIND PARENTS.—The President shall consult with left-behind parents who have an abduction case involving a child located in the country referenced in paragraph (1)(A), or designated representatives or representative groups of such left-behind parents, during the course of the consultations conducted pursuant to paragraph (1) concerning the potential impact of such consultations on the resolution of such cases.

SEC. 204. REPORT TO CONGRESS.

(a) IN GENERAL.—Subject to subsection (b), not later than 90 days after the President makes a determination under section 201 in response to failures to resolve unresolved cases and the President decides to take action under paragraphs (10) through (17) of section 205(a) (or commensurate action as provided in section 205(b)) with respect to that country, or not later than 90 days after the President designates a country as a Country With a Pattern of Noncooperation pursuant to section 202(b)(1)(A), the President shall transmit to the appropriate congressional committees a report on the following:

(1) IDENTIFICATION OF PRESIDENTIAL ACTIONS.—An identification of the action or actions described in section 205(a) (or commensurate action as provided in section 205(b)) to be taken with respect to such country.

(2) DESCRIPTION OF VIOLATIONS.—A description of the failure to resolve an unresolved case or the pattern of noncooperation, as applicable, giving rise to the action or actions to be taken by the President.

(3) PURPOSE OF PRESIDENTIAL ACTIONS.—A description of the purpose of the action or actions.

(4) EVALUATION.—

(A) DESCRIPTION.—An evaluation, in consultation with the Secretary of State, the parties described in section 203(b), and other parties the President determines appropriate, of the anticipated impact of the Presidential action upon—

(i) pending abduction cases in such country;

(ii) the government of such country;

(iii) the population of such country;

(iv) the United States economy;

(v) other interested parties; and

(vi) if such country is a Convention country or an MOU country, the reciprocal fulfillment of obligations pursuant to such Convention or applicable MOU, as applicable.

(B) FORM.—The evaluation under subparagraph (A) shall be transmitted in unclassified form, but may contain a classified annex if necessary.

(5) STATEMENT OF POLICY OPTIONS.—A statement that noneconomic policy options designed to resolve the unresolved case or bring about the cessation of the pattern of noncooperation have reason-

ably been exhausted, including the consultations required in section 203.

(b) DELAY IN TRANSMITTAL OF REPORT.—If, on or before the date that the President is required to submit a report under subsection (a) to the appropriate congressional committees, the President determines and certifies to such committees that a single, additional period of time not to exceed 90 days is necessary pursuant to section 202(c)(2), the President shall not be required to submit the report to such committees until the expiration of such period of time.

SEC. 205. PRESIDENTIAL ACTIONS.

(a) DESCRIPTION OF PRESIDENTIAL ACTIONS.—Except as provided in subsection (c), the Presidential actions referred to in this subsection are the following:

(1) A private demarche.

(2) An official public demarche.

(3) A public condemnation.

(4) A public condemnation within one or more multilateral fora.

(5) The delay or cancellation of one or more scientific exchanges.

(6) The delay or cancellation of one or more cultural exchanges.

(7) The denial of one or more working, official, or state visits.

(8) The delay or cancellation of one or more working, official, or state visits.

(9) The restriction of the number of visas issued to nationals of such country pursuant to subparagraphs (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

(10) The withdrawal, limitation, or suspension of United States development assistance in accordance with section 116 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n).

(11) Directing the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the Trade and Development Agency not to approve the issuance of any (or a specified number of) guarantees, insurance, extensions of credit, or participations in the extension of credit with respect to such government or the agency or instrumentality of such government determined by the President to be responsible for such unresolved case or pattern of noncooperation, as applicable.

(12) The withdrawal, limitation, or suspension of United States security assistance in accordance

with section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304).

(13) In accordance with section 701 of the International Financial Institutions Act of 1977 (22 U.S.C. 262d), directing the United States executive directors of international financial institutions to oppose and vote against loans primarily benefitting such government or the agency or instrumentality of such government determined by the President to be responsible for such unresolved case or pattern of noncooperation, as applicable.

(14) The denial, withdrawal, suspension, or limitation of benefits provided pursuant to title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.), relating to the Generalized System of Preferences.

(15) Ordering the heads of the appropriate United States agencies not to issue any (or a specified number of) specific licenses, and not to grant any other specific authority (or a specified number of authorities), to export any goods or technology to such government or to the agency or instrumentality of such government determined by the President to be responsible for such unresolved case or pattern of noncooperation, as applicable, under—

(A) the Export Administration Act of 1979 (as continued in effect under the International Emergency Economic Powers Act);

(B) the Arms Export Control Act;

(C) the Atomic Energy Act of 1954; or

(D) any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.

(16) Prohibiting any United States financial institution from making loans or providing credits totaling more than $10,000,000 in any 12-month period to such government or to the agency or instrumentality of such government determined by the President to be responsible for such unresolved case or pattern of noncooperation, as applicable.

(17) Prohibiting the United States Government from procuring, or entering into any contract for the procurement of, any goods or services from such government or from the agency or instrumentality of such government determined by the President to be responsible for such unresolved case or pattern of noncooperation, as applicable.

(b) COMMENSURATE ACTION.—Except as provided in subsection (c), the President may substitute any other ac-

tion authorized by law for any action described in subsection (a) if such action is commensurate in effect to the action substituted and if such action would further the purposes of this Act as specified in section 2(c). The President shall seek to take all appropriate and feasible actions authorized by law to resolve the unresolved case or to obtain the cessation of such pattern of noncooperation, as applicable. If commensurate action is taken under this subsection, the President shall transmit to the appropriate congressional committees a report on such action, together with an explanation for taking such action.

(c) EXCEPTIONS.—Any action taken pursuant to subsection (a) or (b) may not prohibit or restrict the provision of medicine, medical equipment or supplies, food, or other life-saving humanitarian assistance.

SEC. 206. EFFECTS ON EXISTING CONTRACTS.

The President shall not be required to apply or maintain any action under section 205—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities, to satisfy requirements essential to the national security of the United States;

(B) if the President determines in writing and transmits to the appropriate congressional committees a report that the government or the agency or instrumentality of such government to which such action would otherwise be applied is a sole source supplier of such defense articles or services, that such defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(C) if the President determines in writing and transmits to the appropriate congressional committees a report that such defense articles or services are essential to the national security of the United States under defense co-production agreements; or

(2) to products or services provided under contracts entered into before the date on which the President publishes in the Federal Register notice of such action in accordance with section 208.

SEC. 207. PRESIDENTIAL WAIVER.

(a) IN GENERAL.—Subject to subsection (b), the President may waive the application of any of the actions described in paragraphs (10) through (17) of section 205(a) (or commensurate action as provided in section 205(b)) with respect to a country, if the President deter-

mines and so reports to the appropriate congressional committees that—

(1) the government of such country has satisfactorily resolved any abduction cases or access cases giving rise to the application of any of such actions and—

(A) if such country is a Convention country, such country has taken measures to ensure future compliance with the provisions of the Hague Abduction Convention;

(B) if such country is an MOU country, such country has taken measures to ensure future compliance with the provisions of the MOU at issue; or

(C) if such country was a nonsignatory country at the time the abductions or denials of rights of access resulting in the abduction cases or access cases occurred, such country has become a Convention country or an MOU country;

(2) the exercise of such waiver authority would further the purposes of this Act; or

(3) the important national interest of the United States requires the exercise of such waiver authority.

(b) CONGRESSIONAL NOTIFICATION.—Not later than the date of the exercise of a waiver under subsection (a), the President shall notify the appropriate congressional committees of such waiver or the intention to exercise such waiver, together with a detailed justification thereof.

SEC. 208. PUBLICATION IN FEDERAL REGISTER.

(a) IN GENERAL.—Subject to subsection (b), the President shall ensure publication in the Federal Register of the following:

(1) DETERMINATIONS OF GOVERNMENTS, AGENCIES, INSTRUMENTALITIES OF COUNTRIES WITH PATTERNS OF NONCOOPERATION.—Any designation of a country that the President has designated as a Country With a Pattern of Noncooperation under section 202(b)(1), together with, when applicable and to the extent practicable, the identities of agencies or instrumentalities determined to be responsible for such pattern of noncooperation.

(2) PRESIDENTIAL ACTIONS.—A description of any action under paragraphs (10) through (17) of section 205(a) (or commensurate action as provided in section 205(b)) and the effective date of such action.

(3) DELAYS IN TRANSMITTAL OF PRESIDENTIAL ACTION REPORTS.—Any delay in transmittal of a report required under section 204.

(4) WAIVERS.—Any waiver issued under section 207.

(b) LIMITED DISCLOSURE OF INFORMATION.—The President may limit publication of information under this section in the same manner and to the same extent as the President may limit the publication of findings and determinations described in section 654(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2414(c)), if the President determines that the publication of such information—

(1) would be harmful to the national security of the United States; or

(2) would not further the purposes of this Act.

SEC. 209. TERMINATION OF PRESIDENTIAL ACTIONS.

Any action taken under this Act or any amendment made by this Act with respect to a foreign country shall terminate on the earlier of the following 2 dates:

(1) Not later than two years after the effective date of such action unless expressly reauthorized by law.

(2) The date on which the President transmits to Congress a certification containing a determina-

tion of the President that the government of such country has resolved any unresolved case or has taken substantial and verifiable steps to correct the pattern of noncooperation at issue, as applicable, that gave rise to such action.

SEC. 210. UNITED STATES ASSISTANCE.

(a) IMPLEMENTATION OF PROHIBITION ON ECONOMIC ASSISTANCE.—Section 116(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(c)) is amended—

(1) in paragraph (2), by striking "and" at the end;

(2) in paragraph (3)(B), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(4) whether the government has engaged in a pattern of noncooperation regarding abduction cases or access cases, as such terms are defined in the Sean and David Goldman International Child Abduction Prevention and Return Act of 2012.".

(b) IMPLEMENTATION OF PROHIBITION ON SECURITY ASSISTANCE.—Section 502B(a)(4) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(a)(4)) is amended—

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(C) has engaged in a pattern of noncooperation regarding abduction cases or access cases, as such terms are defined in the Sean and David Goldman International Child Abduction Prevention and Return Act of 2012.".

SEC. 211. MULTILATERAL ASSISTANCE.

Section 701 of the International Financial Institutions Act (22 U.S.C. 262d) is amended—

(1) by redesignating the second subsection (g) (as added by Public Law 105–292) as subsection (h); and

(2) by adding at the end the following new subsection:

"(i) In determining whether the government of a country engages in a pattern of gross violations of internationally recognized human rights, as described in subsection (a), the President shall give particular consideration to whether such government has engaged in a pattern of noncooperation regarding abduction cases or ac-

cess cases, as such terms are defined in the Sean and David Goldman International Child Abduction Prevention and Return Act of 2012.".

SEC. 212. AMENDMENT TO GENERALIZED SYSTEM OF PREFERENCES ELIGIBILITY FOR GENERALIZED SYSTEM OF PREFERENCES.

Section 502(b)(2) of the Trade Act of 1974 (19 U.S.C. 2462(b)(2)) is amended—

(1) by inserting after subparagraph (H) the following new subparagraph:

"(I) Such country is a country with a pattern of noncooperation regarding abduction cases or access cases, as such terms are defined in the Sean and David Goldman International Child Abduction Prevention and Return Act of 2012."; and

(2) in the flush left matter after subparagraph (I) (as added by paragraph (1) of this section)—

(A) by striking "and (H)" and inserting "(II)"; and

(B) by inserting after "D))" the following: "and (I)".

☒

Mr. SMITH. H.R. 3605, the Global Online Freedom Act of 2012, the Smith amendment number 69 to H.R. 3605, the amendment in the nature of a substitute provided also to your offices on Friday.

[The amendment referred to follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3605 OFFERED BY MR. SMITH OF NEW JERSEY

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Global Online Freedom Act of 2012".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The political and economic benefits of the Internet are important to advancing democracy and freedom throughout the world, but the potential benefits of this transformative technology are under attack by authoritarian governments.

(2) A number of repressive foreign governments block, restrict, otherwise control, and monitor the Internet, effectively transforming the Internet into a tool of censorship and surveillance.

(3) A number of United States businesses have enabled repressive regimes to compromise the security of Internet users engaged in peaceful discussion of political, social, and religious issues and severely limit their access to information and communication channels by selling these governments or their agents technology or training.

(4) A number of United States businesses have provided repressive governments with information about Internet users who were the company's clients or were using the companies' products, that has led to the arrest and imprisonment of the Internet users.

(5) The actions of a number of United States businesses in cooperating with the efforts of repressive governments to transform the Internet into a

tool of censorship and surveillance have caused Internet users in the United States and in foreign countries to lose confidence in the integrity of United States businesses.

(6) Information and communication technology companies are to be commended for cooperating with civil society organizations, academics, and investors in founding the Global Network Initiative, in order to provide direction and guidance to the information and communications technology companies and others in protecting the free expression and privacy of Internet users. Human rights due diligence by companies makes a difference.

(7) The United States Government has a responsibility to protect freedom of expression on the Internet, to prevent United States businesses from directly and materially cooperating in human rights abuses perpetrated by repressive foreign governments, and to restore public confidence in the integrity of United States business.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

(A) the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Finance of the Senate.

(2) FOREIGN OFFICIAL.—The term "foreign official" means—

(A) any officer or employee of a foreign government or of any department; and

(B) any person acting in an official capacity for or on behalf of, or acting under color of law with the knowledge of, any such government or such department, agency, state-owned enterprise, or instrumentality.

(3) INTERNET.—The term "Internet" has the meaning given the term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3)).

(4) INTERNET-RESTRICTING COUNTRY.—The term "Internet-restricting country" means a country designated by the Secretary of State pursuant to section 104(a) of this Act.

(5) LEGITIMATE FOREIGN LAW ENFORCEMENT PURPOSE.—

(A) IN GENERAL.—The term "legitimate foreign law enforcement purpose" means for the

purpose of enforcement, investigation, or prosecution by a foreign official based on a publicly promulgated law of reasonable specificity that proximately relates to the protection or promotion of the health, safety, or morals of the citizens of the jurisdiction of such official.

