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Tom Lantos Human Rights CommissionThe Goldman Act at Five Years

Respected Chairman McGovern and Smith, Members of Congress and Staff. I am honored for the privilege to provide my written testimony before you and I commend you for holding this hearing on an important and growing issue of International Parental Child Abductions.

In July 2015, I had the privilege to testify at the House Foreign Affairs Subcommittee on "Africa, Global Health, Global Human Rights, and International Organizations", about my son's abduction to India. Since then **4 more Annual Report have been issued by the U.S. State Department, citing India for its failure to return abducted American children, retained in that country. Since then there have been 4 "Actions Taken" Reports issued by the U.S. State Department, including 4 demarches, countless dialogues and numerous instances of our "cases being raise with the Government on India".**

The net result, my son, Reyansh, along with **dozens of other American children (82 reported children as of December 2018) remain hostages in India, while the taking parents, receive safe haven in a country that refuses to act on international parental kidnapping, nor live up to its binding obligations to uphold UN. Convention on Rights of Children or the rule of law.**

I am compelled to stand up and fight for a cause that transcends cultures and Nations. I am here today because my little boy, whom I love dearly, isn't with me and he has been robbed of his father's love and presence for over seven (7) years. Reyansh is another victim of a crime that was not perpetrated by a stranger, but his own parent. It was a calculated, malicious act committed to inflict maximum pain on me, without any regard for Reyansh's wellbeing or rights.

On March 22, 2012, I drove my son and his mother (Dimple Khatri Parmar) to airport for what was going to be five (5) week vacation. As Reyansh and his mother were waiting at the security line at the airport, my little boy kept running towards me, to give me a hug and return back to the queue. He repeated this several times, until he could not come past the TSA agent who checked his passport and tickets. This memory has been etched in my mind permanently. Each time I see little children at the airport it reminds me of my son and a profound sense of sorrow fills my heart and my eyes begin to water. At home, I have kept many of my son's toys, clothes and other belongings intact, waiting for the day he returns home. I have kept his photo next me ever since he was taken from me. I talk to him, pray for him and share my joys and sorrows with him.

Little did I know that my son would not return for 2,453 days and counting. It wasn't until April 24, 2012 that I learnt about Reyana's mother's decision to seek divorce in India and not return to the U.S. and her refusal to return Reyansh to his home. I was in a state of shock. She gave me no hint of her plans, but as soon as she reached India, her tone changed. I felt violated, it

felt like someone ripped my heart out and left be bleeding. I would cry for days, I begged her to return home and try to work things out. I pleaded her to think about our three (3) year old boy, who all of a sudden has to live without his father, in a country he had never lived before. Reyansh's mother ignored all my pleas. I felt betrayed by my partner with whom I was married for over 9 years.

For another six (6) months I continued to negotiate my son's return with his mother. She demanded over USD 400,000, refused to return Reyansh to the U.S., share his custody, and only offered me see temporary access to Reyansh in India a few weeks a year. I could not accept her unreasonable terms, and she took full advantage of my son's wrongful retention in India as tool to extract favorable terms. While we were negotiating, she also prepared and file for divorce and child custody in India, unbeknownst to me.

On November 7, 2012, I received an email from an Indian attorney, who claimed to present Reyansh's mother, with an ex-parte interim Indian Court order saying I cannot remove Reyansh from his mother's custody. In her petition, she alleged that she is a "victim of domestic abuse" and used cruelty as grounds for divorce. I asked her during a phone conversation why she never reported this in the U.S. If she dialed 911, she would receive help within minutes and law enforcement would investigate her allegations. She didn't have a response. I was beginning to see the extent of her deception and planning.

Reyansh's mother had planned and executed his abduction to perfection. I urged her to drop the case and negotiate with me in good faith, she insisted that if I agree to her earlier demands, there will be no litigation and we could "settle out of court". In reality, she held my son hostage and was resorting to extortion.

