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The Goldman Act to Return Abducted American Children: Ensuring Administration Action

Chairman Chris Smith (NJ-04)
Subcommittee on Africa, Global Health,
Global Human Rights, and International Organizations
Excerpts of Remarks
Nov. 19, 2015

Good morning, and welcome to our fourth oversight hearing this year on implementation of the Sean and David Goldman International Child Abduction Prevention and Return Act.

The Goldman Act empowers the executive branch with powerful new tools and a myriad of ways to successfully resolve parental child abduction cases. Like any law, however, it is only as good as its implementation.

Historically, 750-1,000 American children are unlawfully removed from their homes each year by one of their parents and taken across international borders.

International parental child abduction rips children from their homes and takes them away to a foreign land, alienating them from the love and care of the parent and family left behind.

Child abduction is child abuse. Its negative impact on the children and left behind families can last for years—even a lifetime.

Two of our witnesses today – like many in this hearing room and around the country – know first-hand the trauma, the tears, the excruciating pain, and the longing and heartbreak of parental child abduction.

David Goldman's son Sean was abducted to Brazil and unlawfully retained for approximately 5 ½ years.

Mr. Goldman tenaciously pursued every legal means of return including expert counsel in his quest to bring Sean home. Today father and son are thriving.

Captain Paul Toland continues his heroic 12 year quest to bring his 13 year old daughter, Erica, home from Japan. Captain Toland refuses to quit or be deterred despite years of frustration and setbacks – such is this father’s incredible love for his precious daughter.

Our first hope is to prevent, or at least mitigate the number of, abductions and the State Department is to be commended for implementing a provision of the Goldman Act that adds children that a judge has determined to be at risk of abduction to a “no fly” list. In 2014, we saw a decrease in the number of new abductions—150 fewer new cases than the previous year.

But I am concerned that the State Department has chosen not to impose any sanctions on any of those nations found to have engaged in a “pattern of noncompliance.”

The Goldman Act, however, requires State Department action on individual cases that have been pending for more than a year if the foreign government has not been taking adequate steps to resolve the case.

The Goldman Act also requires action when, collectively, a country has high numbers of cases – 30 percent or more – that have been unresolved for over a year; or if the government is failing in their duties under the Hague Convention or other bilateral agreement; or if their law enforcement fails to enforce return or access orders.

The Goldman Act not only shines a light on a country’s record through the annual designation of countries showing a “pattern of non-compliance”, it holds countries accountable and incentivizes systemic reform. Actions escalate in severity, and range from official protests through diplomatic channels, to public condemnation, to extradition, to the suspension of development, security, or other foreign assistance.

The Goldman Act was designed to raise the stakes on the foreign country’s inaction or obstruction, and move the country to end to the nightmare of abduction.

In July we reviewed the State Department’s first annual report on abduction and access resolution rates around the world. The annual report had some major gaps and misleading information, some of which were corrected by the Supplemental Data posted by the State Department in August.

Tragically, in contravention of both the spirit and letter of the Goldman Act, the State Department failed to list Japan - with more than 50 abduction cases - among the 22 countries showing a “pattern of non-compliance” and therefore eligible for Goldman Act sanctions. This glaring omission – which can still be corrected today – sent the unfortunate signal that pre-Hague Japan cases were no longer a top priority—cases like that of Sgt. Michael Elias who has been denied any contact with his two young children, Jade and Michael, after they were abducted to Japan in 2008.

In September State Department sent to Congress its first 90 day report on actions it took to bring the 22 most difficult countries to the resolution table.

Those actions included demarches, judicial rulings, and meetings – all of which are necessary and of value – but noticeably absent was the imposition of any number of meaning sanctions prescribed by the Goldman Act.

I respectfully submit that this was a missed opportunity to convey to “pattern of non-compliance” nations that the United States is absolutely serious about resolving parental abduction. The imposition of sanctions says we mean business. (Sanctions are imposed on an entity to enforce civil right laws and other policies of paramount importance)

Notwithstanding section 103 of the Goldman Act, the Report makes no mention of MOUs or bilateral agreements to resolve cases – including and especially cases that existed prior to Japan’s ratification of the Hauge.

I – and others – have raised this concern for several years, especially for victims of Japan’s policies. Perhaps Assistant Secretary Bond can tell us if any bilateral agreements or MOUs are in the works.

The report details the State Department’s efforts to persuade India to ratify the Hauge Convention – a step that if not combined with an MOU to resolve current abduction cases; which number about 75, we risk replicating the extraordinary misery endured by left behind parents after Japan ratified the Hauge. If India ratified the Hauge it will - like Japan – grandfather preexisting cases out of the convention resolution process.

Bindu Philips, mother of Albert and Alfred, has struggled with her ex-husband in Indian courts for the return of her sons for nearly nine years. Ravi Parmar has been fighting for his son’s return for three years.

Section 201 of the Goldman Act also requires the State Department to conduct a review of individual cases pending 12 months or more to discern whether the foreign government has taken adequate steps to resolve the case or whether actions are warranted. This is the “individual case” trigger for actions (as opposed to the “pattern of noncompliance” country trigger). Despite a half-dozen Congressional letters from various members of Congress asking for Sec. 201 reviews of egregious cases, the State Department, to my knowledge, has not done a single review, much less applied actions.

I am encouraged by a press statement by Secretary of State John Kerry.

White noting that the Goldman Act provides “additional tools to advocate for the return of abducted children” he states “there can be no safe haven for abductors. The Department of State will continue to use all the tools available to us to help those involved in international parental child abduction cases to resolve their disputes and move forward with their lives.”