(B) RULE OF CONSTRUCTION.—For purposes of this Act, the control, suppression, or punishment of peaceful expression of political, religious, or ideological opinion or belief shall not be construed to constitute a legitimate foreign law enforcement purpose. Among expression that should be construed to be protected against control, suppression, or punishment when evaluating a foreign government's claim of a legitimate foreign law enforcement purpose is expression protected by article 19 of the International Covenant on Civil and Political Rights.

(C) RULE OF CONSTRUCTION.—No provision under this Act shall be construed to affect a country's ability to adopt measures designed to combat infringement of intellectual property.

(6) SUBSTANTIAL RESTRICTIONS ON INTERNET FREEDOM.—The term "substantial restrictions on

Internet freedom" means actions that restrict or punish the free availability of information via the Internet for reasons other than legitimate foreign law enforcement purposes, including—

(A) deliberately blocking, filtering, or censoring information available via the Internet based on the expression of political, religious, or ideological opinion or belief, including by electronic mail; or

(B) persecuting, prosecuting, or otherwise punishing an individual or group for posting or transmitting peaceful political, religious, or ideological opinion or belief via the Internet, including by electronic mail.

(7) UNITED STATES BUSINESS.—The term "United States business" means—

(A) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship that—

(i) has its principal place of business in the United States; or

(ii) is organized under the laws of a State of the United States or a territory,

possession, or commonwealth of the United States; and

(B) any issuer of a security registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l).

SEC. 4. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.

TITLE I—PROMOTION OF GLOBAL INTERNET FREEDOM

SEC. 101. STATEMENT OF POLICY.

It shall be the policy of the United States—

(1) to promote as a fundamental component of United States foreign policy the right of every individual to freedom of opinion and expression, including the right to hold opinions, and to seek, receive, and impart information and ideas through any media and regardless of frontiers, without interference;

(2) to use all appropriate instruments of United States influence, including diplomacy, trade policy, and export controls, to support, promote, and

strengthen principles, practices, and values that promote the free flow of information without interference or discrimination, including through the Internet and other electronic media; and

(3) to deter any United States business from cooperating with officials of Internet-restricting countries in effecting the political censorship of online content.

SEC. 102. SENSE OF CONGRESS.

It is the sense of the Congress that—

(1) the President should, through bilateral, and where appropriate, multilateral activities, seek to obtain the agreement of other countries to promote the goals and objectives of this Act and to protect Internet freedom; and

(2) to the extent possible in every country in which they operate, United States businesses should work to—

(A) ensure access to the Web sites of the Voice of America, Radio Free Europe/Radio Liberty, Radio Free Asia, Al-Hurra, Radio Sawa, Radio Farda, Radio Marti, TV Marti, or other United States-supported Web sites and online access to United States Government reports such as the annual Country Reports on

Human Rights Practices, the annual Reports on International Religious Freedom, and the annual Trafficking in Human Persons Reports; and

(B) promote the security of Internet users and expand their access to information and communication channels by limiting censorship of protected political and religious speech and information.

SEC. 103. ANNUAL COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.

(a) REPORT RELATING TO ECONOMIC ASSISTANCE.—Section 116 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n) is amended by adding at the end the following new subsection:

"(g)(1) The report required by subsection (d) shall include an assessment of freedom of expression with respect to electronic information in each foreign country. Such assessment shall consist of the following:

"(A) An assessment of the general extent to which Internet access is available to and used by citizens in that country.

"(B) An assessment of the extent to which government authorities in that country attempt to filter, censor, or otherwise block or remove nonviolent ex-

pression of political or religious opinion or belief via the Internet, including electronic mail, as well as a description of the means by which such authorities attempt to block or remove protected speech.

"(C) An assessment of the extent to which government authorities in that country have persecuted, prosecuted, or otherwise punished an individual or group for the nonviolent expression of political, religious, or ideological opinion or belief via the Internet, including electronic mail.

"(D) An assessment of the extent to which government authorities in that country have sought to collect, request, obtain, or disclose the personally identifiable information of a person in connection with that person's nonviolent expression of political, religious, or ideological opinion or belief, including without limitation communication that would be protected by the International Covenant on Civil and Political Rights.

"(E) An assessment of the extent to which wire communications and electronic communications are illicitly monitored in that country.

"(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic mission personnel shall consult with human rights organi-

zations, technology and Internet companies, and other appropriate nongovernmental organizations.

"(3) In this subsection—

"(A) the term 'electronic communication' has the meaning given the term in section 2510 of title 18, United State Code;

"(B) the term 'Internet' has the meaning given the term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3));

"(C) the term 'personally identifiable information' means data in a form that identifies a particular person; and

"(D) the term 'wire communication' has the meaning given the term in section 2510 of title 18, United State Code.".

(b) REPORT RELATING TO SECURITY ASSISTANCE.—Section 502B of the Foreign Assistance Act of 1961 (22 15 U.S.C. 2304) is amended by adding at the end the following new subsection:

"(j)(1) The report required by subsection (b) shall include an assessment of freedom of expression with respect to electronic information in each foreign country. Such assessment shall consist of the following:

"(A) An assessment of the general extent to which Internet access is available to and used by citizens in that country.

"(B) An assessment of the extent to which government authorities in that country attempt to filter, censor, or otherwise block or remove nonviolent expression of political or religious opinion or belief via the Internet, including electronic mail, as well as a description of the means by which such authorities attempt to block or remove protected speech.

"(C) An assessment of the extent to which government authorities in that country have persecuted, prosecuted, or otherwise punished an individual or group for the peaceful expression of political, religious, or ideological opinion or belief via the Internet, including electronic mail.

"(D) An assessment of the extent to which government authorities in that country have sought to collect, request, obtain, or disclose the personally identifiable information of a person in connection with that person's communication of ideas, facts, or views where such communication would be protected by the International Covenant on Civil and Political Rights.

"(E) An assessment of the extent to which wire communications and electronic communications are illicitly monitored in that country.

"(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic mission personnel shall consult with human rights organizations, technology and Internet companies, and other appropriate nongovernmental organizations.

"(3) In this subsection—

"(A) the term 'electronic communication' has the meaning given the term in section 2510 of title 18, United State Code;

"(B) the term 'Internet' has the meaning given the term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3));

"(C) the term 'personally identifiable information' means data in a form that identifies a particular person; and

"(D) the term 'wire communication' has the meaning given the term in section 2510 of title 18, United State Code.".

SEC. 104. ANNUAL DESIGNATION OF INTERNET-RESTRICTING COUNTRIES; REPORT.

(a) DESIGNATION.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State shall designate Internet-restricting countries for purposes of this Act.

(2) STANDARD.—A foreign country shall be designated as an Internet-restricting country if the Secretary of State, after consultation with the Secretary of Commerce, determines, based on the review of the evidence that the government of the country is directly or indirectly responsible for a systematic pattern of substantial restrictions on Internet freedom during any part of the preceding 1-year period.

(b) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State shall transmit to the appropriate congressional committees a report that contains the following:

(A) The name of each foreign country that at the time of the transmission of the report is designated as an Internet-restricting country under subsection (a).

(B) An identification of each government agency and quasi-government organization re-

sponsible for the substantial restrictions on Internet freedom in each foreign country designated as an Internet-restricting country under subsection (a).

(C) A description of efforts by the United States to counter the substantial restrictions on Internet freedom referred to in subparagraph (B), including a description and details of programs funded under any other provision of law with the purpose of promoting Internet freedom.

(D) A description of the evidence used by the Secretary of State to make the determinations under subsection (a)(2).

(2) FORM.—The information required by paragraph (1)(C) may be provided in a classified form if necessary.

(3) PUBLIC AVAILABILITY.—All unclassified portions of the report shall be made publicly available on the Internet Web site of the Department of State.

SEC. 105. REPORT ON TRADE-RELATED ISSUES OR DISPUTES DUE TO GOVERNMENT CENSORSHIP OR DISRUPTION OF THE INTERNET.

(a) REPORT.—Not later than 90 days after the date of the enactment of this Act, the United States Trade Representative, in consultation with the Secretary of State and the Secretary of Commerce, shall transmit to the appropriate congressional committees a report on—

(1) any trade-related issues or disputes that arise due to government censorship or disruption of the Internet among United States trade partners; and

(2) efforts by the United States Government to address the issues or disputes described in paragraph (1) either bilaterally or multilaterally.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States should pursue trade policies that expand the information economy by—

(1) ensuring the free flow of information across the entire global network;

(2) promoting stronger international transparency rules; and

(3) ensuring fair and equal treatment of online services regardless of country of origin.

TITLE II—CORPORATE TRANSPARENCY AND ACCOUNTABILITY TO PROTECT ONLINE FREEDOM

SEC. 201. DISCLOSURE OF HUMAN RIGHTS DUE DILIGENCE.

(a) IN GENERAL.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

"(r) DISCLOSURE OF HUMAN RIGHTS DUE DILIGENCE.—

"(1) DISCLOSURE. Except as provided in paragraph (3), each Internet communications service company that operates in an Internet-restricting country shall include in the annual report of the company information relating to the company, any subsidiary of the company, and any entity under the control of either of such companies, relating to the following:

"(A) HUMAN RIGHTS DUE DILIGENCE.—Company policies applicable to the company's internal operations that address human rights due diligence through a statement of policy that is consistent with applicable provisions of the Guidelines for Multinational Enterprises issued

by the Organization for Economic Co-operation and Development, and whether such policy—

"(i) is approved at the most senior level of the company;

"(ii) explicitly states the company's expectations of personnel, business partners, and other parties under the control of the company, products, or services;

"(iii) is publicly available and communicated internally and externally to all personnel, business partners, other relevant partners, customers, and users;

"(iv) is reflected in operational policies and procedures necessary to embed it throughout the company; and

"(v) is independently assessed by a third party to demonstrate compliance in practice, which should include—

"(I) whether the assessment was conducted under the supervision of any third party organization or multi-stakeholder initiative;

"(II) a description of the assessment process;

"(III) a description of measures taken to ensure the assessor's independence; and

"(IV) inclusion of the assessor's public report.

"(B) NON-COMPLIANCE.—If the company's policy does not comply with any of the requirements of clauses (i) through (iv) of subparagraph (A), an explanation of why the company's policy does not meet each such requirement.

"(C) POLICIES PERTAINING TO DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION.—If the company collects or obtains personally identifiable information, the contents of wire communications or electronic communications in electronic storage, or the contents of wire communications or electronic communications in a remote computing service on the Internet, a summary of any internal policies or procedures of the company that set out how the company will assess and respond to requests by the governments of Internet-restricting countries for disclosure of such personally identifiable information or communications.

"(D) RESTRICTIONS ON INTERNET SEARCH ENGINES AND INTERNET CONTENT HOSTING SERVICES.—If the company creates, provides, or hosts an Internet search engine or an Internet content hosting service, all steps taken to provide users and customers with clear, prominent, and timely notice when access to specific content has been removed or blocked at the request of an Internet-restricting country.

"(2) AVAILABILITY OF INFORMATION.—The Commission shall make all information reported by an issuer pursuant to this subsection available online to the public.

"(3) SAFE HARBOR.—

"(A) IN GENERAL.—An Internet communications service company that operates in an Internet-restricting country shall not be required to include in the annual report of the company information described in paragraph (1) if the company includes in the annual report of the company a certification of the Global Network Initiative or a multi-stakeholder initiative described in subparagraph (B) that the company participates in good standing in the

Global Network Initiative or the multi-stakeholder initiative (as the case may be).

"(B) MULTI-STAKEHOLDER INITIATIVE.—A multi-stakeholder initiative referred to in subparagraph (A) is an initiative that—

"(i) is composed of civil society organizations, including human rights organizations and Internet communications service companies;

"(ii) promotes the rule of law and the adoption of laws, policies, and practices that protect, respect, and fulfill freedom of expression and privacy; and

"(iii) requires each company participating in the initiative to undergo assessments by an independent third party described in subparagraph (C) of the company's compliance with the standards described in clause (ii).

"(C) INDEPENDENT THIRD PARTY.—An independent third party referred to in subparagraph (B)(iii) is an entity accredited by the multi-stakeholder initiative to conduct assessments based on criteria that include—

"(i) general expertise in legal and human rights standards; and

"(ii) specific expertise in global business processes relating to information and communication technology, including operations, product development cycles, market segments and industry relationships, information technology privacy, safety, and security standards, data retention systems, and database forensics.

"(4) DEFINITIONS.—In this subsection:

"(A) ELECTRONIC COMMUNICATION AND OTHER TITLE 18 DEFINITIONS.—The terms 'electronic communication', 'electronic communication service', 'electronic storage', 'wire communication', and 'contents' have the meanings given such terms in section 2510 of title 18, United States Code.

"(B) INTERNET.—The term 'Internet' has the meaning given the term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3)).

"(C) INTERNET COMMUNICATIONS SERVICE COMPANY.—The term 'Internet communications service company' means an issuer that—

"(i) is required to file an annual report with the Commission; and

"(ii)(I) provides electronic communication services or remote computing services, but does not include—

"(aa) businesses that provide such services as an ancillary service to the provision of lodging, transportation, or food services; or

"(bb) activities conducted by a financial institution (as such term is defined in section 5312 of title 31, United States Code) that are financial in nature, even if such activities are conducted using the Internet; or

"(II) is a domain name registrar, domain name registry, or other domain name registration authority.

"(D) INTERNET CONTENT HOSTING SERVICE.—The term 'Internet content hosting service' means a service that—

"(i) stores, through electromagnetic or other means, electronic data, such as the content of Web pages, electronic mail, doc-

uments, images, audio and video files, online discussion boards, or Web logs; and

"(ii) makes such data available via the Internet.

"(E) INTERNET-RESTRICTING COUNTRY.—The term 'Internet-restricting country' has the meaning given such term under section 3 of the Global Online Freedom Act of 2012.

"(F) INTERNET SEARCH ENGINE.—The term 'Internet search engine' means a service made available via the Internet that, on the basis of a query consisting of terms, concepts, questions, or other data input by a user, searches information available on the Internet and returns to the user a link to or other means of locating, viewing, or downloading information or data available on the Internet relating to such query.

"(G) PERSONALLY IDENTIFIABLE INFORMATION.—The term 'personally identifiable information' means data in a form that identifies a particular person.

"(H) REMOTE COMPUTING SERVICE.—The term 'remote computing service' has the mean-

ing given such term under section 2711(2) of title 18, United States Code.".