With the help of her family, Indian lawyers and legal system that doesn't even recognize joint custodial rights, let alone parental child abduction, she has managed to weave a complex and malicious web in India, to deny Reyansh and my rights. Each day that passes by, increases the risk of my little boy suffering from long term emotional or psychological trauma.

I sought legal advice in New Jersey and India and filed for divorce and custody in New Jersey, since all three of us were residents of New Jersey, Reyansh was attending pre-school in New Jersey and his mother and I were working full time in New Jersey. In February 2013, the Superior Court, after determining it had jurisdiction to decide the child custody and divorce case, issued an emergent order directing Reyansh's mother to return him to New Jersey immediately and cease all litigation in India.

Reyansh's mother upon being served, immediately violated that order and obtained another ex-parte order in March 2013, preventing enforcement of the New Jersey order in India. Even though under Indian rules, ex-parte interim order ought to be heard within 30 days of issues, there has been no hearing on both these orders for over five (5) years. In effect, these orders have become permanent.

In April 2013, the Superior Court of New Jersey found Reyansh's mother in violation of earlier order and again directed her to comply with the February 2013 order to return Reyansh to New Jersey. The Court also issued its own opinion on why it had personal jurisdiction over Reyansh's mother, based on the principle of "minimum contact" and that Reyansh was wrongfully

removed from New Jersey in violation of my custodial rights. On this basis, I challenged the Family Court of Pune's jurisdiction to decide my son's custody and divorce. New Jersey orders were also submitted to the Family Court, Pune, however in June 2013, the Court, based on a flawed and frankly insufficient determination, decided that it had jurisdiction to decide the divorce and custody in India.

I appealed this order in the Bombay High Court. In October 2014, nearly 10 months after the New Jersey Court had dissolved my marriage and granted me sole, legal and residential custody of my son and found my ex-wife in default of multiple New Jersey Court orders, to my shock and dismay, the High Court reaffirmed the Family Court, Pune's decision and stated that not only was Reyansh's mother domiciled in India, so was I. It concluded that because my marriage took place in India and I had ancestral residential property in India, I had the "intention to be domiciled in the future". The Court's decision ran counter to facts and existing case law. I had immigrated to the U.S. in 1994, became a naturalized U.S. citizen in 2002, have lived and worked in the U.S. continuously since 1994 and had no intention to reside in India. In January 2015, I appealed the High Court decision to India's Supreme Court, who declined to admit my petition.

My petition to enforce the New Jersey divorce and custody decree in India, which was filed in 2015, had been stalled in the Family Court India for almost 4 years. My motion to seek interim parental plan, had also been stalled. No hearing had taken place in the 3 years since filing my suit on the above matters. In the meantime, petitions and motions filed by my ex-wife subsequent to my filings, had been heard and decided in her favor. I was left with a barrage of adverse orders from Indian Courts, inaction on my petitions and motions and chronic and systemic disregard for my son's wellbeing. Since 2016, I volunteered to pay ad-hoc child support, with the hope the Family Court will focus on the core issue of child abduction and enforcement of New Jersey decree, however little progress had been made.

In January 2018, after being denied access to my son during Christmas, I mailed gifts for my son that I had purchased earlier. I filed a petition in the Family Court, Pune to allow my parents to spend time with my son and to deliver Christmas gifts to him. My ex-wife contested the application, on multiple grounds, including that the gifts I had sent were "enticements" for my son and that she was afraid I had sent "used clothes". This was outrageous, but the Family Court Judge in India, did not grant my request. On April 4, 2018, U.S. Consular staff conducted a welfare and whereabouts visit with Reyansh. During the visit, the Consular staff offered to deliver Christmas gifts to Reyansh, which were refused by my ex-wife. Thus, Reyansh's Christmas gifts remained undelivered until November 2018, when my parents were finally allowed to visit my son after his 10th birthday. While my parents were granted three (3) hours with my son, they were only able to spend 45 minutes with him. This is the ugly reality of international parental child abduction. Child abductors, regardless of parent or stranger, perpetrate child abuse, simply by their wrongful retention of children. They show no regard for rule of law or the wellbeing of the victimized child.

