

111TH CONGRESS
1ST SESSION

H. RES. 125

Calling on the central authority of Brazil to immediately discharge all its duties under the Hague Convention by facilitating and supporting Federal judicial proceedings as a matter of extreme urgency to obtain the return of Sean Goldman to his father, David Goldman, for immediate return to the United States.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2009

Mr. SMITH of New Jersey submitted the following resolution; which was referred to the Committee on Foreign Affairs

RESOLUTION

Calling on the central authority of Brazil to immediately discharge all its duties under the Hague Convention by facilitating and supporting Federal judicial proceedings as a matter of extreme urgency to obtain the return of Sean Goldman to his father, David Goldman, for immediate return to the United States.

Whereas, on May 25, 2000, Sean Goldman was born in Red Bank, New Jersey, the son of David Goldman and Bruna Bianchi Ribeiro Goldman who were married in New Jersey in 1999;

Whereas Sean Goldman lived with his parents the first four years of his life in Tinton Falls, New Jersey;

Whereas, on June 16, 2004, Sean and his mother Mrs. Goldman left together with Mrs. Goldman's parents for a planned vacation to Mrs. Goldman's parents' home in Brazil;

Whereas upon her arrival in Brazil, Mrs. Goldman called Mr. Goldman to advise him that their marriage was over and that she would not be returning Sean to his home in New Jersey;

Whereas Mr. Goldman has been trying unsuccessfully since June 17, 2004, to secure the return of his son from Brazil;

Whereas, on August 26, 2004, the Superior Court of New Jersey awarded custody to Mr. Goldman, ordered Mrs. Goldman and her parents to immediately return Sean to the United States, and indicated to Mrs. Goldman and her parents that their continued behavior under United States law constituted parental kidnapping;

Whereas, on September 3, 2004, Mr. Goldman filed an application for the immediate return of Sean to the United States under the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention");

Whereas the Federal Republic of Brazil acceded to the Hague Convention on October 19, 1999, and the Hague Convention entered into force between Brazil and the United States on December 1, 2003;

Whereas, pursuant to article 12 of the Hague Convention, the judicial authority of Brazil was required to order Sean's return to the United States "forthwith," customarily defined under international law as within six weeks after an application for return has been filed;

Whereas, on October 13, 2005, the Brazilian court refused to return Sean in contravention of Brazil's obligations under the Hague Convention even though it found that Sean was a habitual resident of the United States and, pursuant to international law, had been wrongfully removed and retained in Brazil;

Whereas, on August 19, 2005, the Superior Court of New Jersey found both Mrs. Goldman and her parents to be in willful contempt of the court's orders and further found Mrs. Goldman's continued retention of Sean actionable under the International Parental Kidnapping and Crime Act of 1993 as well as New Jersey's criminal statutes;

Whereas the contempt of Ms. Goldman and her family continued after the court's August 19, 2005, order and Mr. Goldman was afforded no contact with his son;

Whereas Mrs. Goldman obtained a divorce from Mr. Goldman without notice through the Brazilian courts and soon thereafter married João Paulo Lins e Silva;

Whereas, on August 22, 2008, Mrs. Goldman tragically passed away during childbirth leaving Sean without a mother and separated from his biological father in the United States;

Whereas in September 2008, Mr. Goldman traveled to Brazil to visit and rightfully reclaim full custody of his son, Sean;

Whereas, upon his arrival, Mr. Goldman learned that Mr. Lins e Silva had petitioned the Brazilian courts for custody rights over Sean and also had secretly petitioned the Brazilian courts to replace Mr. Goldman's name with his own name on a new birth certificate to be issued to Sean

Goldman, despite the fact that Mr. Goldman, not Mr. Lins e Silva, is Sean's biological father;

Whereas in October 2008, Mr. Lins e Silva failed to make Sean available for a visitation ordered by the Brazilian Federal Court with his father, and absconded with Sean for the duration of the scheduled visitation;

Whereas Brazilian law enforcement did not provide Mr. Goldman with Sean's location during the visitation ordered by the Brazilian court and did not enforce the visitation order, even though they were informed about Mr. Lins e Silva's failure to make Sean available for the visitation;

Whereas, the Government of Brazil, through the Hague Convention, is obligated to "take all appropriate measures to secure within [its territory] the implementation of the objects of the Convention," and "to use the most expeditious procedures available";

Whereas the judicial authority of Brazil has failed to comply with its obligations under article 11 of the Hague Convention to expeditiously order the return of Sean to the United States;

Whereas, the United States and Brazil, through the Hague Convention, have expressed the firm conviction that "the interests of children are of paramount importance in matters relating to their custody";

Whereas, furthermore, the United States and Brazil have expressed their desire, through the Hague 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";

Whereas the U.S. State Department determined in its 2008 Compliance Report to Congress for the 1980 Hague Convention on the Civil Aspects of International Child Abduction, as required under Public Law 105–277, section 2803 (the “Hague Convention Compliance Report”), that Brazil “continued to demonstrate patterns of noncompliance with the Convention in its judicial performance”;

Whereas it is reported that there are nearly 50 cases in which children who were habitual residents of the United States have been wrongfully abducted to Brazil and have not been returned to the United States as required under the Hague Convention; and

Whereas Sean is being deprived of his rightful opportunity to live and be raised by his biological father, Sean could suffer developmental and psychological consequences because of this unjust separation, and it is consistent with international law to be reunited with his father in New Jersey following the death of his mother: Now, therefore, be it

1 *Resolved*, That—

2 (1) the House of Representatives—

3 (A) calls on the central authority of Brazil
4 to immediately discharge all its duties under
5 the Hague Convention by facilitating and sup-
6 porting Federal judicial proceedings as a matter
7 of extreme urgency to obtain the return of Sean
8 Goldman to his father, David Goldman, for im-
9 mediate return to the United States; and

10 (B) calls upon the Brazilian government to
11 fulfill its obligation under international law to

1 take all other appropriate measures to secure
2 within its territory the implementation of the
3 objects of the Hague Convention, and to use
4 the most expeditious procedures available, pur-
5 suant to article 2 of the Convention, in the case
6 of Sean Goldman as well as all other children
7 from the United States whose rights are not
8 being respected under the Convention; and

9 (2) it is the sense of the House of Representa-
10 tives that the United States should—

11 (A) make the determination, through the
12 United States Department of State in its 2009
13 Hague Convention Compliance Report, that
14 Brazil is a “Country Not Compliant with the
15 Convention”, given that Brazil failed in all
16 three performance areas of central authority
17 performance, judicial performance, and law en-
18 forcement performance for fiscal year 2008;

19 (B) review its diplomatic procedures and
20 the operations available to United States citi-
21 zens through its central authority under the
22 Hague Convention to ensure that effective as-
23 sistance is provided to Mr. Goldman and other
24 United States citizens in obtaining the expedi-
25 tious return of their children from Brazil and

1 other countries that have entered into the recip-
2 rocal obligations with the United States under
3 the Hague Convention; and

4 (C) take any and all other appropriate
5 measures to ensure that Hague Convention
6 partners return abducted children to the United
7 States in compliance with the Hague Conven-
8 tion's provisions.

○