(b) RULEMAKING.—Not later than the end of the 270-day period beginning on the date of the enactment of this Act, the Securities and Exchange Commission shall issue final rules to carry out section 13(r) of the Securities and Exchange Act of 1934, as added by subsection (a).

TITLE III—EXPORT CONTROLS ON CERTAIN TELECOMMUNICATIONS EQUIPMENT

SEC. 301. EXPORT CONTROLS ON CERTAIN TELECOMMUNICATIONS EQUIPMENT.

(a) IN GENERAL.—Section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405), as continued in effect under the International Emergency Economic Powers Act, is amended by adding at the end the following:

"(t) CERTAIN TELECOMMUNICATIONS EQUIPMENT.—

"(1) IN GENERAL.—The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate Federal departments and agencies, shall establish and maintain, as part of the list maintained under this section, a list of goods and technology that would serve

the primary purpose of assisting, or be specifically configured to assist, a foreign government in acquiring the capability to carry out censorship, surveillance, or any other similar or related activity through means of telecommunications, including the Internet, the prohibition or licensing of which would be effective in barring acquisition or enhancement of such capability.

"(2) INTERNET-RESTRICTING COUNTRIES.—Notwithstanding any other provision of law, the Secretary shall prohibit the export of goods or technology on the list established under paragraph (1) to a government end user in any Internet-restricting country.

"(3) WAIVER.—The President may waive the application of paragraph (2) with respect to export of goods or technology on the list established under paragraph (1) on a case-by-case basis if the President determines and certifies to Congress that it is in the national interests of the United States to do so.

"(4) DEFINITIONS.—In this subsection—

"(A) the term 'Internet' has the meaning given the term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3));

"(B) the term 'Internet-restricting country' means a country designated by the Secretary of State pursuant to section 104(a) of the Global Online Freedom Act of 2012;

"(C) a 'government end user' in a country—

"(i) is an end user that is a government of that country, or of a political subdivision of that country, or is an agency or instrumentality of such a government; and

"(ii) includes a telecommunications or Internet service provider that is wholly or partially owned by a government of that country; and

"(D) an 'agency or instrumentality' of a government is an 'agency or instrumentality of a foreign state', as defined in section 1603 of title 28, United States Code.".

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the President shall revise the Export Administration Regulations and any other regulations necessary to carry out the amendment made by subsection (a).

(2) EXPORT ADMINISTRATION REGULATIONS.—In this subsection, the term "Export Administration Regulations" means the Export Administration Regulations as maintained and amended under the authority of the International Emergency Economic Powers Act and codified, as of the date of the enactment of this Act, in subchapter C of chapter VII of title 15, Code of Federal Regulations.

(c) EFFECTIVE DATE.—Section 6(t) of the Export Administration Act of 1979, as added by subsection (a), shall take effect on the date of the enactment of this Act and shall apply with respect to the export of goods or technology on the list established under paragraph (1) of such section on or after 1 year after the date of the enactment of this Act.

☒

Mr. SMITH. And H.R. 4141, the International Food Assistance Improvement Act of 2012, and the Bass amendment, number 35 to H.R. 4141 which is the amendment sent to your offices on Monday, which adds our good friend and now deceased member, Donald Payne's name to the title of that legislation.

[The amendment referred to follows:]

AMENDMENT TO H.R. 4141

OFFERED BY MS. BASS OF CALIFORNIA

Strike section 1 and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Donald M. Payne International Food Assistance Improvement Act of 2012".

☒

Mr. SMITH. Hearing no objection, it is so ordered. The amendments and bills are adopted and without objection the staff is directed to make technical and conforming changes.

I now would like to recognize myself to speak to H.R. 1940, as amended. I want to thank my colleagues on the subcommittee for supporting this legislation, and for your input as we crafted its various provisions in H.R. 1940, the Sean and David Goldman International Child Abduction and Prevention and Return Act of 2012.

It was David Goldman's unrelenting effort to bring his son Sean home from Brazil that first alerted me to the epidemic of international parental child abduction in this country. According to the U.S. State Department, between 2008 and 2010, bereaved parents left behind like David Goldman reported over 3,200 abduction cases involving more than 4,700 children.

I had the privilege of joining David in his fight to return Sean, and experienced firsthand the maddening obstacles encountered by left-behind parents even in countries that have signed the Hague Convention on International Child Abduction. Foreign courts, endless appeals to run out the clock, exploitation of the safeguards in the Convention and prejudice against foreigners.

As David has told this subcommittee in numerous hearings that I've chaired on the subject, for the 5½ years of that battle, he lived, and this is his quote: "In a world of despondency and desperation with a searing pain throughout my entire being." He went on to say, "Everywhere I turned I saw the image of my abducted child."

I am pleased to see David Goldman is in the audience today and submit this bill in his honor, and in honor of his formerly abducted son, Sean. And, frankly, it's in honor of all of the parents, and

there are several others in the audience today, and their abducted children for whom the Hague Convention has been a long and bitter disappointment.

My bill, H.R. 1940, as amended, will encourage effective implementation of the Hague Abduction Convention, and create strong incentives for compliance and disincentives for non-compliance by countries that currently enable abductors and perpetuate child abuse through weak Convention implementation.

H.R. 1940, as amended, is also for the left-behind parents and bereaved children who have been taken to countries that are not party to the Hague Convention. Parents like Michael Elias, a combat-injured Iraq veteran from New Jersey whose ex-wife used her Japanese consulate connections to abduct little Jade and Michael, Jr. after the New Jersey court had ordered surrender of passports and joint custody.

Ms. Nakamura flagrantly disregarded those valid court orders telling Michael Elias, and I quote her, "My country, Japan, will protect me." Sadly, she was right. Although Japan is reportedly prosecuting her for abusing her consulate connections, they will not return the children.

At a hearing last May, Michael Elias told this subcommittee that as a father who no longer has his children to hold in his arms, "I cannot deal with the sorrow so I will try my best to stay strong and keep fighting for their return. All my hopes and dreams for their future now lie in the hands of others." He continued, "I am begging our Government to help not only my family but hundreds of others, heartbroken families as well, to demand the return of our American children who are being held in Japan."

U.S. Navy Commander Paul Toland, who is here with us with some of the left-behind dads from Japan whose children are in Japan, also knows firsthand the pain suffered by all of the left-behind parents. His daughter, Erica Toland, was living with Paul and his wife in Navy housing in Yokohama, Japan, when Etsuko took Erica in 2003 and never returned. Tragically, his wife passed away in 2007, and yet Commander Toland has continually been denied access to his daughter.

We have, in the past, had hearings with some of the other left-behind parents and we will include in this record some of their testimonies, and we're planning in about a month to 6 weeks' time yet another hearing to hear firsthand from those families and from those left-behind parents of the plight that they face, the obstacles they encounter with our U.S. Department of State and the Office of Children's Issues in the hope that finally they will get their children home.

According to the Office of Children's Issues at the State Department, there are more than 111 American children being held in Japan, others say it's much higher than that, against the will of their American parent. More than 40 others are not allowed access to their American parent. Japan has yet to issue and enforce any court order for the return of a single American child abducted to Japan. I look forward to the day, and I believe that day will happen soon, when these kids are brought home. And I do believe H.R. 1940, as amended, takes us a step closer.

International parental child abduction rips children from their homes and lives, takes them to a foreign land and alienates them from a left-behind parent who loves them and who they have a right to know. Their childhood is disrupted, or sometimes is in hiding, as the taking parent seeks to evade the law, or to conjure illegal cover for their abusive actions. Abducted children often lose their relationship with their mom or their dad, half of their identity, and half of their culture.

They 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. As adults they may struggle with identity issues, their own personal relationships, and parenting.

All of this has been chronicled over and over again, and is one of the main reasons why the Hague Convention was adopted back in 1980 in the first place. The body of evidence has only exploded over the years since.

Parental child abduction is child abuse. Too many families have been waiting too long for the return of their children. Our current system with its endless delays and lack of proper accountability has failed far too many. It is time for the approach that backs our demands for adherence to international obligations with penalties, and makes clear to foes and friends alike that our children are our top priority.

The amendment that was just approved by unanimous consent will achieve this goal by giving the President important tools to motivate other countries to quickly respond to applications for an abducted child's return. For even one case that has been pending for over 6 weeks in a foreign country's judicial system the President may choose to at least issue a private demarche or take more serious actions commensurate with the gravity of the case.

If a country has 10 or more cases of children abducted from the U.S., pursuant to this legislation, and those cases are not being resolved in a timely manner, or the entity responsible for working with the U.S., the central authority, or the judiciary, or the law enforcement, are persistently failing to fulfill their obligations, the President can take measured, effective, and predictable actions to aggressively advocate for our children's return. Such actions range from denial of certain assistance to prohibiting the procurement of certain goods or services from the government or instrumentality responsible for the pattern of non-cooperation.

Of course, the President is directed to consult with the government concerned and report to Congress when contemplating serious actions. The President is also provided with certain waiver authorities that take into account the important national interests of the U.S. However, the expectation is that the President will use all tools necessary to bring our children home in a timely manner, and that the President will have to explain the minority of cases where a delineated tool cannot be used. And I will put into the record, and it's in the legislation, all 17 of the prescribed actions that the President can take, and they are serious.

We patterned it after lessons learned from the international—the Trafficking Victims Protection Act of 2000 which I authored, and the legislation called the International Religious Freedom Act

which I helped get passed. It was authored by my good friend and colleague, Frank Wolf, prescribing specific actions to be taken against governments that show this non-cooperation, or a pattern of non-cooperation.

I would like to now yield to my friend and colleague, Ms. Bass, for comments she might have on the child abduction legislation.

Ms. BASS. Thank you. Thank you, Mr. Chair. I just have to say as this is my first subcommittee hearing as ranking member that I can't not begin by expressing again my sadness for the loss of our colleague, Representative Payne, but I am thankful for the opportunity to serve as ranking member, and to serve alongside of you and your leadership that you've had for so many years on these issues.

It's fitting that during this first subcommittee meeting after the loss of our friend and colleague that we're going to consider several measures aimed at protecting the most vulnerable among us, children, the disenfranchised, and the hungry, whom Representative Payne fought to protect throughout his career.

Representative Payne was a leader on international human rights issues, and especially concerned with protecting the rights of children and young people. And I, of course, want to commend you, Chairman Smith, for your dedication to promoting adherence to the Hague Convention on the Civil Aspects of International Child Abduction, for encouraging nations to adopt the Convention, and for consistently pursuing justice for our children.

Last year you convened two subcommittee hearings on international child abduction, and during the first of those hearings we all heard the heartbreaking stories of parents whose children were abducted to a foreign country.

David Goldman, who is here today, Mr. Goldman, I have to tell you that I watched your story for years on TV, and I never had any idea, of course, that I would wind up serving in Congress and having an opportunity to meet you. I just really can't imagine what it was like, what you went through. And I'm very happy that you're reunited with your son, and really want to congratulate you for your leadership in helping to bring that about, Mr. Chairman.

I know the Elias family is represented by the grandmother that is here. Thank you for attending today, and also over the time you have shared your story with us.

This legislation that is offered by Chairman Smith would finally give proper due diligence to this often neglected crisis by creating an Office on International Child Abductions within the State Department, and by expanding the President's authority to act decisively to bring these children home.

The community that I represent in Los Angeles has also been impacted by this horrific crime. Several of my constituents have reached out to me and told me about their children that have been abducted. There's one family that we've been working with for quite a while whose child was abducted to Japan, so I appreciate you bringing forward this bill and I look forward to continuing to support the efforts until all the children are returned home. Thank you.

Mr. SMITH. Ms. Bass, thank you so very much, and welcome to the subcommittee. And as both you and I and so many others who

were at Don Payne's funeral know, it was a huge loss to the Congress, and a great friend especially of those who are suffering the ravages of famine and natural disasters on the continent of Africa. But welcome to the subcommittee as ranking member, I look forward to working with you.

I'd like to now yield to the vice chairman of the subcommittee, Mr. Fortenberry.

Mr. FORTENBERRY. Thank you, Mr. Chairman, for your important leadership on this and so many other issues. What more important function can our Government undertake than to prevent the abduction of American children?

Thousands of children have been subjected to this abuse. Thousands of children have been treated as international pawns. Think of the thousands of children who lie silently in their beds except for the crying that can perhaps not be heard by anyone but themselves.

A child's pain should know no international boundary, and a child's suffering is enough due to the separation of their family unit. So, I want to thank you, Mr. Smith, for your important leadership.

International child abduction is too common, and past legal and diplomatic barriers have been too high for the families who have had to suffer through this problem. Establishing the Office of the International Child Abductions within the State Department, I'm hopeful, may impart a focused and whole of government approach to returning abducted children to the United States and preventing more families from the heartbreak and difficulties that this has caused. Thank you for your leadership.

Mr. SMITH. Thank you very much. The Chair recognizes the former U.S. Attorney from Pennsylvania, Mr. Marino.

Mr. MARINO. Thank you, Chairman. As a prosecutor for 18 years I've had the unfortunate task of dealing with issues that are such heartbreaking issues as child abduction from a domestic perspective and from an international perspective. And I can only thank the chairman for holding this hearing, putting this legislation together, that will really put some teeth into the laws that The Hague should have implemented a long time ago. So, the chairman and, of course, the parents out here and the parents that aren't here, and the children that have been abducted have my total support, and that is a commitment. Thank you.

Mr. SMITH. Thank you very much. The Chair recognizes Mr. Turner from New York.

Mr. TURNER. Thank you, Mr. Chair. I was reminded of something in another life. I ran an entertainment company, a woman named Cathy Mahone came in to sell her television rights which ultimately was a TV movie called "Rescue My Child." And her 8-year old daughter was abducted following a divorce, and falsely sent to Jordan. And failing to get any satisfaction from the State Department or through the courts, she took some extralegal methods and hired what were called consultants at the time, ex-military people, who literally went in and re-kidnaped the child and got her out.

This extralegal method has pretty much closed down. The principals of the company were a little tired of going to jail and getting shot at and all the other things that they had to endure over the

years. I'm hoping what we've done today will be a legal step that will facilitate this, and I applaud you for it. Thank you.