My communication with my son has been disrupted since October 2017. I continue to call my son 3 days, as per my allocated time, but my calls are either unanswered, or my son answers my call, say, "I don't want to talk to you" or "stop calling me" and hangs up immediately. I know this is not my son speaking, he has been manipulated or coerced by his mother or her

family. In June 2018, I visited India, after I was granted temporary access. However my ex-wife, her Indian attorney, Abhjit Sarwate, Yashwant Khatri and Harsha Khatri (my ex-wife's parents) all conspired to prevent Reyansh from spending time with me and willfully defaulted on Family Court, Pune order dated May 31, 2018.

In April 2019, the Family Court Pune, finally decided on all pending suits in India. The Court dismissed my ex-wife's divorce and custody petition filed in India, citing lack of jurisdiction. The Court found that my son was illegally removed from New Jersey, and had been illegally retained in India by his mother. The Court found that my son, my ex-wife and I are were and continue to be domiciled in New Jersey and that New Jersey is my son's habitual residence. The Court also found that allegations of domestic abuse by my ex-wife in her Indian suit, were without merit. However, the Court also dismissed my suit to enforce New Jersey Court orders in India, on technical grounds and concluded that returning my son to New Jersey would not be in the my son's best interest, citing parental alienation. We are in the process of seeking review of this order. Clearly even when the Courts have recognized parental child abduction by my ex-wife, it applied an arbitrary standard for "best interest of the child" and denied my son and I justice.

I often think about my own childhood, where my parents' presence and love was constant. I then think about my son, who has forced to deal with this trauma, who doesn't even know that he has been wronged, his dignity robbed, and his rights violated. I pray for my son's wellbeing each and every day, multiple times a day.

I am the sole residential and legal custodian of my son, based on the determination by the Superior Court of New Jersey. Three (3) New Jersey Court orders that direct my ex-wife, who is also a U.S. Citizen, to return my son to New Jersey. Yet, two different U.S. Attorneys declined to prosecute my son's abduction case under 18 USC 1204. For the past six year, my parents, Reyansh's grandparents, have remained in India to help me with litigation in India. I have exhausted my savings, borrowed from my retirement account, and yet seven years later, I am no closer to bringing my son home, than I was when he was abducted in 2012. The Response from our Federal Agencies, namely the Department of State (Office of Children's Issues) and Department of Justice have been woefully lacking.

- After 7 years of my son's abduction to India, I still don't what specific actions has the Department of State, the Office Children's Issues have taken to seek my son's return?
- I am unable to understand what it means that the State Department "raises" all cases with the Government of India?
- I am heartbroken to hear from State Department officials, when they say there is "no update" on the status of return applications submitted to the Government of India in December 2015.
- I am frustrated each time I read that the U.S. Government has signed another trade deal or defense deal with the Government of India, yet does not sign a deal to reunite America's stolen children.

Let's look at elsewhere within our Government. Where is the Department of Justice, whose mission is;

"To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans."

Has the DoJ lived up to its mission statement? How many parental child abductions cases have they prosecuted in that last decade? How many cases have they closed without children returning? How many offenders have they successfully prosecuted? The answers are hard to find.

It took me nearly three (3) months to get a response from the FBI to even report my son's abduction. On multiple occasion, the FBI desk agent informed me that "my son is not abducted, he is with his mother". I had to repeatedly explain the situation, refer them to 18 USC 1204, the International Parental Child Kidnapping Crime Act, reach out to my Congressional office and the NCMEC. Then finally, I received a call from an FBI agent who request more information about my son and his abduction. After 8-9 months of investigation, the FBI recommended my son's case for prosecution. However, the U.S. Attorney's office in New Jersey declined to prosecute my case, and offered no explanation. To his credit, my FBI agent reached out to the Washington D.C. office and sought their assistance. After a couple of months I find out that U.S. Attorney in D.C. also declined to prosecute my case, again no explanation was offered.

