

**BROKEN LAWS AND BEREAVED LIVES
INTERNATIONAL CHILD ABDUCTION HEARINGS
HOUSE COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH AND HUMAN RIGHTS
CHAIRMAN: REPRESENTATIVE CHRISTOPHER SMITH [R-NJ-4]
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**TESTIMONY: CARLOS BERMUDEZ
FATHER OF CHILD ABDUCTED TO MEXICO**

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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", ubiquitous 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.