Mr. SMITH. Mr. Turner, thank you so very much. The Chair recognizes a woman who happens to be both a lawyer and a nurse, and has been, like the other members of this subcommittee, tenacious in combating human rights, Ms. Ann Marie Buerkle.

Ms. BUERKLE. Thank you, Mr. Chairman, and I just want to echo my colleagues' thoughts to you. Thank you for your leadership on this extremely important issue.

We sat through, several months ago, a hearing about child abduction and listened to the anguished testimony of parents who had lost their children, so this piece of legislation will, as my colleague said, put teeth into what the Hague Convention should be doing.

It's the right thing to do. As a mother of six children, I can only imagine the pain that you've all felt by having your child abducted, so we are so pleased to be able to work with you to get this passed. Thank you so much.

Mr. SMITH. I want to thank my good friends and colleagues. I just want to note before we move on to the Global Online Freedom Act, unless my colleagues have anything further to say, and you mentioned this, Mr. Turner, the importance of the media, television and print, all media, but to bring the message forward to sensitize and mobilize people. I would be remiss if I didn't note that Dateline did a tremendous public service for David and every other left-behind parent, and Meredith Vieira is here, and Benita Noel. Benita was the producer and was with David throughout that process. Meredith carried frequently, almost every day in some cases, vital information as to what was happening in real time, and what a difference that made. And then got it all together for various Dateline specials. And not only did it help David Goldman and Sean get reunited, and Sean repatriated to the U.S. with his dad, but I do believe it has helped all the other left-behind parents.

And this is still a festering sore when it comes to issues. The pain that these men and women suffer is beyond words to describe, and yet they continually push hard. Thank you for amplifying their concerns in such a magnificent way.

Any further comments on that legislation? If not, I now will move to the consideration of the debate on H.R. 3605, the Global Online Freedom Act.

In December, I introduced H.R. 3605 which was an updating of the Global Online Freedom Act that I first introduced, as I mentioned earlier, back in 2006. The response to the growing global use of the Internet as a tool of censorship and surveillance as a means of capturing, apprehending the best and the brightest in dictatorship countries all over the world, including especially in China.

Members might recall back in 2006 we had our first hearing on this issue in this subcommittee, and I swore in all of the leaders from Google, Yahoo!, Cisco, and Microsoft, and the answers that they gave at that time were very unavailing. They didn't want to tell us what they were doing in places like China, but we persisted, we wrote legislation, the Global Online Freedom Act, and today we have a refined, and I think, an even more effective draft of legisla-

tion that moves to the committee to try to combat this misuse of the Internet.

The threat to human rights is very serious. Reporters Without Borders just released its Internet enemies list, the names of the countries that violate their citizens' online freedoms. The reports tell us that China, Vietnam, and Iran are the world's biggest prisons for netizens. Other countries are not lagging far behind.

For example, the Government of Pakistan recently announced a public bid for companies to help them build their own version of China's Great Firewall. The public outcry caused the government to withdraw the bid but I'm skeptical that plans for the firewall are actually scrapped. Likely this procurement has simply been moved behind the scenes and out of public scrutiny.

Sadly, it's through the assistance of Western companies and technologies that this—and this includes American companies and technology, that governments like Iran, China, and Syria, and many others are transforming the Internet into a weapon of mass surveillance.

Just as we jealously guard our media freedoms and our personal freedoms, and would be horrified if American companies sold newspaper censorship services abroad, we also need to ensure that our companies and our capital markets are not censoring the Internet abroad. The Internet holds great promise, but also because it can be censored and surveilled, the potential of great peril.

The Global Online Freedom Act is designed to help ensure that U.S. companies are not complicit in repression of human rights. We need to move now to ensure that fundamental freedoms are protected. First, the Global Online Freedom Act requires the State Department to beef up its reporting on Internet freedom in the annual Country Reports for Human Rights Practices, and to identify by name what we call Internet restricting countries.

This country designation will be useful not only in a diplomatic context in helping to advance Internet freedom through naming and shaming countries, but will also provide U.S. technology companies with the information they need to make good business decisions in difficult foreign markets.

Second, the bill requires Internet companies listed on the U.S. stock exchanges to disclose to the Securities and Exchange Commission how they conduct their human rights due diligence, including with regards to the collection and sharing of personally identifiable information with repressive countries, and the steps they take to notify users when they remove content or block access to content.

This provision of the bill will help democratic activists and human rights offenders to hold Internet companies accountable by creating a new transparency standard for Internet companies. And while we certainly want to hold U.S. companies accountable, this provision will also require foreign Internet service companies that are listed here in the United States, including big name Chinese companies such as Baidu, Sohu, and Sina to report this information, as well.

And, finally, in response to the numerous reports we've all seen in the papers recently on U.S. technology being used to track down or conduct surveillance of activists through the Internet or mobile

devices, this bill will prohibit the export of hardware or software that could be used for surveillance, tracking, and blocking, and the like, to the governments of Internet restricting countries.

Current export control laws do not take into account the human rights impact of these exports and, therefore, do not create any incentive for U.S. companies to evaluate their role in assisting repressive regimes.

This section will not only help stop the sale of these items to repressive governments, but will create an important foreign policy stance for the United States that will help insure that dissidents abroad know that we are on their side and that U.S. businesses are not profiting from this repression.

The export control law is long overdue. Right now the State Department spends millions of dollars to develop and deploy circumvention tools and other technologies to help dissidents get information and to communicate safely. Truly, it is absurd for us to allow U.S. companies to export blocking and surveillance technologies to these countries only to have the State Department then spend money to help dissidents get around those same technologies.

What we do here in the United States is critically important to achieving our goals, and I believe that this legislation will send a strong message to companies that they have a unique role to play in preserving online freedom, and that we send an even stronger message to repressive governments that the Internet should not become a tool of repression. I yield to the ranking member, Ms. Bass.

Ms. BASS. Thank you, Mr. Chairman.

Free speech has long been a hallmark of a healthy democracy and a free society. For over 2 billion people worldwide, the Internet and new communication technologies have become unprecedented tools for expanding their ability to speak and receive information, participate in political and democratic processes, and share knowledge and ideas.

For over a year now we have witnessed what has been dubbed the Arab Spring. In countries throughout the Arab world via the Internet and social networking, citizens have communicated, organized, and raised awareness of their plights under repressive regimes. Sites such as Facebook and Twitter have played a major role in these uprisings.

Whatever you may think about the outcome of those movements, one thing is clear; the long suspected power of the Internet to bring about political change has been confirmed, and that is very positive. The prevalence of these uprisings has caused governments to enact stricter policies against political dissent and further restrict access to information and online networking tools.

As Representative Payne repeated in our hearing on this topic last December, former President Clinton once said that, "Trying to control the Internet would be like trying to nail Jello to the wall." Unfortunately, there are regimes around the world that are attempting to do just that, and some with relative success.

Yet determined to share their stories, protestors and bloggers living in these countries are still finding ways to access the Internet because of the technologies made available by companies like Google, Yahoo!, Facebook, Twitter, and others. For example, in

Syria where there is extremely limited freedom of the press and unconscionable repression, activists are using an iPhone application to disseminate news and online information about their protest against Assad.

The bill also requires U.S. listed Internet communication providers to report on their human rights due diligence with regard to foreign policies on Internet privacy and repression.

While I support the overall goal of the bill, I hope that we can continue to refine the language at the full committee such it does not adversely impact U.S. companies that are providing a tremendous service to many people across the globe who have no other way to see beyond their borders, shed light on their plights, and mobilize their communities for change. But as the chairman pointed out, as a perfect example of a U.S. company that would export technology that would block access and then we provide funding so that they can go around it is exactly the type of abuse that we want to get at.

So, that said, I commend you, Chairman Smith, for your leadership on this issue.

Mr. SMITH. Vice Chairman Fortenberry.

Mr. FORTENBERRY. Thank you, Mr. Chairman.

American leadership and innovation was responsible for the remarkable technological breakthrough known as the Internet which spurred the advent of globalization and this unprecedented industrial revolution of our new century. It has become a way of life since then.

Globalization, of course, carries marvelous potential for progress to benefit mankind, but it also involves unprecedented risk and challenges, including the challenge of applying fundamental principles to the use of new, and vibrant, and transformative technologies.

U.S. companies operating around the world are routinely required to abide by local laws of the countries in which they operate just as foreign countries are required to abide by U.S. law.

Mr. Chairman, I recall the hearing which you held on this topic in the 109th Congress, and at that time the fundamental question we addressed there still applies today; whether U.S. companies have an obligation to comport themselves in a manner consistent with the United States Constitution and the Bill of Rights when local laws overseas conflict with the basic foundational principles upon which our laws are based.

The Global Online Freedom Act seeks to integrate these foundational human rights principles into the complexities of our participation in the vast global technology marketplace. So, I urge my colleagues and thank you, as well, Mr. Chairman, to continue to support this thoughtfully developed measure. And, again, thank you for your tireless efforts in this regard.

Mr. SMITH. Mr. Fortenberry, thank you very much for your comments and for your leadership, as well.

I'd just like to point out that the Global Online Freedom Act has had a broad, broad amount of support. This morning we received—we just received a letter of support from Yahoo!, Freedom House, Amnesty International, and I know T. Kumar is here, and thank you for your support, as well as helping us to put it together,

Human Rights Watch, Access, and a group letter signed by 13 leading human rights organizations all in support of the Global Online Freedom Act. Without objection, those letters will be made a part of the record.

We now move for debate purposes to the third bill, H.R. 4141, as amended, the newly named Donald M. Payne, and thank you, Ms. Bass, for naming it so out of deep respect for our deceased colleague, the Donald M. Payne International Food Assistance Improvement Act of 2012.

This bill was originally introduced—and still it's his bill—by Mr. Payne before he passed away on March 6th. The bill is based on important recommendations that had been made by the Government Accountability Office in a report that they issued in May 2011 on "Better Nutrition and Quality Control Can Further Improve U.S. Food Aid," as well as other studies on the same subject funded by the U.S. Agency for International Development.

As the GAO pointed out in its report, the U.S. spent approximately $1.5 billion on emergency food aid in Fiscal Year 2010 assisting nearly 46.5 million women, men, and children. In fact, the U.S. is the world's largest donor of international food assistance providing more than half of global food aid supplies. It's imperative that this assistance not only satisfy people's hunger, but that it meets their fundamental nutritional needs, as well.

The statistics of the prevalence and impact of under-nutrition are absolutely staggering. It is reported that 3.5 million children around the world die each year as a direct result of under-nutrition. Others who suffer from malnutrition are often debilitated for the rest of their lives. Children who do not receive adequate nutrition during the first 1,000 days of life, beginning with conception through their second birthday, suffer from stunted physical and cognitive development. They have increased risks of illness, not only in early life but also later as adults from such conditions as diabetes, cardiovascular diseases, and cancers.

Mothers who are under-nourished are more often likely to have low birth weight babies leading to a multi-generational cycle of under-nutrition, and even disability.

Mr. Payne's H.R. 4141, which the subcommittee has just adopted, directs the Administrator of USAID to use currently available funds to improve the nutritional quality of U.S. food assistance, particularly for vulnerable groups such as pregnant and lactating mothers, children under the age of 5, and beneficiaries of the U.S. HIV/AIDS programming or PEPFAR.

Possible measures that may be taken include the adoption of new specifications for micronutrient fortified food aid products, strengthening assessment of the quality of food donations, and improving guidance to implementing partners on how to address nutrient deficiencies in certain age recipients.

H.R. 4141, as amended, will also include nutrition science experts in the Food Aid Consultative Group created by the Food for Peace Act. The bill calls on the administrator to work within this group to improve quality control and cost effectiveness of food assistance programs through increased coordination and oversight.

Finally, the USAID Administrator would need to ensure that food assistance programs carried out under the Food for Peace Act contribute to any U.S. global food security strategy.

Again, I want to thank Ms. Bass for offering the amendment to add Mr. Payne's name to this bill, which is truly a remarkable way to honor this wonderful man. Ms. Bass?

Ms. BASS. Thank you, Mr. Chairman, and thank you for accepting the amendment and including this, because we really wanted to honor Representative Payne, and we thought this was a great way to do it, to change the name of the bill.

Malnutrition, as you mentioned, is the number one risk to health globally accounting for the deaths of 3.5 million children under 5 years old, and impairing hundreds of thousands of growing minds. This has profound consequences not only for the child's future, but also for the long-term health and development of families, communities, and societies.

The human and economic costs of malnutrition are enormous. Women, children, and the poor are, of course, the most hit. For over 55 years, the United States has been a world leader in international food aid delivering lifesaving calories to the most vulnerable of populations, often in conflict zones. However, while our efforts are great, the ongoing food crisis in the Horn of Africa is just one example of how the challenge is growing.

As revealed in recent reports, by the Government Accountability Office and Tufts University, there are a number of ways in which our food aid initiatives can and must be improved including increased nutritional quality, greater oversight and quality controls, and an enhanced value chain. This bill incorporates these recommendations and ensures that our food aid programs are smart, effective, and efficient.

The bill directs USAID to work with USDA and the Food Aid Consultative Group to adopt new specifications for food aid products, work to strengthen systems to better assess the types and quality of agricultural commodities and products, adjust products to cost-effectively meet nutritional needs, develop new program guidance to better target recipients, and provide improved guidance to implementing partners on how to adequately address nutritional deficiencies. It also would ensure that the food aid programs are integrated into our global food security strategy.

H.R. 4141 is a wonderful example of Congressman Payne's lifelong commitment to addressing the needs of the under-served, fostering innovation in humanitarian assistance, and advancing America's leadership across the globe. Thank you.

Mr. SMITH. Ms. Bass, thank you very much, and I look forward to working with you as the new Ranking Member.

Ms. BASS. Absolutely.

Mr. SMITH. And I would like to thank for the record all the members for their constructive help in crafting these bills as we take them to the full committee, and then on to the floor, and down to the President's desk.

Without objection the markup is adjourned.

[Whereupon, at 3:14:06 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

SUBCOMMITTEE MARKUP NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-0128

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS
Christopher H. Smith (R-NJ), Chairman

March 23, 2012

You are respectfully requested to attend an OPEN markup held by the Subcommittee on Africa, Global Health, and Human Rights to be held in **Room 2200 of the Rayburn House Office Building (and available live, via the WEBCAST link on the Committee website at http://www.hcfa.house.gov):**

DATE: Tuesday, March 27, 2012

TIME: 2:00 p.m.