I learned from other left behind parents, that their experience with District Attorneys and U.S. Attorneys is comparable. They face multiple obstacles to even register child abduction cases and when they are registered, and investigated, Prosecutors decline to prosecute the case. We have seen this pattern repeat in dozens of cases.

As part of on-going oversight of the Goldman Act (HR 3212, 2014) and oversight of the Federal Agencies, the DoJ submitted a written testimony on November 19, 2015, for a House Foreign Affairs hearing on the issue of International Parental Child Abduction. The DoJ's testimony raises more questions than provides answers:

The DoJ states:

*"International extradition, nevertheless, remains a valuable tool for bringing to justice individuals who violate our law by absconding with a child to a foreign country or unlawfully retaining a child abroad. Integral to that effort is the U.S. Department of Justice's Office of International Affairs (OIA), which vigorously pursues extradition of parents charged with international parental kidnapping when a federal or state prosecutor seeks extradition. For example, **since 2000, our records show that the Department, through OIA, has opened approximately 182 cases involving persons charged in the United States with international parental kidnapping or related offenses.**"*

182 extradition requests since year 2000 represent a minute percentage of outbound abduction cases (from the U.S.) reported to the Department of State ("DoS") each year, let alone those reported to State and Federal law enforcement or not reported at all.

Between 2010-2013, the DoS reported 5,007 children abducted from the United States to other nations. Assuming an average of 1,000 new abductions year each since year 2000, an

estimated 15,000 children were abducted between 2000-2015. DoJ's extradition represent about 1% of estimated child abductions between 2000-2015 or 3% of the reported abductions cases between 2010-2013.

There is a compelling case for the DoJ to increase prosecutions under IPCKCA. The DoJ testimony states:

"In those cases, approximately 61 fugitives returned to the U.S. through extradition, voluntary surrender, or deportation."

It is important to note that percentage of successful prosecutions, i.e. where child abductors are extradited to the United States is 34%, which suggests that when USAO or State DAs decide to prosecute child abduction cases, they have higher probability to succeed than those parents who have reported child abduction cases to the DoS, where the return rate ~16% in 2016.

The DoJ asserts that criminal prosecutions do not lead to return of abducted children. It states:

"it is important, however, to distinguish between the extradition of the parent who kidnapped a child and the return of that child to the United States. Extradition is a process to secure custody of a person charged with a criminal offense; it is not one intended to secure custody of an abducted child."

The DoJ further explains:

"federal or state prosecutors may investigate and prosecute the parent, but they typically have no control over whether foreign authorities will order the return of the child. As a result, even when a parent charged with parental kidnapping is extradited to the United States, the child may remain in the foreign country in the custody of other relatives, friends, or a child services agency"

While the extradition of child abductors from other countries may not guarantee the return abducted children, often US Attorneys or DAs will be able to negotiate the return of abducted American children, for a reduced sentence. **Lack of prosecutions, essentially allow child abductors to face no consequences for their actions, creates no deterrence to prevent future abductions, thus the cycle of abductions and inaction by the U.S. Government continues, leaving thousands of victimized children and families to their own peril.**

Victims' Report Card

So if I have to give a victims' report card. to rate our the responsiveness and effectiveness of U.S. and Indian Governments handling of international parental child abductions cases, using a rating scale that my nine year old son would understand, namely, "A" through "F", **I would give the United States Government a "D" and the our "global strategic partner", "friend", and fellow democracy, the Government of India a solid "F"**

After several decades of collective hardships faced by left behind parents and our children, the dial on international parental child abduction just hasn't moved!

Our Government's response to this crisis is un-American. I would expect this type of response in a less developed country, and I was born and raised in one. From a parent's point of view, where is the Leadership? Where is the Urgency? Left behind parents have been kicked around like a soccer ball from one Court room to the next, from one Government agency to another, from one elected Official's office to another. And by chance, if their stars align, then that left behind parent, like David Goldman, Noelle Hunter or Alyssa Zagaris, may get the support and justice they deserve; otherwise for most left behind parents we hit the "repeat" button and do this all over again!