MARKUP OF: H.R. 1940, To ensure compliance with the 1980 Hague Convention on the Civil Aspects of International Child Abduction by countries with which the United States enjoys reciprocal obligations, to establish procedures for the prompt return of children abducted to other countries, and for other purposes;

H.R. 3605, To prevent United States businesses from cooperating with repressive governments in transforming the Internet into a tool of censorship and surveillance, to fulfill the responsibility of the United States Government to promote freedom of expression on the Internet, to restore public confidence in the integrity of United States businesses, and for other purposes; and

H.R. 4141, To direct the Administrator of the United States Agency for International Development to take appropriate actions to improve the nutritional quality, quality control, and cost effectiveness of United States food assistance, and for other purposes.

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE MARKUP

MINUTES OF SUBCOMMITTEE ON *Africa, Global Health, and Human Rights* MARKUP

Day *Tuesday* **Date** *March 27, 2012* **Room** *2200 Rayburn*

Starting Time *2:34 p.m.* **Ending Time** *3:14 p.m.*

Recesses [*0*] ( ) ( ) ( ) ( ) ( ) ( )

Presiding Member(s)

Rep. Chris Smith

Check all of the following that apply:

Open Session [☑]
Executive (closed) Session [ ]
Televised [☑]

Electronically Recorded (taped) [☑]
Stenographic Record [☑]

BILLS FOR MARKUP: *(Include bill number(s) and title(s) of legislation.)*

H.R. 1940: Sean and David Goldman Internatinoal Child Abduction Prevention and Return Act of 2012
H.R. 3605: Global Online Freedom Act of 2012
H.R. 4141: Donald M. Payne International Food Assistance Improvement Act of 2012

COMMITTEE MEMBERS PRESENT:

Rep. Chris Smith, Rep. Robert Turner, Rep. Jeff Fortenberry, Rep. Karen Bass, Rep. Tom Marino, Rep. Russ Carnahan, Rep. Ann Marie Buerkle

NON-COMMITTEE MEMBERS PRESENT:

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

Written statement of Ms. Edwards; Written statement of Mr. Bermudez; Written statement of Mr. Izzard; Written statement of Mr. Bower; Presidential actions that can be taken as set out by H.R. 1940; Statements in support of H.R. 3605

ACTIONS TAKEN DURING THE MARKUP: *(Attach copies of legislation and amendments.)*

H.R. 1940 passed, as amended by Smith (NJ) #64, by unanimous consent
H.R. 3605 passed, as amended by Smith (NJ) #69, by unanimous consent
H.R. 4141 passed, as amended by Bass (CA) #35, by unanimous consent

RECORDED VOTES TAKEN (FOR MARKUP): *(Attach final vote tally sheet listing each member.)*

Subject	Yeas	Nays	Present	Not Voting

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED *3:14 p.m.*

Subcommittee Staff Director

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

Testimony of Sara Edwards
May 24, 2011
House Committee on Foreign Affairs,
Subcommittee on Africa, Global Health, and Human Rights

My name is Sara Edwards and I am the mother of an adorable 3 year old boy, named Abdullah Eli. Thank you all for the opportunity today to share Eli's story. I miss my boy so much every day, but the chance to speak to you about my pain and struggle gives me the hope that someday very soon I will have him back in my arms. Eli loves to play race with his toy cars and trucks. He is a beautiful blonde-headed smile-factory of a boy. He also gives the most wonderful bear hugs, but I have not held him since March 4th 2010. That day, more than fourteen months ago Eli's father, my husband, Muhammed Kiraz, took Eli to Turkey for a family visit.

Muhammed and I met while we were both in college and we married in Kent, Ohio in 2003. Our son was born five years later in 2008, while I was in graduate school at The Pennsylvania State University. My family and parts of Muhammed's family lived in Northeast Ohio, so when Eli was 6 months old, we moved back there.

In January of 2010, after seven years of marriage, Muhammed and I separated. We drafted an informal shared parenting agreement to outline our intentions for raising Eli. I believed this document was a framework for us to work together as separated parents to achieve the best interests of our son. We acted under the plan, which called for equal custodial time of alternating weeks with Muhammed and I each visiting Eli two days a week during the other parents' visitation. We made bedtime phone calls every night regardless of which parents' week it was. I fully believed that Muhammed's participation meant he was committed to shared parenting like I was.

Therefore, when Muhammed wanted to go forward with a visit with Eli to see his family in Turkey, I did not object. I thought it would be good for Muhammed to have the support of his family during the separation. Muhammed provided me with the round trip travel itinerary of their tickets and also a signed, notarized statement promising to return with Eli. Muhammed and Eli were supposed to spend only two months in Turkey. But now 14 months later, Eli has still not come home.

Hindsight is 20/20. I now know that my husband felt he could not get what he wanted in the U.S. so he took our son to Turkey. There secured an unlawful custody ruling and divorce, and he did all he could to ensure that my side of the story would never be heard. I am here today to share my side of the story, and to speak for Eli.

I certainly did not want to be without my son for two months; I knew that I would miss him more than I had ever missed anything else, but I have always felt that it is important for our son to know his Turkish family and to have exposure to that half of his culture. I wanted to be fair. I myself had traveled to Turkey five times before Muhammed abducted Eli. I took Eli two of those times and each time we were there we stayed for two months. It all seemed routine. I drove them to the airport for their visit and I was there as they went through ticketing and security. I blew kisses and waved to Eli as Eli waved bye-bye from Muhammed shoulders. As I hold on to

that happy last look at him, I now realize that Muhammed actively deceived me and preyed on my trust from the moment we decided to separate.

For the first two weeks of their trip, I visited with Eli daily by web cam. While anxiously counting down the days to his return, I actually remember being glad to know that Eli would learn some Turkish words during his trip. Muhammed, however, had plans for something altogether different and on March 22, 2010, my nightmare began. Muhammed began making threats that he would only bring Eli back to Ohio if I would declare myself an unfit parent and give full custody of our son to him. I was in hell. He told me that he had already divorced me and that there was nothing I could do. I was shocked and devastated, but I thought his out bursts were just scare tactics to make me relinquish custody. On March 23, 2010, I contacted the Department of State, Office of Children's Issues; the American Embassy in Ankara, Turkey; and the Turkish Consulate in Chicago. I also began seeking advice from attorneys in Turkey and all over the United States.

It is now clear to me that Muhammed never intended to bring Eli home. Muhammed arrived in Turkey on March 6, 2010, and attended a divorce hearing on March 10, 2010. The domestic court of Nevsehir, Turkey granted full custody of our son to Muhammed on March 11, 2010. Muhammed got full custody and divorce in a domestic court in a country where we never resided. According to Turkish law, I should have been physically present for the divorce hearing. Not only was I not present, I was never informed of the case in any way, and I never had contact at all with the attorney, Hasan Unal, who supposedly represented me. I did not even have hard evidence that a divorce occurred until Muhammed filed the Turkish court's divorce and custody ruling through his Ohio attorney as evidence in the Ohio custody case.

To date, Muhammed continues to ignore the Summit County court order to return Eli to Ohio. The judge signed the order adopting our original Shared Parenting Plan in June of 2010, and Muhammed and I are still legally married in Ohio. My Turkish attorney submitted my Hague petition to the Turkish Central Authority on January 24, 2011. I learned that the Turkish authorities have investigated Muhammed and Eli's whereabouts and, just this month the Turkish Central Authority has opened a case on my behalf in Kayseri, Turkey domestic court for the return of my son. I await updates daily. I await updates desperately.

Over the past fourteen months, Muhammed has permitted me to visit with Eli by web cam, sometimes on a regular basis, but he also abruptly cuts off access for long periods with no warning. I schedule my daily life around the chance to speak to my only child, and my despair or elation turns upon Muhammed's whim. Eli no longer understands or speaks English and I struggle to keep up with him in Turkish, but I am so grateful to still have contact with him and maintain our bond. Eli was only 2 when Muhammed took him, and now at age 3 I see him growing and changing drastically with each visit. Every day I wonder if he is thinking about me and missing his mother the same way I am thinking about him and missing him. Muhammed threatens to take Eli to Syria, torturing me with the reality that each web cam visit could be the last time that I ever see Eli. My greatest fear is the real possibility that Eli will one day believe the lies that Muhammed has told; that I am a bad mother, that I abandoned him, that I did not want him.

The obstacles I face fighting the abduction of my son are great. I am essentially on my own to fight a court battle in a foreign country where I do not know the language or understand the culture. I have to be continually vigilant as I learn to maneuver this nightmare of uncertainly that accompanies fighting for my son. To date, I still do not know whether Eli has been issued a Turkish passport. No one can give me confirmation that Muhammed can be questioned if he tries to abscond with Eli from Turkey while the Hague investigation case is pending. No one can give me confirmation that Muhammed would be questioned if he returns to the US to renew is Legal Resident Status.

I love my son more than anything in this world and I am ready every minute to welcome Eli home. Thank you for this opportunity to share Eli's story. I personally ask each of you to commit now to do all that is in your power to restore the right of our children to have relationships with both of their parents.

Thank you.

Testimony of Carlos Bermudez
House Committee on Foreign Affairs
Subcommittee on Africa, Global Health, and Human Rights
May 24, 2011

Issue of ICA and Mexico

Personal Story

My only son, Sage, was born May 14th, 2007. Like many parents, I had spent the months preceding his birth rearranging my priorities towards fatherhood, and anxiously awaiting his arrival. From the moment I first held him in my arms, I knew that being his father was now to be the most important role in my life. A few months after his birth, In October 2007, my wife Ana's dearest aunt Sylvia was dying of cancer. This unfortunate reality played out against the auspicious birth of Sage, and my marriage to his mother, Ana Belem. Estranged from her family and suffering from the idea that she might never see her Aunt before she died, my wife asked me to allow her to take our son to Mexico to see Sylvia before she died, and tell her family about our marriage and child. Although I offered to go along with her, she plead with me to let her go alone initially so she could talk to them before I got there, claiming that this would make the situation smoother because she knew how to handle her family. I was very reluctant, as Sage was only 5 months old, but she insisted they would be fine and that this was the best plan. We agreed that she would go alone for the first 2-3 weeks to give her time alone with her family, so that she could explain her previously unannounced marriage and child.

The trip was supposed to last two months, with her return from Mexico planned to coincide with the date we believed her green card would arrive to make her a legal US Resident. Leaving the country in the midst of changes in residency status is not without risk--Immigration does not allow applicants to do so without special permission. Whether knowingly or not, my wife falsely claimed, and convinced me, that if she requested this special permission it would be denied, and the proceedings to request would just delay the normal process making it even less likely that she'd make it to Mexico to see her aunt before she died.

Under these circumstances I notarized permission for my son to travel to Mexico for a "two month tourist visit." When the Green Card processing stalled for, to date, unexplained reasons, the two month visit extended to a total of four months, with my wife returning to the United States in March.

By staying behind in the United States, in deference to my wife's requests, I failed to effectively protect my son's right to be parented by his father. By not overtly publicly establishing, in Mexico, my ability and willingness to be father to my son, I implicitly abetted a series of events that would later lead to my son's abduction, and subsequent illegal retention from the country of his birth and paternal family. I pray my son will forgive me this error, though I shall never forgive myself for it. While trying to navigate the complexities of an international relationship, and to respect my wife's reported customs by allowing her to leave the country alone with

our son, I inadvertently enabled my wife to believe she could invent a completely false narrative of Sage's father, and of her life in the United States.

As one might expect, this four month separation from my wife and son was difficult. In particular, because it quickly became apparent that every conversation between my wife and I was initiated by me, and that my wife was not using any of the various cameras and communication media that I'd acquired and maintained at great expense, precisely to allow her to send pictures and videos and facilitate ongoing interaction between myself and our son over the internet.

Upon my wife's return from Mexico in March of 2008 I had serious reservations about the long term viability of our marriage, but believed that working to salvage the marriage was what was best for my son. Increasingly, there were signs that something was amiss with my wife. In spite of my efforts to understand and address what was happening, I was ultimately at a loss for what to do and was quietly, and thanklessly, maintaining a demanding work schedule to provide for my family, I tried not to read the writing that was, in hindsight, on the walls, and hoped that our problems would somehow work themselves out with time or keep long enough for me to be able to find the time and energy to deal with them effectively.

Time was not on my side. In June of 2008, my wife falsely claimed there was a "family emergency" in Tucson, AZ. The "emergency" involved her supposed cousin, a 12-year-old boy who had gone missing, and whose mother was an illegal alien who was scared to go to the authorities for fear of being deported. The missing boy had supposedly gone out with his uncle to McDonald's, where they believed he'd been picked up by the US Border Patrol. Although his mother was illegal the boy was born in the US. My wife's mother asked for her help, since she is licensed to practice law in Mexico and a legal US Resident. Despite great discomfort, I didn't object to my wife going to AZ with our son to see what she could do to help during this dire crisis. The only alternative I saw at that time was to take the time off at IBM to care for our son alone, while my wife went to help her endangered cousin. Being the sole provider for our family that, regrettably, did not seem feasible at the time.

Ana went to Arizona with our son for what was supposed to be a few days. Once there she turned off her phone, and via email, said that Sage had thrown it in the bath tub but she was "looking for another phone to call with". I spent nights in terror when I couldn't get a hold of my wife. Did something happen? Was my child suffering or in danger? Emotions any parent can relate to. The idea that my son might be in some kind of danger forced me to stop refusing to ask myself the hard questions about what was going on. As my uncertainty and fear grew, I began a frantic investigation into my wife's recent activity, plans and associations. She never seemed to find a phone, but for several weeks I continued to receive emails saying that she was "looking for a phone to call," and that she was still working to resolve the family emergency. Finally, I traced the originating IP address of her emails to find she wasn't in Arizona at all. She was in Mexico, and there began the investigation into why she had really gone to Mexico. I began to see what she was doing and what her intentions were. Although my wife has never endeavoured to explain to me why she did this, I have determined the following:

Before long, I would learn that my wife had been having a long-running affair with

one of the "friends" in her social group. This "friend," amongst many others, had come to our house for a number of events we'd hosted there, including my wife's baby shower and a cook-out for her birthday when my son was 4 months old. To be with this family friend, she quietly planned the abduction of our son to Nogales, Mexico, a border city and sister to Nogales, AZ. Over the course of weeks, while still in the U.S., she asked me to go to the Mexican Embassy to apply for a birth certificate for Sage so he could have dual citizenship. She gathered up all the documentation she could find of our life, such as the pictures and legal documents like our marriage certificate. She also took my passport, social security card, both copies of my birth certificate and the title to my car and flew to Tucson. The detailed story she'd told about the missing child was pure fiction used to abduct our own son.

There have since been 9 separate trials in Mexico with multiple still ongoing. The Mexican legal system allows for a large number of appeals, all of which can suspend enforcement of any decision to return an abducted child. Since September 2010, the family court judge has illegally suspended the new proceedings to have my son returned, claiming he is waiting for the superior court to give him original court documents from the first trial. The State Superior court claims that they are waiting for these files from the first level federal court even though it was the State Superior court that incorrectly sent them to the 2nd level federal court, who then incorrectly sent them to the 1st level federal court, who has been unresponsive to requests that they be returned to the 1st level family court so that the proceedings can commence. As you may have just gathered, the Mexican legal system is both maddeningly slow and at times, a bit confusing. It's become very clear here that the claim being made by the 1st level family court that they cannot proceed without these "original documents" is patently false, since they have certified copies and have never even requested that the higher courts send them the documents they claim to need.

Mexico is amongst the world's most popular sources and destinations for international child abduction, while also being widely regarded as having one of the least effective systems of protecting and returning internationally abducted children within its borders.

Mexico signed on to the United Nations Convention on the Rights of the Child in 1990, the Hague Convention on the Civil Aspects of International Child Abduction in 1991,[1] and the Inter-American Convention on the International Return of Children. Since becoming party to the Hague Abduction Convention, the world's most recognized and utilized instrument for addressing international child abduction, Mexico has been repeatedly criticized for enjoying the benefit of having its treaty partners protect Mexico's own internationally abducted children, while also being consistently non-compliant in fulfilling its reciprocal obligations to protect and return children abducted to Mexico. To date its procedures for enforcing its treaty obligations are unpredictable and entirely ineffective. The Centre for International Family Law Studies in Cardiff, Wales, compared seven jurisdictions, including Mexico. The conclusion was that Mexico was by far the worst offender in its failure to return abducted children. In consideration of Mexico's history of noncompliance, as documented extensively over the past 11 years in the US State Department's annual compliance reports, Texas courts made a landmark decision finding Mexico's legal system ineffective and lacking legal mechanisms for the immediate and effective enforcement of child custody orders and, furthermore stating, Mexico posed a risk to

children's physical health and safety due to human rights violations committed against children, including child labor and a lack of child abuse laws. Ever-increasing travel warnings to Mexico for U.S. Citizens only further the risk to these children, and to their left-behind parents forced into litigations, and attempts to see their children, there.

Hague Convention

The Hague Convention is widely viewed as completely ineffective in Mexico, with the country being extensively cited as having problems with nearly every aspect of its implementation. Oftentimes, children can not be located for Convention proceedings to start, due to problems with law enforcement's performance. Law enforcement has reported an inability to locate children even when parents have reported giving them the children's exact address in Mexico. Although Mexico claims to provide free legal representation for victim parents, the provided representation is often completely unable to move the case forward and will only represent the parent during the natural trial, not during appeals. Parents who have been able to gain traction in Mexican courts have turned to private attorneys. Even when these attorneys have won favorable verdicts they are not enforced if the abductor files appeals, or amparos, which suspend enforcement of the decision until they've been adjudicated, frequently causing years of delays. In the unlikely event that children are located, legal proceedings commence, all appeals are heard and a final return order is issued, law enforcement issues can arise anew due to their inability to locate children yet again. A tragic example of this is the Combe-Rivas abduction where, after four years, the Mexican Supreme Court issued a final decision ordering the child's return in June 2009. To date, the decision remains unenforced due to an inability to locate the child.

Domestic family law

Mexican courts grant automatic custody of children below 7–12 years (depending on the state) to mothers unless they have been proven to be unfit. This maternal preference has been the subject of Constitutional challenges on the basis that the Mexican Constitution enshrines the equality of the sexes, but has been upheld on the grounds that the Constitution also protects the integrity of the family. Custody cases are also not immune to many of the problems found in Hague cases and, even if a custody decision were to be won it would not necessarily allow for the child to be taken back out of Mexico. In cases where taking the child back out of Mexico to the home country is sought, the decision can be subject to the same lack of enforceability pending the exhaustion of all appeals that plagues Hague Convention applications.

Corruption is an intrinsic part of the problem with international child abduction in Mexico,, and affects every other aspect of the issue from locating children and judicial decisions to enforcing court orders for repatriation in the rare cases where the obstacles of locating children and judicial noncompliance have been overcome. Parents of children abducted to Mexico have reported being asked for a "mordida" (literally "bite", ubiquitoius slang for bribe in Mexico) in order for Mexican officials to do routine work.[8] Mexico bears the stigma of being considered one of the most corrupt countries in the hemisphere.

Criticism of the United States government's role

Child abduction to Mexico from the US is as much an American policy problem as it is a Mexican one.[citation needed]Inasmuch as Mexico is cited for failing to take appropriate measures to curb the international abduction of children, the US government is likewise criticized for not taking appropriate measures to protect American children or support American parents in their efforts to recover their internationally abducted children. The proximity and close relationship between the United States and Mexico makes the problems of one country the problems of both and, by extension, places the responsibility of addressing the problem on both countries. US officials recognize this, and have increasingly worked to assist Mexico by providing training and education to Mexican judges and law enforcement. This type of bilateral cooperation is part of a broadening recognition of the responsibility both nations share in addressing problems in the region, and is most notably demonstrated in the Mérida Initiative, the $1.4 billion aid package to help Mexico interdict illicit drugs, arms and human trafficking.[43][44]

US State Department

American parents complain that they are essentially alone in dealing with foreign courts and legal systems. The US State Department has a virtual monopoly on information in such cases, but refuses to act as a vigorous advocate for left-behind American parents while also preventing the National Center for Missing and Exploited Children or anyone else from playing that role. State Department attorney Thomas Johnson remarked that when he reminded one senior State Department official with Child Abduction Convention responsibilities that she works for the American people, her immediate response was: "I don't work for the American people; I work for the Secretary of State", demonstrating the Department's inherent conflict of interest (i.e., a desire to maintain "good" bilateral foreign relations for their own sake that overrides assertive and effective advocacy on behalf of American citizens).

Dangerous Diplomacy

State's overriding desire to appease foreign governments and maintain "good relations" is having a conflict of interest between their responsibility to internationally abducted children as the designated United States Central Authority under the Hague Convention. This inherent conflict of interest between the two roles is magnified by what the book defines as the "culture of state", a culture characterized by extreme moral relativism, valuing process over substance and misplaced priorities that reward failures by promotions or high paying jobs "consulting" for the foreign government of the country that they'd previously been paid to advocate America's interests in.

Personal Experiences with US State Department

Upon being assigned a “caseworker” at the OCI at State, the first question I asked my caseworker at the State Dept was whether or not I should report my son's passport stolen since someone had suggested it as an option. He evaded the question and when I pressed for an answer he got angry and replied with deep sarcasm, asking me if the

passport had been stolen (which was exactly what I was asking him). That was the first of many signs that I needed to look elsewhere for help finding my son and the first moment I thought to myself, my God, they've put the DMV in charge of recovering my son. To my horror, I've come to appreciate, at great length, how accurate that initial impression was.

In the initial family court decision in Mexico, which resulted from what could more accurately be described as a debacle than a serious Hague proceeding, the judge denied my son's return to the US claiming that my wife hadn't been to the US since October of 2007 and that since I waited until June 2008 to file the Hague application, even though that would still be within one year, I must have consented to the abduction of my son or I wouldn't have waited so long. I submitted receipts and confirmation numbers for plane tickets that prove my wife was in the US until May of 2008 but the Mexican court claimed that these "private" documents could not be substantiated. I also submitted a vehicle title for a car my wife registered in NC, but the judge also held that it was possible she registered a North Carolina title, which is a public document, without ever coming to NC, and didn't seem to care that the address she wrote on the title was our address. In order to prove without a doubt in my appeal that my wife had returned to the US after a trip in October 2007, I requested that the US State Department obtain copies of her entry and exit records to the United States. In the Kafkaesque conversations that ensued I escalated this issue to the Abduction Unit Chief who told me that records were not always kept during land crossings between Mexico and the US. I repeatedly said that that was fine; I only wanted the records that actually did exist and had already given them the date, airline and number of a flight my wife had taken from Mexico into the US. State claimed that they could not give me this information about my wife because it violated her privacy. When I asked to then have the entry and exit records for my son, for whom I am the custodial parent, I was informed that this was not the role that the OCI typically played and that they aren't allowed to give legal advice and don't have the information I'm asking for. Furthermore, she said, the information I'm looking for would be of no use to me in my legal case since Mexico and the US share a land border that allows the fluid entry and exit of person's between the two countries, so proving she entered a country would not prove the date of the illegal abduction/retention. I informed OCI again that my wife claims to have not entered the US since October of 2007 and any evidence of entry proves she is lying, but couldn't help but wonder if, moments after she said they couldn't give me legal advice, she was giving me legal advice, so I asked her if she was a Mexican attorney, to which she replied that she was not, but then, why was she telling me that the information I was requesting was of no use to me in my appeal when my Mexican attorney is the one telling me to obtain this information? Furthermore, they said that OCI didn't have that information and asking them for it was like asking a plumber to fix my electrical. I told them that I felt it was more like asking a general contractor to work with the plumber and that I know the OCI has a working relationship with every other relevant US agency and that if I went to those agencies directly they would only tell me to work through the OCI. At various points OCI told me something to the effect, a decision was made in your case, sometimes including that the appeal is up to you and your attorney. The clear subtext of those statements was, we consider your case closed, we agree with the family courts decision, and we aren't going to get involved.

STATEMENT OF JOSHUA HANNUM IZZARD
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TESTIFYING AS THE PARENT OF AN AMERICAN CHILD WRONGFULLY REMOVED FROM THE UNITED STATES AND DETAINED IN THE RUSSIAN FEDERATION

HEARING

BEFORE THE

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS
CHRISTOPHER H. SMITH (R-NJ)
May 24, 2011

CONCERNING

INTERNATIONAL PARENTAL KIDNAPPING TO NON-HAGUE COUNTRIES

TESTIMONY OF JOSHUA HANNUM IZZARD
PARENT OF ABDUCTED CHILD, MELISANDE IZZARD

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS
May 24, 2011

Thank you, Mr. Chairman, for inviting me to testify today regarding the ongoing tragedy of International Parental Kidnapping.

I am Joshua Hannum Izzard, bereaved father and sole legal guardian of Melisande Izzard, my American born-and-raised daughter and only child, who was taken almost 8 months ago to Perm, Russia; whose voice I haven't heard since January. I have been living for nearly 8 months with a hole in my life, while some, like Mr. Tom Sylvester, of Cincinnati, Ohio, who testified in 2009, and his daughter, and others like them, have lived with that hole for years. Our great country must stop this constant bleeding of its most important resource, its citizens. As a nation we need to construct legal mechanisms to facilitate resolution of existing parental kidnappings and put in place effective preventative mechanisms to assure that our citizens are not subjected to the daily, unbearable sorrow that comes in the wake of an international parental kidnapping.

I was in Rome, Italy when Tatiana Ivleva, my decade-long partner, the love of my life and wife of five years, the mother of my daughter, called to inform me that she and my little blue-eyed angel were in Russia and would never return, that I would never see my daughter again. In shock, I nearly collapsed on the street. I wrote the first of many letters for my daughter while flying home, speeding westward away from her to Chicago. My heart seemed a thread being unraveled across the world, my life unwinding as the distance between us grew.

At home I opened the door to our Chicago apartment overlooking Lake Michigan. Desolation overwhelmed me as the golden afternoon light filtering through the dead silence of our living room gently touched on the semicircle of my daughter's favorite toys, left exactly as she had been playing with them. No joyous "Daddy's home, hurrah!" Only silence, thundering silence.

Initial denial became steely resolve to protect my child, who now lives in grave danger; to bring her back to her loving, lawful home. Since the kidnapping my offers of compromise and reconciliation have gone unanswered, court orders and decisions ignored, and requests to at least have phone calls with my daughter unheeded. A local arrest warrant has been issued for Tatiana. The FBI, INTERPOL, the Chicago PD, the National Center for Missing and Exploited Children (NCMEC), State Department, and Congressmen's offices are all involved. I have given interviews to US and Russian media, each time imploring Tatiana to simply speak with me, to negotiate a solution.

Melisande was torn away from me and everyone and everything she had known from birth, in one cruel, selfish instant by her mother Tatiana, and maternal grandmother, Galina and abruptly plunged into a strange world of darkness, mental illness, and danger. Tatiana's own signed statements declare that she immediately moved in with her high school boyfriend in Russia, an abusive individual named Andrey Medvedev, with whom, it has been proven, she had been having an extramarital relationship for some time prior to the kidnapping. Mr. Medvedev is a violent alcoholic, with numerous citations for public intoxication, drunk driving (for which he lost his license), and physical violence, offences ranging from assaulting a bar employee to terrorizing neighbors with his drunken rages and loud music, to purported accusations of child molestation. Both his former wife and a long-time live-in partner report that his inability to control himself when drinking was a primary cause of the breakup of their relationships. He is reportedly a devoted adherent of a cult which advocates the use of psychoactive drugs, engaging in ritualistic sexual behavior, forcing women to submit to dominant males, and isolating themselves from society. This is what my ex-wife has done. Despite not working, Tatiana attended only two hearings before signing over her full power of attorney regarding all aspects of our divorce, including Melisande's upbringing and custody, to a violent alcoholic whose decisions will impact my daughter's life forever.

The role of the Russian Consulate in the abduction itself and the ensuing legal processes has seen Russia make a joke of its own laws and flaunt its impunity to the international community. To accomplish the abduction, Tatiana turned to the Russian Consulate in Washington D.C., for help. What she said is unknown, but she was issued a one-time Russian Repatriation Certificate with our American daughter's name written on

it. This document allowed her to abduct our daughter, a US Citizen, from US soil and transport her directly to a non-Hague country. Imagine the situation: two nervous Russian women with a bewildered 2-year-old US citizen in tow passing through security and boarding a foreign-bound commercial flight at one of America's busiest airports, without passports, without the signed permission of the father.