Challenges In India

I wish we could say that the only challenge we face in India is systemic delays in their judiciary system. And that despite the delays, abducted American children and left behind parents, consistently get justice in India. Unfortunately, neither statements are true!

Key challenges victimized parents and children face in India include:

- 1) Lack of policy and law recognizing parental child abduction as crime, both civil and penal, has significant ramifications for not only Indian citizens, but those around the world who have some sort of association with India, including; cross cultural ties, marriage with Indian citizens or people of Indian origin;
- 2) Absence of administrative tools in India, including reporting of parental child abduction cases, domestic and international, and retrieval and reunification assistance for abducted children, means, left behind parents are compelled to litigate in a dysfunctional and ill-equipped judiciary system in India;
- 3) Lack of clear and transparent guidelines on a multitude of issues, including the determination of jurisdiction (i.e. domicile), child custody (including shared parenting, non-custodial parental rights), alimony, child support and distribution of marital assets; result in significant discretionary power with Judges and inconsistent quality of judicial decisions. This often leads to extensive appeals and delays justice;
- 4) Systemic delays and other inefficiencies in the Indian judicial system is not only leading to justice being denied to Indian citizens, but impacts U.S. Citizens and other foreign nationals who are being subjected to the jurisdiction of Indian Courts, in matters related to divorce and child custody;

Members of the Committee don't just take my word. According to the NCMEC, **86%** of all active cases of **abductions to India are open 2 years or more** and **51%** of all active India related cases are **open 5 years or more. 21%** of all India related cases **close without the child returning or child turning 18 years.**

I respectfully urge members of this Committee and those in our Government, that you consider each of the actions listed in **Exhibit A** (below).

Conclusion

Quoting from David Goldman's May 2013 testimony before the House Foreign Affairs Sub-Committee:

"Let us also be clear what we left-behind families are asking for: Some people mistakenly believe we are asking our government to intervene in custody disputes. We are not. All we are asking is that when our children are kidnapped to thwart a proper resolution of custody, the law governing their return to our country is upheld."

"..when it comes to the international law that deals with children abducted from the United States to other lands – there is no rule of law. And the broken lives and broken spirits of left-behind parents across America, whom we represent here today, stand as a living rebuke to that failure to enforce the rule of law."

"The plain fact is that nations who refuse to return America's children pay no price for defying the law, and unless we arm the State Department with the tools they need to do their job and unless nations who break the law flagrantly and repeatedly suffer real consequences, nothing will change...nothing will change"

After almost five (5) years, those words still hold true. The Department of State, Department of Justice, U.S. Congress and the White House, have the tools to urgently and safely bring our children back. We are asking for ACTION! We are asking that you BRING OUR KIDS HOME!

Thank you, Chairman Smith and Ranking Member Bass, for allowing our voices to be heard.

Exhibit A

List of Overt Actions in Support of Victims of Parental Child Abductions – Abductors, Aiders and Abettors:

- 1) Departments of State & Justice, coordinate investigation and prosecution of abductors under 18 U.S. Code § 1204 - International Parental Kidnapping Crime Act (IPKCA), upon the confirmation of abduction case by the DoS;
- 2) Congress enact law to provide full legal, financial and reunification aid to victimized parents and children both within the U.S. and in the country where the child(ren) are wrongfully retained;
- 3) Department of Home Security and DoS streamline procedures to enroll children in the Prevent Departure program, including allowing a concerned parent to temporarily (period of 90 days) enroll children in the program until a Court order can be obtained;
- 4) Congress enact laws or amend existing ICAPRA legislation, to automatically impose visa restrictions and halt trade concessions for countries that are cited as non-compliant on the DoS Annual Report on International Parental Child Abduction. These restrictions remain in place until all abducted American children are returned;
- 5) An interagency action be initiated, comprising of the DoS, DoJ and DHS, to establish or enhance existing extradition treaties with those Nations that are Top 10 destinations for abducted American children. If those Nations do not cooperate, we must freeze all extradition requests from those nations until our extradition request are honored;