Tatiana wrote to thank Russian diplomats Nikolay Teoglot and Ekaterina Polozkova for the certificate shortly after the kidnapping; this note is in the possession of the FBI. To reiterate: TSA officials accepted a travel document in lieu of a passport. The airline they flew with required no further checks as to why and how these individuals were boarding an international flight with no passports and no written permission from the other parent. At that very moment the father was happily scouting shops in Rome for presents to bring back to his beloved family. Diplomatic abuse and lack of exit controls and effective screening procedures made this abduction possible.

My daughter is half-Russian. I have many close friends in Russia. Sadly, it is a country in which not only International Laws and Human Rights are frequently violated, but one which does not follow the letter of its own law. Consider the fact that since July 2003, Russia has unilaterally refused to observe its duties under the 1965 Hague Service Convention. It will not serve its citizens with divorce papers from the US, yet it allows its citizens to argue in court that they were not served properly because the papers were not delivered by Hague Service Convention through the Ministry of Justice.

Despite this I was able to satisfy both American and Russian process service requirements and went on to win the American custody case when we were divorced on Dec. 29th, 2010. I proceeded to legalize the divorce decision at the Russian Consulate in Washington D.C., and this decision was affirmed by the Russian Government's Vital Records Office in Moscow, who stated that the American divorce was valid in Russia from the moment on Dec. 29th, 2010 that it went into effect. Now… prepare yourselves to enter a bizarre no-man's land of lawlessness and intrigue.

Provincial Russian Judge Olga Sherbakova, being in possession of the properly served American divorce petition and divorce decision (translated into Russian), allowed Tatiana to initiate a divorce suit with me as respondent. The first hearing was on January 20th, 2011, nearly a month after we were divorced with a decision that the Russian State already considered valid. Maxim Ivlev, Tatiana's brother, as former head of the legal department of the Perm Duma (Senate) is a person with deep political, judicial, and intelligence service connections. Within days a media smear campaign including primetime specials vilifying me was undertaken. The media campaign included public statements and letters by politicians Pavel Mikov and Ilya Neustroev both violated Russian constitutional law regarding separation of the political and judicial systems. They both approached judges – they themselves publicly declared so – and requested an expedited outcome in favor of the Russian mother. Politician Neustroev, Tatiana's brother's former superior, runs a live blog, in which he immediately published an entry about my family titled, "I am Against America". I then received serious threats against my life, so serious that I won't travel to Perm, lending 'credibility' to my former wife's publicized statement that I don't care enough about my daughter to visit her.

Please note, Mr. Chairman, there is never mention of the welfare of my daughter; rather, it's Russia against America and my daughter a disposable political pawn. The process leading up to my "second divorce" from my only wife on March 24th, 2011, was fraught with bias. Legal infractions were numerous. The presiding Judge met in private with Tatiana's side. Evidence was mysteriously introduced into the court clerk's files. Decisions consisting of several typed pages were ready within minutes or even seconds of the conclusion of each hearing, suggesting that the complete text had been prepared before the hearing had commenced. At one hearing, it was claimed that 2½ year old Melisande had said she did not wish to Skype with me, and it was argued that it would constitute child abuse to enforce Skype visitation – this argument was upheld by the courts. It was stated that I was currently in Perm, Russia, plotting a Rambo-like attempt to bring Melisande home, and was therefore forbidden to travel with Melisande. My passport proves that I have not travelled outside of the United States since I was in Rome. Russian Immigration and Border Control or the Consulate could confirm that I have not had a Russian visa, without which it is impossible to travel there, since 2007.

On March 24th, 2011, I was divorced from a person that Russia had acknowledged I was not married to, hadn't been for the preceding three months. During the hearing, 20 procedural norms of the Russian Code of Civil Procedure (CCP) and Civil Code (CC) were broken. Tatiana was awarded full custody and another divorce as well as child support which, if applied by Russian standards, would require a local father to pay 80% of his income. A complete list of these violations is available upon request, but here is a quick sampling in order of their breaking: 113, 6, 9, 415, 220, 71, 163, 62, 67, 61, 215, 55, and 139. By violating existing laws a Russian court proceeded with 'legal' processes resulting in this decision. I was never served with any court documents, nor allowed to give testimony or present statements from scores of witnesses. My ex-wife's only witness, Mrs. Kseniya Vorontsova, gave fallacious, mendacious testimony against me. I was not given time for translation of the documents. My lawyer was denied or given delayed access to case materials. My legalized Russian court decision and Russian governmental proof that I was already divorced were not taken into consideration. A higher court process was ignored by a lower court. Courts refused to accept and register official evidence. The case was tried in a court which had no jurisdiction, no argument or proof presented that an American child could be under that court's jurisdiction. My daughter and I were denied (and continue to be denied) contact with each other during the course of the proceedings, explicitly violating Russian law.

So grievous were the violations that ten days ago an Appellate Court in Russia upheld my viewpoint, overturning the lower court's decision in its entirety, and sending the case back to a lower court to be retried by a different judge. My ex-wife and I may soon have the singular distinction of having been married once but divorced three times.

Mr. Chairman, I contend that my daughter and I have the inalienable right to a full and loving parental/child relationship. The Russian Consulate's, courts', and government's assistance to Ms. Ivleva and Mr. Medvedev have facilitated violation of my daughter's and my right to that most basic human relationship, eroding the foundations of law, international diplomacy, and of the most important element of society, the family. The alienation that is likely beginning now will have lifelong consequences for Melisande and me and for Melisande's entire family in the US. I can't imagine doing to Melisande what is being done to her. I deplore my family's tragedy being politicized. I appeal to Russia to look beyond political one-upmanship and to acknowledge that a horrible injustice is being done to a little girl who needs her father, and to a father and family that love her little golden head, sparkling eyes and joyous laugh.

Americans must take a decisive stance on defending our own citizens, our own inalienable rights to the most basic of relationships and bonds that a person has – those between children and their parents. I pray that our testimonies might lead to legislation which would unite all bereaved parties, which would prevent similar situations for other parents and children who might suffer due to selfish decisions of one or the other parent. Intervention by government agencies whose hands are tied by incomplete or non-existent laws and enforcement mechanisms can lead to one eventuality and one alone – in non-Hague cases and many Hague cases of child abduction, physical possession of the child spells complete control of the situation and of the other parent. This situation must be remedied for our children's future. Thank you.

CBM

May 19, 2011

The Honorable Chairman Ileana Ros-Lehtinen
2206 Rayburn H.O.B.
Washington, DC 20515-0918

Re: Colin Bower - Written Testimony
US House of Representatives
Committee on Foreign Affairs
Subcommittee on Africa, Global Health and Human Rights
Hearing on "International Child Abduction: Broken Laws and Bereaved Lives"
Room 2203 Rayburn House Office Building
May 24, 2011, 2.00 pm edt

Dear Chairman Ros-Lehtinen and Honorable Committee Members,

Thank you for inviting me to testify today.

In sum, my children, American citizens, were kidnapped and are being held illegally by Egypt, in Egypt. Meanwhile, the United States rewards Egypt by giving them billions of dollars in aid. This is wrong, and I call for a cessation of any aid to Egypt from the United States until they return my sons.

It is instructive to have some background information on the kidnapping of Noor and Ramsay Bower, my two sons, and then I will speak about several areas I believe should be addressed going forward to protect and honor the lives of our children, their rights, and human rights generally.

My two sons, Noor and Ramsay Bower, now aged 10 and 8, were kidnapped to Egypt in August 2009 by their mother, Mirvat el Nady. The kidnapping took place 8 months after the final Massachusetts divorce judgment - which declared me as the boys' sole legal custodian - was rendered.

In light of Mirvat el Nady's condition (outlined in H Res 193), I had always assumed the parenting responsibilities for my boys. I woke up every day with my boys, fed them, clothed them, ensured they got to school or an activity, scheduled and brought them to their play dates and parties, bathed them, read to them, and put them to bed. I changed jobs in order to simultaneously support my family financially and act as a de facto single parent. After the divorce, I remained their sole legal and primary custodial parent.

What I think of and worry about most is Noor and Ramsay's present safety and future quality of life. I wonder what they are being taught, as I believe this will materially determine what they think and what choices they will ultimately have in life. Their futures are being impacted each day they remain parented by an unfit mother who remains supported and enabled by the el Nady family, from the abduction to their ongoing support of parental alienation and child abuse, both financially (through their family company Egybelg) and otherwise. My boys are being forced to hide from the rest of the world, and I can't begin to understand what this must be like for them.

There are several notable issues involved in this tragedy.

- **This is not a custody battle** - There was a 20 month court case in Boston completed in December 2008, in which both parties participated fully from start to finish, including Mirvat el Nady being represented by six separate high powered US divorce attorneys.
- **This is a federal crime** - The FBI issued a federal warrant for the arrest of Mirvat el Nady, including the issuance of an Interpol red notice.
- **This involves national security** - Mirvat el Nady obtained Egyptian passports for the children in false last names. Passport fraud is an extraditable offense under the Mutual Legal Assistance Treaty (MLAT) between the US and Egypt, as false passports by definition are used to commit crimes in other countries - just as in this case.
- **This is child abuse** - The US Supreme court and other international bodies deem both child abduction and parental alienation child abuse. The fact that Mirvat el Nady was found to be a long term addict of schedule 2 narcotics and incapable of anticipating the boys' needs is yet another level of child abuse of and imperilment for the boys.
- **This is a state sponsored crime** - The Egyptian government issued false passports, indirectly owns the airline that ignored obvious flags by letting Mirvat el Nady kidnap the boys to Egypt, and provided el Nady security through the State Security Agency (now defunct for being corrupt). The Egyptian government shut down streets for Mirvat el Nady to travel, something they don't do for the highest level politicians.

There are many things we can do immediately to protect our children and basic human rights. Because time is limited, I will focus on five.

First, before receiving the US$2bn de facto aid package announced in President Obama's speech last week, Egypt must demonstrate through action its commitment to human rights. Even the people of Egypt, who will either benefit or suffer from this aid, have spoken about the need to make sure this money doesn't simply continue the power structure that existed under the now defunct Mubarak regime. By fact and definition, my children's rights are and have been abused for the past 21 months. Before receiving aid, I call on the US government to ensure that the new Egyptian government is protecting human rights, not violating them, and demonstrates this through the return of Noor and Ramsay.

Second, before receiving aid, we need to ensure that the MLAT is being enforced by our partners, and appropriate extradition is being carried out. This is a national security issue, and one that impacts the very safety of US citizens. We should not provide aid to countries that have enabled crimes to be committed in our country, against our citizens, and who do not implement conditions of the MLAT. Any agreement can be signed, but if is not enforced, it is worse than having no treaty at all, as it allows purveyors of deceit to fly under a false cloak of legitimacy.

Third, before they receive aid, we need countries to agree to recognize and mirror existing probate orders involving custody decisions reached in residential jurisdictions where both parties were active participants and legally represented. The country harboring the fugitive should issue a mirror order consistent with the existing order in the country of the children's primary residence.

Fourth, I call on the Republican party to stop the moratorium on Resolutions being heard this Congress, and make available the ability of House Resolutions to be heard on the floor, including and notably H Res

103, which is bi-partisan and involves the lives of my two little boys. Alternatively, I ask for exceptions to be made in cases crucial to the lives of American children, including my boys and others in a similar situation. I ask that both parties stand together to send a strong message to Egypt that we support the Egyptian people's goal of attaining democracy and human rights by ensuring their new government acts in concert with these values before receiving the financial backing of the United States. Given the relevant facts, it is not a stretch to say that H Res 193, if acted upon, could very well save the lives of Noor and Ramsay.

Fifth, there must be further controls in place to protect against the unlawful removal of our children to foreign countries.

Committee members, I thank you for your invitation to speak today and for your consideration of this most important issue.

Best regards,

Colin Bower
Father of Noor and Ramsay Bower

Presidential actions that can be taken under Section 205(a) of H.R. 1940

(1) A private demarche.

(2) An official public demarche.

(3) A public condemnation.

(4) A public condemnation within one or more multilateral fora.

(5) The delay or cancellation of one or more scientific exchanges.

(6) The delay or cancellation of one or more cultural exchanges.

(7) The denial of one or more working, official, or state visits.

(8) The delay or cancellation of one or more working, official, or state visits.

(9) The restriction of the number of student (including US Information Agency and vocational training programs) visas issued to nationals of such country.

(10) The withdrawal, limitation or suspension of United States development assistance in accordance with section 116 of the Foreign Assistance Act.

(11) Directing the Export-Import Bank of the U.S., the Overseas Private Investment Corporation, or the Trade and Development Agency not to approve the issuance of any (or a specified number of) guarantees, insurance, extensions of credit, or participations in the extension of credit with respect to such government or the agency or instrumentality of such government determined by the President to be responsible for the unresolved case or patterns of noncooperation.

(12) The withdrawal, limitation or suspension of United States security assistance in accordance with section 502B of the Foreign Assistance Act.

(13) In accordance with the International Financial Institutions Act, directing the U.S. executive directors of international financial institutions to oppose and vote against loans primarily benefitting the government or the agency or instrumentality of the government determined by the President to be responsible for the unresolved case or pattern of noncooperation.

(14) The denial, withdrawal, suspension, or limitation of benefits provided pursuant to title V of the Trade Act of 1974 relating to the Generalized System of Preferences.

(15) Ordering the heads of the appropriate U.S. agencies not to issue any (or a specified number of) specific licenses, and not to grant any other specific authority (or a specified number of authorities), to export any goods or technology to the government or to the

agency or instrumentality of the government determined by the President to be responsible for the unresolved case or pattern of noncooperation, under:

(A) The Export Administration Act of 1979;

(B) The Arms Export Control Act;

(C) The Atomic Energy Act of 1954; or

(D) Any other statute that requires the prior review and approval of the U.S. Government as a condition for the export or re-export of goods or services.

(16) Prohibiting any U.S. financial institution from making loans or providing credits totaling more than $10 million in any 12-month period to the government or agency or instrumentality of the government determined by the President to be responsible for the unresolved case or pattern of noncooperation.

(17) Prohibiting the U.S. Government from procuring, or entering into any contract for the procurement of, any goods or services from the government or the agency or instrumentality of the government determined by the President to be responsible for the unresolved care or pattern of noncooperation.

YAHOO!

Representative Christopher Smith
Chairman, Subcommittee on Africa, Global Health, and Human Rights
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Representative Smith:

Yahoo! is pleased to offer our support to the most recent (March, 2012) draft of the Global Online Freedom Act. We are grateful for your tireless efforts in working with us, human rights groups, academics and others to craft a reasoned, meaningful effort that will push all online companies to responsible engagement in countries around the world. In particular, the safe harbor in the bill for companies that join efforts like the Global Network Initiative (GNI) will go a long way to encouraging a wider group of companies to join us in efforts to develop responsible industry practices. Yahoo! is a co-founding member of GNI (www.globalnetworkinitiative.org), and has recently participated in the first ever third-party assessment of company implementation of GNI's principles, which GNI will feature in its annual report in April of 2012.

Issues of online freedom, privacy and responsibility are not easy. This past year has shown us the incredible power of the Internet to foster freedom, democracy and openness across the globe. And the Arab Spring was just one example of citizens using online tools to communicate with each other, learn, and organize. But with that great potential comes significant risks that cannot be ignored – risks, for instance, that governments will seek to turn the incredible positive power of the Internet against those same citizens. Internet companies have seen these risks firsthand, and Yahoo! has worked hard to minimize risks to our users as we enter new markets or make decisions about our business operations.

Yahoo! cares deeply about these issues, and has spent the last five years building a robust program to integrate human rights decision-making into our business operations. In addition to our work on the GNI, Yahoo!'s Business & Human Rights Program (BHRP) implements its mission through a number of core initiatives, including:

- Developing an accountability framework, designed to assess Yahoo!'s performance in meeting Yahoo!'s overall goals and operational steps relating to human rights issues;

- Developing guiding principles and operational guidelines, as well as employee training, which translate Yahoo!'s support for freedom of expression and user privacy into practical steps to be followed by employees;

- Conducting Human Rights Impact Assessments, which examine the human rights landscape in prospective markets, evaluate challenges to free expression and privacy that might result from

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washington, dc 20001 usa

the proposed offering of services, and offer strategic approaches to protect the rights of Yahoo!'s users;

- Fostering internal and external stakeholder engagement with users, employees, civil society groups, government and shareholders to address the complex issues at the intersection of human rights and ICT;

- Creating a website and an e-mail alias to inform internal and external stakeholders about Yahoo!'s human rights initiatives and to elicit their feedback (http://humanrights.yahoo.com/ and bhrp@yahoo-inc.com);

- Launching and hosting the Yahoo! Business & Human Rights Summit (http://ycorpblog.com/2009/05/07/a-summit-for-human-rights), a stakeholder shared-learning forum about technology and free expression. (http://www.yhumanrightsblog.com/blog/our-initiatives/business-human-rights-summit/);

- Joining the Clinton Global Initiative and developing a commitment aligned with promoting and supporting free expression;

- Launching the Change Your World series in Cairo, an event created to shine the light on extraordinary women who are creating positive change in the world and identify areas where companies can use their technology and platforms to amplify women's voices. Yahoo! will host a Change Your World event in Washington DC on May 18, 2012, as well as an event in Brazil in November of 2012.

Our sincere hope is that other companies join us in these efforts, as we have found that good business and responsible behavior are not mutually exclusive at all. Indeed, we believe that dialogue between companies and civil society organizations can help us better understand how to do our jobs the right way – for us, and for our users.

We very much look forward to continuing to work with you on this important effort, and we again thank you for the thoughtful and balanced approach in this legislation.

Sincerely,

David Hantman
Deputy General Counsel & Vice President, Global Public Policy
Yahoo! Inc.

March 27, 2012

Dear Representative Smith:

We write in strong support of H.R. 3605, the Global Online Freedom Act of 2011. This bill is an important tool in preventing repressive governments from enlisting U.S. companies in their effort to transform the Internet into a tool of surveillance and repression.

The Internet is an incredible tool for communication, but as some governments have discovered, it is also an effective tool for censorship and oppression. Many repressive countries, including China and Iran, among others, are transforming the Internet into a powerful and effective tool to silence political and religious speech and to track down those who are fighting for freedom.

We have witnessed an increase in the arrests and detentions of bloggers, the blocking of websites, online intimidation and surveillance of peaceful political activists, and aggressive denial of service attacks against websites that promote the free flow of legitimate political and religious speech.

We value the promotion of Internet freedom because it derives from universal and cherished rights—the freedoms of speech, assembly, and association. An open Internet gives people a platform from which to express their legitimate aspirations and to hold their governments accountable. We believe that people in every country deserve to be able to take part in building a more peaceful, prosperous, and democratic society, and H.R. 3605 will help promote a more open and free Internet.

By moving quickly to pass the Global Online Freedom Act, the U.S. Congress can send a powerful message to dictators around the globe that we will not idly stand by while fundamental freedoms are eroded online. Thank you for introducing this important legislation and we look forward to supporting its passage.

Sincerely,

Initiatives for China

Beijing Spring

Yibao

New Hope Foundation

China Rights Network

The Alliance of the Guard of Canadian Values

Federation for a Democratic China

Uyghur American Association

Princeton China Initiative

China Truth Foundation

China Free Press

Laogai Research Foundation

Reporters Without Borders

FOR IMMEDIATE RELEASE
CONTACT: Mary McGuire in Washington, +1-202-747-7035

Freedom House Endorses Global Online Freedom Act

Washington – December 8, 2011 –

Freedom House supports the Global Online Freedom Act (GOFA) 2.0, which was introduced today in the U.S. Congress as H.R. 3605. The bill, which would hinder the ability of U.S. companies to sell surveillance and censorship technologies to repressive governments, is crucial to the promotion of global internet freedom.

"U.S. companies are reported to have sold technologies for monitoring digital communications and censoring online content to repressive governments in the Middle East and elsewhere," said Daniel Calingaert, vice president for policy and external relations at Freedom House. "GOFA is the first serious legislative proposal to stop sales of U.S. technology that is used to violate human rights."

The bill would prohibit exports of surveillance and censorship technologies to countries that restrict the internet. It would also require U.S. technology companies to disclose their policies for collecting and sharing personal data and for blocking access to online content.

"The explosive growth of social media and internet use generally is being met by increasingly sophisticated forms of repression," said Sanja Kelly, project director for *Freedom on the Net* at Freedom House. "More and more governments are eavesdropping on the communications of human rights activists and restricting internet users' access to information, such as independent news websites and peaceful online political discussions."

For more information, visit:

Freedom on the Net 2011 Foreign Policy: Hacking the Revolution Growing Challenges to Internet Freedom

Freedom House is an independent watchdog organization that supports democratic change, monitors the status of freedom around the world, and advocates for democracy and human rights.

Join us on Facebook and Twitter (freedomhousedc) and stay up to date with Freedom House's latest news and events by signing up for our RSS feeds and our blog.

HUMAN RIGHTS WATCH

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HUMAN RIGHTS WATCH

www.hrw.org

March 13, 2012

Representative Chris Smith
2373 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Smith,

We write in strong support of H.R. 3605, the Global Online Freedom Act of 2011. This bill is an important tool in preventing repressive governments from enlisting U.S. companies in their effort to transform the Internet into a tool of surveillance and repression.

The Internet is an incredible tool for communication, but as some governments have discovered, it is also an effective tool for censorship and oppression. Many repressive countries, including China and Iran, among others, are transforming the Internet into a powerful and effective tool to silence political and religious speech and to track down those who are fighting for freedom. Even more worrying, is that these methods of repression are spreading. Countries like Vietnam and Thailand are increasing their efforts to censor content or identify Internet users exercising their rights to free expression or assembly.

We have witnessed an increase in the arrests and detentions of bloggers, the blocking of websites, online intimidation and surveillance of peaceful political activists, and aggressive denial of service attacks against websites that promote the free flow of legitimate political and religious speech. As witnessed during the Arab Spring, the Internet has the ability to allow billions of people to exercise their rights of speech, assembly, and association. But an open Internet is not guaranteed. Governments, companies, and civil society must be vigilant to ensure that the Internet is a platform that people can use to express their legitimate aspirations and to hold their governments accountable. People in every country deserve to be able to take part in building a more peaceful, prosperous, and democratic society, and H.R. 3605 will help promote a more open and free Internet.

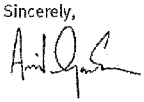
The Global Online Freedom Act would require companies to demonstrate that they have put policies and procedures in place to protect human rights online and to safeguard their users. Such mechanisms are particularly pertinent given the role of the U.S. Internet firm Yahoo in turning over to the Chinese government user information which led to the arrest, conviction and 10-year prison term of the journalist Shi Tao in 2005 on a charge of "divulging state secrets abroad." It would strengthen

efforts by the US government to protect internet freedom by giving the government new resources to keep the Internet open and give it new authority to ensure that certain technologies do not fall into the hands of repressive governments.

Finally, it would level the playing field for responsible businesses by ensuring that US trade negotiations protect freedom of expression and thereby allowing innovative companies to fairly compete, especially in countries where governments try to censor their products or services. These are modest, but critical steps needed to help keep the internet open.

By moving quickly to pass the Global Online Freedom Act, the U.S. Congress can send a powerful message to dictators around the globe that we will not idly stand by while fundamental freedoms are eroded online. Thank you for introducing this important legislation and we look forward to supporting its passage.

Sincerely,



Arvind Ganesan
Director, Business and Human Rights Division
Human Rights Watch

AMNESTY
INTERNATIONAL

March 26, 2012

Honorable Christopher H. Smith
Member of Congress
US House of Representatives

Dear Representative Smith:

I write on behalf of the United States section of Amnesty International in strong support of H.R. 3605, the Global Online Freedom Act of 2011. We consider this bill to be an important tool in preventing repressive governments from enlisting U.S. companies in efforts to use the Internet as a tool of surveillance and repression.

The Internet is an incredible tool for communication, but as some governments have demonstrated, it can also be used for censorship and oppression. Many repressive governments, including those of China and Iran, among others, are attempting to transform the Internet into a tool to track down those who are fighting for freedom and to silence political and religious speech.

Amnesty International has documented arrests and detentions of bloggers, the blocking of websites, online intimidation and surveillance of peaceful political activists, and aggressive denial of service attacks against websites that promote the free flow of legitimate political and religious speech.

We value the promotion of Internet freedom because it derives from universal and cherished rights—the freedoms of speech, assembly, and association. An open Internet gives people a platform from which to express their legitimate aspirations and to hold their governments accountable. We believe that people in every country deserve to be able to take part in building a more peaceful, prosperous, and democratic society, and we consider a more open and free Internet to be an important tool that can be used to achieve this end.

By moving quickly to pass the Global Online Freedom Act, the U.S. Congress can send a powerful message around the globe that the United States will not idly stand by while fundamental freedoms are eroded online. Thank you for introducing this important legislation. We look forward to supporting its passage.

Sincerely,

T. Kumar
International Advocacy Director
Amnesty International USA

27 March 2012

Dear Representative Smith:

We write in support of H.R. 3605, the Global Online Freedom Act of 2011. This bill is an important tool in preventing repressive governments from enlisting U.S. companies in their efforts to transform the Internet into a tool of surveillance and repression.

The Internet is an extraordinary tool for communication, but as some governments have discovered, it is also an effective mechanism for censorship and oppression. Many countries, including China and Iran, among others, are transforming the Internet into a powerful and effective tool to silence political and religious speech and to track down those who are fighting for freedom. While such technologies were once limited to repressive states, this "worst practice" in curtailing the rights of users is spreading, from Thailand to India to Syria to Venezuela, as more governments seek out questionable censorship and surveillance programs.

We have witnessed an increase in the arrests and detentions of bloggers, the blocking of websites, online intimidation and surveillance of peaceful political activists, and aggressive denial of service attacks against websites that promote the free flow of political and religious speech and association.

While civil society has had some success through public campaigning, and the media has exposed the trade through thorough reporting, government efforts have been thwarted by the efforts of other governments who would use censorship and surveillance technologies to abuse their citizens' rights. However, it is clear that a more comprehensive and holistic regulatory approach is needed.

Critical to this effort is the bill's provisions requiring greater transparency in the companies that operate in this censorship and surveillance technology sector. **However we maintain two important reservations about the current draft of the bill.**

Firstly, while the draft of H.R. 3605 being introduced today (on March 27th, 2012) continues to improve on previous iterations, we urge Congress to demand this kind of accountability from all companies in the sector, while being mindful that the bill's provisions do not ensnare lightweight technologies that will actually help activists or sanction "dual use" technologies in onerous amounts of licensing procedures. Ill-conceived regulation may actually hurt activists while enabling their oppressors, as we have seen when governments 'over sanction'.

Secondly, we encourage Congress to engage a multistakeholder body comprised of relevant government officials, internet companies, and human rights organizations to

assist in identifying which countries are "internet restrictive." The sanctions process in the United States has historically been prone to politicization, often placing certain countries in the 'bad' list, while turning a blind eye to other countries, which should be treated with equal suspicion. A multistakeholder body could instrumentally advise the US government both in terms of the countries and technologies should be sanctioned to achieve the greater realization of internet freedom and digital rights around the world. Having greater impartiality and uniformity from which to judge all countries, not just those designated as "internet restricting" and technologies would be a useful step forward.

By moving to pass the Global Online Freedom Act, the U.S. Congress can send a powerful message to governments around the globe that it will not idly stand by while fundamental freedoms are eroded online. Rightly, it should also require the U.S. government as a major customer of these technologies to push for greater vendor accountability and transparency.

We look forward to working with Congress to ensure that the effectiveness of any legislation is maximized while unintended consequences are avoided and thank Congressman Smith for his leadership on this important issue.

Sincerely,

Brett Solomon
Executive Director
Access | AccessNow.org

Access (https://www.accessnow.org) is a global movement for digital freedom premised on the belief that the realization of human rights in the 21st century is increasingly dependent on access to the internet and other forms of technology. For more information contact press@accessnow.org or call Blair at 202-503-6141